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Presidential Documents

Title 3—

The President

Proclamation 10403 of May 27, 2022

Adjusting Imports of Steel Into the United States

By the President of the United States of America

A Proclamation

1. On January 11, 2018, the Secretary of Commerce (Secretary) transmitted to the President a report on the Secretary's investigation into the effect of imports of steel mill articles (steel articles) on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised the President of his opinion that steel articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

2. In Proclamation 9705 of March 8, 2018 (Adjusting Imports of Steel Into the United States), the President concurred in the Secretary's finding that steel articles, as defined in clause 1 of Proclamation 9705, as amended by clause 8 of Proclamation 9711 of March 22, 2018 (Adjusting Imports of Steel Into the United States), are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of those steel articles by imposing a 25 percent ad valorem tariff on such articles imported from all countries except Canada and Mexico. The proclamation further stated that any country with which we have a security relationship is welcome to discuss with the United States alternative ways to address the threatened impairment of the national security caused by imports from that country, and noted that, should the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security such that the President determines that imports from that country no longer threaten to impair the national security, the President may remove or modify the restriction on steel articles imports from that country and, if necessary, adjust the tariff as it applies to other countries, as the national security interests of the United States require.

3. The United States and Ukraine have developed a close security relationship. Ukraine has expressed its willingness to work with the United States to address the global excess capacity for producing steel. Ukraine's steel industry has been significantly disrupted by the Russian Federation's unjustified, unprovoked, unyielding, and unconscionable war against Ukraine. The significant disruption in Ukraine's steel production is expected to decrease the total amount of steel produced by Ukraine as well as the amount of steel imported into the United States from Ukraine, which in 2021 accounted for less than 1 percent of all steel imports into the United States. At the same time, the steel industry has been historically important to Ukraine, and both the United States and Ukraine have an interest in maintaining that industry as an economic lifeline while the country recovers.

4. The United States and Ukraine have recently engaged in broad security discussions. The current disruption of Ukrainian steel production has been part of those discussions, and the ongoing discussion is anticipated to include alternative measures to prevent imports of steel from Ukraine from threatening the national security of the United States as Ukraine's steel production recovers from the significant disruption caused by the war.

5. In light of the ongoing security discussions and significant disruption of Ukraine's ability to produce steel, I conclude that Ukraine's present situation presents a special case. I have determined to suspend the tariffs set forth in Proclamation 9705 for the import of steel articles and derivative steel articles from Ukraine for 1 year. The Secretary shall monitor the situation in the domestic steel industry and developments in Ukraine's steel industry and inform me of any need to terminate or extend this suspension.

6. In light of my determination to adjust the tariff proclaimed in Proclamation 9705 as applied to eligible steel articles and derivative steel articles that are the product of Ukraine, I have considered whether it is necessary and appropriate in light of our national security interests to make any corresponding adjustments to such tariff as it applies to products of other countries. I have determined that it is necessary and appropriate, at this time, to maintain the current tariff level as it applies to products of other countries.

7. Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to take action to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

8. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 232 of the Trade Expansion Act of 1962, as amended, section 301 of title 3, United States Code, and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) Clause 2 of Proclamation 9705, as amended, is revised to read as follows:

''(2)(a) In order to establish certain modifications to the duty rate on imports of steel articles, subchapter III of chapter 99 of the HTSUS is modified as provided in the Annex to this proclamation and any subsequent proclamations regarding such steel articles.

(b) Except as otherwise provided in this proclamation, or in notices published pursuant to clause 3 of this proclamation, all steel articles imports covered by heading 9903.80.01, in subchapter III of chapter 99 of the HTSUS, shall be subject to an additional 25 percent ad valorem rate of duty with respect to goods entered for consumption, or withdrawn from warehouse for consumption, as follows: (i) on or after 12:01 a.m. eastern daylight time on March 23, 2018, from all countries except Argentina, Australia, Brazil, Canada, Mexico, South Korea, and the member countries of the European Union; (ii) on or after 12:01 a.m. eastern daylight time on June 1, 2018, from all countries except Argentina, Australia, Brazil, and South Korea; (iii) on or after 12:01 a.m. eastern daylight time on August 13, 2018, from all countries except Argentina, Australia, Brazil, South Korea, and Turkey; (iv) on or after 12:01 a.m. eastern daylight time on May 20, 2019, from all countries except Argentina, Australia, Brazil, South Korea, and Turkey; (v) on or after 12:01 a.m. eastern daylight time on May 21, 2019, from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea; (vi) on or after 12:01 a.m. eastern standard time on January 1, 2022, from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea, and except the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.80.65 through 9903.81.19, inclusive; (vii) on or after 12:01 a.m. eastern daylight time on April 1, 2022, from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea, and except the member

countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.80.65 through 9903.81.19, inclusive, and from Japan, for steel articles covered by headings 9903.81.25 through 9903.81.80, inclusive; and (viii) on or after 12:01 a.m. eastern daylight time on June 1, 2022, from all countries except Argentina, Australia, Brazil, Canada, Mexico, South Korea, and except from Ukraine through 11:59 p.m. eastern daylight time on June 1, 2023, and except the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.80.65 through 9903.81.19, inclusive, and from Japan through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.81.25 through 9903.81.80, inclusive. Further, except as otherwise provided in notices published pursuant to clause 3 of this proclamation, all steel articles imports from Turkey covered by heading 9903.80.02, in subchapter III of chapter 99 of the HTSUS, shall be subject to a 50 percent ad valorem rate of duty with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 13, 2018, and prior to 12:01 a.m. eastern daylight time on May 21, 2019. All steel articles imports covered by heading 9903.80.61, in subchapter III of chapter 99 of the HTSUS, shall be subject to the additional 25 percent ad valorem rate of duty established herein with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern time on the date specified in a determination by the Secretary granting relief. These rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported steel articles, shall apply to imports of steel articles from each country as specified in the preceding three sentences''

(2) The first two sentences of clause 1 of Proclamation 9980 of January 24, 2020 (Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States), are revised to read as follows:

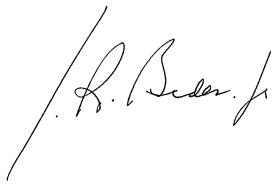
''In order to establish increases in the duty rate on imports of certain derivative articles, subchapter III of chapter 99 of the HTSUS is modified as provided in Annex I and Annex II to this proclamation. Except as otherwise provided in this proclamation, all imports of derivative aluminum articles specified in Annex I to this proclamation shall be subject to an additional 10 percent ad valorem rate of duty, and all imports of derivative steel articles specified in Annex II to this proclamation shall be subject to an additional 25 percent ad valorem rate of duty, with respect to goods entered for consumption, or withdrawn from warehouse for consumption, as follows: (i) on or after 12:01 a.m. eastern standard time on February 8, 2020, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, the Commonwealth of Australia (Australia), Canada, and the United Mexican States (Mexico) and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea; (ii) on or after 12:01 a.m. eastern standard time on January 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Mexico, and South Korea; (iii) on or after 12:01 a.m. eastern daylight time on April 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply

to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, and South Korea; and (iv) on or after 12:01 a.m. eastern daylight time on June 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico, and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, and South Korea, and except from Ukraine through 11:59 p.m. eastern daylight time on June 1, 2023''

(3) Any imports of steel articles from Ukraine that were admitted into a U.S. foreign trade zone under ''privileged foreign status'' as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern daylight time on June 1, 2022, shall be subject upon entry for consumption made on or after 12:01 a.m. eastern daylight time on June 1, 2022, to the 25 percent rate of duty imposed by Proclamation 9705, as amended.

(4) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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Annex

Modifications to Chapter 99 of the Harmonized Tariff Schedule of the United States

Section A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on June 1, 2022, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States ("HTS") is hereby modified as follows:

1. Subdivision (a) of U.S. note 16 to such subchapter Is modified by adding at the end thereof the following new sentence: "Unless otherwise provided in this note, iron or steel products covered by subdivision (b) of this note that are the product of Ukraine shall be exempt from the duty provided for in heading 9903.80.01 [entered for consumption] during the period from 12:01 a.m. eastern daylight time on June 1, 2022 through 11:59 p.m. eastern standard time on June 1, 2023."

2. Subdivision (a)(ii) of such U.S. note 16 is modified by inserting after "therefrom" in the first sentence of such subdivision the phrase ", and other than products of Ukraine [that are entered for consumption] during the period from June 1, 2022 through 11:59 p.m. eastern daylight time on June 1, 2023."

3. The article description of headings 9903.80.01 and 9903.80.03 are each modified by inserting after "or of Japan," the phrase ", or of Ukraine entered under the terms of such U.S. note 16,".

Section B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on the date of signature of this proclamation, subchapter III of chapter 99 of the HTS is further modified in order to make technical corrections in previously proclaimed provisions.

1. Subheading 9903.81.62 (first appearance) is redesignated as "9903.81.27", and the subheading now designated as "9903.8.38" is redesignated as "9903.81.38".

2. Subheading 9903.81.73 is modified by deleting "nonumerated" and inserting in lieu thereof "nonenumerated".

3. Subheadings 9903.80.28, 9903.80.88 and 9903.81.48 are each modified by deleting from the article description of each such subheading the number "7319.23.00" and by inserting in lieu thereof "7219.23.00".

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Billing code 7020–02–C

Presidential Documents

Proclamation 10404 of May 27, 2022

Prayer for Peace, Memorial Day, 2022

By the President of the United States of America

A Proclamation

On Memorial Day, we remember the patriots who gave their lives in the service of America, in the service of freedom, and in the service of justice. They made the ultimate sacrifice to defend our Constitution and our democracy. We are free because they were brave, and we live by the light of the flame of liberty they kept burning. They are all heroes, and our Nation is forever grateful.

Those who wear the uniform of the United States Armed Forces know the pride of service and what it means to dedicate themselves to a cause greater than themselves. These women and men put their lives on the line for an idea—the idea of America. They are the best of us. On this day, as we honor the fallen angels who consecrated this great Nation and the ideals that we stand for with their blood, we rededicate ourselves to the unending work of bringing our country ever closer to that more perfect Union for which they died.

Today and every day, we ask God to protect our troops, to shine light perpetual upon the fallen, and to bring comfort to their families. To those who mourn a loved one, and to America's Gold Star Families who have lost a loved one in conflict, my heart aches for you. Our Nation owes you and those you have lost a tremendous debt that we can never fully repay. On Memorial Day, we vow to honor their memories and support the families, caregivers, and survivors they left behind.

As we honor the memories of our fallen heroes, we are grateful for the future they made possible for us and rededicate ourselves to seeking enduring peace. Our heroes gave their lives for our country, and they live forever in our hearts—forever proud, forever honorable, and forever American.

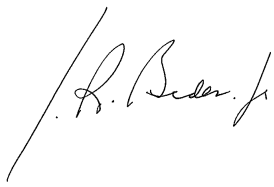
In honor and recognition of all of our fallen service members, the Congress, by a joint resolution approved May 11, 1950, as amended (36 U.S.C. 116), has requested that the President issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer and reflection. The Congress, by Public Law 106–579, has also designated 3:00 p.m. local time on that day as a time for all Americans to observe, in their own way, the National Moment of Remembrance.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim Memorial Day, May 30, 2022, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time when people might unite in prayer and reflection. I urge the press, radio, television, and all other information media to cooperate in this observance. I further ask all Americans to observe the National Moment of Remembrance beginning at 3:00 p.m. local time on Memorial Day.

I request the Governors of the United States and its Commonwealths and Territories, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon on this Memorial Day on

all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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Rules and Regulations

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 328

RIN 3064–AF71

False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation is adopting a final rule to implement section 18(a)(4) of the Federal Deposit Insurance Act. The final rule establishes the process by which the Federal Deposit Insurance Corporation will identify and investigate conduct that may violate section 18(a)(4) of the Federal Deposit Insurance Act, the standards under which such conduct will be evaluated, and the procedures which the Federal Deposit Insurance Corporation will follow when formally and informally enforcing the provisions of section 18(a)(4) of the Federal Deposit Insurance Act.

DATES: The rule is effective on July 5, 2022.

FOR FURTHER INFORMATION CONTACT: Richard M. Schwartz, Counsel, Legal Division, 202–898–7424, *rischwartz@FDIC.gov;* Michael P. Farrell, Counsel, Legal Division, 202–898–3853, *mfarrell@FDIC.gov,* Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

Section 18(a)(4) of the Federal Deposit Insurance Act, 12 U.S.C. 1828(a)(4), (Section 18(a)(4)) prohibits any person from misusing the name or logo of the Federal Deposit Insurance Corporation (FDIC) or from engaging in false advertising or making knowing misrepresentations about deposit insurance. The FDIC has observed an increasing number of instances where financial services providers or other entities or individuals have misused the FDIC's name or logo or have made false or misleading representations about deposit insurance. To provide transparency into how the FDIC will address these and similar concerns, the FDIC is adopting regulations to further clarify its procedures for identifying, investigating, and where necessary taking formal and informal action to address potential violations of Section 18(a)(4). The regulations also establish a point-of-contact for receiving complaints and inquiries about potential misrepresentations regarding deposit insurance. Although the FDIC is not required to promulgate regulations to implement section 18(a)(4), the FDIC nonetheless believes that the final rule establishes a more transparent process that will benefit all parties and promotes stability and confidence in FDIC deposit insurance and the nation's financial system.

II. Background

The FDIC has steadfastly and proactively sought to protect consumers [1] by limiting the use of the FDIC's name, seal, and logo to insured depository institutions (IDIs) and preventing false and misleading representations about the manner and extent of FDIC deposit insurance (deposit insurance). Section 18(a)(4) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1828(a)(4) (Section 18(a)(4)), prohibits any person from engaging in false advertising by misusing the name or logo of the FDIC or from making knowing misrepresentations about the existence of or the extent or manner of deposit insurance.[2] Section 18(a)(4) provides the FDIC independent authority to investigate and take administrative enforcement actions, including the power to issue cease and desist orders and impose civil money penalties, against any person who misuses the FDIC name or logo or makes misrepresentations about deposit insurance.[3]

Although the FDIC has broad statutory authority in this area, the FDIC has never issued specific regulations regarding false representations related to deposit insurance or the misuse of the FDIC's name or logo. Recently, the FDIC has observed an increasing number of instances where financial service providers or other entities or individuals have misused the FDIC's name or logo or have made false or misleading representations about deposit insurance. Therefore, the FDIC adopts the following rule, which provides certain procedures the FDIC will follow for identifying, investigating, and taking formal and informal action to address potential violations of Section 18(a)(4). The rule also provides for an established point-of-contact responsible for receiving complaints about potential violations of Section 18(a)(4) and responding to inquiries about deposit insurance coverage representations.

III. Requests for Information, The Proposed Rule, and Comments Received

Requests for Information

On February 26, 2020, the FDIC published a Request for Information (2020 RFI) related to potential modernization of its signage and advertising rules set out in part 328 of the FDIC regulations.[4] Some of the questions in the 2020 RFI related to the deposit insurance misrepresentations addressed in this final rule. The comment period for the 2020 RFI was extended on March 13, 2020,[5] but efforts to modify the rules under part 328 of the FDIC regulations were postponed in light of the COVID–19 national emergency. Subsequently, the FDIC published a new Request for Information in the **Federal Register** on April 9, 2021 (2021 RFI) which focused on soliciting information on the FDIC's advertising requirements applicable to IDIs and related topics, and removed specific questions relating to misrepresentations and misuse.[6]

The Proposed Rule

On May 10, 2021, the FDIC published a notice of proposed rulemaking (NPR)

[1] As used in this regulation, the term ''consumer'' is broadly defined to encompass all current and potential depositors, including natural persons, organizations, corporate entities, and governmental bodies.

[2] Under Federal law, it is also criminal offense to misuse the FDIC name or make false representations regarding deposit insurance. *See* 18 U.S.C. 709.

[3] 12 U.S.C. 1828(a)(4)(C)–(D).

[4] 85 FR 10997 (Feb. 26, 2020).

[5] 85 FR 14678 (Mar. 13, 2020).

[6] 86 FR 18528 (April 9, 2021).

to implement Section 18(a)(4).[7] The NPR proposed a regulation redesignating the existing regulations in part 328 as subpart A to part 328 and establishing a new subpart B to part 328, entitled ''False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo.'' The proposed subpart described certain procedures by which the FDIC would identify and investigate conduct that may violate Section 18(a)(4), the standards under which such conduct would be evaluated, and the procedures which the FDIC would follow when formally and informally enforcing the provisions of Section 18(a)(4).

Comments on the Proposed Rule

A. Overview

The FDIC issued the NPR on May 10, 2021, with a 60-day comment period. In the NPR, the FDIC also stated that it would consider any relevant comments submitted in response to the 2021 RFI. The FDIC received nineteen comments in response to the NPR.[8] Commenters included trade associations, insured depository institutions, advocacy groups, and other interested parties. All of the commenters expressed support for the proposed rule. Some noted that they have seen similar trends of misuse in the industry that the proposal is meant to combat. Several commenters applauded the FDIC's efforts to prevent false and misleading statements regarding deposit insurance and promote public confidence in FDIC-insured institutions. Additionally, commenters stated that the proposal sufficiently identifies situations that present potential risks related to false or misleading representations regarding deposit insurance coverage and the misuse of the FDIC's name or logo. Further, commenters stated that the proposed informal and formal enforcement processes were adequate. Additionally, the FDIC received two comments in response to the 2021 RFI that contained comments relevant to this rulemaking, one from a trade association and one from an IDI. These comments generally echoed the FDIC's concerns about consumers' ability to understand whether and how funds placed with non-IDIs are insured.

B. Requests for Clarification

Many commenters requested certain changes to clarify specific elements of the proposed rule. For example, a number of commenters asked that the FDIC clarify that IDIs have the authority to submit complaints of possible violations. Other commenters requested that the FDIC define certain terms in the proposed rule. For example, in regard to 12 CFR 308.147, one commenter requested the FDIC to clarify the meaning of the phrase ''a known IAP'' of an IDI.[9]

Additionally, in reviewing the comments, the FDIC noted that commenters used differing terms to refer to those impacted by potential misrepresentations. Some commenters referred to these as ''consumers.'' Others referred to them as ''consumers or depositors.'' Others used the terms, ''depositors or prospective depositors.'' Finally, one commenter noted that ''individuals . . . local governments, charitable organizations, corporations,'' and others could be impacted.

C. Suggested Alternatives

Commenters also suggested the FDIC take additional actions beyond the proposal. For example, commenters suggested the FDIC adopt a ''one-click rule'' for social media and internet advertising,[10] adopt standard disclosure language, create a closed database accessible to IDIs that lists IAPs who have violated these regulations, and adopt a voluntary public register of FDIC-insured products. Additionally, one commenter suggested the FDIC implement an information sharing mechanism designed to notify states of any formal or informal actions taken against an individual or entity in their jurisdiction. Additionally, some comments submitted in response to the NPR and the 2021 RFI suggested that the FDIC mandate that non-IDIs make certain affirmative statements regarding deposit insurance, including affirmative statements that non-insured products are not insured and statements explaining how and when deposits placed with IDIs by third parties are insured.

D. Section 328.102(b)(3)(ii)

The FDIC received ten comments related to proposed § 328.102(b)(3)(ii), which provided that, if a non-bank entity makes claims regarding the insured-status of its products, the failure to identify the name(s) of the IDI(s) which would be receiving deposits would be a material omission in violation of the rule. The commenters, mostly trade associations, recommended that the FDIC clarify the provision because they argued it could constrain the dissemination of information by and about so-called ''deposit placement networks.'' [11] They explained that a deposit network may involve many IDIs, making it difficult to name the specific IDI(s) in the network that will receive a deposit until the deposit is placed. The commenters urged the FDIC to modify or remove this requirement in the final rule.

E. Hybrid Products

Two commenters requested that the FDIC clarify the advertising and marketing requirements applicable to non-deposit and hybrid products. One commenter asked in particular how the proposed rule and the 2020 RFI would work together, and how the FDIC will consider and investigate complaints and statements regarding hybrid products.

Responses to Comments

With respect to requests that the FDIC clarify that IDIs can submit complaints under the proposed rule, the FDIC reviewed the language of proposed § 328.103, which allows any ''person'' to submit complaints, and the definition of ''person'' under proposed § 328.101, which specifically includes Regulated Institutions like IDIs. The FDIC believes these provisions make it sufficiently clear that IDIs can submit complaints, and therefore is not making any changes to these sections of the proposed rule.

Similarly, the FDIC does not believe it is necessary to amend the proposed rule to further define the phrase ''known IAP'' as it is used in proposed § 328.104. The FDIC interprets this phrase to mean any person who is actually known to the

[7] 86 FR 24770 (May 10, 2021).

[8] Of the comments received, some comments were identical.

[9] The draft regulation defined the term ''IAP'' to mean an ''institution-affiliated party'' under section 3(u) of the FDI Act, 12 U.S.C. 1813(u). As discussed more fully below, the term ''known IAP'' was not defined in the proposed regulation.

[10] The ''one-click'' rule is found in the official interpretation to Regulation Z and Regulation DD and deals with how certain advertising disclosures may be provided. *See* 12 CFR part 1026, supp. I, Comment 16(c)(1)–2, and 12 CFR part 1030, supp. I, Comment 8(a)–9. Generally, under these regulations, when a triggering term is mentioned in an advertisement, additional disclosures may be required. In the case of electronic advertisements, these regulations allow the additional disclosures to be located on a separate web page, so long as the triggering term is accompanied by a link that directly takes the consumer to the additional information.

[11] The term ''Deposit Placement Network'' is a defined term under section 29(g) of the FDI Act (12 U.S.C. 1831f(g)) in relation to brokered deposits. Although the commenters used the term ''deposit placement networks'' in their comment letters, their comments appeared intended to apply more broadly to any deposit network administered by a non-bank entity (referred to here as a ''deposit network sponsor'') that, through a network of IDIs with which it has business relationships, arranges or facilitates the placement of deposits. To distinguish these broader networks from ''Deposit Placement Networks,'' as described in section 29(g) of the FDI Act, the FDIC will refer to the former as merely ''deposit networks.''

FDIC to be an IAP, as defined under 12 U.S.C. 1813(u), either because the FDIC is aware that the person is a director, officer, employee or controlling shareholder of an IDI, or because the FDIC has already made a determination that the person is an IAP. The FDIC believes that this interpretation is consistent with the plain language of the phrase ''known IAP.''

Based upon the comments received, the FDIC recognizes the need to define a single term to describe those that may be adversely impacted by violations of Section 18(a)(4). To provide clarification, the FDIC has added a defined term, ''Consumer,'' to include all current or potential depositors, including natural persons, organizations, corporate entities, and governmental bodies.[12]

With regard to the suggestion that the FDIC implement standard disclosures and a ''one-click'' rule for social media and internet advertising, the FDIC does not believe it is advisable to adopt these suggestions in light of the pace of technological change in these areas. The FDIC believes any formats prescribed at this time could quickly become obsolete or even counterproductive as technology continues to evolve. Accordingly, the FDIC believes the proposed rule as currently drafted, which sets forth standard-based requirements as opposed to prescribing specific formats, is more appropriate.

With regard to the suggestion that the FDIC create a database of IAPs who have potentially violated the proposed rule, the FDIC believes that such a database could risk reputational harm to individuals who have not yet been found to have engaged in a violation. Further, to the extent the FDIC pursues formal enforcement action under the proposed rule, a public notice of charges or order will be issued. The FDIC believes that the publication of such notices and orders would be generally sufficient to provide IDIs with information about any individual who the FDIC believes has violated section 18(a)(4) or the implementing regulation.

With regard to the suggestion of a voluntary register of FDIC-insured products, the FDIC does not believe such a register would be advisable. The voluntary nature of such a register would limit its usefulness. Moreover, the FDIC resources that would be required to maintain such a register would likely be significant and outweigh any benefit it may have.

With regard to the proposal that the FDIC institute an information sharing system with state authorities, the FDIC does not believe any changes to the proposed rule are necessary. Proposed § 328.105 authorizes the FDIC to notify other authorities (including state regulators) of conduct that may fall within their jurisdiction. The FDIC recognizes the importance of working with other state and Federal agencies to address false, misleading, or otherwise deceptive representations regarding deposit insurance. Conduct that violates Section 18(a)(4) may also violate other statutory schemes, including but not limited to Section 5 of the Federal Trade Commission Act (FTC Act), 5 U.S.C. 45, (Section 5) and Section 1031 of the Dodd-Frank Act, 12 U.S.C. 5531 (Section 1031). Indeed, other laws or regulations may encompass broader conduct than that reached by Section 18(a)(4). For example, certain of Section 18(a)(4)'s prohibitions apply only to knowing misrepresentations, while several other statutes prohibiting deception do not require that misrepresentations be made knowingly. Nothing contained in this regulation should be read to limit the authority of any state or Federal agency or individual under any other law, including but not limited to the Consumer Financial Protection Bureau, the Federal Trade Commission, the Federal Reserve Board of Governors, the U.S. Department of Justice, state Attorneys General, and the FDIC itself.[13]

Based upon the facts and circumstances presented in individual cases, the FDIC anticipates that it will work with other agencies to address misrepresentations regarding deposit insurance when appropriate. The FDIC believes the referral authority currently contained in § 328.105 adequately provides for such cooperation. However, to further clarify, conduct that violates Section 18(a)(4) may at times violate other statutory schemes as well. As such, the FDIC is adding a new § 328.109 to expressly reiterate that the FDIC's authority under Section 18(a)(4) does not bar any other action authorized by law, by the FDIC or any other agency. While this reservation of authority to the FDIC and other agencies and individuals is provided in the plain language of Section 18(a)(4), the FDIC believes it is helpful to reference it in the final rule to avoid any confusion on this point.

Finally, in response to the suggestions that the FDIC require non-IDIs to make certain affirmative statements related to deposit insurance, the FDIC made revisions to the proposed § 328.102(b)(3)(ii), discussed below. The FDIC is not precluded from imposing additional requirements to ensure appropriate use of its official sign and advertisement language if the facts and circumstances warrant such action.

With respect to the comments regarding the language of proposed § 328.102(b)(3)(ii), the FDIC's aim in the proposed rule was to address situations in which non-bank entities were making unsubstantiated claims about the availability of deposit insurance without directly or indirectly identifying the IDIs with which these entities were ostensibly doing business. In such cases, consumers and the FDIC are unable to effectively evaluate the accuracy of such claims by non-bank entities. Moreover, even if the non-bank entity actually placed deposits at one or more IDIs, information identifying the IDI(s) at which such funds were being placed is vital to understanding the extent and manner of deposit insurance provided. Omission of this information could impact the insurability of the deposited funds to the consumer's detriment.[14]

Commenters have pointed out that it may not always be possible to identify with specificity the IDI(s) that will receive funds placed through a deposit network until those funds are actually

[12] As noted in the NPR, the standards governing this rule were adapted in part from those applicable to deception under Section 5 of the Federal Trade Commission Act, 5 U.S.C. 45 (Section 5). The FDIC recognizes that, in some but not all cases, Section 18(a)(4)'s prohibitions only apply to ''knowing'' misrepresentations, while Section 5 more broadly prohibits any material misrepresentations in commerce without regard to the advertising party's intent or knowledge. Regardless of any difference this presents, the FDIC believes that Section 5, which prohibits unfair or deceptive acts or practices in commerce offers a valuable framework for evaluating misrepresentations under Section 18(a)(4). Accordingly, the FDIC has looked to the standards governing deception under Section 5 to inform its understanding of what constitutes a misrepresentation that violates Section 18(a)(4). Similarly, the FDIC believes that Section 5 is useful in defining who Section 18(a)(4) protects, and Federal courts have concluded that the protections offered by Section 5 extend broadly to ''consumers,'' including natural persons, businesses, and not-for profit organizations. *See, e.g., FTC* v. *IFC Credit Corp.,* 543 F.Supp.2d 925, 934 (N.D.Ill. 2008). The FDIC believes similarly broad protection is appropriate here and consistent with the statute.

[13] For example, to the extent a misrepresentation about deposit insurance was made by an IDI or IAP, the FDIC would also be able to pursue the matter under section 8 of the FDI Act, 12 U.S.C. 1818, as well as Section 18(a)(4).

[14] For example, assume an individual consumer had $50,000 on deposit at Bank A. If the consumer saw an advertisement by a non-bank entity that promised full FDIC deposit insurance on large certificates of deposit (CDs), and the consumer obtained a $250,000 CD from the non-bank entity, the consumer would not necessarily receive the full value of the promised deposit insurance if the non-bank entity placed the consumer's funds at Bank A. Assuming these deposits, totaling $300,000, were held in the same capacity at Bank A, they would only be insured for up to $250,000.

deposited at the IDI(s).[15] Nonetheless, the FDIC continues to believe that in order for a non-bank entity to avoid the prohibition under Section 18(a)(4) against making misrepresentations about deposit insurance, a non-bank entity cannot advertise that its products are or will be FDIC-insured without providing consumers with sufficient information to adequately understand the extent and manner of deposit insurance provided. Such information allows consumers to verify representations about deposit insurance directly with IDIs and also allows consumers to avoid a situation where their total combined deposits at a particular IDI may exceed the maximum deposit insurance amount. Accordingly, the FDIC is amending proposed § 328.102(b)(3)(ii) and has created a new § 328.102(b)(5) to accommodate and address these competing concerns.[16]

Rather than requiring non-bank entities that are advertising FDIC-insured deposits to identify the specific IDI(s) that *will* receive a consumer's deposit, the FDIC is adopting a final rule that will require such non-bank entities to identify the IDI(s) with which the non-bank entities have existing direct or indirect business relationships and into which consumers' deposits *may* be placed.[17] The use of the word ''may'' does not allow non-bank entities to satisfy this requirement by merely identifying IDIs with which such non-bank entities might one day do business. The final rule provides that such non-bank entities must identify the IDIs with which such an entity has an existing direct or indirect business relationship for the placement of deposits and into which consumers' deposits may be placed.[18] To the extent that a non-bank entity places deposits through a deposit network, it may satisfy this requirement by identifying the deposit network and each IDI in the deposit network or by providing a hyperlink to a current list of all the IDIs that are part of such a network.[19] The FDIC believes that the final rule provides sufficient flexibility for non-bank entities, which as a result of relationships with deposit network sponsors may not be able to directly identify the IDI(s) that will receive consumers' deposits, while still providing consumers with access to adequate information about the extent and manner of deposit insurance provided.

With respect to comments requesting clarification relating to advertisements for hybrid products, the FDIC does not believe that any change to the proposed rule is necessary. The proposed rule prohibits misrepresentations about deposit insurance in advertising related to hybrid products. The proposed rule adopts the definition of hybrid products contained in subpart A, and its prohibitions related to advertising of hybrid products are consistent with the requirements of subpart A. To the extent that there are any future amendments to subpart A that impact the proposed rule's provisions related to hybrid products, the FDIC will address them at that time.

IV. The Final Rule

For the reasons stated above, the final rule adopts the proposed rule with certain limited changes. The FDIC is amending § 328.101 to add a definition for the term ''Consumer,'' to identify those intended to be protected under the regulation. The FDIC is also amending § 328.102(b)(3)(ii), adding a new § 328.102(b)(5), and redesignating § 328.102(b)(5) as § 328.102(b)(6) in order to clarify how marketing related to deposit networks can comply with the regulation.

Additionally, the FDIC is adding a new § 328.109 to make clear that, in accordance with the plain language of Section 18(a), the existence of the FDIC's authority to pursue enforcement actions under this subpart does not impact the authority of any other state or Federal agency or individual to pursue any other action authorized by any law. The FDIC is also making a minor, technical amendment to § 328.107 to provide clarity regarding the General Counsel's delegated authority to initiate and prosecute formal enforcement actions under the final rule.

Finally, the FDIC is redesignating the existing regulations in part 328 as subpart A to part 328, entitled ''Advertisement of Membership,'' and is establishing a new subpart B to part 328, entitled ''False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo'' containing the new regulations described herein. Finally, the FDIC is making technical amendments to § 328.3, limiting the applicability of definitions in that section to subpart A of part 328, and not to part 328, generally.

V. Expected Effects

The final rule will primarily affect non-bank entities and individuals who are potentially misusing the FDIC's name or logo or are making misrepresentations about deposit insurance. The FDIC currently insures 4,960 depository institutions[20] that could also be affected; however in practice, the final rule will primarily affect non-bank entities and private individuals. Since the adoption of Section 18(a)(4) in 2008, the FDIC has issued only one formal enforcement order against a non-bank entity for misuse of the FDIC's name or logo or for misrepresentations or false advertising in relation to deposit insurance. However, between January 1, 2019, and December 31, 2020, the FDIC reached informal resolutions regarding the potential misuse of the FDIC's name or logo and/or misrepresentations relation to deposit insurance in at least 165 instances.[21] Based on this experience, the FDIC estimates that the final rule will apply to relatively few formal enforcement actions and conservatively estimates that it will affect fewer than 165 informal resolutions with non-bank entities and individuals each year.

As discussed previously, the final rule will clarify the FDIC's procedures for evaluating potential violations of Section 18(a)(4). The final rule will generally be consistent with existing practices used by the FDIC with respect to these matters. Further the rule will not affect the application of related criminal prohibitions under 18 U.S.C. 709. Therefore, the FDIC believes that the final rule is unlikely to have any significant effect on formal and informal enforcement of the Section 18(a)(4) prohibitions.

The final rule could pose some indirect disclosure costs on non-depository entities. The rule's description of ''material omission'' provides that a statement that a product is insured or guaranteed by the FDIC violates the rule if non-depository entities who make representations about

[15] For example, if a customer places a deposit through a deposit network, the deposit network may be unable to tell the consumer in advance whether the entirety of the deposit will be placed at a single institution or whether it might be divided and placed at multiple institutions.

[16] The § 328.102(b)(5) that was included in the NPR has likewise been redesignated as § 328.102(b)(6).

[17] A non-bank entity may have an indirect relationship with an IDI if it places deposits through a deposit network.

[18] As an example, a non-bank entity may identify such IDIs by providing consumers with a link to a current list on its website of the IDIs with which it has existing business relationships for the placement of deposits.

[19] A non-bank entity may satisfy this requirement by providing a link to a list it maintains. Alternatively, if the deposit network maintains a current list of IDIs with which the deposit network has existing business relationships on the deposit network sponsor's public website, the non-bank entity may provide consumers with a link to such a list on the deposit network's website.

[20] Call Report data, June 30, 2021.

[21] *See FDIC 2019 Annual Report,* p. 38; *FDIC 2020 Annual Report,* p. 47.

deposit insurance fail to directly or indirectly identify the IDIs into which consumers' deposits may be placed. As described above, a non-bank entity may comply with this provision by publicly disclosing the name(s) of all IDI(s) with which the entity has existing direct or indirect business relationships for the placement of deposits and into which consumers' deposits may be placed. If the non-bank entity places deposits through a deposit network, it may publicly disclose the name(s) of the IDIs that are part of the deposit network. Such a list could be provided in writing or through a hyperlink to a website containing this information. Such a website could be maintained by the non-bank entity or the deposit network. In turn, the rule could result in deposit networks making publicly available lists of the IDIs with which they have existing business relationships for the placement of deposits, to the degree those entities are not already doing so. In either case, the FDIC believes that any such costs are likely to be relatively small.

The FDIC believes that the final rule will benefit FDIC-insured institutions and members of the public by further clarifying what constitutes a violation of Section 18(a)(4), by creating a process by which institutions and members of the public can report suspected instances of false advertising, misuse, or misrepresentation regarding deposit insurance, and by establishing clear procedures by which the FDIC will investigate and, where necessary, formally and informally resolve potential violations of Section 18(a)(4). Specifically, the added transparency on the FDIC's processes for investigating potential instances of misuse or misrepresentation and, if needed, resolution are expected to benefit the parties involved by establishing a common understanding of those processes.

VI. Alternatives

The FDIC has considered alternatives to the rule but believes that adopting subpart B to part 328 represents the most appropriate option. As discussed previously, Section 18(a)(4) establishes prohibitions against the misuse of the FDIC's name or logo and prohibits misrepresentations and false advertising in relation to deposit insurance. The FDIC considered the status quo alternative of not adopting a regulation. However, the FDIC believes that the final rule is the most appropriate action because it provides clarity for the public regarding what constitutes misuse of FDIC name or logo or misrepresentation with respect to FDIC insurance, how the FDIC will identify and investigate suspected instances of misuse or misrepresentation, and the process by which the FDIC will pursue formal or informal resolution of instances of misuse or misrepresentation.

VII. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.[22] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $750 million.[23] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As of June 30, 2021, the FDIC insured 4,960 depository institutions, of which 3,374 are considered small banking organizations for the purposes of RFA.[24] Potential instances of misuse of the FDIC name or logo, or misrepresentations about deposit insurance, by IDIs are usually addressed under the normal supervisory authority of the appropriate Federal financial regulator; therefore although the final rule could affect IDIs, in practice the rule would primarily affect non-bank entities and private individuals. Private individuals are not considered ''small entities'' under the RFA.[25]

Based on the information above, the FDIC certifies that the rule would not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.[26] The FDIC's OMB control number for its ''Customer Assistance Forms'' information collection is 3064–0134. The final rule does not revise this existing information collection pursuant to the PRA and consequently, no submission in connection with this OMB control number will be made to the OMB for review. However, § 328.102(b)(5) of the final rule imposes third-party disclosure requirements which will be addressed in a separate **Federal Register** document. In particular, § 328.102(b)(5) of the final rule imposes disclosure requirements for non-bank entities that make certain types of statements regarding deposit insurance. Under the PRA, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information is not approved by the OMB. Consequently, the FDIC will not subject anyone to penalties for violations of § 328.102(b)(5) related to such third-party disclosures until the information collection request is approved by the OMB.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act 48 requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invited comment regarding the use of plain language, but did not receive any comments on this topic.

D. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a

[22] 5 U.S.C. 601, *et seq.*

[23] The SBA defines a small banking organization as having $750 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 87 FR18627, effective May 2, 2022). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for the purposes of RFA.

[24] FDIC Call Report data, June 30, 2021.

[25] How to Comply with the Regulatory Flexibility Act, August 2017, The U.S. Small Business Administration, Office of Advocacy, *https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf.*

[26] 4 U.S.C. 3501–3521.

''major'' rule. If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication. The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or Local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act.

As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[27] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[28] The FDIC has determined that the final rule would not impose any additional reporting, disclosure, or other new requirements on IDIs, and thus the requirements of the RCDRIA do not apply.

[27] 12 U.S.C. 4802(a).

[28] *Id.*

List of Subjects in 12 CFR Part 328

Advertising, Bank deposit insurance, Savings associations, Signs and symbols.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR part 328 as follows:

PART 328—ADVERTISEMENT OF MEMBERSHIP, FALSE ADVERTISING, MISREPRESENTATION OF INSURED STATUS, AND MISUSE OF THE FDIC'S NAME OR LOGO

■ 1. Revise the authority citation for part 328 to read as follows:

Authority: 12 U.S.C. 1818, 1819 (Tenth), 1820(c), 1828(a).

■ 2. Revise the heading for part 328 to read as set forth above.

■ 3. Designate §§ 328.0 through 328.4 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Advertisement of Membership

■ 4. Amend § 328.3 by revising paragraphs (a) and (e)(1)(i) and (ii) to read as follows:

§ 328.3 Official advertising statement requirements.

(a) *Advertisement defined.* The term ''advertisement,'' as used in this subpart, shall mean a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.

* * * * *

(e) * * *

(1) * * *

(i) *Non-deposit product.* As used in this subpart, the term ''non-deposit product'' shall include, but is not limited to, insurance products, annuities, mutual funds, and securities. For purposes of this definition, a credit product is not a non-deposit product.

(ii) *Hybrid product.* As used in this subpart, the term ''hybrid product'' shall mean a product or service that has both deposit product features and non-deposit product features. A sweep account is an example of a hybrid product.

* * * * *

§§ 328.5 through 328.99 [Reserved]

■ 5. Add reserved §§ 328.5 through 328.99.

■ 6. Add subpart B to read as follows:

Subpart B—False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo

Sec.

Subpart B—False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo

§ 328.100 Scope.

This subpart applies to any person who:

(a) Falsely represents, expressly or by implication, that any deposit liability, obligation, certificate, or share is FDIC-insured by using the FDIC's name or logo;

(b) Knowingly misrepresents, expressly or by implication, that any deposit liability, obligation, certificate, or share is insured by the FDIC if such an item is not so insured;

(c) Knowingly misrepresents, expressly or by implication, the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured by the FDIC, if such an item is not insured to the extent or manner represented; or

(d) Aids or abets another in any of the foregoing listed in paragraphs (a) through (c) of this section.

§ 328.101 Definitions.

For purposes of this subpart:

Advertisement means a commercial message, in any medium, that is designed to attract public attention or patronage to a product, business, or service.

Appropriate Federal Banking Agency has the meaning set forth in section 3(q) of the FDI Act (12 U.S.C. 1813(q)).

Consumer means any current or potential depositor, including natural persons, organizations, corporate entities, and governmental bodies.

FDI Act means the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

FDIC means the Federal Deposit Insurance Corporation.

FDIC-Associated Images means the Seal of the FDIC, alone or within the letter C of the term FDIC; the Official Sign and Symbol of the FDIC, as set forth in § 328.1; the Official Advertising Statement, as set forth in § 328.3(b); any similar images; and any other signs and

symbols that may represent or imply that any deposit, liability, obligation certificate, or share is insured or guaranteed in whole or in part by the FDIC.

FDIC-Associated Terms means the abbreviation ''FDIC,'' and the following words or phrases: ''Federal Deposit Insurance Corporation,'' ''Federal Deposit,'' ''Federal Deposit Insurance,'' ''FDIC-insured,'' ''FDIC insurance,'' ''insured by FDIC,'' ''member FDIC;'' any similar words or phrases; or any other terms that may represent or imply that any deposit, liability, obligation certificate, or share is insured or guaranteed by the FDIC.

Federal Banking Agency has the meaning set forth in section 3(z) of the FDI Act, 12 U.S.C. 1813(z).

General Counsel means the General Counsel of the FDIC or his or her designee.

Hybrid Product has the same meaning as set forth under § 328.3(e)(1)(ii).

Institution-Affiliated Party (IAP) has the same meaning as set forth under section 3(u) of the FDI Act, 12 U.S.C. 1813(u).

Insured Deposit has the same meaning as set forth under section 3(m) of the FDI Act, 12 U.S.C. 1813(m).

Insured Depository Institution has the same meaning as set forth under section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2).

Non-Deposit Product has the same meaning as set forth under § 328.3(e)(1)(i).

Person means a natural person, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity, association, or organization, including a ''Regulated Institution'' as defined in this section.

Regulated Institution means any institution for which the FDIC, the Office of the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System is the ''appropriate Federal banking agency'' under section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

Third-Party Publisher means any party that publishes, places, distributes, or circulates advertising or marketing materials, regardless of the platform or media used for distribution, containing FDIC-Associated Images, FDIC-Associated Terms, or other claims regarding FDIC insurance or guarantees. Third-Party Publishers include, but are not limited to: Publishers and distributors of written, visual, or print advertising; broadcasters of video or audio advertisements; telemarketers; internet or web-based distributors, including internet service providers, and email marketers; and direct mail marketers and distributors.

Uninsured Financial Product means any Non-Deposit Product, Hybrid-Product, investment, security, obligation, certificate, share, or financial product other than an ''Insured Deposit'' as defined in this section.

§ 328.102 Prohibition.

(a) *Use of the FDIC name or logo.* (1) No person may represent or imply that any Uninsured Financial Product is insured or guaranteed by the FDIC by using FDIC-Associated Terms as part of any business name or firm name of any person.

(2) No person may represent or imply that any Uninsured Financial Product is insured or guaranteed by the FDIC by using FDIC-Associated Terms or by using FDIC-Associated Images as part of an Advertisement, solicitation, or other publication or dissemination.

(3) This section applies, but is not limited, to:

(i) An Advertisement for any Uninsured Financial Product that features or includes one or more FDIC-Associated Terms or FDIC-Associated Images, without a clear, conspicuous, and prominent disclaimer that the products being offered are not FDIC insured or guaranteed.

(ii) An Advertisement for any Uninsured Financial Product that may be backed or guaranteed by an entity other that the FDIC, but features or includes one or more FDIC-Associated Terms or FDIC-Associated Images, without a clear, conspicuous, prominent, and accurate explanation as to the actual nature and source of the guarantee.

(iii) An Advertisement for any Non-Deposit Product or Hybrid Product by a Regulated Institution that includes any statement or symbol which implies or suggests the existence of deposit insurance relating to the Non-Deposit Product or Hybrid Product.

(iv) Publication or dissemination of information, regardless of the media or platform, that suggests or implies that the party making the representation is an FDIC-insured institution if this is not in fact true.

(v) Publication or dissemination of information, regardless of the media or platform, that suggests or implies that the party making the representation is associated with an FDIC-insured institution if the nature of the association is not clearly, conspicuously, prominently, and accurately described.

(vi) Publication or dissemination of information, regardless of the media or platform, that suggests or implies that the party making the representation is the FDIC or any office, division, or subdivision thereof, if this is not in fact true.

(vii) Publication or dissemination of information, regardless of the media or platform, that suggests or implies that the party making the representation is associated with the FDIC or any office, division, or subdivision thereof, if the nature of the association is not clearly, conspicuously, prominently, and accurately described.

(b) *False or misleading representations regarding FDIC insurance.* (1) No person may knowingly make false or misleading representations about deposit insurance, including:

(i) That any deposit liability, obligation, certificate, or share is insured under this subpart if such a deposit is not so insured;

(ii) The extent to which any deposit liability, obligation, certificate, or share is insured under this subpart if such item is not insured to the extent represented; or

(iii) The manner in which any deposit liability, obligation, certificate, or share is insured under this subpart if such item is not insured in the manner represented.

(2) For the purposes of this section, a statement is deemed to be a statement regarding deposit insurance, if it:

(i) Includes any FDIC-Associated Images or FDIC-Associated Terms;

(ii) Makes any representation, suggestion, or implication about the existence of FDIC insurance or the extent or manner of coverage; or

(iii) Makes any representation, suggestion, or implication about the existence, extent, or effectiveness of any guarantee by FDIC in the event of financial distress by Insured Depository Institutions, whether a specific Insured Depository Institution or Insured Depository Institutions generally, including but not limited to bank failure, insolvency, or receivership of such institutions.

(3) For the purposes of this section, a statement regarding deposit insurance violates this section, if:

(i) The statement contains any material representations which would have the tendency or capacity to mislead a reasonable consumer, regardless of whether any such consumer was actually misled; or

(ii) The statement omits material information that would be necessary to prevent a reasonable consumer from being misled, regardless of whether any such consumer was actually misled.

(4) Without limitation, a false or misleading representation is deemed to

be material if it states, suggests, or implies that:

(i) Uninsured Financial Products are insured or guaranteed by the FDIC;

(ii) Insured Deposits (whether generally or at a particular Regulated Institution) are not insured or guaranteed by the FDIC;

(iii) The amount of deposit insurance coverage is different (whether greater or less) than actually provided under the FDI Act;

(iv) The circumstances under which deposit insurance may be paid are different than actually provided under the FDI Act;

(v) The requirements to qualify for deposit insurance, or the process by which deposit insurance would be paid, are different from what is provided under the FDI Act and its implementing regulations in this chapter, including false or misleading claims related to actions required of consumers to qualify for or obtain such insurance; or

(vi) Regulated Institutions may convert Insured Deposits into another form of liability that is not insured, such as unsecured debt or equity.

(5) Without limitation, a statement regarding deposit insurance will be deemed to omit material information if the absence of such information could lead a reasonable consumer to believe any of the material misrepresentations set forth in paragraph (b)(4) of this section or could otherwise result in a reasonable consumer being unable to understand the extent or manner of deposit insurance provided. For example, if a statement is made by a person other than an Insured Depository Institution that represents or implies that an advertised product is insured or guaranteed by the FDIC, it will be deemed to be a material omission to fail to identify the Insured Depository Institution(s) with which the representing party has a direct or indirect business relationship for the placement of deposits and into which the consumer's deposits may be placed.

(6) Without limitation, a representation is deemed to have been knowingly made if the person making the representation:

(i) Has made false or misleading representations regarding deposit insurance;

(ii) Has been advised by the FDIC in an advisory letter, as provided in § 328.106(a), or has been advised by another governmental or regulatory authority, including, but not limited to, another Federal banking agency, the Federal Trade Commission, the U.S. Department of Justice, or a state bank supervisor, that such representations are false or misleading; and

(iii) Thereafter, continues to make these, or substantially-similar, representations.

§ 328.103 Inquiries and complaints.

Should any person have reason to believe that anyone is or may be acting in violation of section 18(a) of the FDI Act (12 U.S.C. 1828(a)) or this subpart, or have questions regarding the accuracy of deposit-related representations, such individuals may contact the FDIC at the FDIC Information and Support Center, *http://ask.fdic.gov/fdicinformationandsupportcenter/s/,* or by telephone at 1–877–275–3342 (1–877–ASK–FDIC).

§ 328.104 Investigations of potential violations.

(a) The General Counsel has delegated authority to investigate potential violations of section 18(a) of the FDI Act (12 U.S.C. 1828(a)) and this subpart.

(b) Such investigations will be conducted as prescribed under section 10(c) of the FDI Act (12 U.S.C. 1820(c)) and subpart K of part 308 of this chapter (12 CFR 308.144 through 308.150). Notwithstanding the general confidentiality provisions of 12 CFR 308.147, in cases that may pose a risk of imminent harm to consumers, the FDIC may disclose or confirm the existence of an investigation that does not involve an Insured Depository Institution or a known IAP thereof. Such disclosure must not disclose any information obtained or uncovered during the course of the investigation.

§ 328.105 Referral to appropriate authority.

(a) If, in connection with the receipt of an inquiry or complaint, or during the course of an investigation, informal resolution, or formal enforcement under this subpart:

(1) The FDIC becomes aware of conduct by a Regulated Institution for which another Federal banking agency is the appropriate Federal banking agency or an Institution-Affiliated Party of such an institution, that appears to violate section 18(a) of the FDI Act (12 U.S.C. 1828(a)), the FDIC may recommend that the appropriate Federal banking agency take appropriate enforcement action. If the appropriate Federal banking agency does not take the recommended action within 30 days, the FDIC may pursue any and all remedies available under section 18(a) or the FDI Act (12 U.S.C. 1828(a)) and this subpart;

(2) The FDIC becomes aware of conduct that the FDIC has reason to believe violates a civil law or regulations within the jurisdiction of another regulatory authority, the FDIC may take steps to notify the appropriate authority; and

(3) The FDIC becomes aware of conduct that the FDIC has reason to believe violates 18 U.S.C. 709, the FDIC may notify FDIC's Office of Inspector General for referral to the appropriate criminal law enforcement authority.

(b) To the extent that any records are provided to a regulatory or criminal law enforcement authority, as set forth in paragraph (a) of this section, the provision of such records will be made in accordance with the requirements of part 309 of this chapter. Where such records were obtained during the course of an investigation, informal resolution, or formal enforcement action, the General Counsel will be considered the Director of the FDIC's Division having primary authority over records so obtained.

§ 328.106 Informal resolution.

(a) If the FDIC has reason to believe that any person may be misusing an FDIC-Associated Image or FDIC-Associated Term or otherwise violating § 328.102(a), or may be making false or misleading representations regarding deposit insurance in violation of § 328.102(b), the FDIC may issue an advisory letter to such a person and/or any person who aids or abets another in such conduct, including any Third-Party Publisher. Generally, such an advisory letter will:

(1) Alert the recipient of advisory letter of the basis for the FDIC's concerns;

(2) Request that the person and/or Third-Party Publisher:

(i) Take reasonable steps to prevent any violations of section 18(a) of the FDI Act (12 U.S.C. 1828(a)) and this subpart;

(ii) Commit in writing to refrain from such violations in the future; and

(iii) Notify the FDIC in writing that the identified concerns have been fully addressed and remediated; and

(2) Offer the person or Third-Party Publisher the opportunity to provide additional information, documentation, or justifications to substantiate the representations made or otherwise refute the FDIC's expressed concerns.

(b) Except in cases where the FDIC has reason to believe that consumers or Insured Depository Institutions may suffer harm arising from continued violations, recipients of advisory letters described in paragraph (a) of this section will be provided not less than fifteen (15) days to provide the requested commitment, explanation, or justification.

(c) Where a recipient of an advisory letter described in paragraph (a) of this

section provides the FDIC with the requested written commitments within the timeframe specified in the letter, and where any required remediation has been verified by FDIC staff, the FDIC will generally take no further administrative enforcement against such a party under § 328.107.

(d) Where a recipient of an advisory letter described in paragraph (a) of this section fails to respond to the letter, fails to make the requested commitments, or fails to provide additional information, documentation, or justifications that the FDIC, in its discretion, finds adequate to substantiate the representations made or otherwise refute the concerns set forth in the advisory letter, the FDIC may pursue all remedies set forth in this subpart.

(e) Nothing in this section will prevent the FDIC from commencing a formal enforcement action under § 328.107 at any time before or after the issuance of an advisory letter under this section if:

(1) The FDIC has reason to believe that consumers or Insured Depository Institutions may suffer harm arising from continued violations; or

(2) The person to whom such an advisory letter would be sent has previously received a similar advisory letter from the FDIC under paragraph (a) of this section.

§ 328.107 Formal enforcement actions.

(a) *Enforcement authority.* For the purpose of enforcing the requirements of section 18(a)(4) of the FDI Act (12 U.S.C. 1818(a)(4)) and this subpart, the General Counsel has delegated authority to bring administrative enforcement actions against any person under sections 8(b), (c), (d), and (i) of the FDI Act (12 U.S.C. 1818(b), 1818(c), 1818(d), and 1818(i)). In the case of conduct by a Regulated Institution for which another Federal banking agency is the appropriate Federal banking agency or an institution-affiliated party of such an institution, the General Counsel may not bring an enforcement action under this subpart unless the FDIC has provided the appropriate Federal banking agency with notice as set forth in § 328.105(a)(1) and the appropriate Federal banking agency failed to take the recommended action.

(b) *Venue.* Unless the person who is the subject of the enforcement action consents to a different location, the venue for an administrative action commenced under section 18(a)(4) of the FDI Act (12 U.S.C. 1818(a)(4)), will be as follows:

(1) In a case where the person who is the subject of the action is an Insured Depository Institution or an IAP of an Insured Depository Institution, in the Federal judicial district or territory in which the home office of the Insured Depository Institution is located.

(2) In a case where the person who is the subject of the action is not an Insured Depository Institution or an IAP of an Insured Depository Institution, the Federal judicial district or territory where the person who is the subject of the action resides, if the subject resides in the United States. If the subject of the action does not reside in the United States, the venue will be where the subject of the action conducts business or the Federal judicial district for the District of Columbia.

(3) For the purposes of paragraph (b)(1) of this section, a natural person is deemed to reside in the Federal judicial district where the natural person is domiciled. A person other than a natural person is deemed to reside in the Federal judicial district where it is headquartered or has its principal place of business.

(c) *Rules of practice and procedure.* All actions brought and maintained under this section will be subject to the FDIC's Rules of Practice and Procedure in subparts A through C of part 308 of this chapter (12 CFR 308.1 through 308.109).

§ 328.108 Appeals process.

(a) A person who is the subject of a final order issued after an administrative action commenced pursuant to this subpart may obtain judicial review of such order in accordance with the procedures set forth in section 8(h)(2) of the FDI Act (12 U.S.C. 1818(h)(2)).

(b) Petitions for review under this section may be filed in the court of appeals for the circuit where the hearing was held or the United States Court of Appeals for the District of Columbia Circuit.

§ 328.109 Other actions preserved.

No provision of this subpart shall be construed as barring any action otherwise available, under the laws or regulations of the United States or any state, to any Federal or state agency or person.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on May 17, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–10903 Filed 6–1–22; 8:45 am]

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1240

RIN 2590–AB18

Enterprise Regulatory Capital Framework—Public Disclosures for the Standardized Approach

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA or the Agency) is adopting a final rule (final rule) that amends the Enterprise Regulatory Capital Framework (ERCF) by introducing new public disclosure requirements for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac, and with Fannie Mae, each an Enterprise). The requirements include quantitative and qualitative disclosures related to risk management, corporate governance, capital structure, and capital requirements and buffers under the standardized approach.

DATES: This rule is effective August 1, 2022.

FOR FURTHER INFORMATION CONTACT: Andrew Varrieur, Senior Associate Director, Office of Capital Policy, (202) 649–3141, *Andrew.Varrieur@fhfa.gov*; Christopher Vincent, Senior Financial Analyst, Office of Capital Policy, (202) 649–3685, *Christopher.Vincent@fhfa.gov*; or James Jordan, Associate General Counsel, Office of General Counsel, (202) 649–3075, *James.Jordan@fhfa.gov* (these are not toll-free numbers); Federal Housing Finance Agency, 400 7th Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

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XI. Congressional Review Act

I. Introduction

On November 3, 2021, FHFA published in the **Federal Register** a notice of proposed rulemaking (proposed rule) seeking comments on amendments to the ERCF that would implement new public disclosure requirements for the Enterprises.[1] FHFA proposed these amendments to improve market discipline and encourage sound risk-management practices at the Enterprises by ensuring that market participants have access to sufficient information with which they can assess an Enterprise's material risks and capital adequacy and make informed investment decisions. Public disclosures that are clear, comprehensive, useful, consistent over time, and comparable across Enterprises will facilitate such analyses and will therefore contribute to the safety and soundness of the Enterprises, decreasing risk to U.S. taxpayers. FHFA is now adopting in this final rule the proposed amendments, substantially as proposed, with minor modifications as discussed in the relevant sections of this preamble.

The public disclosure requirements in the final rule align with many of the public disclosure requirements for large banking organizations under the regulatory capital framework adopted by United States banking regulators (U.S. banking framework). Modern bank disclosure requirements were initially contemplated by the Basel Committee on Banking Supervision (BCBS) under Pillar 3 of Basel II in order to complement the minimum capital requirements and the supervisory review process and were later expanded with additional requirements in Basel III. In much the same way, the public disclosure requirements in the final rule will bolster the ERCF as it aims to ensure that each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission to provide stability and ongoing assistance to the secondary mortgage market across the economic cycle, in particular during periods of financial stress.[2]

II. Overview of the Final Rule

The final rule implements quantitative and qualitative disclosure requirements related to risk management, corporate governance, capital structure, statutory capital requirements, supplemental capital requirements, including risk-weighted assets calculated under the standardized approach, and capital buffers. In contrast to the U.S. banking framework, which has fewer requirements and buffers under the standard approach than under the advanced approaches, the ERCF requires the Enterprises to satisfy the same capital buffers and leverage requirements under the standard approach and under the advanced approaches. Therefore, the final rule adapts the public disclosure requirements in the U.S. banking framework to reflect the ERCF's standardized approach, blending elements from the U.S. banking framework's standardized and advanced approaches. While the final rule implements disclosure requirements for the ERCF's standardized approach only, FHFA may in the future consider additional disclosure requirements related to the advanced approaches.

In general, the final rule requires quarterly quantitative disclosures and annual qualitative disclosures, provided the Enterprises disclose any material changes to disclosure items as soon as practicable, and no later than the end of the next calendar quarter. As discussed below, Enterprises will publish on their websites their first public disclosure reports under the final rule in the first quarter of 2023. This timeframe will allow the Enterprises to establish the internal reporting and governance functions necessary to fulfill the disclosure requirements and will minimize duplicative reporting by aligning the schedule of annual qualitative disclosures with the Securities and Exchange Commission's (SEC) reporting schedule for Form 10–K.

The final rule balances the potential costs of disclosures with the many benefits, including the benefits of increased market discipline of the Enterprises. By allowing market participants to assess key information about the Enterprises' risk profiles and associated levels of capital, the final rule will promote transparency, increase the amount of information available to the public, and encourage sound risk management practices at the Enterprises. In doing so, the final rule will foster financial stability at the Enterprises and in the broader housing finance market both during and after the Enterprisers' conservatorships. However, enhanced public disclosures could be costly for the Enterprises. The final rule strikes an appropriate balance between the market benefits of disclosure and the additional financial burden to the Enterprises by permitting the Enterprises to fulfill many of the disclosure requirements by relying on similar disclosures made in accordance with accounting standards or SEC mandates. When an Enterprise fulfills a disclosure requirement using information provided in a different regulatory report, the Enterprise must provide a summary table that specifically indicates where the cross-referenced disclosures may be found and provide a reconciliation of regulatory capital elements as they relate to its balance sheet in any audited consolidated financial statements should there be differences between the accounting or other disclosures and the disclosures required under the final rule.

As proposed, the final rule also introduces a materiality concept for items not explicitly identified as required disclosures. The materiality concept is designed to ensure that improvements in public disclosures come not only from regulatory standards, but also as a result of efforts made by management at the Enterprises to communicate advances in risk management processes and internal reporting systems to public shareholders and other market participants. In a manner similar to the requirements for U.S. banking organizations, the final rule requires an Enterprise to decide which additional disclosures are relevant based on this materiality concept. Information is material if its omission or misstatement could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions. Similarly, the final rule requires an Enterprise to have a formal disclosure policy approved by its board of directors that addresses the Enterprise's approach for determining which disclosures are necessary and appropriate. The policy must address internal controls, disclosure controls, and procedures.

III. General Overview of Comments on the Proposed Rule

FHFA received six public comment letters on the proposed rule.[3] In general, commenters were very supportive of the proposed disclosure requirements. Most commenters recommended FHFA adopt the amendments to the ERCF as proposed, with a few specific recommendations which are discussed in the relevant sections below.

However, one commenter expressed only measured support for the

[1] 86 FR 60589.

[2] 85 FR 82150.

[3] *See* comments on Amendments to the Enterprise Regulatory Capital Framework Rule—Public Disclosures for the Standardized Approach, available at *https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Comment-List.aspx?RuleID=710.* The comment period for the proposed rule closed on January 3, 2022.

disclosure requirements due to the Enterprises being in conservatorships. The commenter stated that without more certainty regarding the future of the Enterprises, a rule requiring the Enterprises to devote substantial time and resources to developing and producing these disclosures seems to be premature. FHFA maintains that requirements that encourage sound risk-management practices, such as comprehensive, consistent, and comparable public disclosures, serve an important function at the Enterprises regardless of an Enterprise's conservatorship status.

In addition to comments directly related to the proposed amendments, FHFA also received several comments on other matters, such as the magnitude of funds remitted to the U.S. Department of the Treasury by the Enterprises relative to cumulative draws, the costs of owning or renting a home in the U.S., and the implications of mortgage originators selling their debt to other financial institutions. FHFA acknowledges the importance of these topics and will thoroughly consider the public's feedback on these issues when relevant rulemakings and policy decisions are under consideration.

IV. Public Disclosure Requirements

A. General Requirements

The proposed rule would implement general requirements related to a formal disclosure policy, the concept of materiality, and fulfilling disclosure requirements by relying on other required public reports.

Market participants consider many factors when making their assessment of an Enterprise, including the Enterprise's risk profile and the techniques it uses to identify, measure, monitor, and control the risks to which the Enterprise is exposed. Accordingly, the proposed rule would require an Enterprise to have a formal disclosure policy approved by its board of directors that addresses the Enterprise's approach for determining which disclosures are necessary and appropriate. The policy would be required to address internal controls, disclosure controls, and procedures. The board of directors and senior management would ensure the appropriate review of the disclosures and that effective internal controls, disclosure controls, and procedures are maintained. One or more senior officers of the Enterprise would be required to attest that the disclosures meet the requirements of the proposed rule. The final rule adopts the requirements related to a formal disclosure policy as proposed.

For items not explicitly identified as required disclosures, the proposed rule would require an Enterprise to decide which additional disclosures are relevant based on a materiality concept. Information is material if its omission or misstatement could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions. Through the implementation of a materiality concept, FHFA would encourage the management of each Enterprise to regularly review its public disclosures and enhance these disclosures, where appropriate, to clearly identify all significant risk exposures and their effects on the Enterprise's financial condition and performance, cash flow, and earnings potential. The final rule adopts the requirements related to the materiality concept as proposed.

To help mitigate the financial burden of public disclosures, the proposed rule would allow an Enterprise to fulfill some of the disclosure requirements by relying on similar disclosures made in accordance with accounting standards or SEC mandates. In addition, an Enterprise could use information provided in regulatory reports to fulfill the disclosure requirements. In these situations, an Enterprise would be required to provide a reconciliation of regulatory capital elements as they relate to its balance sheet in any audited consolidated financial statements should there be differences between the accounting or other disclosures and the disclosures required under the proposed rule. In addition, an Enterprise would be required to provide a summary table that specifically indicates where all the cross-referenced disclosures may be found. The final rule adopts, without change, the proposed requirements related to fulfilling disclosure requirements by relying on other required reports.

B. Standardized Approach

The proposed rule would require public disclosures related to the ERCF standardized approach across eleven categories, with each category containing qualitative disclosures and quantitative disclosures, with one exception. The categories are: (1) Capital structure; (2) capital adequacy; (3) capital buffers; (4) credit risk: general disclosures; (5) general disclosure for counterparty credit risk-related exposures; (6) credit risk mitigation; (7) credit risk transfers (CRT) and securitization; (8) equities; (9) interest rate risk for non-trading activities; (10) operational risk; and (11) tier 1 leverage ratio. The first 10 categories would require both quantitative and qualitative disclosures, while the required disclosures related to the tier 1 leverage ratio would be quantitative only. Many of the disclosures described within the categories are identical to the disclosures applicable to U.S. banking organizations subject to the standardized approach. Others have been modified to reflect the ERCF, such as those referring to statutory core capital and statutory total capital, adjusted total capital, the prescribed capital conservation buffer amount (PCCBA), and CRT. In addition, FHFA has excluded several disclosure items that are included in the U.S. banking framework for activities or categorizations not relevant in the ERCF, such as exposures to foreign banks, statutory multifamily mortgages, and high volatility commercial real estate (HVCRE).

The standardized approach in the ERCF differs broadly from the U.S. banking standardized approach in its inclusion of risk-weighted assets for operational risk and market risk, in its application of capital buffers, and in its application of leverage ratio requirements. In contrast to capital requirements for banking organizations subject to the standardized approach in the U.S. banking framework, the standardized approach in the ERCF requires an Enterprise to capitalize operational and market risks, to apply every component of the PCCBA including the countercyclical capital buffer, and to apply the same leverage ratio requirements and prescribed leverage buffer amount (PLBA) regardless of approach. Accordingly, the proposed rule would require an Enterprise to publicly disclose qualitative and quantitative information related to these items in the standardized approach.

Several of the proposed rule's qualitative disclosure requirements for operational risk pertain to the advanced measurement approach (AMA). These disclosures would include a description of the AMA, as well as a discussion of relevant internal and external factors considered in the Enterprise's measurement approach. Because the Enterprises are not required to implement the AMA approach until at least January 1, 2025, FHFA would expect the AMA-related disclosures to begin at the same time. Until then, the Enterprises are required to adhere to an operational risk capital requirement of 15 basis points of adjusted total assets.

Advanced approaches banking organizations must disclose information related to total leverage exposure (TLE) and the supplementary leverage ratio,

while standardized approach banking institutions are not required to do so. The ERCF analog to the concept of TLE is adjusted total assets, and the analog to the concept of the supplementary leverage ratio is the tier 1 leverage ratio. In contrast to the U.S. banking framework, the ERCF tier 1 leverage ratio requirement is the same for an Enterprise operating under the standardized or advanced approaches. In addition, under the ERCF the PCCBA is based on adjusted total assets, while the capital conservation buffer in the U.S. banking framework is based on risk-weighted assets. For these reasons, FHFA included disclosures related to the leverage ratio and adjusted total assets within the disclosure requirements for the standardized approach.

Many of the disclosure requirements for the standardized approach are also applicable to the advanced approach. For example, the disclosure items described within the categories for capital structure, PCCBA, PLBA, operational risk, and leverage would not differ conditional on whether an Enterprise's total risk-weighted assets are higher under the standardized approach or the advanced approach. Because these items are applicable to the standardized approach, the proposed rule would include disclosures related to these items within the disclosure requirements for the standardized approach.

The proposed rule would require an Enterprise to make the required disclosures publicly available for each of the last three years or such shorter time period beginning when the disclosure requirements come into effect. The public disclosure requirements are designed to provide important information to market participants on capital, risk exposures, risk assessment processes, and, thus, the capital adequacy of an Enterprise. Although the disclosure requirements are categorized into tables, the substantive content is the focus of the disclosure requirements, not the tables themselves. The proposed rule would require an Enterprise to make the disclosures described in tables 1 through 11 to § 1240.63.

Table 1 disclosures, ''Capital Structure,'' would provide summary information on the terms and conditions of the main features of regulatory capital instruments, which would allow for an evaluation of the quality of the capital available to absorb losses within an Enterprise. An Enterprise also would disclose the total amount of common equity tier 1, core, tier 1, total, and adjusted total capital, with separate disclosures for deductions and adjustments to capital.

Table 2 disclosures, ''Capital Adequacy,'' would provide information on an Enterprise's approach for categorizing and risk-weighting its exposures, as well as the amount of total risk-weighted assets. The table would also include common equity tier 1, tier 1, and adjusted total risk-based capital ratios.

Table 3 disclosures, ''Capital Buffers,'' would require an Enterprise to disclose the PCCBA, the PLBA, eligible retained income, and any limitations on capital distributions and certain discretionary bonus payments, as applicable.

One commenter recommended FHFA either clarify or remove the proposed requirement that an Enterprise discuss the differential effects, if any, the buffers have on an Enterprise's business by geographic breakdown. The commenter noted that the ERCF buffers are applied at the Enterprise-level, not by business line, and are based on adjusted total assets rather than risk-weighted assets. For these reasons, items that do vary by geographic region, such as house price appreciation, should have no differential impact on the capital buffers. In light of the commenter's recommendation and rationale, FHFA removed from the final rule the Table 3 line (a) requirement to discuss the differential effects, if any, the buffers have on an Enterprise's business by geographic breakdown.

Tables 4, 5, and 6 disclosures, related to credit risk, counterparty credit risk, and credit risk mitigation, respectively, would provide market participants with insight into different types and concentrations of credit risk to which an Enterprise is exposed and the techniques it uses to measure, monitor, and mitigate those risks. These disclosures are intended to enable market participants to assess the credit risk exposures of the Enterprise without revealing proprietary information.

Table 7 disclosures, ''CRT and Securitization,'' would provide information to market participants on the amount of credit risk transferred and retained by an Enterprise through CRT and securitization transactions, the types of products securitized by the Enterprise, the risks inherent in the Enterprise's securitized assets, the Enterprise's policies regarding credit risk mitigation, and the names of any entities that provide external credit assessments of a securitization. These disclosures would provide for a better understanding of how securitization transactions impact the credit risk of an Enterprise. To further facilitate that understanding, securitization transactions in which the originating Enterprise does not retain any securitization exposure would be shown separately and would only be reported for the year of inception.

One commenter recommended that certain required market risk disclosures from proposed §§ 1240.205(d)(7) and (d)(8) be relocated to this Table 7. These disclosures relate to the monitoring of changes in the credit risk of securitization positions and to the policy governing the use of credit risk mitigation to mitigate the risks of securitization and resecuritization positions. While FHFA agrees that these required disclosures are more appropriate to Table 7, FHFA determined that no additions to the table in the final rule were necessary given disclosure items (a)(4) and (a)(5) of Table 7, which adequately cover these topics.

Table 8 disclosures, ''Equities,'' would provide market participants with an understanding of the types of equity securities held by the Enterprise and how they are valued. The table would also provide information on the capital allocated to different equity products and the amount of unrealized gains and losses. (In comparison with bank holding companies subject to the Federal Reserve Board's Regulation Q, on which the proposed regulation was based, the types of equity securities that may be held by the Enterprises are limited. Their capital treatment is governed by 12 CFR 1240.51 and 1240.52.)

Table 9 disclosures, ''Interest Rate Risk for Non-trading Activities,'' would require an Enterprise to provide certain quantitative and qualitative disclosures regarding the Enterprise's management of interest rate risks.

Table 10 disclosures, ''Operational Risk,'' would require an Enterprise to provide certain qualitative disclosures regarding the advanced measurement approach, when applicable, and a description of the use of insurance for the purpose of mitigating operational risk. These disclosures would include a description of the AMA, as well as a discussion of relevant internal and external factors considered in the Enterprise's measurement approach.

Table 11 disclosures, ''Tier 1 Leverage Ratio,'' would provide information related to an Enterprise's adjusted total assets, including adjustments for fiduciary assets, derivative exposures, repo-style transactions, and off-balance sheet exposures. The table would also include an Enterprise's tier 1 leverage ratio. These disclosures are intended to enable market participants to assess the aggregate exposure to risk at an

Enterprise and to consider that risk against the Enterprise's capital backstop.

The final rule adopts the disclosure requirements for the standardized approach substantially as proposed, with one adjustment to Table 3, as discussed above.

C. Market Risk

In § 1240.205, the proposed rule would require an Enterprise to make public disclosures related to market risk for covered positions under the standardized approach. These disclosures would provide quantitative and qualitative information related to an Enterprise's market risk profile, market risk valuation strategies, internal controls, and disclosure controls and procedures. The quantitative disclosures would detail exposure amounts and risk-weighted assets for material portfolios of covered positions, as well as on-balance sheet and off-balance sheet securitization positions by exposure type.

The proposed rule's market risk disclosure requirements would include a formal disclosure policy approved by an Enterprise's board of directors that addresses the Enterprise's approach for determining its market risk disclosures. The policy would address the associated internal controls and disclosure controls and procedures and would contain requirements related to the verification and attestation of disclosures and the maintaining of effective controls and procedures. The requirements would also include quarterly quantitative disclosures for each material portfolio of covered positions related to exposure and risk-weighted asset amounts as well as the aggregate amount of on-balance sheet and off-balance sheet securitization positions by exposure type.

In addition, an Enterprise would be required to make annual public disclosures for each material portfolio of covered positions related generally to portfolio composition and valuation policies, procedures, and methodologies. These disclosures would include, among other things, key valuation assumptions and information on significant changes, model characteristics used to calculate risk-weighted assets for market risk, and a description of the approaches used for validating and evaluating the accuracy of internal models and modeling processes. In addition, the annual disclosures would include a description of the Enterprise's processes for monitoring changes in the market risk of securitization positions.

As discussed above, one commenter recommended that certain credit risk disclosures in proposed §§ 1240.205(d)(7) and (d)(8) be relocated to a more appropriate section. FHFA determined that these disclosures, related to the monitoring of changes in the credit risk of securitization positions and to the policy governing the use of credit risk mitigation to mitigate the risks of securitization and resecuritization positions, were already present in Table 7 of § 1240.63. As a result, FHFA has removed reference to credit risk from proposed § 1240.205(d)(7) and deleted proposed § 1240.205(d)(8).

The final rule adopts the disclosure requirements for market risk under the standardized approach substantially as proposed, with adjustments to proposed §§ 1240.205(d)(7) and (d)(8), as discussed above.

V. Frequency of Disclosures

The proposed rule would require the Enterprises to make quantitative disclosures on a quarterly basis, consistent with the disclosure requirements for most regulated financial institutions and frequently enough to capture most changes in risk profiles. The proposed rule would also require the Enterprises to make qualitative disclosures that provide a general summary of an Enterprise's risk-management objectives and policies, reporting system, and definitions may be disclosed annually. However, if a material change occurs, where for the purpose of these disclosure requirements a material change means a change such that the omission or misstatement of which could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions, the proposed rule would require the Enterprises to disclose a brief discussion of this change and its likely impact as soon as practicable, and no later than the end of the next calendar quarter.

The proposed rule would also require that the disclosures be timely. As described above, an Enterprise may be able to fulfill some of the proposed disclosure requirements by relying on similar disclosures made in accordance with accounting standards or SEC mandates. FHFA acknowledges that timing of disclosures required under other federal laws, including disclosures required under the federal securities laws and their implementing regulations by the SEC, may not always align with the timing of required Enterprise disclosures. For this reason, the proposed rule described timely disclosures as being no later than the applicable SEC disclosure deadlines for the corresponding Form 10–K annual report at the end of a fiscal year and the corresponding Form 10–Q at the end of other calendar quarters. In cases where an Enterprise's fiscal year-end does not coincide with the end of a calendar quarter, FHFA would consider the timeliness of disclosures on a case-by-case basis. In some cases, management may determine that a material change has occurred, such that the most recent reported amounts do not reflect the Enterprise's capital adequacy and risk profile. In those cases, an Enterprise would need to disclose the general nature of these changes and briefly describe how they are likely to affect public disclosures going forward. An Enterprise would make these interim disclosures as soon as practicable after the determination that a material change has occurred.

The concept of timely disclosures was described in the preamble to the proposed rule, but not explicitly in the proposed rule itself. FHFA has determined to formalize the concept of timely disclosures in the final rule by adopting similar disclosure deadlines as those discussed above, while adding a short buffer of 10 business days. Therefore, the final rule adopts, without change, the proposed requirements related to the frequency of public disclosures and requires the proposed disclosure requirements to be made in a timely manner no later than 10 business days after an Enterprise files its corresponding Annual Report or Quarterly report on SEC Form 10–K or Form 10–Q, respectively.

VI. Compliance Dates

The compliance date for the disclosure requirements under the proposed rule would be six months from the date of publication of the final rule in the **Federal Register**. In addition, the proposed rule would generally require qualitative disclosures to be made annually ''after the end of the fourth calendar quarter.'' One commenter recommended that FHFA reconsider this compliance date to align the required annual qualitative public disclosures, and in particular an Enterprise's first public disclosures under the final rule which must be made after the end of the fourth calendar quarter, with the more comprehensive annual qualitative disclosures included in an Enterprise's Annual Report on the SEC's Form 10–K. The commenter recommended this alignment because the required public disclosures under the final rule would likely reference disclosures made on Form 10–K.

Upon consideration of the commenter's recommendation, the final rule adopts a compliance date for the new standardized approach disclosure requirements in §§ 1240.61 to 1240.63 and § 1240.205 of no later than 10 business days after an Enterprise files its Annual Report on SEC Form 10–K for the fiscal year ending December 31, 2022. This compliance date will align the new public disclosures with the reporting cycle for the Enterprises' Annual Reports, while providing a short buffer for the publication of an Enterprise's first disclosure report. Further, FHFA has determined that the costs to an Enterprise of producing a public disclosure report containing extensive qualitative disclosures one quarter before the Enterprise produces a public disclosure report where many of the same qualitative disclosures will likely be included by reference outweigh the benefits to investors and market participants of having the report one quarter earlier, in particular given the Enterprises' current significant capital deficits relative to capital requirements and buffers under the ERCF.

The proposed rule would also amend the reporting requirement compliance dates in § 1240.4(b) to remove references to parts of the ERCF that do not contain reporting requirements. Specifically, the proposed rule would remove references to compliance dates for reporting requirements in subparts C and G of 12 CFR 1240, §§ 1240.162(d) and 1240.204, as these parts do not contain reporting requirements. The proposed rule would retain without modification the January 1, 2022 compliance dates for reporting requirements outlined in §§ 1240.1(f) and 1240.41.

The final rule adopts, without change, the proposed amendments to other reporting requirement compliance dates in the ERCF.

VII. Location of Disclosures and Audit Requirements

The proposed rule would require an Enterprise to ensure that required disclosures are publicly available (for example, included on a public website) for each of the last three years or such shorter time period beginning when the proposed rule, if adopted as a final rule, comes into effect. In general, management of an Enterprise would have some discretion to determine the appropriate medium and location of the disclosures, provided the Enterprise meets the requirements related to cross-referencing described below. Furthermore, an Enterprise would have flexibility in formatting its public disclosures unless otherwise ordered by FHFA under its general authority to follow specific reporting guidelines or procedures, including potentially utilizing specified templates for certain quantitative disclosure elements. For example, FHFA may determine that standardizing the way the Enterprises present a subset of the required quantitative disclosures would facilitate the ability of market participants to compare attributes or results across Enterprises and better assess the risk profile and capital adequacy of each Enterprise. Conversely, there may be aspects of the required disclosures that cannot easily be standardized or where comparison across Enterprises may be less meaningful to market participants, such as descriptions of an Enterprise's risk management practices or certain analyses that contain bespoke risk metrics.

FHFA encourages each Enterprise to make all required disclosures available in one place on the Enterprise's public website, the address of which should be communicated in the Enterprise's regulatory report. However, the proposed rule would permit an Enterprise to provide the disclosures in more than one place, such as in its public financial reports (for example, in Management's Discussion and Analysis included in SEC filings) or other regulatory reports, as long as the Enterprise also provides a summary table on its public website that specifically indicates where all the disclosures may be found (for example, regulatory report schedules, page numbers in annual reports).

The proposed rule would require an Enterprise to reconcile disclosures of regulatory capital elements as the elements relate to an Enterprise's balance sheet in any audited consolidated financial statements. However, disclosures under the proposed rule which are not included in the footnotes to the audited financial statements would not be subject to external audit reports for financial statements or internal control reports from management and the external auditor. Therefore, the proposed rule would not introduce any new audit requirements, and under the proposed rule, the audit requirements for an Enterprise's required public disclosures would be identical to the audit requirements for a banking organization's required public disclosures in the U.S. banking framework.

The final rule adopts, without change, the proposed requirements related to the location of disclosures and audit requirements.

VIII. Proprietary and Confidential Information

FHFA believes that the proposed disclosure requirements strike an appropriate balance between the need for meaningful disclosure and the protection of proprietary and confidential information. Accordingly, FHFA believes that an Enterprise would be able to provide all these disclosures without revealing proprietary and confidential information. Only in rare circumstances might the required disclosure of certain items of information compel an Enterprise to reveal confidential and proprietary information. In these unusual situations, FHFA proposed that if an Enterprise believes that disclosure of specific commercial or financial information would compromise its position by making public information that is either proprietary or confidential in nature, the Enterprise need not disclose those specific items. Instead, the Enterprise must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed. This provision would apply only to those disclosures included in the proposed rule and would not apply to disclosure requirements imposed by accounting standards or other regulatory agencies.

The final rule adopts the requirements related to proprietary and confidential information as proposed.

IX. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). The final rule contains no such collection of information requiring OMB approval under the PRA. Therefore, no information has been submitted to OMB for review.

X. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the

Regulatory Flexibility Act. FHFA certifies that the final rule will not have a significant economic impact on a substantial number of small entities because the final rule is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

XI. Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801 *et seq.*), FHFA has determined that this final rule is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects for 12 CFR Part 1240

Capital, Credit, Enterprise, Investments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the Preamble, under the authority of 12 U.S.C. 4511, 4513, 4513b, 4514, 4515–17, 4526, 4611–4612, 4631–36, FHFA amends part 1240 of title 12 of the Code of Federal Regulation as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER C—ENTERPRISES

PART 1240—CAPITAL ADEQUACY OF ENTERPRISES

■ 1. The authority citation for part 1240 is revised to read as follows:

Authority: 12 U.S.C. 4511, 4513, 4513b, 4514, 4515, 4517, 4526, 4611–4612, 4631–36.

■ 2. Amend § 1240.4 by revising paragraph (b) to read as follows:

§ 1240.4 Transition.

* * * * *

(b) *Reporting requirements.* (1) For any reporting requirement under § 1240.1(f) or § 1240.41, the compliance date will be January 1, 2022.

(2) For any reporting requirement under §§ 1240.61 through 1240.63, the compliance date will be no later than 10 business days after an Enterprise files its Annual Report on SEC Form 10–K for the fiscal year ending December 31, 2022.

(3) For any reporting requirement under § 1240.205, the compliance date will be no later than 10 business days after an Enterprise files its Annual Report on SEC Form 10–K for the fiscal year ending December 31, 2022.

* * * * *

■ 3. Add §§ 1240.61 through 1240.63 to Subpart D to read as follows:

Subpart D—Risk-Weighted Assets—Standardized Approach

* * * * *

Sec.

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§ 1240.61 Purpose and scope.

Sections 1240.61 through 1240.63 of this subpart establish public disclosure requirements related to the capital requirements and buffers described in subpart B and subpart G.

§ 1240.62 Disclosure requirements.

(a) An Enterprise must provide timely public disclosures each calendar quarter of the information in the applicable tables in § 1240.63, where for the purpose of these disclosure requirements timely means no later than 10 business days after an Enterprise files its corresponding Annual Report on SEC Form 10–K at the end of a fiscal year or its corresponding Quarterly Report on SEC Form 10–Q at the end of other calendar quarters. If a material change occurs, where for the purpose of these disclosure requirements a material change means a change such that the omission or misstatement of which could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions, then an Enterprise must disclose a brief discussion of this change and its likely impact as soon as practicable thereafter, and no later than the end of the next calendar quarter. Qualitative disclosures that have not changed from the prior quarter may be omitted from the next quarterly disclosure but must be disclosed at least annually after the end of the fourth calendar quarter.

(b) Unless otherwise directed by FHFA, the Enterprise's management may provide all of the disclosures required by §§ 1240.61 through 1240.63 in one place on the Enterprise's public website or may provide the disclosures in more than one public financial report or other regulatory reports, provided that the Enterprise publicly provides a summary table specifically indicating the location(s) of all such disclosures.

(c) An Enterprise must have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures.

(d) The Enterprise's board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over the disclosures required by this subpart, and must ensure that appropriate review of the disclosures takes place. The Chief Risk Officer and the Chief Financial Officer of the Enterprise must attest that the disclosures meet the requirements of this subpart.

(e) If an Enterprise believes that disclosure of specific commercial or financial information would prejudice seriously its position by making public certain information that is either proprietary or confidential in nature, the Enterprise is not required to disclose these specific items but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed.

§ 1240.63 Disclosures.

(a) Except as provided in § 1240.62, an Enterprise must make the disclosures described in Tables 1 through 11 of this section publicly available for each of the last three years (that is, twelve quarters) or such shorter period until an Enterprise has made twelve quarterly disclosures pursuant to this part beginning with the disclosure for the quarter ending December 31, 2022.

(b) An Enterprise must publicly disclose each quarter the following:

(1) Regulatory capital ratios for common equity tier 1 capital, additional tier 1 capital, tier 1 capital, tier 2 capital, total capital, core capital, and adjusted total capital, including the regulatory capital elements and all the regulatory adjustments and deductions needed to calculate the numerator of such ratios;

(2) Total risk-weighted assets, including the different regulatory adjustments and deductions needed to calculate total risk-weighted assets; and

(3) A reconciliation of regulatory capital elements as they relate to its balance sheet in any audited consolidated financial statements.

TABLE 1 TO PARAGRAPH (b)(3)—CAPITAL STRUCTURE

Qualitative disclosures	(a) Summary information on the terms and conditions of the main features of all regulatory capital instruments.
Quantitative disclosures	(b) The amount of common equity tier 1 capital, with separate disclosure of: (1) Common stock and related surplus; (2) Retained earnings; (3) AOCI (net of tax) and other reserves; and (4) Regulatory adjustments and deductions made to common equity tier 1 capital. (c) The amount of core capital, with separate disclosure of: (1) The par or stated value of outstanding common stock; (2) The par or stated value of outstanding perpetual, noncumulative preferred stock; (3) Paid-in capital; and (4) Retained earnings. (d) The amount of tier 1 capital, with separate disclosure of: (1) Additional tier 1 capital elements, including additional tier 1 capital instruments and tier 1 minority interest not included in common equity tier 1 capital; and (2) Regulatory adjustments and deductions made to tier 1 capital. (e) The amount of total capital, with separate disclosure of: (1) The general allowance for foreclosure losses; and (2) Other amounts from sources of funds available to absorb losses incurred by the Enterprise that the Director by regulation determines are appropriate to include in determining total capital. (f) The amount of adjusted total capital, with separate disclosure of: (1) Tier 2 capital elements, including tier 2 capital instruments; and (2) Regulatory adjustments and deductions made to adjusted total capital.

TABLE 2 TO PARAGRAPH (b)(3)—CAPITAL ADEQUACY

Qualitative disclosures	(a) A summary discussion of the Enterprise's approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b) Risk-weighted assets for: (1) Exposures to sovereign entities; (2) Exposures to certain supranational entities and MDBs; (3) Exposures to GSEs; (4) Exposures to depository institutions and credit unions; (5) Exposures to PSEs; (6) Corporate exposures; (7) Aggregate single-family mortgage exposures categorized by: (i) Performing loans; (ii) Non-modified re-performing loans; (iii) Modified re-performing loans; (iv) Non-performing loans; (8) Aggregate multifamily mortgage exposures categorized by: (i) Multifamily fixed-rate exposures; (ii) Multifamily adjustable-rate exposures; (9) Past due loans; (10) Other assets; (11) Insurance assets; (12) Off-balance sheet exposures; (13) Cleared transactions; (14) Default fund contributions; (15) Unsettled transactions; (16) CRT and other securitization exposures; and (17) Equity exposures. (c) Standardized market risk-weighted assets as calculated under subpart F of this part. (d) Risk-weighted assets for operational risk. (e) Common equity tier 1, tier 1, and adjusted total risk-based capital ratios. (f) Total standardized risk-weighted assets.

TABLE 3 TO PARAGRAPH (b)(3)—CAPITAL BUFFERS

Qualitative disclosures	(a) A summary discussion of the Enterprise's capital buffers.
Quantitative disclosures	(b) At least quarterly, the Enterprise must calculate and publicly disclose the prescribed capital conservation buffer amount and all its components as described under § 1240.11. (c) At least quarterly, the Enterprise must calculate and publicly disclose the prescribed leverage buffer amount as described under § 1240.11. (d) At least quarterly, the Enterprise must calculate and publicly disclose the eligible retained income of the Enterprise, as described under § 1240.11. (e) At least quarterly, the Enterprise must calculate and publicly disclose any limitations it has on distributions and discretionary bonus payments resulting from the capital buffer framework described under § 1240.11, including the maximum payout amount for the quarter.

(c) For each separate risk area described in Tables 4 through 9, the Enterprise must, as a general qualitative disclosure requirement, describe its risk management objectives and policies, including: Strategies and processes; the structure and organization of the relevant risk management function; the scope and nature of risk reporting and/or measurement systems; policies for hedging and/or mitigating risk and strategies and processes for monitoring the continuing effectiveness of hedges and/or mitigants.

TABLE 4 TO PARAGRAPH (c) [1]—CREDIT RISK: GENERAL DISCLOSURES

Qualitative disclosures	(a) The general qualitative disclosure requirement with respect to credit risk (excluding counterparty credit risk disclosed in accordance with Table 5 of this section), including the: (1) Policy for determining past due or delinquency status; (2) Policy for placing loans on nonaccrual; (3) Policy for returning loans to accrual status; (4) Description of the methodology that the Enterprise uses to estimate its adjusted allowance for credit losses, including statistical methods used where applicable; (5) Policy for charging-off uncollectible amounts; and (6) Discussion of the Enterprise's credit risk management policy.
Quantitative disclosures	(b) Total credit risk exposures and average credit risk exposures, after accounting offsets in accordance with GAAP, without taking into account the effects of credit risk mitigation techniques (for example, collateral and netting not permitted under GAAP), over the period categorized by major types of credit exposure. For example, the Enterprises could use categories similar to that used for financial statement purposes. Such categories might include, for instance: (1) Loans, off-balance sheet commitments, and other non-derivative off-balance sheet exposures; (2) Debt securities; and (3) OTC derivatives. (c) Geographic distribution of exposures, categorized in significant areas by major types of credit exposure.[2] (d) Industry or counterparty type distribution of exposures, categorized by major types of credit exposure. (e) By major industry or counterparty type: (1) Amount of loans not past due or past due less than 30 days; (2) Amount of loans past due 30 days but less than 90 days; (3) Amount of loans past due 90 days and on nonaccrual; (4) Amount of loans past due 90 days and still accruing; [3] (5) The balance in the adjusted allowance for credit losses at the end of each period, disaggregated on the basis of loans not past due or past due less than 30 days, loans past due 30 days but less than 90 days, loans past due 90 days and on nonaccrual, and loans past due 90 days and still accruing; and (6) Charge-offs during the period. (f) Amount of past due loans categorized by significant geographic areas including, if practical, the amounts of allowances related to each geographical area,[4] further categorized as required by GAAP. (g) Reconciliation of changes in the adjusted allowance for credit losses.[5] (h) Remaining contractual maturity delineation (for example, one year or less) of the whole portfolio, categorized by credit exposure.

[1] Table 4 does not cover equity exposures, which should be reported in Table 8 of this section.

[2] Geographical areas consist of areas within the United States and territories. An Enterprise might choose to define the geographical areas based on the way the Enterprise's portfolio is geographically managed. The criteria used to allocate the loans to geographical areas must be specified.

[3] An Enterprise may, but is not required to, also provide an analysis of the aging of past-due loans.

[4] The portion of the general allowance that is not allocated to a geographical area should be disclosed separately.

[5] The reconciliation should include the following: A description of the allowance; the opening balance of the allowance; charge-offs taken against the allowance during the period; amounts provided (or reversed) for estimated expected credit losses during the period; any other adjustments (for example, exchange rate differences, business combinations, acquisitions, and disposals of subsidiaries), including transfers between allowances; and the closing balance of the allowance. Charge-offs and recoveries that have been recorded directly to the income statement should be disclosed separately.

TABLE 5 TO PARAGRAPH (c)—GENERAL DISCLOSURE FOR COUNTERPARTY CREDIT RISK-RELATED EXPOSURES

Qualitative disclosures	(a) The general qualitative disclosure requirement with respect to OTC derivatives, eligible margin loans, and repo-style transactions, including a discussion of: (1) The methodology used to assign credit limits for counterparty credit exposures; (2) Policies for securing collateral, valuing and managing collateral, and establishing credit reserves; (3) The primary types of collateral taken; and (4) The impact of the amount of collateral the Enterprise would have to provide given a deterioration in the Enterprise's own creditworthiness.
Quantitative Disclosures	(b) Gross positive fair value of contracts, collateral held (including type, for example, cash, government securities), and net unsecured credit exposure.[1] An Enterprise also must disclose the notional value of credit derivative hedges purchased for counterparty credit risk protection and the distribution of current credit exposure by exposure type.[2] (c) Notional amount of purchased and sold credit derivatives, segregated between use for the Enterprise's own credit portfolio and in its intermediation activities, including the distribution of the credit derivative products used, categorized further by protection bought and sold within each product group.

[1] Net unsecured credit exposure is the credit exposure after considering both the benefits from legally enforceable netting agreements and collateral arrangements without taking into account haircuts for price volatility, liquidity, etc.

[2] This may include interest rate derivative contracts, foreign exchange derivative contracts, equity derivative contracts, credit derivatives, commodity or other derivative contracts, repo-style transactions, and eligible margin loans.

TABLE 6 TO PARAGRAPH (c)—CREDIT RISK MITIGATION [1] [2]

Qualitative disclosures	(a) The general qualitative disclosure requirement with respect to credit risk mitigation, including: (1) Policies and processes for collateral valuation and management; (2) A description of the main types of collateral taken by the Enterprise; (3) The main types of guarantors/credit derivative counterparties and their creditworthiness; and (4) Information about (market or credit) risk concentrations with respect to credit risk mitigation.
Quantitative Disclosures	(b) For each separately disclosed credit risk portfolio, the total exposure that is covered by eligible financial collateral, and after the application of haircuts. (c) For each separately disclosed portfolio, the total exposure that is covered by guarantees/credit derivatives and the risk-weighted asset amount associated with that exposure.

[1] At a minimum, an Enterprise must provide the disclosures in Table 6 in relation to credit risk mitigation that has been recognized for the purposes of reducing capital requirements under this subpart. Where relevant, the Enterprises may give further information about mitigants that have not been recognized for that purpose.

[2] Credit derivatives that are treated, for the purposes of this subpart, as synthetic securitization exposures should be excluded from the credit risk mitigation disclosures and included within those relating to securitization (Table 7 of this section).

TABLE 7 TO PARAGRAPH (c)—CRT AND SECURITIZATION

Qualitative disclosures	(a) The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of: (1) The Enterprise's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the Enterprise to other entities and including the type of risks assumed and retained with resecuritization activity; [1] (2) The nature of the risks (*e.g.,* liquidity risk) inherent in the securitized assets; (3) The roles played by the Enterprise in the securitization process [2] and an indication of the extent of the Enterprise's involvement in each of them; (4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures; (5) The Enterprise's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and (6) The risk-based capital approaches that the Enterprise follows for its securitization exposures including the type of securitization exposure to which each approach applies. (b) A list of: (1) The type of securitization SPEs that the Enterprise, as sponsor, uses to securitize third-party exposures. The Enterprise must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and (2) Affiliated entities: (i) That the Enterprise manages or advises; and (ii) That invest either in the securitization exposures that the Enterprise has securitized or in securitization SPEs that the Enterprise sponsors.[3] (c) Summary of the Enterprise's accounting policies for CRT and securitization activities, including: (1) Whether the transactions are treated as sales (*i.e.,* sale accounting has been obtained) or financings; (2) Recognition of gain-on-sale; (3) Methods and key assumptions applied in valuing retained or purchased interests; (4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes; (5) Treatment of synthetic securitizations; (6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and (7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the Enterprise to provide financial support for securitized assets. (d) An explanation of significant changes to any quantitative information since the last reporting period.
Quantitative Disclosures	(e) The total outstanding exposures securitized by the Enterprise in securitizations that meet the operational criteria provided in § 1240.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the bank acts only as sponsor.[4] (f) For exposures securitized by the Enterprise in securitizations that meet the operational criteria in § 1240.41: (1) Amount of securitized assets that are past due categorized by exposure type; and (2) Losses recognized by the Enterprise during the current period categorized by exposure type.[5] (g) The total amount of outstanding exposures intended to be securitized categorized by exposure type. (h) Aggregate amount of: (1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and (2) Off-balance sheet securitization exposures categorized by exposure type. (i)(1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (*e.g.,* CRTA, SSFA); and (2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any: (i) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and (ii) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight.

TABLE 7 TO PARAGRAPH (c)—CRT AND SECURITIZATION—Continued

	(j) Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type. (k) Aggregate amount of resecuritization exposures retained or purchased categorized according to: (1) Exposures to which credit risk mitigation is applied and those not applied; and (2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

[1] The Enterprise should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the Enterprise is active.
[2] For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.
[3] Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.
[4] "Exposures securitized" include underlying exposures originated by the Enterprise, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions. Securitization transactions (including underlying exposures originally on the Enterprise's balance sheet and underlying exposures acquired by the Enterprise from third-party entities) in which the originating Enterprise does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. Enterprises are required to disclose exposures regardless of whether there is a capital charge under this part.
[5] For example, charge-offs/allowances (if the assets remain on the Enterprise's balance sheet) or credit-related write-off of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the bank with respect to securitized assets.

TABLE 8 TO PARAGRAPH (c)—EQUITIES

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to equity risk for equities, including: (1) Differentiation between holdings on which capital gains are expected and those taken under other objectives including for relationship and strategic reasons; and (2) Discussion of important policies covering the valuation of and accounting for equity holdings. This includes the accounting techniques and valuation methodologies used, including key assumptions and practices affecting valuation as well as significant changes in these practices.
Quantitative Disclosures	(b) Carrying value disclosed on the balance sheet of investments, as well as the fair value of those investments; for securities that are publicly traded, a comparison to publicly-quoted share values where the share price is materially different from fair value.
	(c) The types and nature of investments, including the amount that is: (1) Publicly traded; and (2) Non publicly traded. (d) The cumulative realized gains (losses) arising from sales and liquidations in the reporting period. (e)(1) Total unrealized gains (losses) recognized on the balance sheet but not through earnings. (2) Total unrealized gains (losses) not recognized either on the balance sheet or through earnings. (3) Any amounts of the above included in tier 1 or tier 2 capital. (f) Capital requirements categorized by appropriate equity groupings, consistent with the Enterprise's methodology, as well as the aggregate amounts and the type of equity investments subject to any supervisory transition regarding regulatory capital requirements.[1]

[1] This disclosure must include a breakdown of equities that are subject to the 0 percent, 20 percent, 100 percent, 300 percent, 400 percent, and 600 percent risk weights, as applicable.

TABLE 9 TO PARAGRAPH (c)—INTEREST RATE RISK FOR NON-TRADING ACTIVITIES

Qualitative disclosures	(a) The general qualitative disclosure requirement, including the nature of interest rate risk for non-trading activities and key assumptions, including assumptions regarding loan prepayments and frequency of measurement of interest rate risk for non-trading activities.
Quantitative disclosures	(b) The increase (decline) in earnings or economic value (or relevant measure used by management) for upward and downward rate shocks according to management's method for measuring interest rate risk for non-trading activities, categorized by currency (as appropriate).

TABLE 10 TO PARAGRAPH (c)—OPERATIONAL RISK

Qualitative disclosures	(a) The general qualitative disclosure requirement for operational risk. (b) Description of the AMA, when applicable, including a discussion of relevant internal and external factors considered in the Enterprise's measurement approach. (c) A description of the use of insurance for the purpose of mitigating operational risk.

TABLE 11 TO PARAGRAPH (c)—TIER 1 LEVERAGE RATIO

	Dollar amounts in thousands			
	Tril	Bil	Mil	Thou
Part 1: Summary comparison of accounting assets and adjusted total assets				
1 Total consolidated assets as reported in published financial statements.				
2 Adjustment for fiduciary assets recognized on balance sheet but excluded from total leverage exposure.				
3 Adjustment for derivative exposures.				

TABLE 11 TO PARAGRAPH (c)—TIER 1 LEVERAGE RATIO—Continued

	Dollar amounts in thousands			
	Tril	Bil	Mil	Thou
4 Adjustment for repo-style transactions. 5 Adjustment for off-balance sheet exposures (that is, conversion to credit equivalent amounts of off-balance sheet exposures). 6 Other adjustments. 7 Adjusted total assets (sum of lines 1 to 6).				
Part 2: Tier 1 leverage ratio				
On-balance sheet exposures				
1 On-balance sheet assets (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions). 2 LESS: Amounts deducted from tier 1 capital. 3 Total on-balance sheet exposures (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions) (sum of lines 1 and 2).				
Derivative exposures				
4 Current exposure for derivative exposures (that is, net of cash variation margin). 5 Add-on amounts for potential future exposure (PFE) for derivative exposures. 6 Gross-up for cash collateral posted if deducted from the on-balance sheet assets, except for cash variation margin. 7 LESS: Deductions of receivable assets for cash variation margin posted in derivative transactions, if included in on-balance sheet assets. 8 LESS: Exempted CCP leg of client-cleared transactions. 9 Effective notional principal amount of sold credit protection. 10 LESS: Effective notional principal amount offsets and PFE adjustments for sold credit protection. 11 Total derivative exposures (sum of lines 4 to 10).				
Repo-style transactions				
12 On-balance sheet assets for repo-style transactions, except include the gross value of receivables for reverse repurchase transactions. Exclude from this item the value of securities received in a security-for-security repo-style transaction where the securities lender has not sold or re-hypothecated the securities received. Include in this item the value of securities that qualified for sales treatment that must be reversed. 13 LESS: Reduction of the gross value of receivables in reverse repurchase transactions by cash payables in repurchase transactions under netting agreements. 14 Counterparty credit risk for all repo-style transactions. 15 Exposure for repo-style transactions where a banking organization acts as an agent. 16 Total exposures for repo-style transactions (sum of lines 12 to 15).				
Other off-balance sheet exposures				
17 Off-balance sheet exposures at gross notional amounts. 18 LESS: Adjustments for conversion to credit equivalent amounts. 19 Off-balance sheet exposures (sum of lines 17 and 18).				
Capital and adjusted total assets				
20 Tier 1 capital. 21 Adjusted total assets (sum of lines 3, 11, 16, and 19).				
Tier 1 leverage ratio				
22 Tier 1 leverage ratio	(in percent)			

■ 4. Add § 1240.205 to Subpart F to read as follows:

Subpart F—Risk-weighted Assets—Market Risk

* * * * *

§ 1240.205 Market risk disclosures.

(a) *Scope.* An Enterprise must make timely public disclosures each calendar quarter, where for the purpose of these disclosure requirements timely means no later than 10 business days after an Enterprise files its corresponding Annual Report on SEC Form 10–K at the end of a fiscal year or its corresponding Quarterly Report on SEC Form 10–Q at the end of other calendar quarters. If a significant change occurs, such that the most recent reporting amounts are no longer reflective of the Enterprise's capital adequacy and risk profile, then a brief discussion of this change and its likely impact must be provided as soon as practicable thereafter. Qualitative disclosures that typically do not change each quarter may be disclosed annually, provided any material changes are disclosed as soon as practicable thereafter, and no later than the end of the next calendar quarter, where for the purpose of these disclosure requirements a material change means a

change such that the omission or misstatement of which could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions. If an Enterprise believes that disclosure of specific commercial or financial information would prejudice seriously its position by making public certain information that is either proprietary or confidential in nature, the Enterprise is not required to disclose these specific items but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed.

(b) *Location.* The Enterprise's management may provide all of the disclosures required by this section in one place on the Enterprise's public website or may provide the disclosures in more than one public financial report or other regulatory reports, provided that the Enterprise publicly provides a summary table specifically indicating the location(s) of all such disclosures.

(c) *Disclosure policy.* The Enterprise must have a formal disclosure policy approved by the board of directors that addresses the Enterprise's approach for determining its market risk disclosures. The policy must address the associated internal controls and disclosure controls and procedures. The board of directors and senior management must ensure that appropriate verification of the disclosures takes place and that effective internal controls and disclosure controls and procedures are maintained. The Chief Risk Officer and the Chief Financial Officer of the Enterprise must attest that the disclosures meet the requirements of this subpart, and the board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over the disclosures required by this section.

(d) *Quantitative disclosures.* (1) For each material portfolio of covered positions, the Enterprise must provide timely public disclosures of the following information at least quarterly:

(i) Exposure amounts for each product type included in covered positions as described in § 1240.202; and

(ii) Risk-weighted assets for each product type included in covered positions as described in § 1240.202.

(2) In addition, the Enterprise must disclose publicly the aggregate amount of on-balance sheet and off-balance sheet securitization positions by exposure type at least quarterly.

(e) *Qualitative disclosures.* For each material portfolio of covered positions as identified using the definitions in § 1240.202, the Enterprise must provide timely public disclosures of the following information at least annually after the end of the fourth calendar quarter, or more frequently in the event of material changes for each portfolio:

(1) The composition of material portfolios of covered positions;

(2) The Enterprise's valuation policies, procedures, and methodologies for covered positions including, for securitization positions, the methods and key assumptions used for valuing such positions, any significant changes since the last reporting period, and the impact of such change;

(3) The characteristics of the internal models used for purposes of this subpart;

(4) A description of the approaches used for validating and evaluating the accuracy of internal models and modeling processes for purposes of this subpart;

(5) For each market risk category (that is, interest rate risk, credit spread risk, equity price risk, foreign exchange risk, and commodity price risk), a description of the stress tests applied to the positions subject to the factor;

(6) The results of the comparison of the Enterprise's internal estimates for purposes of this subpart with actual outcomes during a sample period not used in model development; and

(7) A description of the Enterprise's processes for monitoring changes in the market risk of securitization positions, including how those processes differ for resecuritization positions.

Sandra L. Thompson,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2022–11582 Filed 6–1–22; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0844; Project Identifier AD–2021–00689–T; Amendment 39–22028; AD 2022–09–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This AD was prompted by reports of a missing shim at a joint common to the main torque box (MTB) skin panel and rear spar root fitting. This AD requires inspecting the MTB skin panel and rear spar root fitting for cracking and delamination, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 7, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 7, 2022.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0844.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0844; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Joseph Hodgin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3962; email: *joseph.j.hodgin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. The NPRM published in the **Federal Register** on October 28, 2021 (86 FR 59665). The NPRM was

prompted by reports of a missing shim at a joint common to the MTB skin panel and rear spar root fitting. In the NPRM, the FAA proposed to require inspecting the MTB skin panel and rear spar root fitting for cracking and delamination, and applicable on-condition actions. The FAA is issuing this AD to address the omission of a shim between the MTB skin panel and rear spar flange at the attachment to the root fitting. This condition, if not addressed, could result in a reduction in fatigue performance of the MTB skin panel and rear spar root fittings, which could affect the structural integrity of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Air Line Pilots Association, International (ALPA), Boeing, an individual, and United Airlines, who supported the NPRM without change.

The FAA received additional comments from Avianca Airlines. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Substitute Approval Form for Alternative Method of Compliance (AMOC) Letter

Avianca Airlines (AVA) proposed that paragraph (h) of the proposed AD be revised to require an 8100–9 approval form, rather than an AMOC, for a repair after contacting Boeing. AVA stated that the time delay required to obtain an AMOC letter affects the operational return to service of the affected aircraft and that an 8100–9 form is already an approved document that certifies compliance with airworthiness standards.

The FAA does not agree with this request. An FAA Form 8100–9, which is both a repair data approval and AMOC approval, may be issued by the Boeing Company Organization Designation Authorization (ODA), provided it has been authorized by the Manager, Seattle ACO Branch, FAA, as required by paragraph (i)(3) of this AD. If the ODA does not have authorization from the Manager, Seattle ACO Branch, FAA, then a separate AMOC approval is required. This AD has not been changed with regard to this request.

Request To Allow Later Approved Revisions of the Service Bulletin

AVA requested that the proposed AD be revised to allow later approved revisions of Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021, to be used for compliance with the proposed AD.

The FAA does not agree with the request to allow later approved revisions. The FAA may not refer to any document that does not yet exist in an AD. In general terms, the FAA is required by Office of the Federal Register (OFR) regulations for approval of materials incorporated by reference, as specified in 1 CFR 51.1(f), to either publish the service document contents as part of the actual AD language; or submit the service document to the OFR for approval as referenced material, in which case the FAA may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR approved it for incorporation by reference. See 1 CFR part 51.

To allow operators to use later revisions of the referenced document (issued after publication of the AD), either the FAA must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an alternative method of compliance with this AD under the provisions of paragraph (i) of this AD.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021. This service information specifies procedures for an ultrasonic test for cracking and delamination of the skin panel, an open hole high frequency eddy current (HFEC) inspection for cracking of the rear spar root fitting at the fastener holes common to the MTB skin panel and rear spar root fitting interface, and a surface HFEC inspection for cracking of visible rear spar root fitting surface areas, and applicable on-condition actions. On-condition actions include measurement of the gap between the MTB skin panel and the rear spar flange, installation of a new shim between the MTB skin panel and the rear spar flange, and installation of new fasteners in the MTB skin panel and the rear spar flange. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 91 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	14 work-hours × $85 per hour = $1,190	$0	$1,190	$108,290

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Gap measurement	1 work-hour × $85 per hour = $85	$0	$85
Installation	10 work-hours × $85 per hour = $850	11,330	12,180

The FAA has received no definitive data on which to base the cost estimates for the repairs specified in this AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–09–08 The Boeing Company: Amendment 39–22028; Docket No. FAA–2021–0844; Project Identifier AD–2021–00689–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 7, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category, as specified in Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of a missing shim at a joint common to the main torque box (MTB) skin panel and rear spar root fitting. The FAA is issuing this AD to address the omission of a shim between the MTB skin panel and rear spar flange at the attachment to the root fitting. This condition, if not addressed, could result in a reduction in fatigue performance of the MTB skin panel and rear spar root fittings, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB550011–00, Issue 001, dated May 18, 2021, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021.

(h) Exceptions to Service Information Specifications

Where Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

For more information about this AD, contact Joseph Hodgin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3962; email: *joseph.j.hodgin@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021.

(ii) [Reserved]

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

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on April 15, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11806 Filed 6–1–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2021–0572, FRL–9439–02–R2]

Approval and Promulgation of Implementation Plans; New York; Ozone and Particulate Matter Controls Strategies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving several revisions to the New York State Implementation Plan (SIP) meant to result in emission reductions that will help attain and maintain the national ambient air quality standards (NAAQS) for particulate matter (PM) and ozone. These SIP revisions consist of amendments to several existing regulations outlined within New York's Codes, Rules, and Regulations that implement control measures for sources of PM and oxides of nitrogen (NO_X). These actions are being taken in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on July 5, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2021–0572. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Fausto Taveras, Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007–1866, at (212) 637–3378, or by email at *Taveras.Fausto@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information section is arranged as follows:

I. What is the background for these actions?

On January 28, 2022, the EPA published a Notice of Proposed Rulemaking that proposed to approve revisions to the New York SIP submitted by the State of New York on February 3, 2021 and October 15, 2020. *See* 87 FR 4530. The SIP revisions include adopted revisions to three regulations, Title 6 of the New York Code of Rules and Regulations (NYCRR), Part 219, ''Incinerators'', and Part 222, ''Distributed Generation Sources'', with state effective dates of March 14, 2020, and March 25, 2020, respectively. New York also submitted attendant revisions to Part 200, Section 200.9, ''General Provisions, Referenced material''. These revisions are applicable statewide, with the exception of Part 222 which will only be applicable to sources located within the New York Metropolitan Nonattainment Area (NYMA).[1] These revisions include additional control strategies that will reduce NO_X and PM_X emissions from major sources throughout the State. The EPA is approving New York's SIP submittals listed within this action as a SIP-strengthening measure for New York's ozone and PM SIP. The EPA is also approving New York's SIP submittal since it incorporates additional RACT/RACM rules for NO_X at Municipal and Private Solid Waste Incineration Units.

The specific details of New York's SIP submittals and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's January 28, 2022, proposed rulemaking. *See id.*

[1] The New York portion of the NYMA, is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, Rockland and the Shinnecock Indian Nation. *See 40 CFR 81.333.*

II. What comments were received in response to the EPA's proposed action?

In response to EPA's January 28, 2022 proposed rulemaking on New York's SIP revisions, the EPA received three comments during the 30-day public comment period. The specific comments may be viewed under Docket ID Number EPA–R02–OAR–2021–0572 on the *https://regulations.gov* website.

Comment 1 & 2

Two public comments received on February 14, 2022, were submitted by one anonymous commenter. Both comments are substantially similar and support the EPA's proposed approval of New York's SIP revisions. Both comments state that the revisions to 6 NYCRR Part 219 and Part 222 are necessary to, ''. . . make sure that an increase in PM and NO_X emissions are avoided.'' However, both comments also urge the EPA to reevaluate the Ozone levels outlined in the 2008 and 2015 Ozone NAAQS due to the ever-changing environment and the growing population in the NYMA.

Response 1 & 2

The EPA acknowledges the commenter's support of the EPA's proposed rule. The EPA also recognizes the commenter's request for the EPA to reevaluate and revisit the Ozone levels outline within the 2008 and 2015 Ozone NAAQS. While this issue is outside the scope of the present action, we note that on December 23, 2020, the EPA announced a decision to retain, without changes, the 2015 Ozone NAAQS (December 23, 2020 Decision). *See* 85 FR 87256. However, on October 29, 2021, the EPA announced that it will reconsider the December 23, 2020 Decision.[2]

Comment 3

The Midwest Ozone Group (MOG) submitted comments on February 28, 2022, that urged the EPA to require New York to impose all emission controls for Distributed Generation Sources (DG Sources) units by 2023, instead of the adopted 2025 final phase year. MOG stated that a 2023 implementation timeframe will be consistent with the nonattainment obligations of the NYMA. MOG also provided details on how NO_X emissions from New York's DG Sources adversely impact upwind states like Connecticut and argued that the EPA's proposed approval fails to recognize the impact on those upwind states and the Good Neighbor Provisions

[2] See, *https://www.epa.gov/ground-level-ozone-pollution/epa-reconsider-previous-administrations-decision-retain-2015-ozone.*

of the Clean Air Act. In addition, MOG provided the following comments, and extensive details for each, as follows:

1. EPA has recognized the critical need to regulate NO_X emissions from DG Sources units.

2. In 2023, the only remaining ozone NAAQS nonattainment monitors in the Northeast are located in the Connecticut portion of the NYMA.

3. It has been well-established that residual nonattainment in Connecticut and the NYMA is being caused by sources that include DG Sources units in New York.

4. EPA should not allow New York to delay the implementation of those controls beyond the moderate nonattainment date for the 2015 ozone NAAQS.

MOG's comment letter also included: (1) Presentation slides distributed by the EPA on the analysis of ozone trends in the east in relation to interstate transport, (2) and a data analysis presentation conducted by the Stationary and Area Source Committee on high emitting Electric Generating Units during High Electric Demand Days throughout states within the Ozone Transport Region. MOG referred to these attachments in its comments on EPA's proposed action.

Response 3

In this action, EPA is approving New York's rules into the state's SIP as a SIP strengthening measure. This action is not intended to satisfy specific nonattainment planning obligations under the Clean Air Act. Rather, EPA is approving these New York regulations into the SIP pursuant to CAA section 110(k)(3), which states that EPA ''shall approve [a SIP] submittal as a whole if it meets all the applicable requirements of this chapter.'' Because this SIP revision relates to criteria pollutants and strengthens the preexisting requirements in the New York SIP, EPA has determined it is appropriate to approve the SIP revision.

EPA finds no basis, and the commenter has not provided one, to disapprove New York's submittal solely on grounds related to the timing of the regulations at issue in relation to the attainment dates. There are multiple separate nonattainment obligations that apply to New York pursuant to subpart 2 of part D of title I of the CAA, including requirements related to ensuring nonattainment areas attain the NAAQS by the applicable attainment date. EPA acknowledges that the State of New York has unmet attainment planning obligations for the NYMA nonattainment area. The EPA makes no finding in this action that New York has satisfied those obligations and does not make any finding as to whether the regulations approved through this action would be sufficient to meet separate nonattainment planning obligations. EPA action on any SIP revision submitted by New York to meet nonattainment planning requirements would be a separate rulemaking with an opportunity for public comment.

The EPA considers comments related to interstate transport obligations under CAA section 110(a)(2)(D)(i)(I) to be beyond the scope of this action. The EPA's actions addressing interstate transport under the 2008 and 2015 ozone NAAQS are separate rulemakings with their own comment periods and the separate availability of judicial review. The EPA will not address comments in this action that are unrelated to this action.

The EPA also reviewed NYSDEC's SIP revision to examine if similar comments were presented during the department's assessment of public comments for the proposal of Part 222. Representatives from energy management and sustainable energy organizations each submitted comments that requested NYSDEC to provide additional justification for why DG Sources need to be considered an economic dispatch source to be subject to the control requirements in Part 222. The commentors questioned why the adopted rule would not apply to distributed generation sources that provide electricity to power equipment or structures not served by distribution utilities and stated that these DG Sources not connected to the electrical grid could run fossil fuel-fired generators without any restrictions under Part 222. NYSDEC responded to the comments by stating that the purpose of Part 222 is to address and reduce emissions from emergency engines used in non-emergency applications, which include DG Sources classified as economic dispatch sources. Within NYSDEC's SIP revision of Part 222, the department also stated that sources that are not connected to the grid, which are not subject to Part 222, will be subject to 6 NYCRR Part 201, ''Permits and Registrations''.

NYSDEC also stated that it consulted with stakeholders including the New York Independent System Operator (NYISO), to develop a rule that improves air quality while maintaining a reliable electric grid. Therefore, NYSDEC chose the 2021 and 2025 timeframes to strike a balance in improving air quality and maintaining electric grid reliability. NYSDEC also factored in the time for owners or operators applicable to Part 222 to replace their DG Sources with sources that are at least model year 2000 or retrofit their sources with the required control technology. NYSDEC also factored in the time demands for permitting requirements and emission testing and believes that the compliance schedule in the regulation is appropriate.[3] The 2025 timeframe builds upon and parallels existing protections in other New York regulations applicable to DG Sources. NYSDEC also chose the 2025 timeframe since most sources subject to Part 222 will also have to comply with the emission provisions outlined in Section 24–149.6 of the New York City Air Pollution Code.[4] Starting on January 1, 2025, stationary engines applicable to Section 24–149.6 must also demonstrate compliance with the EPA's Tier IV emissions standards set forth in 40 CFR part 60, subpart III, ''Standards of Performance for Stationary Combustion Ignition Internal Combustion Engines''. NYSDEC also stated that sources that are not connected to the grid, and are not subject to Part 222, will be subject to 6 NYCRR Part 201, ''Permits and Registrations''. The revisions made to Part 222 impose emission limits and control technology requirements onto emergency engines located within the NYMA, which are sources not currently regulated under Title 6 NYCRR Subpart 227–2, ''Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO_X)''. The 2021 and 2025 timeframe provides time for owners or operators of applicable DG Sources to retire older units and implement control technologies, while maintaining the reliability of the electric grid. NYSDEC also states within its SIP revision that a regulatory strategy to address emissions from DG Sources not subject to Part 222 or Subpart 227–2 may be addressed through a separate rulemaking effort.

NYSDEC has also revised Part 222 to add subdivision 222.4(c), which establishes up to a two-year extension to the 2021 and 2025 compliance dates in cases where owners or operators can

[3] Under 6 NYCRR Part 222, applicable owners or operators of a DG source that will operate as an economic dispatch source must notify NYSDEC by March 15, 2021, or 30 days prior to operating the source, whichever is later. In addition, emission test reports demonstrating compliance with the 2025 emission limits of Part 222 must be submitted and approved by the Department before a distributed generation source may be operated as an economic dispatch source on or after May 1, 2025.

[4] Title 24, Chapter 1, Subchapter 6, Section 24–149.6 of New York City's Administrative Code outlines emission control provisions for certificated stationary combustion compression ignition internal combustion engines operating within New York City. See, *https://www1.nyc.gov/assets/dep/downloads/pdf/air/air-pollution-control-code.pdf.*

provide evidence, such as contracts, to demonstrate that they intend to meet the emission limits set forth in section 222.4(b) (control requirements) as expeditiously as practicable, but no later than April 30, 2027.

This concludes our response to the comments received. No changes have been made to the proposed rule as a result of the comments received.

III. What action is the EPA taking?

The EPA is approving as SIP strengthening measures New York's SIP revision submittals, dated February 3, 2021, and October 15, 2020, for the purpose of incorporating the revisions made to 6 NYCRR Subpart 219, ''Incinerators'', and 6 NYCRR Part 222, ''Distributed Generation Sources'', with a state effective date of March 14, 2020, and March 25, 2020, respectively. The EPA is also approving the attendant revisions made to Part 200, Subpart 200.9, ''General Provisions, Referenced material''. The EPA evaluated New York's submittals for consistency with the Clean Air Act, EPA regulations, and EPA policy. The EPA finds that these submissions strengthen New York's Ozone and PM SIPs.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of 6 NYCRR Part 200, Subpart 200.9, ''General Provisions, Referenced material'', Part 219, ''Incinerators'', and Part 222, ''Distributed Generation Sources'', as described in Section I of this preamble and set forth below in the amendments to 40 CFR part 52. The EPA has made and will continue to make these materials generally available through *https://regulations.gov* and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in New York's SIP, have been incorporated by reference by EPA into that SIP, and are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[5]

[5] 62 FR 27968 (May 22, 1997).

V. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Dioxide, Intergovernmental Relations, Incorporation by Reference, Ozone, Particulate matter, Reporting and recordkeeping requirements, Waste treatment and disposal.

Authority: 42 U.S.C. 7401 *et seq.*

Lisa Garcia,

Regional Administrator, Region 2.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

■ 2. In § 52.1670 paragraph (c) is amended in the table by revising entries ''Title 6, Part 200, Subpart 200.9'', ''Title 6, Part 219'', and ''Title 6, Part 222'' to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	* * *
Title 6, Part 200, Subpart 200.9.	General Provisions, Referenced material.	3/25/20	6/2/22	• EPA is approving referenced materials that previously were not Federally enforceable. • EPA approval finalized at [insert **Federal Register** citation].
*	*	*	*	* * *
Title 6, Part 219	Incinerators	3/14/20	6/2/22	• EPA approval finalized at [insert **Federal Register** citation].
*	*	*	*	* * *
Title 6, Part 222	Distributed Generation Sources.	3/25/20	6/2/22	• EPA approval finalized at [insert **Federal Register** citation].
*	*	*	*	* * *

* * * * *

[FR Doc. 2022–11571 Filed 6–1–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25, 73, and 76

[MB Docket No. 21–293, FCC 22–5; FR ID 89072]

Political Programming and Recordkeeping Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collections associated with the rules adopted in the *Report and Order* in MB Docket No. 21–293, FCC 22–5, Revisions to Political Programming and Record-Keeping Rule. This document is consistent with the *Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the revised rules.

DATES: The amendments to §§ 25.701(d), 25.702(b), 73.1943, and 76.1701, published at 87 FR 7748, February 10, 2022, are effective July 5, 2022.

FOR FURTHER INFORMATION CONTACT: Kathy Berthot, *Kathy.Berthot@fcc.gov,* Media Bureau, Policy Division, at (202) 418–7454, or email: *kathy.berthot@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the information collection requirements in §§ 25.701(d), 25.702(b), 73.1943(a) and (b), and 76.1701(a) and (b) on May 20, 2022. These rules were modified in the *Report and Order* in MB Docket No. 21–293, FCC 22–5, Revisions to Political Programming and Record-Keeping Rule, published 87 FR 7748, February 10, 2022. The Commission publishes this document as an announcement of the effective date of the rules. The other rule amendments adopted in the *Report and Order,* which did not require OMB approval, became effective on March 14, 2022. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 3.317, 45 L Street NE, Washington, DC 20554, regarding OMB Control Numbers 3060–0214 and 3060–1207. Please include the applicable OMB Control Number in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on May 20, 2022, for the information collection requirements contained in §§ 25.701(d), 25.702(b), 73.1943(a) and (b), and 76.1701(a) and (b). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Numbers for the information collection requirements in these rules are 3060–0214 and 3060–1207.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 73.1212, 76.1701 and 73.1943, Political Files.

Form Number: N/A.

Respondents: Business or other for-profit entities; Not for profit institutions; State, Local or Tribal government; Individuals or households.

Number of Respondents: 23,805 respondents; 66,364 responses.

Estimated Time per Response: 1–52 hours.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in Sections 151, 152, 154(i), 303, 307 and 308 of the

Communications Act of 1934, as amended.

Total Annual Burden: 2,064,483 hours.

Total Annual Cost: No cost.

Needs and Uses: On January 25, 2022, the Commission adopted a *Report and Order* in MB Docket No. 21–293, FCC 22–5, 87 FR 7748 (February 10, 2022), Revisions to Political Programming and Record-Keeping Rule, which updates the political file rules for broadcast licensees and cable television system operators to bring them into conformity with the Bipartisan Campaign Reform Act of 2002. The *Report and Order* revises the following information collection requirements:

Pursuant to 47 CFR 73.1943 and 76.1701, each broadcast station licensee and each cable television system is required to maintain in its online political file a complete record of any request to purchase broadcast and cablecast time that is made by or on behalf of a candidate for public office, or that communicates a message relating to any political matter of national importance, including a legally qualified candidate, any election to Federal office, or a national legislative issue of public importance. Such records must include information regarding: (1) Whether the request to purchase broadcast or cablecast time is accepted or rejected by the broadcast licensee or cable television system operator; (2) the rate charged for the broadcast or cablecast time; (3) the date and time on which the communication is aired; (4) the class of time that is purchased; (5) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable); (6) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and (7) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person. In addition, when free time is provided for use by or on behalf of candidates, a record of the free time provided must be placed in the political file. These records must be placed in the political file as soon as possible and retained for a period of two years.

All other information collection requirements contained under 47 CFR 73.1212, 73.3526, 73.3527, 73.1943, and 76.1701 are still a part of the information collection and remain.

OMB Control Number: 3060–1207.

Title: Section 25.701, Other DBS Public Interest Obligations, and Section 25.702, Other SDARS Public Interest Obligations.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents: 3 respondents; 11 responses.

Estimated Time per Response: 1–11 hours.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154, 301, 302, 303, 307, 309, 310, 332, and 335 of the Communications Act of 1934, as amended.

Total Annual Burden: 75 hours.

Total Annual Cost: No cost.

Needs and Uses: On January 25, 2022, the Commission adopted a *Report and Order* in MB Docket No. 21–293, FCC 22–5, Revisions to Political Programming and Record-Keeping Rule, which updates the political file rules for Direct Broadcast Satellite (DBS) providers and Satellite Digital Audio Radio Service (SDARS) licensees to bring them into conformity with the Bipartisan Campaign Reform Act of 2002. The *Report and Order* revises the following information collection requirements:

Pursuant to 47 CFR 25.701(d) and 25.702(b), each DBS provider and each SDARS licensee is required to maintain in its online political file a complete record of any request to purchase airtime that is made by or on behalf of a candidate for public office, or that communicates a message relating to any political matter of national importance, including a legally qualified candidate, any election to Federal office, or a national legislative issue of public importance. Such records must include information regarding: (1) Whether the request to purchase airtime is accepted or rejected by the DBS provider or SDARS licensee; (2) the rate charged for the airtime; (3) the date and time on which the communication is aired; (4) the class of time that is purchased; (5) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable); (6) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and (7) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person. In addition, when free time is provided for use by or on behalf of candidates, a record of the free time provided must be placed in the political file. These records must be placed in the political file as soon as possible and retained for a period of two years.

All other information collection requirements contained under 47 CFR 25.701 and 25.702 are still a part of the information collection and remain unchanged since last approved by OMB. This information collection (OMB 3060–1207) also consolidates the information collections in OMB 3060–1065, OMB 3060–1212, and the portion of OMB 3060–0214 which related to SDARS licensees to eliminate duplication and inconsistencies between these information collections. OMB 3060–1065 and OMB 3060–1212 will be discontinued.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–11694 Filed 6–1–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 220524–0122]

RIN 0648–BL21

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2022 Harvest Specifications for Pacific Whiting, and 2022 Pacific Whiting Tribal Allocation

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the 2022 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan, the Magnuson-Stevens Fishery

Conservation and Management Act, the Pacific Whiting Act of 2006 (Whiting Act), and other applicable laws. This rule implements the domestic 2022 harvest specifications for Pacific whiting including the 2022 tribal allocation for the Pacific whiting fishery, the non-tribal sector allocations, and set-asides for incidental mortality in research activities and non-groundfish fisheries. These measures are intended to help prevent overfishing, achieve optimum yield, ensure that management measures are based on the best scientific information available, and provide for the implementation of tribal treaty fishing rights.

DATES: Effective June 2, 2022.

ADDRESSES:

Electronic Access

This final rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the NMFS website at *https://www.fisheries.noaa.gov* and at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

FOR FURTHER INFORMATION CONTACT: Colin Sayre, phone: 206–526–4656, and email: *Colin.Sayre@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The transboundary stock of Pacific whiting is managed through the Agreement Between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting of 2003 (Agreement). The Agreement establishes bilateral management bodies to implement the terms of the Agreement, including the Joint Management Committee (JMC), which recommends the annual catch level for Pacific whiting. NMFS issued a proposed rule on April 13, 2022 (87 FR 21858) that describes the Agreement, including the establishment of F–40 percent default harvest rate, the explicit allocation of Pacific whiting coastwide total allowable catch (TAC) to the United States (73.88 percent) and Canada (26.12 percent), the bilateral bodies to implement the terms of the Agreement, including the Joint Management Committee (JMC), and the process used to determine the coastwide TAC under the Agreement. The proposed rule also proposed allocating 17.5 percent of the U.S. TAC of Pacific whiting for 2021 to Pacific Coast Indian tribes that have a treaty right to harvest groundfish, and implementing set-asides (750 metric tons (mt)) for Pacific whiting for research and incidental mortality in other fisheries.

2022 TAC Recommendation

The Treaty's Advisory Panel (AP) and JMC met virtually March 1–3, 2022, to develop advice on a 2022 coastwide TAC. The AP provided its 2022 TAC recommendation to the JMC on March 2, 2022.

The Agreement directs the JMC to base the catch limit recommendation on the default harvest rate unless scientific evidence demonstrates that a different rate is necessary to sustain the offshore Pacific whiting resource. After consideration of the 2022 stock assessment and other relevant scientific information, the JMC did not use the default harvest rate, and instead agreed on a more conservative approach. There were two primary reasons for choosing a TAC well below the level of F–40 percent. First, the JMC noted the increasing age of the 2010, 2014, and 2016 year classes and wished to extend access to these stocks as long as possible, which a lower TAC could accomplish. Second, there is uncertainty regarding the size of the 2020 year class. Maintaining a modest TAC for 2022 was deemed prudent by the JMC until an additional year of data is available on the size of the 2020 year class. This conservative TAC setting process, endorsed by the AP, resulted in a TAC that is less than what it would be using the default harvest rate under the Agreement.

The JMC agreed on a recommended coastwide TAC of 545,000 mt, of Pacific whiting, which resulted in a U.S. TAC of 402,646 mt (73.88 percent of 545,000 mt). This recommendation is consistent with the best available scientific information, provisions of the Agreement, and the Whiting Act. The recommendation was transmitted via letter to the United States and Canadian Governments on March 3, 2022. NMFS, under delegation of authority from the Secretary of Commerce, approved the TAC recommendation of 402,646 mt for U.S. fisheries on March 25, 2022.

This final rule announces the U.S. TAC of 402,646 mt, and implements the domestic 2022 Pacific whiting harvest specifications, including, the 2022 tribal allocation of 70,463 mt, the preliminary allocations for three non-tribal commercial whiting sectors, and set-asides for incidental mortality in research activities and non-groundfish fisheries. The tribal and non-tribal allocations for Pacific whiting, as well as set-asides, are effective until December 31, 2022.

Tribal Allocations

This final rule establishes the tribal allocation of Pacific whiting for 2022 as described in the proposed rule (87 FR 21858). Since 1996, NMFS has been allocating a portion of the U.S. TAC of Pacific whiting to the tribal fishery. Regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) specify that the tribal allocation is subtracted from the total U.S. Pacific whiting TAC. The tribal Pacific whiting fishery is managed separately from the non-tribal Pacific whiting fishery and is not governed by limited entry or open access regulations or allocations. NMFS is establishing the 2022 tribal allocation as 70,463 mt (17.5 percent of the U.S. TAC) in this final rule.

In 2009, NMFS, the states of Washington and Oregon, and the tribes with treaty rights to harvest Pacific whiting started a process to determine the long-term tribal allocation for Pacific whiting; however, no long-term allocation has been determined. While new scientific information or discussions with the relevant parties may impact that decision, the best available scientific information to date suggests that 70,463 mt is within the likely range of potential treaty right amounts. As with prior tribal Pacific whiting allocations, this final rule is not intended to establish precedent for future Pacific whiting seasons, or for the determination of the total amount of Pacific whiting to which the Tribes are entitled under their treaty right. Rather, this rule adopts an interim allocation. The long-term tribal treaty amount will be based on further development of scientific information and additional coordination and discussion with and among the coastal tribes and the states of Washington and Oregon.

Non-Tribal Research and Bycatch Set-Asides

The U.S. non-tribal whiting fishery is managed under the Council's Pacific Coast Groundfish FMP. Each year, the Council recommends a set-aside of Pacific whiting to accommodate incidental mortality of the fish in research activities and non-groundfish fisheries based on estimates of scientific research catch and estimated bycatch mortality in non-groundfish fisheries. At its November 2021 meeting, the Council recommended an incidental mortality set-aside of 750 mt for 2022. This set-aside is unchanged from the 750 mt set-aside amount for incidental mortality in 2021 and reflects the recent average mortality that has declined from 942 mt in 2014–2016 to 216 mt in 2017–2019.

This rule implements the Council's recommendations.

Non-Tribal Harvest Guidelines and Allocations

This final rule implements the fishery harvest guideline (HG), also called the non-tribal allocation as described in the proposed rule published on April 13, 2022 (87 FR 21858). The 2022 fishery HG for Pacific whiting is 331,433 mt. This amount was determined by deducting the 70,463 mt tribal allocation and the 750 mt allocation for scientific research catch and fishing mortality in non-groundfish fisheries from the U.S. TAC of 402,646 mt. The regulations further allocate the fishery HG among the three non-tribal sectors of the Pacific whiting fishery: The catcher/processor (C/P) Co-op Program, the Mothership (MS) Co-op Program, and the Shorebased Individual Fishing Quota (IFQ) Program. The C/P Co-op Program is allocated 34 percent (112,687 mt for 2022), the MS Co-op Program is allocated 24 percent (79,544 mt for 2022), and the Shorebased IFQ Program is allocated 42 percent (139,202 mt for 2022). The fishery south of 42° N lat. may not take more than 6,960 mt (5 percent of the Shorebased IFQ Program allocation) prior to May 15, the start of the primary Pacific whiting season north of 42° N lat.

TABLE 1—2022 U.S. PACIFIC WHITING ALLOCATIONS IN METRIC TONS

Sector	2022 Pacific whiting allocation (mt)
Tribal	70,463
Catcher/Processor (C/P) Co-op Program	112,687
Mothership (MS) Co-op Program	79,544
Shorebased IFQ Program	139,202

This rule would be implemented under the statutory and regulatory authority of section 305(d) of the Magnuson-Stevens Act, the Pacific Whiting Act of 2006, the regulations governing the groundfish fishery at 50 CFR 660.5—660.360, and other applicable laws. Additionally, with this final rule, NMFS, will ensure that the fishery is managed in a manner consistent with treaty rights of four Treaty Tribes to fish in their ''usual and accustomed grounds and stations'' in common with non-tribal citizens. *United States* v. *Washington,* 384 F. Supp. 313 (W.D. 1974).

Comments and Responses

NMFS issued a proposed rule on April 13, 2022 (87 FR 21858). The comment period on the proposed rule closed April 28, 2022. No comments were received during the public comment period.

Changes From the Proposed Rule

NMFS has not made any changes to the proposed regulatory text and there are no substantive changes from the proposed rule.

Classification

The Administrator, West Coast Region, NMFS, determined that the final rule is necessary for the conservation and management of the Pacific whiting and that it is consistent with section 305(d), and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Coast Groundfish FMP, and other applicable laws.

Pursuant to 5 U.S.C. 553(d)(3), the NMFS Assistant Administrator finds good cause to waive the 30-day delay in the date of effectiveness for this final rule because such a delay would be contrary to the public interest. If this final rule were delayed by 30 days, Pacific coast whiting fishermen would not be able to fish under the final catch limits for Pacific whiting for that time period, and not be able to realize the full level of economic opportunity this rule provides. Waiving the 30-day delay in the date of effectiveness will allow this final rule to more fully benefit the fishery through increased fishing opportunities as described in the preamble of this rule.

In addition, because this rule increases catch limits for Pacific whiting compared to the interim allocation the fishery is currently operating under, it therefore also falls within the 5 U.S.C. 553(d)(1) exception to the 30-day delay in the date of effectiveness requirement. The Pacific whiting fishery season began fishing on May 15, 2022 under interim allocations based on the lowest coastwide TAC considered in the proposed rule. This final rule implements a higher TAC for Pacific whiting than the interim allocation provided prior to the season opening, and implementing the rule upon publication provides the whiting fleet more opportunity and greater flexibility to harvest the optimal yield.

Waiving the 30-day delay in effectiveness will not have a negative impact on any entities, as there are no new compliance requirements or other burdens placed on the fishing community with this rule. Making this rule effective immediately would also serve the best interests of the public because it will allow for the longest possible fishing season for Pacific whiting and therefore the best possible economic outcome for those whose livelihoods depend on this fishery. Because the 30-day delay in effectiveness would potentially cause significant financial harm without providing any corresponding benefits, this final rule is effective upon publication in the **Federal Register**.

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

A range of potential harvest levels for Pacific whiting have been considered under the Final Environmental Impact Statement for Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods thereafter (2015/16 FEIS). The 2015/16 FEIS examined the harvest specifications and management measures for 2015–16 and 10 year projections for routinely adjusted harvest specifications and management measures. The 10 year projections were produced to evaluate the impacts of the ongoing implementation of harvest specifications and management measures and to evaluate the impacts of the routine adjustments that are the main component of each biennial cycle. The Environmental Assessment for Amendment 29 to the Pacific Coast Groundfish Fishery Management Plan and 2021–22 Harvest Specifications and Management Measures (2021–22 EA) for the 2021–22 cycle tiers from the 2015/16 FEIS and focuses on the harvest specifications and management measures for Pacific coast groundfish stocks that were not within the scope of the 10 year projections in the 2015/16 FEIS. The 2015/16 FEIS and 2021–22 EA are available from NMFS (see **ADDRESSES**).

Final Regulatory Flexibility Analysis

NMFS issued a proposed rule on April 13, 2022 (87 FR 21858), for the 2022 Harvest Specifications for Pacific Whiting, and 2022 tribal allocation for Pacific whiting. An Initial Regulatory Flexibility Analysis (IRFA) was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period on the revised proposed rule ended on April 28, 2022. NMFS did not receive any public comments on the revised proposed rule. The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file any comments on the IRFA or the proposed rule. The description of this action, its

purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. A Final Regulatory Flexibility Analysis (FRFA) was prepared and incorporates the IRFA. There were no public comments received on the IRFA. NMFS also prepared a RIR for this action. A copy of the RIR/FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA, per the requirements of 5 U.S.C. 604 follows.

Under the Regulatory Flexibility Act (RFA), the term ''small entities'' includes small businesses, small organizations, and small governmental jurisdictions. The Small Business Administration has established size criteria for entities involved in the fishing industry that qualify as small businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts, not in excess of $11 million for all its affiliated operations worldwide (see 80 FR 81194, December 29, 2015). A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A small organization is any nonprofit enterprise that is independently owned and operated and is not dominant in its field. Effective February 26, 2016, a seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide (See NAICS 311710 at 81 FR 4469; January 26, 2016). For purposes of rulemaking, NMFS is also applying the seafood processor standard to catcher processors because whiting C/Ps earn the majority of the revenue from processed seafood product.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

No public comments were received on the proposed rule.

Description and Estimate of the Number of Small Entities to Which the Rule Applies, and Estimate of Economic Impacts by Entity Size and Industry

This final rule announces the coastwide TAC and U.S. TAC and allocates Pacific whiting to the following sectors/programs: Tribal, Shorebased IFQ Program Trawl Fishery, MS Coop Program Whiting At-sea Trawl Fishery, and C/P Coop Program Whiting At-sea Trawl Fishery. The amount of Pacific whiting allocated to these sectors is based on the U.S. TAC.

We expect one tribal entity to fish for Pacific whiting in 2022. Tribes are not considered small entities for the purposes of RFA. Impacts to tribes are nevertheless considered in this analysis.

As of January 2022, the Shorebased IFQ Program is composed of 164 Quota Share permits/accounts (134 of which were allocated whiting quota pounds), and 35 first receivers, one of which is designated as whiting-only receivers and 11 that may receive both whiting and non-whiting.

These regulations also directly affect participants in the MS Co-op Program, a general term to describe the limited access program that applies to eligible harvesters and processors in the MS sector of the Pacific whiting at-sea trawl fishery. This program consists of six MS processor permits, and a catcher vessel fleet currently composed of a single co-op, with 34 Mothership/Catcher Vessel (MS/CV) endorsed permits (with three permits each having two catch history assignments).

These regulations also directly affect the C/P Co-op Program, composed of 10 C/P endorsed permits owned by three companies that have formed a single coop. These co-ops are considered large entities from several perspectives; they have participants that are large entities, and have in total more than 750 employees worldwide including affiliates.

Although there are three non-tribal sectors, many companies participate in two sectors and some participate in all three sectors. As part of the permit application processes for the non-tribal fisheries, based on a review of the Small Business Administration size criteria, permit applicants are asked if they considered themselves a ''small'' business, and they are asked to provide detailed ownership information. Data on employment worldwide, including affiliates, are not available for these companies, which generally operate in Alaska as well as the West Coast and may have operations in other countries as well. NMFS has limited entry permit holders self-report size status. For 2021, all 10 C/P permits reported they are not small businesses, as did 8 mothership catcher vessels. There is substantial, but not complete overlap between permit ownership and vessel ownership so there may be a small number of additional small entity vessel owners who will be impacted by this rule. After accounting for cross participation, multiple Quota Share account holders, and affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by these proposed regulations, 89 of which are considered ''small'' businesses.

This rule will allocate Pacific whiting between tribal and non-tribal harvesters (a mixture of small and large businesses). Tribal fisheries consist of a mixture of fishing activities that are similar to the activities that non-tribal fisheries undertake. Tribal harvests may be delivered to both shoreside plants and motherships for processing. These processing facilities also process fish harvested by non-tribal fisheries. The effect of the tribal allocation on non-tribal fisheries will depend on the level of tribal harvests relative to their allocation and the reapportionment process. If the tribes do not harvest their entire allocation, there are opportunities during the year to reapportion unharvested tribal amounts to the non-tribal fleets. For example, in 2021 NMFS reapportioned 34,645 mt of the original 64,645 mt tribal allocation. This reapportionment was based on conversations with the tribes and the best information available at the time, which indicated that this amount would not limit tribal harvest opportunities for the remainder of the year. The reapportioning process allows unharvested tribal allocations of Pacific whiting to be fished by the non-tribal fleets, benefitting both large and small entities. The revised Pacific whiting allocations for 2021 following the reapportionment were: Tribal 30,000 mt, C/P Co-op 115,141 mt; MS Co-op 81,275 mt; and Shorebased IFQ Program 142,232 mt.

The prices for Pacific whiting are largely determined by the world market because most of the Pacific whiting harvested in the United States is exported. The U.S. Pacific whiting TAC is highly variable, as have subsequent harvests and ex-vessel revenues. For the years 2016 to 2020, the total Pacific whiting fishery (tribal and non-tribal) averaged harvests of approximately 303,782 mt annually. The 2021 U.S. non-tribal fishery had a Pacific whiting catch of approximately 268,926 mt, and the tribal fishery landed less than 3,000 mt.

Impacts to the U.S. non-tribal fishery are measured with an estimate of ex-vessel revenue. The coastwide TAC of 545,000 mt would result in an U.S. TAC of 402,646 mt and, after deduction of the tribal allocation and the incidental catch set-aside, a U.S. non-tribal harvest guideline of 331,433 mt. Using the 2021 weighted-average non-tribal price per

metric ton (*e.g.* $221 per metric ton), the TAC is estimated to result in an ex-vessel revenue of $73.3 million for the U.S. non-tribal fishing fleet.

Impacts to tribal catcher vessels who elect to participate in the tribal fishery are measured with an estimate of ex-vessel revenue. In lieu of more complete information on tribal deliveries, total ex-vessel revenue is estimated with the 2021 average ex-vessel price of Pacific whiting, which was $221.15 per mt. At that price, the proposed 2022 tribal allocation of 70,463 mt would have an ex-vessel value of $15.58 million.

A Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize any Significant Economic Impact of the Proposed Rule on Small Entities

For the allocations to the non-tribal commercial sectors the Pacific whiting tribal allocation, and set-asides for research and incidental mortality NMFS considered two alternatives: ''No Action'' and the ''Proposed Action.''

Under the no action alternative, NMFS would not implement allocations to the non-tribal sectors based on the JMC recommended U.S. TAC, which would not fulfill NMFS' responsibility to manage the U.S. fishery. This is contrary to the Whiting Act and Agreement, which requires sustainable management of the Pacific whiting resource, therefore this alternative received no further consideration.

Under the no action alternative, NMFS would not implement the set-aside amount of 750 mt recommended by the Council. Not implementing set-asides of the US whiting TAC would mean incidental mortality of the fish in research activities and non-groundfish fisheries would not be accommodated. This would be inconsistent with the Council's recommendation, the Pacific Groundfish Fishery Management Plan, the regulations setting the framework governing the groundfish fishery, and NMFS' responsibility to manage the fishery. Therefore the no action alternative received no further consideration.

NMFS did not consider a broader range of alternatives to the proposed tribal allocation because the tribal allocation is a percentage of the U.S. TAC and is based primarily on the requests of the tribes. These requests reflect the level of participation in the fishery that will allow them to exercise their treaty right to fish for Pacific whiting. Under the Proposed Action alternative, NMFS proposes to set the tribal allocation percentage at 17.5 percent, as requested by the Tribes. This would yield a tribal allocation of 70,463 mt for 2022. Consideration of a percentage lower than the tribal request of 17.5 percent is not appropriate in this instance. As a matter of policy, NMFS has historically supported the harvest levels requested by the Tribes. Based on the information available to NMFS, the tribal request is within their tribal treaty rights. A higher percentage would arguably also be within the scope of the treaty right. However, a higher percentage would unnecessarily limit the non-tribal fishery.

Under the no action alternative, NMFS would not make an allocation to the tribal sector. This alternative was considered, but the regulatory framework provides for a tribal allocation on an annual basis only. Therefore, the no action alternative would result in no allocation of Pacific whiting to the tribal sector in 2022, which would be inconsistent with NMFS' responsibility to manage the fishery consistent with the Tribes' treaty rights. Given that there is a tribal request for allocation in 2022, this alternative received no further consideration.

Regulatory Flexibility Act Determination of No Significant Impact

NMFS determined this proposed rule would not adversely affect small entities. The reapportioning process allows unharvested tribal allocations of Pacific whiting, fished by small entities, to be fished by the non-tribal fleets, benefitting both large and small entities.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. A small entity compliance guide will be sent to stakeholders, and copies of the final rule and guides (*i.e.,* information bulletins) are available from NMFS at the following website: *https://www.fisheries.noaa.gov/species/pacific-whiting#management.*

With this final rule, NMFS, acting on behalf of the Secretary, determined that the FMP is implemented in a manner consistent with treaty rights of four Treaty Tribes to fish in their ''usual and accustomed grounds and stations'' in common with non-tribal citizens. *United States* v. *Washington,* 384 F. Supp. 313 (W.D. Wash. 1974).

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

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: May 25, 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 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.50, revise paragraph (f)(4) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2022 is 70,463 mt.

* * * * *

■ 3. Revise Table 2a to part 660, subpart C, to read as follows:

TABLE 2a. TO PART 660, SUBPART C—2022, AND BEYOND, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HARVEST GUIDELINES (WEIGHTS IN METRIC TONS)

[Capitalized stocks are overfished.]

Stocks	Area	OFL	ABC	ACL [a]	Fishery HG [b]
YELLOWEYE ROCKFISH [c]	Coastwide	98	83	51	42.2
Arrowtooth Flounder [d]	Coastwide	11,764	8,458	8,458	6,362.9
Big Skate [e]	Coastwide	1,606	1,389	1,389	1,331.7

TABLE 2a. TO PART 660, SUBPART C—2022, AND BEYOND, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HARVEST GUIDELINES (WEIGHTS IN METRIC TONS)—Continued

[Capitalized stocks are overfished.]

Stocks	Area	OFL	ABC	ACL [a]	Fishery HG [b]
Black Rockfish [f]	California (S of 42° N lat.)	373	341	341	338.7
Black Rockfish [g]	Washington (N of 46°16′ N lat.)	319	291	291	272.9
Bocaccio [h]	S of 40°10′ N lat.	1,870	1,724	1,724	1,676.2
Cabezon [i]	California (S of 42° N lat)	210	195	195	193.7
California Scorpionfish [j]	S of 34°27′ N lat.	303	275	275	271.1
Canary Rockfish [k]	Coastwide	1,432	1,307	1,307	1,237.6
Chilipepper [l]	S of 40°10′ N lat.	2,474	2,259	2,259	2,161.3
Cowcod [m]	S of 40°10′ N lat.	113	82	82	70.8
Cowcod	(Conception)	94	70	NA	NA
Cowcod	(Monterey)	19	12	NA	NA
Darkblotched Rockfish [n]	Coastwide	901	831	831	811.9
Dover Sole [o]	Coastwide	87,540	78,436	50,000	48,402.8
English Sole [p]	Coastwide	11,127	9,101	9,101	8,850.4
Lingcod [q]	N of 40°10′ N lat.	5,395	4,974	4,958	4,679.6
Lingcod [r]	S of 40°10′ N lat.	1,334	1,230	1,172	1,159
Longnose Skate [s]	Coastwide	2,036	1,761	1,761	1,509.6
Longspine Thornyhead [t]	N of 34°27′ N lat.	4,838	3,227	2,452	2,398.3
Longspine Thornyhead [u]	S of 34°27′ N lat.			774	771.8
Pacific Cod [v]	Coastwide	3,200	1,926	1,600	1,093.9
Pacific Ocean Perch [w]	N of 40°10′ N lat.	4,371	3,711	3,711	3,686.3
Pacific Whiting [x]	Coastwide	715,643	x	x	331,433
Petrale Sole [y]	Coastwide	3,936	3,660	3,660	3,272.5
Sablefish [z]	N of 36° N lat.	9,005	8,375	6,566	See Table 1c
Sablefish [aa]	S of 36° N lat.			1,809	1,781.6
Shortspine Thornyhead [bb]	N of 34°27′ N lat.	3,194	2,130	1,393	1,314.6
Shortspine Thornyhead [cc]	S of 34°27′ N lat.			737	730.3
Spiny Dogfish [dd]	Coastwide	2,469	1,585	1,585	1,241.0
Splitnose [ee]	S of 40°10′ N lat.	1,837	1,630	1,630	1,611.6
Starry Flounder [ff]	Coastwide	652	392	392	343.6
Widow Rockfish [gg]	Coastwide	14,826	13,788	13,788	13,539.7
Yellowtail Rockfish [hh]	N of 40°10′ N lat.	6,324	5,831	5,831	4,793.5
Stock Complexes					
Blue/Deacon/Black Rockfish [ii]	Oregon	672	600	600	597.7
Cabezon/Kelp Greenling [jj]	Washington	22	17	17	15
Cabezon/Kelp Greenling [kk]	Oregon	208	190	190	189.8
Nearshore Rockfish North [ll]	N of 40°10′ N lat.	93	77	77	73.9
Nearshore Rockfish South [mm]	S of 40°10′ N lat.	1,233	1,011	1,010	1,005.6
Other Fish [nn]	Coastwide	286	223	223	201.7
Other Flatfish [oo]	Coastwide	7,808	4,838	4,838	4,617.1
Shelf Rockfish North [pp]	N of 40°10′ N lat.	1,821	1,450	1,450	1,377.6
Shelf Rockfish South [qq]	S of 40°10′ N lat.	1,832	1,429	1,428	1,295.2
Slope Rockfish North [rr]	N of 40°10′ N lat.	1,842	1,568	1,568	1,502.1
Slope Rockfish South [ss]	S of 40°10′ N lat.	871	705	705	666.1

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

[b] Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

[c] Yelloweye rockfish. The 51 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2029 and an SPR harvest rate of 65 percent. 8.85 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP catch (0.24 mt), research (2.92 mt), and the incidental open access fishery (0.69 mt) resulting in a fishery HG of 42.2 mt. The non-trawl HG is 38.8 mt. The combined non-nearshore/nearshore HG is 8.1 mt. Recreational HGs are: 9.9 mt (Washington); 9 mt (Oregon); and 11.7 mt (California). In addition, the nontrawl ACT is 30.4 mt and the combined non-nearshore/nearshore ACT is 6.3 mt. Recreational ACTs are: 7.8 mt (Washington), 7.1 (Oregon), and 9.2 mt (California).

[d] Arrowtooth flounder. 2,095.08 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), EFP fishing (0.1 mt), research (12.98 mt) and incidental open access (41 mt), resulting in a fishery HG of 6,362.9 mt.

[e] Big skate. 57.31 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), EFP fishing (0.1 mt), and research catch (5.49 mt), and incidental open access (36.72 mt), resulting in a fishery HG of 1,331.7 mt.

[f] Black rockfish (California). 2.26 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt), research (0.08 mt), and incidental open access (1.18 mt), resulting in a fishery HG of 338.7 mt.

[g] Black rockfish (Washington). 18.1 mt is deducted from the ACL to accommodate the Tribal fishery (18 mt) and research catch (0.1 mt), resulting in a fishery HG of 272.9 mt.

[h] Bocaccio south of 40°10″ N lat. The stock is managed with stock-specific harvest specifications south of 40°10″ N lat. and within the Minor Shelf Rockfish complex north of 40°10″ N lat. 47.82 mt is deducted from the ACL to accommodate EFP catch (40 mt), research (5.6 mt), and incidental open access (2.22 mt), resulting in a fishery HG of 1,676.2 mt. The 2022 combined allocation to the nearshore and non-nearshore fishery is 315.7 mt. The California recreational fishery south of 40°10″ N lat. has an HG of 706.1 mt.

[i] Cabezon (California). 1.28 mt is deducted from the ACL to accommodate EFP (1 mt), research (0.02 mt), and incidental open access fishery (0.26 mt), resulting in a fishery HG of 193.7 mt.

[j] California scorpionfish south of 34°27″ N lat. 3.89 mt is deducted from the ACL to accommodate research (0.18 mt) and the incidental open access fishery (3.71 mt), resulting in a fishery HG of 271.1 mt.

[k] Canary rockfish. 69.39 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), EFP catch (8 mt), and research catch (10.08 mt), and the incidental open access fishery (1.31 mt), resulting in a fishery HG of 1,237.6 mt. The combined nearshore/non-nearshore HG is 123.5 mt. Recreational HGs are: 42.2 mt (Washington); 63.5 mt (Oregon); and 113.9 mt (California).

[l] Chilipepper rockfish south of 40°10′ N lat. Chilipepper are managed with stock-specific harvest specifications south of 40°10′N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 97.7 mt is deducted from the ACL to accommodate EFP fishing (70 mt), research (14.04 mt), the incidental open access fishery (13.66 mt), resulting in a fishery HG of 2,161.3 mt.

[m] Cowcod south of 40°10′ N lat. 11.17 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research (10 mt), and incidental open access (0.17 mt), resulting in a fishery harvest guideline of 70.83 mt. A single ACT of 50 mt is being set for the Conception and Monterey areas combined.

[n] Darkblotched rockfish. 19.06 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), EFP catch (0.6 mt), and research catch (8.46 mt), and the incidental open access fishery (9.8 mt) resulting in a fishery HG of 811.9 mt.

[o] Dover sole. 1,597.21 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), EFP fishing (0.1 mt), research (50.84 mt), and incidental open access (49.27 mt), resulting in a fishery HG of 48,402.8 mt.

[p] English sole. 250.63 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), EFP fishing (0.1 mt), research (8 mt), and the incidental open access fishery (42.52 mt), resulting in a fishery HG of 8,850.4 mt.

[q] Lingcod north of 40°10′ N lat. 278.38 mt is deducted from the ACL for the Tribal fishery (250 mt), EFP catch (0.1 mt), research (16.6 mt), and the incidental open access fishery (11.68 mt) resulting in a fishery HG of 4,679.6 mt.

[r] Lingcod south of 40°10′ N lat. 13 mt is deducted from the ACL to accommodate EFP catch (1.5 mt), research (3.19 mt), and incidental open access fishery (8.31 mt), resulting in a fishery HG of 1,159 mt.

[s] Longnose skate. 251.40 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), EFP catch (0.1 mt), and research catch (12.46 mt), and incidental open access fishery (18.84 mt), resulting in a fishery HG of 1,509.6 mt.

[t] Longspine thornyhead north of 34°27′ N lat. 53.71 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (17.49 mt), and the incidental open access fishery (6.22 mt), resulting in a fishery HG of 2,398.3 mt.

[u] Longspine thornyhead south of 34°27′ N lat. 2.24 mt is deducted from the ACL to accommodate research catch (1.41 mt) and the incidental open access fishery (0.83 mt), resulting in a fishery HG of 771.8 mt.

[v] Pacific cod. 506.1 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), EFP fishing (0.1 mt), research catch (5.47 mt), and the incidental open access fishery (0.53 mt), resulting in a fishery HG of 1,093.9 mt.

[w] Pacific ocean perch north of 40°10′ N lat. 24.73 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), EFP fishing (0.1 mt), research catch (5.39 mt), and the incidental open access fishery (10.04 mt), resulting in a fishery HG of 3,686.2 mt.

[x] The 2022 OFL of 715,643 mt is based on the 2022 assessment with an F40 percent of FMSY proxy. The 2022 coastwide Total Allowable Catch (TAC) is 545,000 mt. The U.S. TAC is 73.88 percent of the coastwide TAC. The 2022 U.S. TAC is 402,646 mt. From the U.S. TAC, 70,463 mt is deducted to accommodate the Tribal fishery, and 750 mt is deducted to accommodate research and bycatch in other fisheries, resulting in a 2022 fishery HG of 331,433 mt. The TAC for Pacific whiting is established under the provisions of the Agreement with Canada on Pacific Hake/Whiting and the Pacific Whiting Act of 2006, 16 U.S.C. 7001–7010, and the international exception applies. Therefore, no ABC or ACL values are provided for Pacific whiting.

[y] Petrale sole. 387.54 mt is deducted from the ACL to accommodate the Tribal fishery (350 mt), EFP catch (0.1 mt), research (24.14 mt), and the incidental open access fishery (13.3 mt), resulting in a fishery HG of 3,272.5 mt.

[z] Sablefish north of 36° N lat. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N lat., using a rolling 5-year average estimated swept area biomass from the NMFS NWFSC trawl survey, with 78.4 percent apportioned north of 36° N lat. and 21.5 percent apportioned south of 36° N lat. The northern ACL is 6,566 mt and is reduced by 656.6 mt for the Tribal allocation (10 percent of the ACL north of 36° N lat.). The 656.6 mt Tribal allocation is reduced by 1.7 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

[aa] Sablefish south of 36° N lat. The ACL for the area south of 36° N lat. is 1,809 mt (21.6 percent of the calculated coastwide ACL value). 27.4 mt is deducted from the ACL to accommodate research (2.40 mt) and the incidental open access fishery (25 mt), resulting in a fishery HG of 1,781.6 mt.

[bb] Shortspine thornyhead north of 34°27′ N lat. 78.4 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), EFP catch (0.1 mt), and research catch (10.48 mt), and the incidental open access fishery (17.82 mt), resulting in a fishery HG of 1,314.6 mt for the area north of 34°27′ N lat.

[cc] Shortspine thornyhead south of 34°27′ N lat. 6.71 mt is deducted from the ACL to accommodate research catch (0.71 mt) and the incidental open access fishery (6 mt), resulting in a fishery HG of 730.3 mt for the area south of 34°27′ N lat.

[dd] Spiny dogfish. 344 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), EFP catch (1.1 mt), research (34.27 mt), and the incidental open access fishery (33.63 mt), resulting in a fishery HG of 1,241 mt.

[ee] Splitnose rockfish south of 40°10′ N lat. Splitnose rockfish in the north is managed in the Slope Rockfish complex and with stock-specific harvest specifications south of 40°10′ N lat. 18.42 mt is deducted from the ACL to accommodate EFP catch (1.5 mt), research (11.17 mt), and the incidental open access fishery (5.75 mt), resulting in a fishery HG of 1,611.6 mt.

[ff] Starry flounder. 48.38 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), EFP catch (0.1 mt), research (0.57 mt), and the incidental open access fishery (45.71 mt), resulting in a fishery HG of 343.6 mt.

[gg] Widow rockfish. 248.32 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), EFP catch (28 mt), research (17.27 mt), and the incidental open access fishery (3.05 mt), resulting in a fishery HG of 13,539.7 mt.

[hh] Yellowtail rockfish north of 40°10′ N lat. 1,037.55 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), EFP catch (10 mt), research (20.55 mt), and the incidental open access fishery (7 mt), resulting in a fishery HG of 4,793.5 mt.

[ii] Black rockfish/Blue rockfish/Deacon rockfish (Oregon). 2.32 mt is deducted from the ACL to accommodate the EFP catch (0.5 mt), research (0.08 mt), and the incidental open access fishery (1.74 mt), resulting in a fishery HG of 597.7 mt.

[jj] Cabezon/kelp greenling (Washington). 2 mt is deducted from the ACL to accommodate the Tribal fishery, therefore the fishery HG is 15 mt.

[kk] Cabezon/kelp greenling (Oregon). 0.21 mt is deducted from the ACL to accommodate EFP catch (0.1 mt), research (0.05 mt), and the incidental open access fishery (0.06 mt), resulting in a fishery HG of 189.8 mt.

[ll] Nearshore Rockfish north of 40°10′ N lat. 3.08 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), EFP catch (0.5 mt), research (0.47 mt), and the incidental open access fishery (0.61 mt), resulting in a fishery HG of 73.9 mt. State-specific HGs are 17.7 mt (Washington), 22.2 mt (Oregon), and 37.4 mt (California).

[mm] Nearshore Rockfish south of 40°10′ N lat. 4.42 mt is deducted from the ACL to accommodate research catch (2.68 mt) and the incidental open access fishery (1.74 mt), resulting in a fishery HG of 1,005.6 mt.

[nn] Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 21.34 mt is deducted from the ACL to accommodate EFP catch (0.1 mt), research (6.29 mt), and the incidental open access fishery (14.95 mt), resulting in a fishery HG of 201.7 mt.

[oo] Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include: butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. 220.89 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), EFP catch (0.1 mt), research (23.63 mt), and the incidental open access fishery (137.16 mt), resulting in a fishery HG of 4,617.1 mt.

[pp] Shelf Rockfish north of 40°10′ N lat. 72.44 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), EFP catch (1.5 mt), research (15.32 mt), and the incidental open access fishery (25.62 mt), resulting in a fishery HG of 1,377.6 mt.

[qq] Shelf Rockfish south of 40°10′ N lat. 132.77 mt is deducted from the ACL to accommodate EFP catch (50 mt), research catch (15.1 mt), and the incidental open access fishery (67.67 mt) resulting in a fishery HG of 1,295.2 mt.

[rr] Slope Rockfish north of 40°10′ N lat. 65.89 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), EFP catch (1.5 mt), and research (10.51 mt), and the incidental open access fishery (18.88 mt), resulting in a fishery HG of 1,502.1 mt.

[ss] Slope Rockfish south of 40°10′ N lat. 38.94 mt is deducted from the ACL to accommodate EFP catch (1 mt), and research (18.21 mt), and the incidental open access fishery (19.73 mt), resulting in a fishery HG of 666.1 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10′ N lat. set equal to the species' contribution to the 40–10-adjusted ACL. Harvest of blackgill rockfish in all groundfish fisheries south of 40°10′ N lat. counts against this HG of 174 mt.

* * * * *

■ 4. Revise Table 2b to part 660, subpart C, to read as follows:

TABLE 2b. TO PART 660, SUBPART C—2022, AND BEYOND, ALLOCATIONS BY SPECIES OR SPECIES GROUP

[Weight in Metric Tons]

Stocks/stock complexes	Area	Fishery HG or ACT [a b]	Trawl		Non-trawl	
			%	Mt	%	Mt
YELLOWEYE ROCKFISH [a]	Coastwide	42.2	8	3.4	92	38.8
Arrowtooth flounder	Coastwide	6,362.9	95	6,044.8	5	318.1
Big skate [a]	Coastwide	1,331.7	95	1,265.1	5	66.6
Bocaccio [a]	S of 40°10′ N lat	1,676.2	39.04	654.4	60.96	1,021.8
Canary rockfish [a]	Coastwide	1,237.6	72.281	894.6	27.719	343.1
Chilipepper rockfish	S of 40°10′ N lat	2,161.3	75	1,621	25	540.3
Cowcod [a]	S of 40°10′ N lat	50	36	18	64	32
Darkblotched rockfish	Coastwide	811.9	95	771.3	5	40.6
Dover sole	Coastwide	4,8402.8	95	45,982.7	5	2,420.1
English sole	Coastwide	8,850.4	95	8,407.8	5	442.5
Lingcod	N of 40′10° N lat	4,679.6	45	2,105.8	55	2,573.8
Lingcod [a]	S of 40′10° N lat	1,159	40	463.6	60	695.4
Longnose skate [a]	Coastwide	1,509.6	90	1,358.6	10	151
Longspine thornyhead	N of 34°27′ N lat	2,398.3	95	2,278.4	5	119.9
Pacific cod	Coastwide	1,093.9	95	1,039.2	5	54.7
Pacific ocean perch	N of 40°10′ N lat	3,686.3	95	3,502	5	184.3
Pacific whiting [c]	Coastwide	331,443	100	331, 443	0	0
Petrale sole [a]	Coastwide	3,272.5	.....	3,242.5	.....	30
Sablefish	N of 36° N lat	NA	See Table 1c			
Sablefish	S of 36° N lat	1,781.6	42	748.3	58	1,033.3
Shortspine thornyhead	N of 34°27′ N lat	1,314.6	95	1,248.9	5	65.7
Shortspine thornyhead	S of 34°27′ N lat	730.3	.....	50	.....	680.3
Splitnose rockfish	S of 40°10′ N lat	1,611.6	95	1,531	5	80.6
Starry flounder	Coastwide	343.6	50	171.8	50	171.8
Widow rockfish [a]	Coastwide	13,539.7	.....	13,139.7	.....	400
Yellowtail rockfish	N of 40°10′ N lat	4,783.5	88	4,209.5	12	574
Other Flatfish	Coastwide	4,617.1	90	4,155.4	10	461.7
Shelf Rockfish [a]	N of 40° 10′ N lat	1,377.6	60.2	829.3	39.8	548.3
Shelf Rockfish [a]	S of 40° 10′ N lat	1,295.2	12.2	158	87.8	1,137.2
Slope Rockfish	N of 40° 10′ N lat	1,502.1	81	1,216.7	19	285.4
Slope Rockfish [a]	S of 40° 10′ N lat	666.1	.....	523.9	.....	142.2

[a] Allocations decided through the biennial specification process.

[b] The cowcod fishery harvest guideline is further reduced to an ACT of 50 mt.

[c] Consistent with regulations at § 660.55(i)(2), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N lat. before the start of the primary Pacific whiting season north of 42° N lat.

■ 5. In § 660.140, revise paragraph (d)(1)(ii)(D) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) *Shorebased trawl allocations.* For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

TABLE 1 TO PARAGRAPH (d)(1)(ii)(D)

IFQ species	Area	2021 Shorebased trawl allocation (mt)	2022 Shorebased trawl allocation (mt)
YELLOWEYE ROCKFISH	Coastwide	3.3	3.4
Arrowtooth flounder	Coastwide	7,376.02	5,974.77
Bocaccio	South of 40°10′ N lat	663.75	654.38
Canary rockfish	Coastwide	880.96	858.56
Chilipepper	South of 40°10′ N lat	1,695.2	1,621
Cowcod	South of 40°10′ N lat	18	18
Darkblotched rockfish	Coastwide	743.39	694.94
Dover sole	Coastwide	45,972.65	45,972.65
English sole	Coastwide	8,478.2	8,407.9
Lingcod	North of 40°10′ N lat	2,275.78	2,090.83
Lingcod	South of 40°10′ N lat	435.6	463.6

TABLE 1 TO PARAGRAPH (d)(1)(ii)(D)—Continued

IFQ species	Area	2021 Shorebased trawl allocation (mt)	2022 Shorebased trawl allocation (mt)
Longspine thornyhead	North of 34°27′ N lat	2,451.28	2,278.38
Pacific cod	Coastwide	1,039.21	1,039.21
Pacific halibut (IBQ)	North of 40°10′ N lat	69.6	69.6
Pacific ocean perch	North of 40°10′ N lat	3,337.74	3,201.94
Pacific whiting	Coastwide	127,682	139,202
Petrale sole	Coastwide	3,692.9	3,237.5
Sablefish	North of 36° N lat	3,139.59	2,985.42
Sablefish	South of 36° N lat	786	748
Shortspine thornyhead	North of 34°27′ N lat	1,212.12	1,178.87
Shortspine thornyhead	South of 34°27′ N lat	50	50
Splitnose rockfish	South of 40°10′ N lat	1,565.20	1,531.00
Starry flounder	Coastwide	171.8	171.8
Widow rockfish	Coastwide	13,600.68	12,663.68
Yellowtail rockfish	North of 40°10′ N lat	4,091.13	3,898.4
Other Flatfish complex	Coastwide	4,088.00	4,120.40
Shelf Rockfish complex	North of 40°10′ N lat	831.07	794.56
Shelf Rockfish complex	South of 40°10′ N lat	159.24	158.02
Slope Rockfish complex	North of 40°10′ N lat	938.58	916.71
Slope Rockfish complex	South of 40°10′ N lat	526.4	523.9

* * * * *

[FR Doc. 2022–11728 Filed 6–1–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 106
Thursday, June 2, 2022

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0520; Project Identifier AD–2021–00683–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. This proposed AD was prompted by significant changes, including new or more restrictive requirements, made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate the latest revision of the AWLs. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 18, 2022.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0520; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Rose Len, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3604; email: *rose.len@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0520; Project Identifier AD–2021–00683–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Rose Len, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3604; email: *rose.len@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, the FAA issued a final rule titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements that rule included Amendment 21–78, which established Special Federal Aviation Regulation No. 88 (SFAR 88) at 14 CFR part 21. Subsequently, SFAR 88 was amended by Amendment 21–82 (67 FR 57490, September 10, 2002; corrected at 67 FR 70809, November 26, 2002), Amendment 21–83 (67 FR 72830, December 9, 2002; corrected at 68 FR 37735, June 25, 2003, to change ''21–82'' to ''21–83''), and Amendment 21–101 (83 FR 9162, March 5, 2018).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule published on May 7, 2001, the FAA intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, the FAA established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, combination of failures, and unacceptable (failure) experience. For all three criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

This proposed AD was prompted by significant changes, including new or more restrictive requirements, made to the AWL related to fuel tank ignition prevention. This condition, if not addressed, could result in the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

FAA's Determination

The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing 747–100/200/300/SP/SR Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, dated September 2020. This service information describes AWLs that include airworthiness limitation instructions (ALIs) and critical design configuration control limitations (CDCCLs) tasks related to fuel tank ignition prevention. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate the latest revision of the AWLs.

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

Other Relevant Rulemaking

The proposed revisions will affect several existing AWL provisions in various ADs. The FAA has determined that accomplishing the revision required by paragraph (g) of this proposed AD would terminate the following AWL requirements for that airplane:

- The revision required by paragraphs (g) and (h) of AD 2008–10–07 R1, Amendment 39–16070 (74 FR 56098, October 30, 2009).
- The revision required by paragraph (g)(1) of AD 2008–18–09, Amendment 39–15666 (73 FR 52911, September 12, 2008).
- The revision required by paragraph (h)(2) of AD 2010–13–12, Amendment 39–16343 (75 FR 37997, July 1, 2010).
- The revision required by paragraph (h) of AD 2010–24–13, Amendment 39–16532 (75 FR 78591, December 16, 2010; corrected May 25, 2011 (76 FR 30253)).
- The revision required by paragraph (k) of AD 2011–06–03, Amendment 39–16627 (76 FR 15814, March 22, 2011).
- The revision required by paragraph (h)(2) of AD 2014–15–14, Amendment 39–17916 (79 FR 45324, August 5, 2014).
- The revision required by paragraph (h) of AD 2016–19–03, Amendment 39–18652 (81 FR 65872, September 26, 2016).

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 39 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2022–0520; Project Identifier AD–2021–00683–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 18, 2022.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1) through (7) of this AD.

(1) AD 2008–10–07 R1, Amendment 39–16070 (74 FR 56098, October 30, 2009) (AD 2008–10–07 R1).

(2) AD 2008–18–09, Amendment 39–15666 (73 FR 52911, September 12, 2008) (AD 2008–18–09).

(3) AD 2010–13–12, Amendment 39–16343 (75 FR 37997, July 1, 2010) (AD 2010–13–12).

(4) AD 2010–24–13, Amendment 39–16532 (75 FR 78591, December 16, 2010; corrected May 25, 2011 (76 FR 30253)) (AD 2010–24–13).

(5) AD 2011–06–03, Amendment 39–16627 (76 FR 15814, March 22, 2011) (AD 2011–06–03).

(6) AD 2014–15–14, Amendment 39–17916 (79 FR 45324, August 5, 2014) (AD 2014–15–14).

(7) AD 2016–19–03, Amendment 39–18652 (81 FR 65872, September 26, 2016) (AD 2016–19–03).

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by significant changes, including new or more restrictive requirements, made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention. The FAA is issuing this AD to address the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Boeing 747–100/200/300/SP/SR Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, dated September 2020, except as specified in paragraphs (h) and (i) of this AD. The initial compliance times for the airworthiness limitation instruction (ALI) tasks are within the applicable compliance times for each AWL number specified in paragraphs (g)(1) through (8) of this AD:

(1) For AWL No. 28–AWL–01, ''External Wires Over Center Fuel Tank'': At the applicable time specified in paragraph (g)(1)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–01 in the existing maintenance or inspection program before the effective date of this AD: Within 144 months since issuance of the original airworthiness certificate or original export certificate, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(1)(i) of this AD: Within 144 months since AWL No. 28–AWL–01 was incorporated into the existing maintenance or inspection program, or within 144 months after the most recent inspection was performed as specified in AWL No. 28–AWL–01, whichever occurs later.

(2) For 28–AWL–03, ''Fuel Quantity Indicating System (FQIS)—Out Tank Wiring Lightning Shield to Ground Termination'': At the applicable time specified in paragraph (g)(2)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–03 in the existing maintenance or inspection program before the effective date of this AD: Within 144 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(2)(i) of this AD: Within 144 months since AWL No. 28–AWL–03 was incorporated into the existing maintenance or inspection program, or within 144 months after the most recent inspection was performed as specified in AWL No. 28–AWL–03, whichever occurs later.

(3) For 28–AWL–09, ''Over-Current and Arcing Protection Electrical Design Features Operation—Fault Current Detector for Center Tank Override/Jettison (O/J) Pumps'': At the applicable time specified in paragraph (g)(3)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–09 in the existing maintenance or inspection program before the effective date of this AD: Within 18 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 90 days after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(3)(i) of this AD: Within 18 months since AWL No. 28–AWL–09 was incorporated into the existing maintenance or inspection program, or within 18 months after the most recent inspection was performed as specified in AWL No. 28–AWL–09, whichever occurs later.

(4) For AWL No. 28–AWL–13, ''Main Tank, Center Wing Tank, Body Tank (if installed), and Auxiliary Tank (if installed) Refuel Valve Installation—Fault Current Bond'': At the applicable time specified in paragraph (g)(4)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–13 in the existing maintenance or inspection program before the effective date of this AD: Within 144 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(4)(i) of this AD: Within 144 months since AWL No. 28–AWL–13 was incorporated into the existing maintenance or inspection program, or within 144 months after the most recent inspection was performed as specified in AWL No. 28–AWL–13, whichever occurs later.

(5) For AWL No. 28–AWL–22, ''Center Tank Override/Jettison Fuel Pump Inlet Protection and Power Failed On Protection System'': At the applicable time specified in paragraph (g)(5)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–22 in the existing maintenance or inspection program before the effective date of this AD: Within 12 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 90 days after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(5)(i) of this AD: Within 12 months since AWL No. 28–AWL–22 was incorporated into the existing maintenance or inspection program, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–22, whichever occurs later.

(6) For AWL No. 28–AWL–23, ''Over-Current and Arcing Protection Electrical Design Features Operation—Main Tank AC Fuel Pump and Center Tank Scavenge AC Fuel Pump Ground Fault Interrupter (GFI)'': At the applicable time specified in paragraph (g)(6)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–23 in the existing maintenance or inspection program before the effective date of this AD: Within 12 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, within 12 months

since Boeing Service Bulletin 747–28A2261 was incorporated, or within 90 days after the effective date of this AD, whichever occurs latest.

(ii) For airplanes not identified in paragraph (g)(6)(i) of this AD: Within 12 months since AWL No. 28–AWL–23 was incorporated into the existing maintenance or inspection program, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–23, whichever occurs later.

(7) For AWL No. 28–AWL–25, ''Cushion Clamps and Teflon Sleeving Installed on Out-of-Tank Wire Bundles Installed on Brackets that are Mounted Directly on the Fuel Tanks'': At the applicable time specified in paragraph (g)(7)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–25 in the existing maintenance or inspection program before the effective date of this AD: Within 144 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(7)(i) of this AD: Within 144 months since AWL No. 28–AWL–25 was incorporated into the existing maintenance or inspection program, within 144 months since Boeing Special Attention Service Bulletin 747–57–2327 was incorporated, or within 144 months after the most recent inspection was performed as specified in AWL No. 28–AWL–25, whichever occurs latest.

(8) For AWL No. 28–AWL–31, ''Reserve Tank Refuel Valve Installation—Lightning Protection Electrical Bond'': At the applicable time specified in paragraph (g)(8)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–31 in the existing maintenance or inspection program before the effective date of this AD: Within 72 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 6 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(8)(i) of this AD: Within 72 months since AWL No. 28–AWL–31 was incorporated into the existing maintenance or inspection program, or within 72 months after the most recent inspection was performed as specified in AWL No. 28–AWL–31, whichever occurs later.

(h) Differences From the Required Service Information

(1) Where the ''Applicability'' column of AWL Nos. 28–AWL–25 and 28–AWL–27 specifies ''ALL'' and ''NOTE,'' replace that text with ''Airplanes L/N 645 and on.''

(2) In the ''Description'' column of AWL Nos. 28–AWL–25 and 28–AWL–27, remove the Applicability Note.

(i) Additional Acceptable Wire Types and Sleeving

(1) Where AWL No. 28–AWL–11 identifies wire types BMS 13–48, BMS 13–58, and BMS 13–60, the following wire types are acceptable: MIL–W–22759/16, SAE AS22759/16 (M22759/16), MIL–W–22759/32, SAE AS22759/32 (M22759/32), MIL–W–22759/34, SAE AS22759/34 (M22759/34), MIL–W–22759/41, SAE AS22759/41 (M22759/41), MIL–W–22759/86, SAE AS22759/86 (M22759/86), MIL–W–22759/87, SAE AS22759/87 (M22759/87), MIL–W–22759/92, and SAE AS22759/92 (M22759/92); and MIL–C–27500 and NEMA WC 27500 cables constructed from these military or SAE specification wire types, as applicable.

(2) Where AWL No. 28–AWL–11 identifies TFE–2X Standard wall for wire sleeving, the following sleeving materials are acceptable: Roundit 2000NX and Varglas Type HO, HP, or HM.

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

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

(k) Terminating Action for Certain ADs

Accomplishment of the revision required by paragraph (g) of this AD terminates the requirements specified in paragraphs (k)(1) through (7) of this AD for that airplane:

(1) The revision required by paragraphs (g) and (h) of AD 2008–10–07 R1.

(2) The revision required by paragraph (g)(1) of AD 2008–18–09.

(3) The revision required by paragraph (h)(2) of AD 2010–13–12.

(4) The revision required by paragraph (h) of AD 2010–24–13.

(5) The revision required by paragraph (k) of AD 2011–06–03.

(6) The revision required by paragraph (h)(2) of AD 2014–15–14.

(7) The revision required by paragraph (h) of AD 2016–19–03.

(l) Alternative Methods of Compliance (AMOCs)

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

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

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

(m) Related Information

(1) For more information about this AD, contact Rose Len, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3604; email: *rose.len@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on May 9, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11750 Filed 6–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0592; Project Identifier MCAI–2021–01023–T]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain MHI RJ Aviation ULC Model CL–600–2D24 (Regional Jet Series 900) airplanes. This proposed AD was prompted by a report of a manufacturing error that can create dents on the lower wing plank, close to the flap arm locations at certain wing stations; as a result, cracks could develop and weaken the structural integrity of the wings before being detected by any existing required inspections. This proposed AD would require an inspection for damage (including dents, cracks, discoloration, gouges, scratches, or other surface damage) of the lower wing plank in the flap arm areas at certain wing stations, and repair if necessary. The FAA is

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

DATES: The FAA must receive comments on this proposed AD by July 18, 2022.

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

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

For service information identified in this NPRM, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0592; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Deep Gaurav, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0592; Project Identifier MCAI–2021–01023–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

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

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–31, dated September 14, 2021 (TCCA AD CF–2021–31) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain MHI RJ Aviation ULC Model CL–600–2D24 (Regional Jet Series 900) airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0592.

This proposed AD was prompted by a report of a manufacturing error that can result in dents on the lower wing plank, close to the five flap arm locations at wing station (WS) 54.55, WS 128.00, WS 179.00, WS 220.00, and WS 264.00. These dents could lead to cracks that could weaken the structural integrity of the wings before being detected by any existing required inspection. The FAA is proposing this AD to address dents, cracks, and other damage, that if not detected and corrected, could lead to reduced structural integrity of the wings. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

MHI RJ Aviation ULC has issued Service Bulletin 670BA–57–029, dated February 2, 2021. This service information describes, among other actions, procedures for doing a detailed visual inspection for damage (including dents, cracks, discoloration, gouges, scratches, or other surface damage) of the outer aft lower skin at WS 54.55, WS 128.00, WS 179.00, WS 220.00, and WS 264.00, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 14 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$0	$170	$2,380

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2022–0592; Project Identifier MCAI–2021–01023–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 18, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Model CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, having serial number 15462 through 15475 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of a manufacturing error that can create dents on the lower wing plank, close to the flap arm locations at certain wing stations; as a result, cracks could develop and weaken the structural integrity of the wings before being detected by any existing required inspections. The FAA is issuing this AD to address dents, cracks, and other damage, that, if not detected and corrected, could lead to reduced structural integrity of the wings.

(f) Compliance

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

(g) Inspection and Corrective Action

Prior to the accumulation of 8,800 total flight hours or within 30 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection for damage (including dents, cracks, discoloration, gouges, scratches, or other surface damage) of the outer aft lower skin at wing stations (WS) 54.55, WS 128.00, WS 179.00, WS 220.00, and WS 264.00 in accordance with paragraph B., ''Procedure,'' of the Accomplishment Instructions of MHI RJ Aviation Service Bulletin 670BA–57–029, dated February 2, 2021. Do all applicable corrective actions before further flight. If any damage is found during the inspection, before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(h) No Reporting Requirement

Although MHI RJ Aviation Service Bulletin 670BA–57–029, dated February 2, 2021, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the inspection can be done, provided the flight is a non-revenue flight.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2021–31, dated September 14, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0592.

(2) For more information about this AD, contact Deep Gaurav, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on May 24, 2022.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11803 Filed 6–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0595; Project Identifier MCAI–2021–01180–T]

RIN 2120–AA64

Airworthiness Directives; Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) AD 2021–16–07, which applies to certain Airbus Defense and Space S.A. Model C–212–CB, C–212–CC, C–212–CD, C–212–CE, C–212–CF, C–212–DE, and C–212–DF airplanes. AD 2021–16–07 requires repetitive inspections of the left-hand (LH) and right-hand (RH) side center wing fairings at a certain frame, around the wing leading edge for discrepancies (cracks), and repair if necessary. Since the FAA issued AD 2021–16–07, a modification was developed to reinforce the structure in the affected area, providing an optional terminating action for the repetitive inspections required by AD 2021–16–07. This proposed AD would continue to require the actions in AD 2021–16–07 and would allow new optional terminating action for the repetitive inspections, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 18, 2022.

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

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

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0595.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0595; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *shahram.daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0595; Project Identifier MCAI–2021–01180–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *shahram.daneshmandi@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–16–07, Amendment 39–21669 (86 FR 47210, August 24, 2021) (AD 2021–16–07), which applies to certain Airbus Defense and Space S.A. Model C–212–CB, C–

212–CC, C–212–CD, C–212–CE, C–212–CF, C–212–DE, and C–212–DF airplanes. AD 2021–16–07 requires repetitive inspections of the LH and RH side center wing fairings at a certain frame, around the wing leading edge for discrepancies (cracks), and repair if necessary. The FAA issued AD 2021–16–07 to address cracks on the LH and RH side fuselage skin and on frame (FR) 5 underneath the skin, near the leading edge of the wing, which could affect the structural integrity of the airplane.

Actions Since AD 2021–16–07 Was Issued

Since the FAA issued AD 2021–16–07, a modification was developed to reinforce the structure in the affected area, which is an optional terminating action for the repetitive inspections required by AD 2021–16–07.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0182R1, dated October 29, 2021 (EASA AD 2020–0182R1) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus Defense and Space S.A. Model C–212–CB, C–212–CC, C–212–CD, C–212–CE, C–212–CF, C–212–DD, C–212–DE, C–212–DF, C–212–EE and C–212–VA airplanes. Model C–212–DD, C–212–EE, and C–212–VA airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report of cracks on the LH and RH side fuselage skin and on a certain frame underneath the skin, near the leading edge of the wing, and the development of a modification to reinforce the structure in the affected area. The FAA is proposing this AD to address cracks on the LH and RH side fuselage skin and on FR 5 underneath the skin, near the leading edge of the wing, which could affect the structural integrity of the airplane. See the MCAI for additional background information.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2021–16–07, this proposed AD would retain all of the requirements of AD 2021–16–07. Those requirements are referenced in EASA AD 2020–0182R1, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0182R1 specifies procedures for repetitive detailed visual inspections of the LH and RH side center wing fairings at FR 5, around the wing leading edge for discrepancies (cracks) and repair, and for a modification to reinforce the structure in the affected area, which terminates the repetitive inspections.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2020–0182R1 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2020–0182R1 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0182R1 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2020–0182R1 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2020–0182R1. Service information required by EASA AD 2020–0182R1 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0595 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 45 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2021–16–07.	3 work-hours × $85 per hour = $255	$0	$255	$11,475

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
Up to 29 work-hours × $85 per hour = $2,465	$14,464	Up to $16,929.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–16–07, Amendment 39–21669 (86 FR 47210, August 24, 2021); and

■ b. Adding the following new AD:

Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.): Docket No. FAA–2022–0595; Project Identifier MCAI–2021–01180–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 18, 2022.

(b) Affected ADs

This AD replaces AD 2021–16–07, Amendment 39–21669 (86 FR 47210, August 24, 2021) (AD 2021–16–07).

(c) Applicability

This AD applies to Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.) Model C–212–CB, C–212–CC, C–212–CD, C–212–CE, C–212–CF, C–212–DE, and C–212–DF airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0182R1, dated October 29, 2021 (EASA AD 2020–0182R1).

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of cracks on the left-hand (LH) and right-hand (RH) side fuselage skin and on frame (FR) 5 underneath the skin, near the leading edge of the wing, and the development of a modification to reinforce the structure in the affected area. The FAA is issuing this AD to address cracks on the LH and RH side fuselage skin and on FR 5 underneath the skin, near the leading edge of the wing, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0182R1.

(h) Exceptions to EASA AD 2020–0182R1

(1) Where EASA AD 2020–0182R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2020–0182R1 refers to refers to August 27, 2020 (the effective date of EASA AD 2020–0182), this AD requires using September 28, 2021 (the effective date of AD 2021–16–07).

(3) Where paragraph (2) of EASA AD 2020–0182R1 specifies to ''contact Airbus D&S for approved instructions and accomplish those instructions accordingly'' if discrepancies are detected, for this AD if any cracking is detected, the cracking must be repaired before further flight using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus Defense and Space S.A.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(4) The ''Remarks'' section of EASA AD 2020–0182R1 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0182R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(k) Related Information

(1) For EASA AD 2020–0182R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0595.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *shahram.daneshmandi@faa.gov.*

Issued on May 25, 2022.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11802 Filed 6–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2022–0015]

RIN 1625–AA09

Drawbridge Operation Regulation; Grand Canal, Indian Harbour Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Lansing Island Bridge across Grand Canal, mile 0.7 at Indian Harbour Beach, FL. A request was made to the Coast Guard to allow the drawbridge to remain closed to navigation and untended during the overnight hours due to a lack of requested openings. We invite your comments on this proposed rulemaking.

DATES: Comments and relate material must reach the Coast Guard on or before July 5, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0015 using Federal Decision Making Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District, telephone 305–415–6740, email *Jennifer.N.Zercher@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code
FL Florida

II. Background, Purpose and Legal Basis

The Lansing Island Bridge across Grand Canal, mile 0.7, at Indian Harbour Beach, FL is a single-leaf bascule bridge with a 16 foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.285(a). Navigation on the waterway consists mainly of recreational mariners.

The bridge owner, Lansing Island Homeowners Association, Inc. requested the Coast Guard consider allowing the drawbridge to remain closed to navigation and untended during the overnight hours due to a lack of requested openings. We requested a copy of the bridge logs from January 1, 2021 through November 30, 2021. After reviewing the logs, the Coast Guard found the drawbridge provided three openings between the hours of 10 p.m. and 6 a.m. Two channels provide alternate access to Grand Canal. Vessels that can pass beneath the bridge without an opening may do so at any time.

On February 1, 2022, the Coast Guard published a Test Deviation entitled Drawbridge Operation Regulation; Grand Canal, Indian Harbour Beach, FL in the **Federal Register** (87 FR 5401). Zero comments received.

III. Discussion of Proposed Rule

The proposed rule will allow the drawbridge to remain closed to navigation and untended during the overnight hours seven days a week. Two channels provide alternate access to Grand Canal.

This proposed change would still allow vessels that are capable of transiting under the bridge, without an opening, to do so at any time.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels capable of transiting under the bridge, without an opening, may do so at any time and alternate routes for vessels to transit Grand Canal are available.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National

Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0015 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published of any posting or updates to the docket.

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 0170.1.

■ 2. Amend § 117.285 by revising paragraph (a) to read as follows:

§ 117.285 Grand Canal.

(a) The draw of the Lansing Island Bridge, mile 0.7, at Indian Harbour Beach, shall open on signal, except that from 10 p.m. to 6 a.m., daily, the draw need not open for the passage of vessels and will be untended.

* * * * *

Dated: May 25, 2022.

Brendan C. McPherson,

Rear Admiral, U.S. Coast Guard, Commander Coast Guard Seventh District.

[FR Doc. 2022–11744 Filed 6–1–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2022–0359; FRL–9886–01–R8]

Air Plan Approval; North Dakota; Removal of Exemptions to Visible Air Emissions Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision it received on November 11, 2016, submitted by the State of North Dakota, through the North Dakota Department of Health (NDDH). The revision was submitted by North Dakota in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, for a provision in the North Dakota SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing approval of the SIP revision and proposing to determine that this SIP revision corrects the deficiency identified in the June 12, 2015, SIP call.

DATES: Comments must be received on or before July 5, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2022–0359 at *https://*

www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6728, email address: *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'' or ''our'' is used, it refers to EPA.

Table of Contents

I. Background

On February 22, 2013, EPA issued a **Federal Register** notice of proposed rulemaking outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the Clean Air Act (CAA) with regard to excess emission events.[1] For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' (80 FR 33839, June 12, 2015), hereafter referred to as the ''2015 SSM SIP Action.'' The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016. In the 2015 SSM Action, EPA issued a SIP call for the North Dakota SIP, since EPA found that provision 33–15–03–04.3, located in the State's SIP, is inconsistent with the CAA and the 2015 SSM Policy because it allows for discretionary exemptions from otherwise applicable emission limitations through a State official's unilateral exercise of discretionary authority that is insufficiently bounded. As noted in a previous footnote, shortly after North Dakota proposed the November 11, 2016 SIP revision, the State created a new environmental agency, the North Dakota Department of Environmental Quality (NDDEQ), and North Dakota's Air Pollution rules were recodified under the NDAC as 33.1–15 instead of 33–15.[2] Therefore, from here on in this document, EPA will refer to provision 33–15–03.04.3 as 33.1–15.03–04.3.

EPA issued a Memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.[3] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific State SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to North Dakota in 2015. The 2020 Memorandum did, however, indicate EPA's intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA's Deputy Administrator withdrew the 2020 Memorandum and announced EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[4] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including minority, low-income and indigenous populations overburdened by air pollution, receive the full health and environmental protections provided by the CAA.[5] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the Agency takes action on SIP submissions, including North Dakota's November 11, 2016 SIP submittal provided in response to the 2015 SIP call.

With regard to the North Dakota SIP, EPA proposes to approve the removal of provision 33.1–15–03–04.3 from Article 33.1–15–03, Restriction of Emission of Visible Air Contaminants.[6] This provision was among those that EPA determined were inconsistent with the CAA in the 2015 SSM SIP Action. Provision 33.1–15–03–04.3 stated that the otherwise applicable emission

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (February 22, 2013).

[2] In 2017, the North Dakota State legislature created the NDDEQ that assumed all the duties and responsibilities of the NDDH's Environmental Health Section. To accommodate the new NDDEQ, the North Dakota Air Pollution Control Law was recodified in the North Dakota Century Code (NDCC) as NDCC 23.1–06 and the Air Pollution Rules were recodified in the North Dakota Administrative Code (NDAC) as NDAC 33.1–15.

[3] October 9, 2020, memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.

[4] September 30, 2021, memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

[5] 80 FR 33985.

[6] The North Dakota State Health Council adopted the amendments removing provision 33–15–03–0.3 on February 24, 2016 (effective July 1, 2016).

limitations for opacity in several other listed regulations do not apply ''where an applicable opacity standard is established for a specific source.'' In the 2015 SSM SIP Action, EPA determined that this provision allowed a State official to modify the opacity limits in a permit or other document to allow emissions in excess of the otherwise applicable SIP limitations. The detailed rationale for issuing the SIP call to North Dakota can be found in the 2015 SSM SIP Action. In its November 11, 2016 SIP submission, North Dakota is requesting that EPA revise the North Dakota SIP by removing 33.1–15–03–04.3 in its entirety, thereby removing this provision from the State's SIP.

II. Analysis of SIP Submission

EPA is proposing to approve North Dakota's November 11, 2016 SIP revision requesting the removal of provision 33.1–15–03–04.3 from the State's SIP. We consider the removal of this provision sufficient to correct the inadequacies that EPA's 2015 SSM SIP Action identified in the North Dakota SIP.[7] As a result of the removal from the SIP, the impermissible discretionary exemptions from emissions limitations contained within this provision will no longer be available to sources. As explained in the 2015 SSM SIP Action (80 FR at 33848), the removal of an exemption is an appropriate way to address the inadequacy. EPA's proposed approval of this revision is consistent with CAA section 110(l) because approval will not interfere with any applicable requirement of the CAA. Specifically, by removing the discretionary exemptions created by 33.1–15–03–04.3, the SIP is now more protective. Therefore, we are proposing to approve the removal of this provision from the SIP. Because removal of this provision would fully address the inadequacies that the 2015 SSM SIP Action identified in the North Dakota SIP, this proposed action, if finalized, will satisfy North Dakota's obligations pursuant to EPA's 2015 SSM SIP Action.

III. Proposed Action

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). EPA is proposing to approve North Dakota's November 11, 2016 SIP submission requesting removal of 33.1–15–03–04.3 from the State SIP. We are proposing approval of the SIP revision because we have determined that it is consistent with the requirements for SIP provisions under the CAA. EPA is further proposing to determine that such SIP revision corrects the deficiency identified in the June 12, 2015, SIP call. EPA is not reopening the 2015 SSM SIP Action and is only taking comment on whether this SIP revision is consistent with CAA requirements and whether it addresses the substantial inadequacy in the specific North Dakota SIP provision (33.1–15–03–04.3) identified in the 2015 SSM SIP Action. EPA has previously taken action on other parts of the North Dakota November 11, 2016 SIP submittal and therefore these other elements have not been addressed in this action nor will EPA be taking comments on those topics at this time.[8]

IV. Incorporation by Reference

In this document, EPA is proposing to remove in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to remove the incorporation by reference of ''33.1–15–03–04.3'' in 40 CFR 52.1820, as described in Section II of this preamble. EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 24, 2022.

K.C. Becker,

Regional Administrator, Region 8.

[FR Doc. 2022–11584 Filed 6–1–22; 8:45 am]

BILLING CODE 6560–50–P

[7] For a more in-depth discussion on the inadequacies of 33–15–03–04.3, see our proposed 2015 SSM SIP Action, 78 FR 12459, 12531–32.

[8] *See* 83 FR 22227, May 14, 2018 (proposed rule) and 84 FR 11646, March 28, 2019 (final rule).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2022–0432; FRL–9851–01–R7]

Air Plan Partial Approval and Partial Disapproval; Missouri; Construction Permits Required

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing partial approval and partial disapproval of revisions to the Missouri State Implementation Plan (SIP) received on March 20, 2019 and June 10, 2021. The SIP revisions in the 2019 and 2021 submittals incorporate updates to construction permit requirement regulations for stationary and portable air sources in Missouri that help ensure ambient air quality standards are met. The changes include numerous organizational changes, administrative and typographical edits to improve clarity of the construction permit process. The revisions include added procedures for the Missouri Department of Natural Resources (MoDNR) to issue general permits. For portable equipment installations, the potential to emit major source threshold of particulate matter was changed to match federal requirements. The changes proposed for approval meet the requirements of the Clean Air Act.

EPA is proposing to disapprove section (1)(B) regarding voluntary permits. EPA is proposing disapproval because the language of the provision is too vague and does not provide sufficient clarity for implementation.

DATES: Comments must be received on or before July 5, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2022–0432 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

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

FOR FURTHER INFORMATION CONTACT: Keith Johnson, Environmental Protection Agency, Region 7 Office, Air Permitting and Standards Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7737; email address: *johnson.keith@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2022–0432, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to partially approve and partially disapprove a submission from Missouri that revises 10 CSR 10–6.060 Construction Permits Required. The revisions were received by EPA on March 20, 2019 and June 10, 2021. The EPA's analysis of the revisions can be found in Section III and in more detail in the technical support document (TSD) included in this docket.

III. What is EPA's analysis of the rule revisions?

In the 2019 SIP submission, MoDNR stated that the revisions to this rule were extensive in order to clarify requirements and procedures for improving readability and regulatory certainty. These proposed changes remove outdated references to incorporation by reference information and added appropriate incorporation by reference information to this rule. The proposed changes clarify the definition of ''portable equipment installation'' and added procedures for issuing general permits in addition to other minor typographical corrections.

Also in Missouri's 2019 submission, the State requested to add a provision for voluntary permits. The EPA is proposing to disapprove section (1)(B) of 10 CSR 10–6.060 regarding voluntary permits. EPA proposes to find the language of section (1)(B) to be too vague for the conditions in which these permits would be issued based on the requirements of 40 CFR 51.160(a), CAA section 110(a)(2)(A), and the John S. Seitz EPA Guidance Memo of September 23, 1987, titled ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency.'' For a SIP revision to be approved, EPA evaluates the rule revisions to ensure that any new provisions are permanent, quantifiable, and enforceable. EPA is proposing disapproval because there is no information in the rule on the conditions, requirements, and parameters for applying for, issuing, or implementing voluntary permits. Based on the limited language in the rule, it is unclear how MoDNR intends to implement the proposed provision. The rule text and EPA's full analysis of the requested revisions is included in the TSD.

Missouri's 2021 SIP submission amendments consist primarily of administrative text edits and clarifications. A clarification to the definition of *Portable equipment* was added in Section 2 to explicitly state that ''any other air pollutant'' includes PM_{10} and $PM_{2.5}$. As discussed in the TSD, EPA proposes to find that this rule revision would not interfere with maintenance of the $PM_{2.5}$ or PM_{10} NAAQS. The submission also clarifies referenced materials and ensures consistency with the federal requirements.

Based on EPA's analysis of the requested revisions to 10 CSR 10–6.060 as summarized here and more fully described in the TSD, EPA proposes to approve all requested revisions, other than section (1)(B) regarding voluntary permits, because they meet the requirements of the Clean Air Act, do not negatively impact the stringency of

the SIP, or have an adverse impact to air quality.

IV. Have the requirements for approval of a SIP revision been met?

With respect to the portions of the submittal which EPA is approving, the State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from August 1, 2018 to October 4, 2018 and received 56 comments. 32 comments were made by EPA, 21 comments from State of Missouri Air Program Staff, and 4 from the public. The State of Missouri revised the rule and responded to comments prior to submitting to the EPA. In addition, as explained above (and in more detail in the technical support document which is included in the docket for this action), the revisions proposed for approval meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

As explained in Section III and further in the TSD, EPA is proposing to disapprove section (1)(B) of 10 CSR 10–6.060 regarding voluntary permits.

V. What action is the EPA taking?

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments. The State of Missouri previously conducted a public notice on the rule changes and responded to all comments. We are publishing the proposed rule in the **Federal Register** to partially approve and partially disapprove the SIP submission. Any parties interested in commenting must do so by the date listed in the **DATES** section of the document. For further information about commenting on this proposed rule, see the **ADDRESSES** section of the document. The EPA is soliciting comment on the substantive and administrative revisions detailed in this proposal and the TSD. The EPA is not soliciting comment on existing rule text that has been previously approved by the EPA into the SIP. If EPA receives adverse comment, we will address all public comments in the subsequent final rule based on the proposed rule.

VI. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulations of 10 CSR 10–6.060 Construction Permits Required as described in Section II of this preamble and set forth below in the proposed amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: May 27, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA-Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–6.060'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.060	Construction Permits Required.	5/30/2020	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	Provisions of the 2010 $PM_{2.5}$ PSD—Increments, SILs and SMCs rule relating to SILs and SMCs that were affected by the January 22, 2013 U.S. Court of Appeals decision are not SIP approved. Provisions of the 2002 NSR reform rule relating to the Clean Unit Exemption, Pollution Control Projects, and exemption from recordkeeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved. ''Livestock and livestock handling systems from which the only potential contaminant is odorous gas.'' Section 9, pertaining to hazardous air pollutants, is not SIP approved. EPA previously approved the 3/30/2016 state effective date version of 10 CSR 10–6.060, with the above exceptions, in a FEDERAL REGISTER document published October 11, 2016. Section (1)(B) of 10 CSR 10–6.060 covering the voluntary permit provision is not SIP approved.
*	*	*	*	*

* * * * *

[FR Doc. 2022–11822 Filed 6–1–22; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 21–333; Report No. 3187; FR ID 89296]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: Petition for Reconsideration (Petition) has been filed in the Commission's proceeding by Michael P. Goggin, on behalf of AT&T Services, Inc.

DATES: Oppositions to the Petition must be filed on or before June 17, 2022. Replies to oppositions must be filed on or before June 27, 2022.

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

FOR FURTHER INFORMATION CONTACT: Susan Mort, Associate Bureau Chief, Wireless Telecommunications Bureau, 202–418–2129 or via email at *susan.mort@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3187, released May 23, 2022. The full text of the Petition can be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/*. The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

*Subject:*In the Matter of Wireless Telecommunications Bureau Announces Procedures for Appeals of Relocation Payment Clearinghouse Decisions, published at 87 FR 30836, May 20, 2022 in WT Docket No. 21–333. This document is being published pursuant to 47 CFR 1.429(e).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–11840 Filed 6–1–22; 8:45 am]

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Notices

Federal Register
Vol. 87, No. 106
Thursday, June 2, 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

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Spices and Culinary Herbs

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S Codex Office is sponsoring a public meeting on August 22, 2022. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 6th Session of the Codex Committee on Spices and Culinary Herbs (CCSCH) of the Codex Alimentarius Commission (CAC), which will convene virtually, September 26–October 3, 2022. The U.S. Manager for Codex Alimentarius and the Acting Deputy Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 6th Session of the CCSCH and to address items on the agenda.

DATES: The public meeting is scheduled for August 22, 2022, from 1:00–2:30 p.m. EDT.

ADDRESSES: The public meeting will take place via Video Teleconference only. Documents related to the 6th Session of the CCSCH will be accessible via the internet at the following address: *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCSCH&session=6.*

Mr. Dorian LaFond, U.S. Delegate to the 6th Session of the CCSCH, invites U.S. interested parties to submit their comments electronically to the following email address: *dorian.lafond@usda.gov.*

Registration: Attendees must register to attend the public meeting here: *https://www.zoomgov.com/meeting/register/vJIsc--rqDwrHUQoI8la985vjKzMsfUOnFA.* After registering, you will receive a confirmation email containing information about joining the meeting.

FOR FURTHER INFORMATION CONTACT:

For further information about the 6th Session of the CCSCH, contact: U.S. Delegate, Mr. Dorian LaFond, *dorian.lafond@usda.gov,* +1 (202) 690–4944.

For further information about the public meeting, contact: U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250. Phone +1 (202) 720–7760, Fax: +1 (202) 720–3157, Email: *uscodex@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

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

The Terms of Reference of the Codex Committee on Spices and Culinary Herbs (CCSCH) are:

(a) To elaborate worldwide standards for spices and culinary herbs in their dried and dehydrated state in whole, ground, and cracked or crushed form;

(b) To consult, as necessary, with other international organizations in the standards development process to avoid duplication.

The CCSCH is hosted by India. The United States attends the CCSCH as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items from the forthcoming Agenda for the 6th Session of the CCSCH will be discussed during the public meeting:

- Matters referred to the Committee by the Codex Alimentarius Commission and/or its subsidiary bodies
- Draft standard for saffron
- Draft standard for dried nutmeg
- Proposed draft standard for dried chili peppers and paprika
- Proposed draft standard for small cardamom
- Proposed draft standard for spices in dried fruits and berries (allspices, juniper berry, star anise and vanilla)
- Proposed draft standard for turmeric
- Consideration of the proposals for new work
- Update to the template for SCH standards
- Date and place of the next session

Public Meeting

At the August 22, 2022, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Mr. Dorian LaFond, U.S. Delegate for the 6th Session of the CCSCH (see **ADDRESSES**). Written comments should state that they relate to activities of the 6th Session of the CCSCH.

Additional Public Notification

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

USDA Non-Discrimination Statement

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

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To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* or write a letter signed by you or your authorized representative. Send your completed

complaint form or letter to USDA by mail, fax, or email.

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: +1 (202) 690–7442, Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, American Sign Language, etc.) should contact USDA's TARGET Center at +1 (202) 720–2600 (voice and TDD).

Done at Washington, DC, on May 27, 2022.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2022–11859 Filed 6–1–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–891]

Carbon and Alloy Steel Wire Rod From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that POSCO (the single entity comprised of POSCO and POSCO International Corporation), a producer and exporter of carbon and alloy steel wire rod (wire rod) from the Republic of Korea (Korea), sold subject merchandise in the United States at prices not below normal value during the period of review (POR) May 1, 2020, through April 30, 2021. We invite all interested parties to comment on these preliminary results.

DATES: Applicable June 2, 2022.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2316.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 2018, Commerce published in the **Federal Register** the antidumping duty (AD) order on wire rod from Korea.[1] On April 8, 2019, Commerce revoked, in part, the *Order* with respect to grade 1078 and higher tire cord quality wire rod used in the production of tire cord wire.[2] On June 13, 2019, Commerce revoked, in part, the *Order* with respect to valve spring quality (VSQ) wire rod.[3]

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of Tariff Act of 1930, as amended (the Act). On July 6, 2021, in accordance with 19 CFR 351.221(c)(1)(i), we initiated this review covering POSCO, the sole producer and exporter for which a review was requested.[4] On January 12, 2022, we extended the deadline for issuing the preliminary results until May 26, 2022.[5]

For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6]

Scope of the Order

The scope of the *Order* includes certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Excluded from the scope are grade 1078 and higher tire cord quality wire rod to be used in the production of tire cord wire. Also, excluded from the scope are VSQ steel products which are defined as wire rod. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[7]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Constructed export prices are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as the appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Results of Review

We preliminarily determine the following weighted-average dumping margin for the period May 1, 2020, through April 30, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
POSCO/POSCO International Corporation[8]	0.00

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, ADs on all appropriate entries covered by this review.[9] The final results of this review shall be the basis for the assessment of ADs on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.[10] 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).

Pursuant to 19 CFR 351.212(b)(1), where an examined respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate an importer-specific *ad valorem* duty assessment rate based on the ratio of the total

[1] *See Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determinations for Spain and the Republic of Turkey,* 83 FR 23417 (May 21, 2018) (*Order*).

[2] *See Carbon and Alloy Steel Wire Rod from the Republic of Korea and the United Kingdom: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 13888 (April 8, 2019).

[3] *See Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 27582 (June 13, 2019).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 35481 (July 6, 2021).

[5] *See* Memorandum, ''Extension of Deadline for Preliminary Results,'' dated January 12, 2022.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Carbon and Alloy Steel Wire Rod from the Republic of Korea; 2017–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *Id.*

[8] We are preliminarily treating POSCO and POSCO International Corporation as a single entity. *See* Preliminary Decision Memorandum at section IV. ''Affiliation and Single Entity Treatment.''

[9] *See* 19 CFR 351.212(b).

[10] *See* section 751(a)(2)(C) of the Act.

amount of dumping calculated for the U.S. sales for a given importer to the total entered value of those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to ADs.

For entries of subject merchandise during the POR produced by POSCO for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate such unreviewed entries pursuant to the reseller policy,[11] *i.e.,* the assessment rate for such entries will be equal to the all-others rate established in the investigation (*i.e.,* 41.10 percent), if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for POSCO will be equal to POSCO's weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent, and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the underlying investigation, but the producer is, then the cash deposit rate will be the rate established for the completed segment for the most recent POR for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 41.10 percent, the all-others rate established in the underlying investigation.[12] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[13] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the time limit for filing case briefs.[14] Parties who submit case briefs or rebuttal briefs in this proceeding 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.[15] Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS and must be served on interested parties.[16] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[17]

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. An electronically-filed request for a hearing must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[18] Hearing 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 issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[19]

Final Results of Review

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the publication of these preliminary results in the **Federal Register** pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1), unless otherwise extended.[20]

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of ADs prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of ADs occurred and the subsequent assessment of double ADs.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: May 26, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–11855 Filed 6–1–22; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[12] *See Order,* 81 FR at 23419.

[13] *See* 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 (for general filing requirements).

[14] *See* 19 CFR 351.309(d)(1).

[15] *See* 19 CFR 351.309(c)(2) and (d)(2).

[16] *See* 19 CFR 351.303.

[17] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[18] *See* 19 CFR 351.310(c); *see also* 19 CFR 351.303(b)(1).

[19] *See* 19 CFR 351.310(c).

[20] *See* section 751(a)(3)(A) of the Act.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC084]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Regional Archipelagic Ecosystem Committee (REAC) meeting to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The meeting will be held June 17, 2022. For specific times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held by web conference via Webex. Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The REAC meeting will be held between 1 p.m. and 4 p.m. on June 17, 2022, Hawaii Standard Time. Public comment periods will be provided in the agendas. The order in which agenda items are addressed may change. The meeting will run as late as necessary to complete scheduled business.

Agenda for the REAC Meeting

1. Welcome and Introductions
2. Overview of the Past REAC Meetings and REAC Responsibilities
3. Seafood Strategy
4. Topics for Future REAC Discussion
5. Public Comment
6. Other Business
7. Discussion and Recommendations

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, phone: (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 26, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–11796 Filed 6–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC027]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public online meeting.

SUMMARY: The Groundfish Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold a workshop to develop methods for constructing abundance indices based on hook-and-line surveys. Additionally, the SSC Groundfish Subcommittee will review the Species Distribution Model in Template Model Builder. The workshop and methodology review meeting is open to the public.

DATES: The SSC Groundfish Subcommittee's online workshop and methodology review meeting will be held Tuesday, June 21, 2022 through Thursday, June 23, 2022 beginning at 8 a.m. each day and continuing until 5 p.m. Pacific Time or until business for the day has been completed.

ADDRESSES: The SSC Groundfish Subcommittee's methodology review meeting and workshop will be an online meeting. Specific meeting information, including directions on how to join the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2413.

SUPPLEMENTARY INFORMATION: The purpose of the SSC Groundfish Subcommittee's meeting is to develop methods and best practices for constructing abundance indices based on hook-and-line surveys in a workshop. Recommendations of SSC Groundfish Subcommittee members will inform the 2023 Accepted Practices Guidelines for Stock Assessments, which is a compilation of guidelines for groundfish stock assessment scientists. Additionally, the SSC Groundfish Subcommittee will review the Species Distribution Model in Template Model Builder (sdmTMB). The sdmTMB model is proposed for developing relative biomass indices in future groundfish stock assessments. The SSC Groundfish Subcommittee report of workshop and methodology review findings and recommendations will be provided to the Pacific Council and the SSC at the November 2022 Pacific Council meeting.

No management actions will be decided by the SSC Groundfish Subcommittee. The SSC Groundfish Subcommittee members' role will be development of recommendations and reports for consideration by the SSC and Pacific Council at the November 2022 Pacific Council meeting.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the SSC Groundfish Subcommittee to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: May 26, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–11795 Filed 6–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC039]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of the Sunrise Wind Offshore Wind Farm, Offshore New York

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

ACTION: Notice; receipt of application for regulations and Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a petition from Sunrise Wind, LLC (Sunrise Wind), a 50/50 joint venture between Orsted North America Inc. (Orsted) and Eversource Investment LLC (Eversource), requesting authorization to take small numbers of marine mammals incidental to construction and operation activities associated with the Sunrise Wind Offshore Wind Farm in a designated lease area on the Outer Continental Shelf (OSC–A 0487)

offshore New York over the course of 5 years beginning in 2023. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Sunrise Wind's request for the development and implementation of regulations governing the incidental taking of marine mammals and issuance of a Letter of Authorization (LOA). NMFS invites the public to provide information, suggestions, and comments on Sunrise Wind's application and request.

DATES: Comments and information must be received no later than July 5, 2022.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to *ITP.Daly@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of Sunrise Wind's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please email the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review. For requests under section 101(A)(5)(A) of the MMPA, NMFS is also required to begin the public review process by publishing a notice of receipt of a request for the implementation of regulations governing the incidental taking (50 CFR 216.104(b)(1)(ii)).

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

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

Summary of Request

On November 10, 2021, NMFS received an application from Sunrise Wind requesting authorization for the taking of marine mammals incidental to construction and operation activities related to the development of the Sunrise Wind Offshore Wind Farm offshore of Rhode Island in Commercial Lease (OCS–A–0487). In response to our comments, and following extensive information exchange with NMFS, Sunrise Wind submitted a final, revised application on May 9, 2022, that we determined was adequate and complete on May 10, 2022. Sunrise Wind requested the regulations and subsequent LOA be valid for five years beginning in 2023.

Sunrise Wind considered the following activities associated with wind farm construction and operation in its application: Impact installation of up to 94 wind turbine generators (WTG) monopole foundations at 102 potential locations; impact installation of one offshore converter stations (OCS–DC) jacket foundation; installation and removal of temporary cofferdams or casing pipes with support sheet piles at the cable landfall location using a pneumatic pipe rammer, impact hammer, and vibratory hammer; detonation of unexploded ordnances (UXOs); high-resolution geophysical (HRG) site characterization surveys; fisheries monitoring surveys; and export cable and inter-array cable trenching, laying, and burial. Vessels will be used to transport crew, supplies, and materials within the Project area to support construction and operation. Sunrise Wind has determined that a subset of these activities (*i.e.,* WTG and OCS–DC foundation installation, installing and removing piles and casing pipes at the cable landfall location, HRG surveys, and UXO detonation) may result in the taking, by Level A harassment and Level B harassment, of marine mammals. Therefore, Sunrise Wind requests authorization to incidentally take marine mammals.

Specified Activities

In Executive Order 14008, President Biden stated that it is the policy of the United States to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.

Through a competitive leasing process under 30 CFR 585.211, Sunrise Wind was awarded Commercial Lease OCS–A 0487 offshore of New York and the exclusive right to submit a construction and operations plan (COP) for activities within the lease area. Sunrise Wind has submitted a COP to BOEM proposing the construction, operation, maintenance, and conceptual decommissioning of the Sunrise Wind project, a 924–1,034 megawatt (MW) commercial-scale offshore wind energy facility located within Lease Area OCS–

A 0487 and consisting of up to 94 wind turbines, one offshore sub-stations, and 1 transmission cable to shore.

Sunrise Wind anticipates the following activities may potentially result in harassment of marine mammals:

- Installing up to 94 WTG monopile foundations with a maximum diameter tapering from 7 meters (m) above the waterline to 12 m (39 ft) below the waterline (7/12 m monopile) using a 4,000 kilojoule impact hammer pile driving from May through December in 2024;
- installing one OCS–DC jacket foundation (8 4-m pin piles) by impact pile driving from May through December in 2024;
- installing and removing 2 casing pipes by pneumatic ramming and/or impact driving and supporting sheet piles by vibratory pile driving at the cable landfall location on Fire Island, New York (up to four days to install and remove each casing pipe for 8 days total plus up to 24 days to install and remove supporting sheet piles);
- using HRG equipment to survey approximately 30,861 kilometers (km) over approximately 621 days across all 5 years (2023–2028);
- the potential high-order detonation of up to 3 UXOs over the course of 3 days in 2024 (1 UXO detonation per day, as necessary).

Sunrise Wind has noted that these are the most accurate estimates for the durations of each planned activity, but that the schedule may shift over the course of the Project due to weather, mechanical, or other related delays.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning Sunrise Wind's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Sunrise Wind, if appropriate.

Dated: May 27, 2022.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–11841 Filed 6–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC085]

East Coast Fisheries of the United States; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: Several fishery management bodies on the East Coast of the United States are convening a public workshop to continue work on an initiative called *East Coast Climate Change Scenario Planning.* This is a joint effort of the Atlantic States Marine Fisheries Commission, the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, and NOAA's National Marine Fisheries Service. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held Tuesday, June 21, 2022 through Thursday, June 23, 2022.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Hotel Crystal City, 300 Army Navy Drive, Arlington, VA 22202; telephone: (703) 416–4100. The meeting will be partially streamed by webinar for portions of the agenda that are held in plenary. Connection information will be posted to the calendar prior to the meeting at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: Climate change is a growing threat for marine fisheries worldwide. On the East coast of the United States, some species have already experienced considerable climate-related changes in distribution, abundance, and/or productivity. These changes have the potential to strain fisheries management and governance systems. Through the East Coast Climate Change Scenario Planning Initiative, fishery scientists and managers are working collaboratively and engaging diverse fishery stakeholders to explore jurisdictional and governance issues related to climate change.

The next phase of this initiative will be a 2.5-day Scenario Creation Workshop, to be held in Arlington, VA, from June 21–23, 2022. Through a series of conversations and exercises, participants will create a set of scenarios that describe how climate change might affect East Coast fisheries in the next 20 years. Each scenario will describe a different way in which changing oceanographic, biological, and social/economic conditions could combine to create future challenges and opportunities for East Coast fisheries.

Day 1 of the workshop will be spent reviewing the work to date (*i.e.,* what is likely to shape East Coast fisheries in the next 20 years, and how confident are we about predictions) and then numerous small groups will each create their own ''mini-scenarios'' (quick-fire stories about what might happen in the next 20 years). This will result in a large number of possible scenario stories. Day 2 will start by focusing on the range of mini-scenarios and discussing any patterns. Through facilitated conversations and suggestions, the full group will emerge with a scenario framework (or small number of scenarios) to explore in more detail. The rest of the day will be spent with small groups working on devising the details of a particular scenario, and also reviewing the ideas emerging from other groups. At the end of Day 2, we will have a candidate scenario framework and basic stories. Day 3 will be spent in plenary, with participants working to ensure that each scenario story is plausible, challenging, relevant, memorable and divergent—and that the Core Team has a clear idea of what additional work is needed to further develop the scenarios.

Approximately 75 workshop participants have been selected in advance to represent a broad range of stakeholder groups and East Coast regions. Others attending the meeting in person are invited to observe the plenary discussions and to provide comments during designated public comment opportunities. Plenary sessions only will be broadcast by webinar. Participants on the webinar will be able to provide input through a chat function and these comments will be summarized and reported out to workshop participants to the extent practicable. Additional details about the workshop will be posted to this page once available: *https://www.mafmc.org/climate-change-scenario-planning.*

The draft scenarios resulting from this workshop will be further refined later this summer and will feed into the Applications Phase of the initiative. During the Applications Phase, participating organizations will generate ideas and offer solutions to the challenges highlighted in the initiative, exploring what the different scenarios mean for future fishery management and

governance and reaching conclusions about any recommendations for changes.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

(Authority: 16 U.S.C. 1801 e*t seq.*)

Dated: May 26, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–11797 Filed 6–1–22; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0034]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) is requesting to extend the Office of Management and Budget's (OMB's) approval for an existing information collection titled, ''Joint Standards and CFPB Standards for Assessing the Diversity Policies and Practices.''

DATES: Written comments are encouraged and must be received on or before August 1, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2022–0034 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Joint Standards and CFPB Standards for Assessing the Diversity Policies and Practices.

OMB Control Number: 3170–0060.

Type of Review: Revision of a currently approved information collection.

Affected Public: Private sector: businesses or other for-profits.

Estimated Number of Respondents: 1,250.

Estimated Total Annual Burden Hours: 9,375.

Abstract: Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) required the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Consumer Financial Protection Bureau (CFPB) and Securities and Exchange Commission (SEC) (together, Agencies and separately, Agency) each to establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters of the Agency relating to diversity in management, employment, and business activities. The Dodd-Frank Act also instructed each OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the Agency. The Agencies worked together to develop joint standards (Joint Standards). On June 10, 2015, they jointly published in the **Federal Register** the ''Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies''.[1] The Agencies will use the information provided to them to monitor progress and trends in the financial services industry regarding diversity and inclusion in employment and contracting activities as well as to identify and highlight those policies and practices that have been successful. The primary Federal financial regulator will share information with other Agencies (when appropriate) to support coordination of efforts and to avoid duplication. The Agencies may publish information disclosed to them (such as best practices) in any form that does not identify a particular entity or individual or disclose confidential business information. Additionally, the CFPB is required to ensure that contractors that do business with the CFPB are making a good faith effort to diversify their workforces. The CFPB requires contractors to submit information related to their workforce and workplace policies.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–11853 Filed 6–1–22; 8:45 am]

BILLING CODE 4810–AM–P

[1] 80 FR 33016 (June 10, 2015).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–460–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on May 16, 2022, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Route 56, Owensboro, Kentucky 42301, filed in

the above reference docket a prior notice pursuant to sections 157.205, 157.208, and 157.213 of the Commission's regulations under the Natural Gas Act (NGA) and its blanket certificate issued in Docket No. CP82–479–000 requesting authorization to modify its Welda Compressor Station located in Anderson County, Kansas by: (1) Overhauling and uprating three gas-fired turbine compressor units and (2) replacing or installing various appurtenances, thus increasing the total station horsepower by 1,350 horsepower. Southern Star asserts that the project will (1) increase the deliverability of its Welda Storage Complex located in Anderson and Allen Counties, Kansas by 14 million cubic feet per day (MMcf/d); (2) increase deliverability of the Elk City Storage Field located in Elk, Chautauqua, and Montgomery Counties, Kansas by 14 MMcf/d; and (3) increase available firm storage capacity by approximately 0.9 billion cubic feet by converting storage working gas capacity previously utilized for interruptible storage capacity. Southern Star states that there will be no changes to working or cushion gas volumes or to the certificated parameters of the storage fields. Southern Star estimates the cost of the project to be approximately $6.4 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this request should be directed to Cindy Thompson, Director, Regulatory, Compliance & Information Governance, Southern Star Central Gas Pipeline, Inc., 4700 State Route 56, Owensboro, Kentucky 42301, by phone at (270) 852–4655 or by email at *cindy.thompson@southernstar.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on July 25, 2022. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is July 25, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is July 25, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before July 25, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22–460–000 in your submission. The Commission encourages electronic filing of submissions.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing.''

The Commission's eFiling staff are available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

(2) You can file a paper copy of your submission. Your submission must reference the Project docket number CP22–460–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: *cindy.thompson@southernstar.com,* 4700 State Route 56, Owensboro, Kentucky 42301. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: May 26, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–11866 Filed 6–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP16–10–000	5–13–2022	Lynda Majors.
2. P–14803–000	5–23–2022	FERC Staff.[1]
3. P–14803–000	5–24–2022	FERC Staff.[2]
Exempt:		
1. CP22–17–000	5–11–2022	State of Texas Governor Greg Abbott.
2. CP16–10–000	4–15–2022	U.S. Senator Mark R. Warner.

[1] Emailed comments dated 5/22/22 from William E. Simpson II.
[2] Emailed comments dated 5/22/22 from William E. Simpson II.

Dated: May 26, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11830 Filed 6–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR22–44–000.

Applicants: Louisville Gas and Electric Company.

Description: § 284.123 Rate Filing: LG&E_Operating Statement Rate Change Revised Exhibit A to be effective 5/1/2022.

Filed Date: 5/25/22.

Accession Number: 20220525–5015.

Comments/Protests Due: 5 p.m. ET 6/15/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.*

For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 26, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11832 Filed 6–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM21–17–000]

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection; Notice on Requests or Extension of Time

On May 10, 2022, the ISO/RTO Council (IRC),[1] Edison Electric Institute, American Public Power Association, and the National Rural Electric Cooperative Association (together, Joint Movants) filed a motion requesting a 15-day extension of time to submit initial comments in response to the Notice of Proposed Rulemaking (NOPR) in this proceeding,[2] from July 18, 2022 to August 2, 2022, and an extension of the reply comment deadline from August 17, 2022 to September 8, 2022. Joint Movants state that the responses to the NOPR will require a great deal of internal consideration for each trade association and IRC member to provide quality responses to the Commission. Moreover, Joint Movants assert that the industry as a whole would benefit from a modest amount of additional time to provide thoughtful and constructive comments in response to the NOPR in order for the Commission to have an adequate record upon which to rule. The MISO South Regulators[3] filed comments supporting Joint Movants' motion.

On May 19, 2022, the National Association of Regulatory Utility Commissioners (NARUC) filed a motion requesting a 30-day extension of time to submit initial comments in this proceeding, from July 18, 2022 to August 17, 2022. NARUC states that the current initial comment deadline of July 18, 2022 is at the beginning of NARUC's Summer Policy Summit, during which the Commission and NARUC will hold another meeting of the Joint Federal-State Task Force on Electric Transmission (Task Force). NARUC states that the state members of the Task Force spend a great deal of time preparing for the Task Force meetings, and it will be difficult for them to balance preparing for the Task Force meeting with developing comments in this proceeding, in addition to their primary responsibilities to their public utility commissions. Further, NARUC states that NARUC meetings serve as an opportunity for their members to discuss policy matters and develop their advocacy positions. Western State Regional Representatives[4] filed comments supporting NARUC's motion and request that the Commission adjust the reply comment period accordingly.

Upon consideration, notice is hereby given that the deadline to submit initial comments in response to the NOPR in this proceeding is extended from July 18, 2022 to and including August 17, 2022. Additionally, notice is hereby given that the deadline to submit reply comments is extended from August 17, 2022 to and including September 19, 2022.

Dated: May 25, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–11775 Filed 6–1–22; 8:45 am]

BILLING CODE 6717–01–P

[1] IRC is comprised of the following independent system operators (ISOs) and regional transmission organizations (RTOs): Alberta Electric System Operator (AESO); California Independent System Operator Corporation; Electric Reliability Council of Texas, Inc. (ERCOT); Independent Electricity System Operator of Ontario, Inc. (IESO); ISO New England Inc.; Midcontinent Independent System Operator, Inc.; New York Independent System Operator, Inc.; PJM Interconnection, L.L.C.; and Southwest Power Pool, Inc. IRC states that AESO, ERCOT, and IESO do not join its motion.

[2] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,* 179 FERC ¶ 61,028 (2022).

[3] For purposes of their pleading, the MISO South Regulators consist of the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Council for the City of New Orleans, and the Mississippi Public Service Commission and Public Utilities Staff.

[4] Western State Regional Representatives are comprised of Western Representatives to the Task Force, Chair of the Committee Regional on Electric Power Cooperation, and Executive Director of the Western Interstate Energy Board.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1945–000]

Powells Creek Farm Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Powells Creek Farm Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 15, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the

Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 26, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11831 Filed 6–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15242–000]

PacifiCorp; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 13, 2021, the PacifiCorp, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of Electric Lake Pumped Storage Project to be located in Emery and Sanpete Counties, Utah. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) The existing 31,500-acre-foot Electric Lake as the upper reservoir, which is impounded by the 229-foot-high, 8,586-foot-long Electric Lake Dam; (2) a new 3,900-foot-long, 375-foot-high concrete gravity dam; a new 820-foot-long, 85-foot-high embankment dam; and a new 1,300-foot-long, 150-foot-high embankment dam, each of which would impound a new 5,000-acre-foot upper reservoir; (3) a new 9,504-foot-long, 24-foot-diameter penstock; (4) a new underground powerhouse containing up to three 167-megawatt Francis pump-turbines generators; (5) a new 345-kilovolt, 55,968-foot-long transmission line that would connect the powerhouse to the PacifiCorp's existing Huntington-Mona 345-kilovolt transmission line; and (6) appurtenant facilities. The estimated annual power generation at the Electric Lake Pumped Storage Project would be 1,460 gigawatt-hours.

Applicant Contact: Mr. Tim Hemstreet, Managing Director, Renewable Energy Development PacifiCorp. 825 NE Multnomah, Suite 1800 Portland, OR 97232 *Tim.hemstreet@pacificorp.com.*

FERC Contact: Ousmane Sidibe; Phone: (202) 502–6245.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15242–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *https://www.ferc.gov/ferc-online/elibrary/overview.* Enter the docket number (P–15242) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 25, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–11774 Filed 6–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–67–000.

Applicants: Eurus Combine Hills I LLC, Eurus Combine Hills II LLC, Avenal Park LLC, Sand Drag LLC, Sun City Project LLC, Spearville 3, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Eurus Combine Hills I LLC, et al.

Filed Date: 5/26/22.

Accession Number: 20220526–5117.

Comment Date: 5 p.m. ET 6/16/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL22–58–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Petition for Declaratory Order of Wabash Valley Power Association, Inc.

Filed Date: 5/18/22.

Accession Number: 20220518–5185.

Comment Date: 5 p.m. ET 6/27/22.

Docket Numbers: EL22–59–000.

Applicants: Tenaska Clear Creek Wind, LLC v. Southwest Power Pool, Inc., et al.

Description: Complaint of Tenaska Clear Creek Wind, LLC.

Filed Date: 5/25/22.

Accession Number: 20220525–5144.

Comment Date: 5 p.m. ET 6/14/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1298–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2022–05–26_MISO TOs Order 864 Additional Compliance to be effective 1/27/2020.

Filed Date: 5/26/22.
Accession Number: 20220526–5147.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER21–2524–004.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Errata to ER21–2524–003 RE Compliance to Waiver NAESB Business Practice to be effective 5/1/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5079.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER22–1197–001.
Applicants: Southern California Edison Company.
Description: Tariff Amendment: Response to Deficiency Letter—SCE Second Amended LGIA Catalina Solar TOT455 to be effective 3/5/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5002.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER22–1439–001.
Applicants: EdSan 1B Group 1 Edwards, LLC.
Description: Tariff Amendment: Amendment to Petition for Market-Based Rate Authorization to be effective 5/24/2022.
Filed Date: 5/25/22.
Accession Number: 20220525–5140.
Comment Date: 5 p.m. ET 5/31/22.
Docket Numbers: ER22–1440–001.
Applicants: EdSan 1B Group 1 Sanborn, LLC.
Description: Tariff Amendment: Amendment to Petition for Market-Based Rate Authorization to be effective 5/24/2022.
Filed Date: 5/25/22.
Accession Number: 20220525–5145.
Comment Date: 5 p.m. ET 5/31/22.
Docket Numbers: ER22–1441–001.
Applicants: EdSan 1B Group 2, LLC.
Description: Tariff Amendment: Amendment to Petition for Market-Based Rate Authorization to be effective 5/24/2022.
Filed Date: 5/25/22.
Accession Number: 20220525–5150.
Comment Date: 5 p.m. ET 5/31/22.
Docket Numbers: ER22–1662–001.
Applicants: GB II New York LLC.
Description: Compliance filing: Supplement to Notice of Succession to be effective 4/20/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5195.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER22–1956–000.
Applicants: Idaho Power Company.
Description: § 205(d) Rate Filing: Amend 4.6 of Rate Schedule 69 to be effective 7/26/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5000.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER22–1957–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3954 Huckleberry Solar GIA to be effective 5/5/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5008.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER22–1958–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3125R11 Basin Electric Power Cooperative NITSA and NOA to be effective 5/1/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5013.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER22–1959–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6464; Queue No. AE2–319 to be effective 5/2/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5028.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER22–1960–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 388, Amendment No. 2 to E&P to be effective 7/26/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5122.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER22–1961–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 401, Yucca Surplus Agreement to be effective 5/12/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5125.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER22–1962–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Tariff Amendment: DEC–NCEMC RS 564 Cancellation to be effective 7/26/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5140.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER22–1963–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Tariff Amendment: DEC-New River RS 543 Cancellation to be effective 7/26/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5148.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER22–1964–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–05–26_SA 3373 Entergy Arkansas-Newport Solar 1st Rev GIA (J919 J1402) to be effective 5/17/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5156.
Comment Date: 5 p.m. ET 6/16/22.
Docket Numbers: ER22–1965–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 14 to be effective 7/25/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5196.
Comment Date: 5 p.m. ET 6/16/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 26, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11829 Filed 6–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3509–042]

Little Falls Hydroelectric Associates, LP; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 3509–042.

c. *Date Filed:* August 31, 2021.

d. *Applicant:* Little Falls Hydroelectric Associates, LP (Little Falls Associates).

e. *Name of Project:* Little Falls Hydroelectric Project (Little Falls Project).

f. *Location:* The existing project is located on the Mohawk River, in the City of Little Falls, Herkimer County, New York. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David H. Fox, Director, Licensing and Compliance, Little Falls Hydroelectric Associates, LP, Eagle Creek Renewable Energy, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, MD 20814, email—*david.fox@eaglecreekre.com;* Jody J. Smet, Vice President, Regulatory Affairs, Little Falls Hydroelectric Associates, LP, Eagle Creek Renewable Energy, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, MD 20814, email—*jody.smet@eaglecreekre.com.*

i. *FERC Contact:* Monir Chowdhury at (202) 502–6736 or email at *monir.chowdhury@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–3509–042.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The Little Falls Project consists of: (1) Two state-owned spillway dams (*i.e.,* North State Dam and South State Dam) joined by an island, and equipped with 1-foot-high flashboards and flow control gates, with a total length of 530 feet and a height of about 6 feet; (2) a reservoir with a storage capacity of 800 acre-feet at a normal surface elevation of 363.8 feet; [1] (3) a 45-foot-wide, 330-foot-long navigation lock (Lock 17); (4) a 55-foot-wide, 73-foot-long concrete intake structure with two roller head gates to control flow through the intake; (5) two 14.7-foot-diameter, 90-foot-long underground concrete penstocks; (6) a 65-foot-wide by 99-foot-long concrete powerhouse containing two-turbine-generator units each with a capacity of 6.65 megawatts; (7) two 74-foot-wide, 25-foot-high flood control gates; (8) two sets of 4.16-kilovolt (kV), 60-foot-long generator leads that run from the powerhouse to a 36-foot-wide by 46-foot-long switchyard containing a 4.16/46-kV transformer; and (9) appurtenant facilities.

There are structures inside the project boundary that are not considered part of the project: The Middle Dam, with sixty percent of the dam currently breached, located in the bypassed reach of the Mohawk River, and built as part of a hydropower plant that was decommissioned in 1962; and the Gilbert Dam located also in the bypassed reach approximately 700 feet upstream of the powerhouse to measure flow through the Mohawk River and to ensure minimum flow conditions are met in the river.

Little Falls Associates proposes to continue to operate the project in a run-of-river mode and continue to provide a minimum flow of 300 cubic feet per second, or inflow if less, into the project's bypassed reach. The project generated an annual average of 55,355 megawatt-hours between 2013–2020.

m. A copy of the application may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according

[1] All elevations refer to the Barge Canal Datum which is 0.8 foot higher than elevations in the National Geodetic Vertical Datum of 1929.

to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	July 2022.
Filing of Reply Comments	September 2022.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. The applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

Dated: May 25, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–11779 Filed 6–1–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9897–01–OA; EPA–HQ–OA–2022–0053]

National Environmental Justice Advisory Council; Notification for a Virtual Public Meeting.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification for a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the date and time described below. The meeting is open to the public. Members of the public are encouraged to provide comments relevant to EPA investments for addressing Environmental Justice and related topics being considered by the NEJAC. For additional information about registering to attend the meeting or to provide public comment, please see ''REGISTRATION'' under **SUPPLEMENTARY INFORMATION**. Pre-registration is required.

DATES: The NEJAC will hold a two-day virtual public meeting on Wednesday, June 22, 2022, and Thursday, June 23, 2022, from approximately 1:00 p.m. to 5:00 p.m., Eastern Time, each day. A public comment period relevant to EPA investments and related topics will be considered by the NEJAC during the meeting on June 22, 2022 (see **SUPPLEMENTARY INFORMATION**). Members of the public who wish to speak during the public comment period must pre-register by 11:59 p.m., Eastern Time, June 15, 2022.

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, NEJAC Designated Federal Officer, U.S. EPA; email: *nejac@epa.gov;* or telephone: (202) 566–0344. Additional information about the NEJAC is available at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council-meetings.*

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is for the council to finalize advice and recommendations on EPA's investments to address environmental justice through the Justice40 Initiative. The meeting will also include updates from each of the NEJAC workgroups, a special public stakeholder panel session and an oral public comment period

The Charter of the NEJAC states that the advisory committee will provide independent advice and recommendations to the EPA Administrator about broad, crosscutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice.

Registration: Individual registration is required for the virtual public meeting. No two individuals can share the same registration link. Information on how to register is located at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council-meetings.* Registration to attend the meetings is available through the scheduled end time of the meeting day. Registration to speak during the public comment period will close at 11:59 p.m., Eastern Time, June 15, 2022. When registering, please provide your name, organization, city and state, and email address for follow up. Please also indicate whether you would like to provide public comment during the meeting, and whether you are submitting written comments at time of registration.

A. Public Comment

The NEJAC is interested in receiving public comments specific to EPA investments and the public's recommendation as to where investments are made. Every effort will be made to hear from as many registered public commenters during the time specified on the agenda. Individuals or groups making remarks during the oral public comment period will be limited to three (3) minutes. Please be prepared to briefly describe your comments; including your recommendations on what you want the NEJAC to advise the EPA to do. Submitting written comments for the record are strongly encouraged. You can submit your written comments in three different ways, (1.) by using the webform at *https://www.epa.gov/environmentaljustice/forms/national-environmental-justice-advisory-council-nejac-public-comment,* (2.) by sending comments via email to *nejac@epa.gov* and (3.) by creating comments in the Docket ID No. EPA–HQ–OA–2022–0053 at *http://www.regulations.gov.* Written comments can be submitted through July 6, 2022.

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Fred Jenkins, via email at: *nejac@epa.gov* or contact by phone at (202) 566–0344. To request special accommodations for a disability or other assistance, please submit your request at least seven (7) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the email,

listed in the **FOR FURTHER INFORMATION CONTACT** section.

Matthew Tejada,

Director for the Office of Environmental Justice.

[FR Doc. 2022–11762 Filed 6–1–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2022–0440; FRL–9885–01–OLEM]

Proposed Information Collection Request; Comment Request; Gathering Data on Results of Annual and Triennial Testing To Evaluate the Impacts of EPA's 2015 Federal Underground Storage Tank Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Gathering Data on Results of Annual and Triennial Testing To Evaluate the Impacts of EPA's 2015 Federal Underground Storage Tank Regulation'' (EPA ICR No. 2650.01, OMB Control No. 2050–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 1, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2022–0440 online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Elizabeth McDermott, Prevention Division, Office of Underground Storage Tanks, (Mail Code 5401R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–0646; email address: *McDermott.Elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This information collection request will allow U.S. E.P.A. to employ a contractor to compile data from private companies providing compliance testing to owners of federally regulated underground storage tank systems (USTs). The completed dataset of test results will allow EPA to evaluate the effectiveness of several of the newly required measures to prevent fuel releases included in the 2015 federal UST regulation: Spill containment liquid tightness testing, containment sump liquid tightness testing (for containment sumps used for interstitial monitoring of piping of single-wall construction), overfill equipment inspections, and two types of annual leak detection equipment testing. EPA is interested in quantitatively assessing if passing rates improve between initial and subsequent rounds of testing in the 15 states from which data will be collected. EPA will use the data to identify if, and by how much, testing required by the regulation impacts equipment performance over time. EPA will use this information to enhance national UST program performance. EPA will share the information gathered from this collection with all state implementing agencies, who could use the results to better inform their future regulations, policies, and guidance for preventing UST releases. Sharing this information will help states implement their programs better, which will help EPA execute national UST program goals and better protect human health and the environment.

Form Numbers: None.

Respondents/affected entities: UST testing and compliance companies, UST facility owners and operators.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 60.

Frequency of response: One-time collection.

Total estimated burden: 1,275 hours per year. Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $53,398.75 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: This is a request for a new collection.

Mark Barolo,

Acting Office Director, Office of Underground Storage Tanks.

[FR Doc. 2022–11790 Filed 6–1–22; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Request for Applications: 2022–2023 EXIM Advisory Committees and Councils

The Export-Import Bank of the United States (EXIM) is accepting applications for the 2022–2023 EXIM Advisory Committee, Sub-Saharan Africa Advisory Committee, Council on Climate, Council on China Competition, Council on Small Business, and Council on Advancing Women in Business from June 1–June 30, 2022.

Candidates wishing to be considered for membership must submit an online

questionnaire *https://www.exim.gov/form/advisory-committee-candidate-que* and email the following to *advisory@exim.gov:*

- Biography
- Headshot
- Letter of interest demonstrating relevant knowledge, experience, and qualifications

Completed application materials must be submitted by 5:30 p.m. EDT, June 30, 2022.

Advisory Committee

The Advisory Committee provides guidance to EXIM on its policies and programs, in particular on the extent to which EXIM provides competitive financing to support American jobs through exports.

Sub-Saharan Africa Advisory Committee

The Sub-Saharan Africa Advisory Committee provides advice on EXIM policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services in Sub-Saharan Africa.

Council on Climate

The Council on Climate advises how EXIM can further support U.S. exporters and American jobs in clean energy and meet congressional mandates to support and promote environmentally beneficial renewable energy, energy efficiency, and energy storage exports.

Council on China Competition

The Council on China Competition offers guidance on advancing the comparative leadership of the United States with respect to China and supporting U.S. innovation and employment through competitive export finance.

Council on Small Business

The Council on Small Business provides recommendations to help more American small business exporters find new markets, achieve more sales, and lower the risk of selling internationally.

Council on Advancing Women in Business

The Council on Advancing Women in Business advises how EXIM can reach more women business leaders and owners and better consider equity goals set in the agency's strategy.

For more information about applying for membership to any of the committees, please contact India Walker, External Engagement Specialist, at *india.walker@exim.gov* or at 202–480–0062.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2022–11804 Filed 6–1–22; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, June 7, 2022 at 10:00 a.m. and its continuation at the conclusion of the open meeting on June 8, 2022.

PLACE: 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2022–11990 Filed 5–31–22; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, June 8, 2022 at 10:00 a.m.

PLACE: Hybrid Meeting: 1050 First Street NE, Washington, DC (12th Floor) and Virtual.

Note: *For* those attending the meeting in person, current COVID–19 safety protocols for visitors, which are based on the CDC COVID–19 community level in Washington, DC, will be updated on the commission's contact page by the Monday before the meeting. See the contact page at *https://www.fec.gov/contact/*. If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public, subject to the above-referenced guidance regarding the COVID–19 community level and corresponding health and safety procedures. To access the meeting virtually, go to the commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Interim Final Rule: Independent Expenditure Reporting
Initial Determination on Eligibility to Receive Primary Election Public Funds—Howie Hawkins, Howie Hawkins 2020 (LRA 1132)
Draft Advisory Opinion 2022–05: DSCC
Draft Advisory Opinion 2022–03: Democracy Engine, LLC
Draft Advisory Opinion 2022–04: Jill Stein for President Committee
Proposed Final Audit Report on Mike Braun for Indiana (A19–02)
Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Acting Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2022–11994 Filed 5–31–22; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/*

request.htm. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than June 15, 2022.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *The Hoeven Family Limited Liability Limited Partnership, Bismarck, North Dakota; John H. Hoeven, III and Marcela Hoeven Samson, as general partners, both of Minot, North Dakota; and the John H. Hoeven, III 2021 Irrevocable Spousal Lifetime Access Trust (Trust), as limited partner, Bismarck, North Dakota; First Western Bank and Trust, as trustee of the Trust and Jon Backes, as trust protector of the Trust, both of Minot, North Dakota*; to join the Hoeven family shareholder control group, a group acting in concert, to retain voting shares of Westbrand, Inc., and thereby indirectly retain voting shares of First Western Bank and Trust, both of Minot, North Dakota.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11776 Filed 6–1–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 5, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *United Community Banks, Inc., Blairsville, Georgia;* to merge with Progress Financial Corporation, and thereby indirectly acquire its subsidiary, Progress Bank and Trust, both of Huntsville, Alabama.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11836 Filed 6–1–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than June 30, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Fidelity Federal Bancorp, Evansville, Indiana, and its parent companies, Pedcor Financial, LLC and Pedcor Financial Bancorp, both of Carmel, Indiana;* to become bank holding companies by acquiring Community Banks of Shelby County, Cowden, Illinois, and also to retain United Fidelity Bank, F.S.B., Evansville, Indiana, and thereby engage in operating a savings association pursuant to section 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11777 Filed 6–1–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than June 30, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Fidelity Federal Bancorp, Evansville, Indiana, and its parent companies, Pedcor Financial, LLC and Pedcor Financial Bancorp, both of Carmel, Indiana;* to become savings and loan holding companies, following their conversion to bank holding companies for a moment in time in connection with the acquisition of Community Banks of Shelby County, Cowden, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11778 Filed 6–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Thursday, July 21, 2022, from 12:30 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held virtually for the public. Members of the National Advisory Council will be able to participate in-person or virtually.

FOR FURTHER INFORMATION CONTACT: Jaime Zimmerman, Designated Management Official, at the Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, Maryland, 20857, (301) 427–1456. For press-related information, please contact Bruce Seeman at (301) 427–1998 or *Bruce.Seeman@AHRQ.hhs.gov.*

Closed captioning will be provided during the meeting. If another reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827–4840, no later than Monday, May 2, 2022. The agenda, roster, and minutes will be available from Ms. Heather Phelps, Committee Management Officer, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Rockville, Maryland, 20857. Ms. Phelps' phone number is (301) 427–1128.

SUPPLEMENTARY INFORMATION:

I. Purpose

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality (the Council). The Council is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director of AHRQ on matters related to AHRQ's conduct of its mission including providing guidance on (A) priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

II. Agenda

On Thursday, July 21, 2022, NAC members will meet to conduct preparatory work prior to convening the Council meeting at 12:30 p.m., with the call to order by the Council Chair and approval of previous Council summary notes. The meeting will begin with an introduction of NAC members and a report by the AHRQ Director. The NAC will then commence a discussion of the meaning of quality across healthcare delivery systems in the future and the impact of innovations in the healthcare marketplace. The meeting is open to the public and will adjourn at 4:30 p.m. For information regarding how to access the meeting as well as other meeting details, including information on how to make a public comment, please go to *https://www.ahrq.gov/news/events/nac/.* The final agenda will be available on the AHRQ Website no later than Thursday, July 7, 2022.

Dated: May 26, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–11807 Filed 6–1–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–0728]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''National Notifiable Diseases Surveillance System (NNDSS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on February 14, 2022 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Notifiable Diseases Surveillance System (NNDSS) (OMB Control No. 0920–0728, Exp. 3/31/2024)—Revision—Center for Surveillance, Epidemiology and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. The National Notifiable Diseases Surveillance System (NNDSS) is based on data collected at the state, territorial and local levels as a result of legislation and regulations in those jurisdictions that require health care providers, medical laboratories, and other entities to submit health-related data on reportable conditions to public health departments. These reportable conditions, which include infectious and non-infectious diseases, vary by jurisdiction depending upon each jurisdiction's health priorities and needs. Each year, the Council of State and Territorial Epidemiologists (CSTE), supported by CDC, determines which reportable conditions should be designated nationally notifiable or under standardized surveillance.

CDC requests a three-year approval for a Revision for the NNDSS (OMB Control No. 0920–0728, Exp. 3/31/2024). This Revision includes requests for approval to: (1) Receive case notification data for Alpha-gal syndrome (AGS), a new condition under standardized surveillance (CSS); (2) receive Sexual Orientation and Gender Identity (SOGI) and Birth Sex data elements (with United States Core Data for Interoperability (USCDI) value sets) for sexually transmitted diseases (STD) and Hepatitis; (3) receive an extension of three years to continue to receive the current SOGI data elements for STD; and (4) receive new disease-specific data elements for AGS, COVID–19, Cryptosporidiosis, Cyclosporiasis, Hepatitis, and STD (not congenital).

The NNDSS currently facilitates the submission and aggregation of case notification data voluntarily submitted to CDC from 60 jurisdictions: Public health departments in every U.S. state, New York City, Washington DC, five U.S. territories (American Samoa, the Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands), and three freely associated states (Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau). This information is shared across jurisdictional boundaries and both surveillance and prevention and control activities are coordinated at regional and national levels.

Over 90% of case notifications are encrypted and submitted to NNDSS electronically from already existing databases by automated electronic messages. When automated transmission is not possible, case notifications are faxed, emailed, or uploaded to a secure network or entered into a secure website. All case notifications that are faxed or emailed are done so in the form of an aggregate weekly or annual report, not individual cases. These different mechanisms used to send case notifications to CDC vary by the jurisdiction and the disease or condition. Jurisdictions remove most personally identifiable information (PII) before data are submitted to CDC, but some data elements (*e.g.,* date of birth, date of diagnosis, county of residence) could potentially be combined with other information to identify individuals. Private information is not disclosed unless otherwise compelled by law. All data are treated in a secure manner consistent with the technical, administrative, and operational controls required by the Federal Information Security Management Act of 2002 (FISMA) and the 2010 National Institute of Standards and Technology (NIST) Recommended Security Controls for Federal Information Systems and Organizations. Weekly tables of nationally notifiable diseases are available through CDC WONDER and *data.cdc.gov.* Annual summaries of finalized nationally notifiable disease data are published on CDC WONDER and *data.cdc.gov* and disease-specific data are published by individual CDC programs.

The burden estimates include the number of hours that the public health department uses to process and send case notification data from their jurisdiction to CDC. Specifically, the burden estimates include separate burden hours incurred for automated and non-automated transmissions, separate weekly burden hours incurred for modernizing surveillance systems as part of message mapping guide (MMG) implementation, separate burden hours incurred for annual data reconciliation and submission, and separate one-time burden hours incurred for the addition of new diseases and data elements. The burden estimates for the one-time burden for reporting jurisdictions are for the addition of case notification data for AGS; and disease-specific data elements for AGS, COVID–19, Cryptosporidiosis, Cyclosporiasis, Hepatitis, and STD (not congenital).

CDC requests OMB approval for an estimated 18,294 burden hours, a decrease from the previously approved 18,954 due to fewer disease-specific data elements being added. There is no cost to respondents other than the time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
States	Weekly (Automated)	50	52	20/60
States	Weekly (Non- automated)	10	52	2
States	Weekly (MMG Implementation)	50	52	4
States	Annual	50	1	75
States	One-time Addition of Diseases and Data Elements.	50	1	1
Territories	Weekly (Automated)	5	52	20/60
Territories	Weekly, Quarterly Non-automated)	5	56	20/60
Territories	Weekly (MMG Implementation)	5	52	4
Territories	Annual	5	1	5
Territories	One-time Addition of Diseases and Data Elements.	5	1	1
Freely Associated States	Weekly (Automated)	3	52	20/60
Freely Associated States	Weekly, Quarterly (Non-automated)	3	56	20/60
Freely Associated States	Annual	3	1	1
Freely Associated States	One-time Addition of Diseases and Data Elements.	3	1	12
Cities	Weekly (Automated)	2	52	20/60
Cities	Weekly (Non-automated)	2	52	2
Cities	Weekly (MMG Implementation)	2	52	4
Cities	Annual	2	1	75
Cities	One-time Addition of Diseases and Data Elements.	2	1	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–11769 Filed 6–1–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHACHSPT)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHACHSPT). The CHACHSPT consists of 18 experts in fields associated with public health; epidemiology; laboratory practice; immunology; infectious diseases; drug abuse; behavioral science; health education; healthcare delivery; state health programs; clinical care; preventive health; medical education; health services and clinical research; and healthcare financing, who are selected by the Secretary of the U.S. Department of Health and Human Services (HHS).

DATES: Nominations for membership on the CHACHSPT must be received no later than October 1, 2022. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be electronically mailed to *nchhstppolicy@cdc.gov* with the subject line of ''CHAC 2023 Nomination.''

FOR FURTHER INFORMATION CONTACT: Marah Condit, MS, Committee Management Lead, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, CDC, 1600 Clifton Road NE, Mailstop US8–6, Atlanta, Georgia 30329–4027; Telephone: (404) 639–3423; Email: *MCondit@cdc.gov.*

SUPPLEMENTARY INFORMATION: The Secretary of HHS, and by delegation, the CDC Director and the Administrator, Health Resources and Services Administration (HRSA), are authorized by the Public Health Service Act to: (1) Conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies related to the cases, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments; (2) assist states and their political subdivisions in preventing, suppressing, and treating communicable diseases and other preventable conditions and in promoting health and well-being; (3) assist public and nonprofit private entities in preventing, controlling, and treating sexually transmitted diseases (STDs), including the human immunodeficiency virus (HIV); (4) improve health and achieve health equity through access to quality services and a skilled health workforce and innovative programs; (5) support healthcare services to persons living with or at risk for HIV, viral hepatitis, and other STDs; and (6) advance the education of health professionals and the public from HIV, viral hepatitis, and other STDs.

CHACHSPT meets at least two times each calendar year, or at the discretion of the Designated Federal Officers in consultation with the CHACHSPT co-chairs.

The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented and the committee's function. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. The CHACHSPT charter stipulates that the Committee shall include representation of persons with HIV and other affected populations; state and local health and education agencies; HIV/viral hepatitis/

STD community-based organizations; and the ethics or faith-based community. At least four members shall be persons with HIV.

Committee members are Special Government Employees (SGEs), requiring the filing of financial disclosure reports at the beginning of and annually during their terms. Individuals who are selected for appointment will be required to provide detailed information regarding their financial interests and, for example, any work they do for the federal government through research grants or contracts. Disclosure of this information is required in order for CDC ethics officials to determine whether there is a conflict between the SGE's public duties as members of CHACHSPT and their private interests, including an appearance of a loss of impartiality as defined by federal laws and regulations, and to identify any required remedial action needed to address the potential conflict. CDC and HRSA review potential candidates for CHACHSPT membership when a vacancy arises and provide a slate of nominees for consideration to the Secretary of HHS for final selection. CDC and HRSA each publishes a **Federal Register** notice and will be using a joint process to nominate nominees on a rolling basis; thus, applications received by CDC will be shared with HRSA for consideration. Therefore, potential candidates need only apply in response to one of the **Federal Register** notices. HHS notifies selected candidates of their appointment near the start of the term in December, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

SGE nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- A letter of interest or personal statement from the nominee stating how their expertise would inform the work of CHACHSPT
- A biographical sketch of the nominee (500 words or fewer)
- Current curriculum vitae or resume, including complete contact information (telephone numbers, mailing address, email address)
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, National Institutes of Health, Food and Drug Administration).

Nominations may be submitted directly by the individual seeking nomination or by the person/organization recommending the candidate. CDC and HRSA will collect and retain nominations received for up to two years to create a pool of potential CHACHSPT nominees. When a vacancy occurs, CDC and HRSA will review nominations and may contact nominees at that time.

Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–11815 Filed 6–1–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–22–0612; Docket No. CDC–2022–0074]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Well-Integrated Screening and Evaluation for Women Across the Nation Reporting System (WISEWOMAN). The WISEWOMAN program is designed to prevent, detect, and control, hypertension and other cardiovascular disease (CVD) risk factors through services such as health coaching, and evidence informed lifestyle programs, which are tailored for individual and group behavior change.

DATES: CDC must receive written comments on or before August 1, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0074 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) (OMB Control No. 0920–0612, Exp. 8/31/2022)—Extension—National Center for Chronic Disease and Public Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The WISEWOMAN program, sponsored by the CDC, provides services to low income, uninsured, or underinsured women aged 40–64. The WISEWOMAN program is designed to prevent, detect, and control hypertension and other cardiovascular disease (CVD) risk factors through healthy behavior support services which are tailored for individual and group behavior change. The WISEWOMAN program provides services to women who are jointly enrolled in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), which is also administered by CDC.

The WISEWOMAN program is administered by state health departments and tribal programs. In 2018, a new five-year cooperative agreement was awarded under Funding Opportunity Announcement DP18–1816, subject to the availability of funds. CDC collects two types of information from WISEWOMAN awardees, which is submitted in an electronic data file to CDC twice per year. The Minimum Data Elements (MDE) file contains data using a unique identifier with client-level information about CVD risk factors and types of healthy behavior support services for participants served by the program. The estimated burden per response for the MDE file is 24 hours. The Annual Progress Report provides a narrative summary of each awardee's objectives and the activities undertaken to meet program goals. The estimated burden per response is 16 hours.

There are no changes to the information collected. CDC will continue to use the information collected from WISEWOMAN awardees to support program monitoring and improvement activities, evaluation, and assessment of program outcomes. The overall program evaluation helps to demonstrate program accomplishments and strengthen the evidence for strategy implementation for improved engagement of underserved populations. It can also determine whether the identified strategies and associated activities can be implemented at various levels within a state or tribal organization. Evaluation is also designed to demonstrate how WISEWOMAN can obtain cardiovascular disease health outcome data on at-risk populations, promote public education about CVD risk-factors, and improve the availability of healthy behavior support services for under-served women.

CDC requests a two-year Extension of this data collection. The total estimated annual burden hours are 2,240. Participation in this information collection is required as a condition of cooperative agreement funding. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Aervage burden per response (in hrs.)	Total burden (in hrs.)
WISEWOMAN Awardees	Screening and Assessment and Lifestyle Program MDEs.	35	2	24	1,680
	Annual Progress Report	35	1	16	560
Total					2,240

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–11772 Filed 6–1–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–22FS; Docket No. CDC–2022–0071]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Artificial Stone Countertops: Exposures, Controls, Surveillance, & Translation. The purpose of the proposed data collection is to conduct a survey with artificial stone countertop fabrication facilities to better understand, work practices and controls related to respirable crystalline silica, barriers or facilitators to implementation of medical and exposure monitoring requirements, and

to identify areas for potential intervention, as well as countertop fabrication facilities willing to participate in future NIOSH exposure and health research.

DATES: CDC must receive written comments on or before August 1, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0071 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Artificial Stone Countertops: Exposures, Controls, Surveillance, & Translation—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As a recently introduced technology in the United States, the Artificial Stone (AS) Countertop industry is not well defined; the obligation to monitor workers' health might not be known, considered, or understood; and education on potential hazards and health risks related to respirable crystalline silica (RCS) is limited. Exposure is associated with the development of silicosis, an irreversible, sometimes fatal, but preventable lung disease. Twenty-four cases of silicosis, including two deaths, have been reported among AS fabrication workers in the United States. The anticipated impacts of this project are increased understanding of industry scale, practices, and medical monitoring, and increased collaboration and communication to inform the AS countertop industry of industry hazards, methods to mitigate exposure, and improvement of medical surveillance. Understanding how or if current RCS recommendations and regulations are used by various AS countertop fabrication facilities will identify approaches for improved intervention.

The purpose of the proposed collection is to conduct a survey with AS countertop fabrication facilities to better understand (1) work practices and controls related to respirable crystalline silica, (2) barriers or facilitators to implementation of medical and exposure monitoring requirements, (3) identify areas for potential intervention, and (4) identify countertop fabrication facilities willing to participate in future NIOSH exposure and health research.

The estimate of burden hours is based on an internal pilot test of the survey instrument. In the internal pilot test, 10 simulated interviews were conducted and the average time for reviewing instructions, gathering mock information, and completing the survey was between 10–30 minutes. For the purposes of estimating burden hours, the median time to complete the survey is used. There are approximately 8,694 countertop fabrication establishments in the United States. There are screening questions at the beginning of the survey so all respondents may not actually participate. An estimated 8,600 respondents are anticipated to participate in the survey. CDC requests approval for an estimated 2,150 annual burden hours.

There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
AS Countertop Facility Managers/ Owners.	Survey	8,600	1	15/60	2,150
Total					2,150

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–11770 Filed 6–1–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–22FT; Docket No. CDC–2022–0073]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Enhanced surveillance of respiratory illness among people experiencing homelessness in Anchorage, Alaska. This project will entail collecting nasopharyngeal swabs from people experiencing respiratory symptoms who are accessing homeless services at congregate and non-congregate shelters in Anchorage, Alaska.

DATES: CDC must receive written comments on or before August 1, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0073 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Enhanced surveillance of Respiratory Illness Among People Experiencing Homelessness in Anchorage, Alaska—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

People experiencing homelessness are at risk for respiratory infectious diseases. This project involves enhanced surveillance for respiratory viruses in congregate and non-congregate homeless shelters to provide evidence to improve public health for people who are experiencing homelessness in Anchorage, Alaska. The project team will collect an upper respiratory specimen (*e.g.* nasopharyngeal swab) from people experiencing respiratory symptoms who are accessing shelters. The project team will complete a short symptom questionnaire with the participant and then conduct a medical record review to ascertain the clinical course of infection. Swabs will be tested for multiple viral pathogens to estimate the burden of pathogen-specific respiratory infections among people experiencing homelessness.

CDC requests OMB approval for an estimated 500 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Persons with Respiratory Symptoms Experiencing Homelessness.	Enrollment in Symptom Screening ..	1,000	1	30/60	500
Total	.....	.....	.....	.....	500

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–11771 Filed 6–1–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–22–1083; Docket No. CDC–2022–0071]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Extended Evaluation of the National Tobacco Prevention and Control Public Education Campaign. This collection is used to evaluate the *Tips From Former Smokers (Tips) campaign,* which encourages smokers to quit smoking and to communicate with smokers about the dangers of smoking.

DATES: CDC must receive written comments on or before August 1, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0071 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Extended Evaluation of the National Tobacco Prevention and Control Public Education Campaign (OMB Control No. 0920–1083, Exp. 03/31/2023)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2012, HHS/CDC launched the National Tobacco Prevention and Control Public Education Campaign, *Tips From Former Smokers (Tips) campaign.* The primary objectives of the *Tips campaign* are to encourage smokers to quit smoking and to encourage nonsmokers to communicate with smokers about the dangers of smoking. *Tips* airs annually in all U.S. media markets on broadcast and national cable TV as well as other media channels including digital video, online display and banners, radio, billboards, and other formats. *Tips* ads rely on evidence-based paid media advertising that highlights the negative health consequences of smoking. *Tips* primary target audience is adult smokers; adult nonsmokers constitute the secondary audience. *Tips* paid advertisements are aimed at providing motivation and support to smokers to quit, with information and other resources to increase smokers' chances of success in their attempts to quit smoking. A key objective for the nonsmoker audience is to encourage nonsmokers to communicate with smokers they may know (including family and friends) about the dangers of smoking and to encourage them to quit. *Tips* ads also focus on increasing audience's knowledge of smoking-related diseases, intentions to quit, and other related outcomes.

The goal of the proposed information collection is to evaluate the reach of the *Tips campaign* among intended audiences and to examine the effectiveness of these efforts in impacting specific outcomes that are targeted by *Tips,* including quit attempts and intentions to quit among smokers, nonsmokers' communications about the dangers of smoking, and knowledge of smoking-related diseases among both audiences. This will require customized surveys that will capture all unique messages and components of *Tips.* Information will be collected through Web-based surveys to be self-administered by adults 18 and over on computers in the respondent's home or in another convenient location. Evaluating the impact of the *Tips* campaign on behavioral outcomes is necessary to determine campaign cost effectiveness and to allow program planning for the most effective campaign outcomes. Because *Tips* content changes, it is necessary to evaluate each yearly implementation of the *Tips* campaign.

The proposed information collection will include three survey collections per year (nine surveys in total) generally conducted before, during, and after the *Tips* campaign in each year. Using the same methods outlined in the currently approved information collection (OMB

Control No. 0920–1083, Exp. 3/31/2023), participants will be recruited from two sources: (1) An online longitudinal cohort of adult smokers and nonsmokers, sampled randomly from postal mailing addresses in the United States (address-based sample, or ABS); and (2) the existing GfK/Ipsos KnowledgePanel, an established long-term online panel of U.S. adults. All online surveys, regardless of sample source, will be conducted via the GfK/Ipsos KnowledgePanel Web portal for self-administered surveys.

Information collected by these surveys include smokers' and nonsmokers' awareness of and exposure to specific *Tips* advertisements; knowledge, attitudes, beliefs related to smoking and secondhand smoke; and other marketing exposures. The surveys will also measure behaviors related to smoking cessation (among the smokers in the sample) and behaviors related to nonsmokers' encouragement of smokers to quit smoking, recommendations of cessation services, and attitudes about other tobacco and nicotine products.

It is important to evaluate the *Tips* campaign in a context that assesses the dynamic nature of tobacco product marketing and uptake of various tobacco products, particularly since these may affect successful cessation rates. Survey instruments may be updated to include new or revised items on relevant topics, including cigars, noncombustible tobacco products, and other emerging trends in tobacco use.

The total response burden is estimated at 9,308 annual hours. Approval is requested for three years between early fall 2023 and December 2026. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
General Population	Screening & Consent	16,667	1	5/60	1,389
Adult Smokers, ages 18–54, in the United States.	Smoker Survey Wave A	2,668	1	20/60	889
	Smoker Survey Wave B	1,667	1	20/60	556
	Smoker Survey Wave C	1,667	1	20/60	556
	Smoker Survey Wave D	1,667	1	20/60	556
	Smoker Survey Wave E	1,667	1	20/60	556
	Smoker Survey Wave F	1,667	1	20/60	556
	Smoker Survey Wave G	1,667	1	20/60	556
	Smoker Survey Wave H	1,667	1	20/60	556
	Smoker Survey Wave I	1,667	1	20/60	556
Adult Nonsmokers, ages 18–54, in the United States.	Nonsmoker Survey Wave A	1,100	1	20/60	366
	Nonsmoker Survey Wave B	835	1	20/60	277
	Nonsmoker Survey Wave C	835	1	20/60	277
	Nonsmoker Survey Wave D	835	1	20/60	277
	Nonsmoker Survey Wave E	835	1	20/60	277
	Nonsmoker Survey Wave F	835	1	20/60	277
	Nonsmoker Survey Wave G	835	1	20/60	277
	Nonsmoker Survey Wave H	835	1	20/60	277
	Nonsmoker Survey Wave I	835	1	20/60	277
Total					9,308

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–11773 Filed 6–1–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10779]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by July 5, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the

proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Complaints Submission Process under the No Surprises Act; *Use:* The No Surprises Act directs the Departments to establish a process to receive complaints regarding violations of the application of qualifying payment amount (QPA) requirements by group health plans and health insurance issuers offering group or individual health coverage. The No Surprises Act also directs HHS to establish a process to receive consumer complaints regarding violations by health care providers, facilities, and providers of air ambulance services regarding balance billing requirements and to respond to such complaints within 60 days. CMS will request information from non-federal governmental plans and issuers, health care providers, facilities, providers of air ambulance services, and individuals to review and process a complaint for potential violations of balance billing requirements. *Form Number:* CMS–10779 (OMB control number: 0938–1406); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 39,000; *Total Annual Responses:* 39,000; Total Annual Hours: 19,500. For policy questions regarding this collection contact Patrick Edwards at 301–492–4371.

Dated: May 27, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–11851 Filed 6–1–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Current Population Survey-Child Support Supplement (OMB No.: 0970–0416)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF) is requesting the federal Office of Management and Budget (OMB) approve the Current Population Survey-Child Support Supplement (CPS–CSS), with minor revisions, for an additional three years. The current OMB approval expires on August 31, 2022.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The CPS–CSS collects detailed information on support agreements and awards, including both required payments and amounts received, as well as data about the socioeconomic characteristics of custodial parents and their families. Data collected pertaining to child support, and the subsequent analysis of survey data, will assist legislators and policymakers in determining the efficacy of various child support legislation. Minor changes are being proposed for the 2023 information collection.

Respondents: Individuals and households.

Annual Burden Estimates: On February 2, 2022 ACF invited comments on this information collection (87 FR 6568). During this time, the U.S. Census Bureau informed the Office of Child Support Enforcement that it planned to change the way in which the questions were fielded. In previous years, all households were asked an initial set of questions and a select number were asked the remaining questions. To improve data quality, fewer households will be asked to participate, but they will be asked all questions on the survey. This change reduces the overall number of respondents significantly (34,500 to 3,600) but increases the time per response from about 2 minutes to about 20 minutes. The following estimates reflect estimates based on this new approach.

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Current Population Survey-Child Support Supplement	3,600	1	0.3333	1,200

Estimated Total Annual Burden Hours: 1,200.

(Authority: 13 U.S.C. 182)

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–11827 Filed 6–1–22; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Integrated Preclinical/Clinical AIDS Vaccine Development Program (IPCAVD) (U19 Clinical Trial Not Allowed).

Date: June 30, 2022.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G34, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Vishakha Sharma, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G34, Rockville, MD 20852, 301–761–7036, *vishakha.sharma@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 26, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11798 Filed 6–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer, Heart, and Sleep Epidemiology A Study Section.

Date: June 27–28, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437–3478, *wieschd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Health Services and Systems.

Date: June 27, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael J McQuestion, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, Bethesda, MD 20892, 301–480–1276, *mike.mcquestion@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; IRAP-Infectious Diseases and Reproductive Health.

Date: June 29–30, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health. Rockledge II. 6701 Rockledge Drive. Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ananya Paria, DHSC, MPH, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007H, Bethesda, MD 20892, (301) 827–6513, *pariaa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; The Cellular and Molecular Biology of Complex Brain Disorders.

Date: June 29–30, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Adem Can, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, (301) 435–1042, *cana2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immune Regulation and Immunotherapy.

Date: June 30-July 1, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shahana Majid, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *shahana.majid@nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Section.

Date: June 30, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stacey Nicole Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *stacey.williams@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.

Date: June 30–July 1, 2022.

Time: 9:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christine Jean DiDonato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1014J, Bethesda, MD 20892, (301) 435–1042, *didonatocj@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review

Group; Cardiovascular Differentiation and Development Study Section.

Date: June 30, 2022.

Time: 9:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, (301) 435–0904, *sara.ahlgren@nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Systemic Injury by Environmental Exposure.

Date: June 30–July 1, 2022.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jodie Michelle Fleming, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812R, Bethesda, MD 20892, (301) 867–5309, *flemingjm@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Cellular and Molecular Immunology—A Study Section.

Date: June 30–July 1, 2022.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mohammad Samiul Alam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 809D, Bethesda, MD 20892, (301) 435–1199, *alammos@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes and Genetics.

Date: June 30–July 1, 2022.

Time: 9:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lystranne Alysia Maynard Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–4809, *lystranne.maynard-smith@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts in Neuroscience.

Date: June 30, 2022.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge, Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian H Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–7490, *brianscott@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Neuropathophysiology of Decision Making and Chemobrain.

Date: July 1, 2022.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892, 301–827–7238, *zhaow@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 27, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11812 Filed 6–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Early-stage Development of Data Science Technologies for Infectious and Immune-mediated Diseases (U01 Clinical Trial Not Allowed); Exploratory Data Science Methods and Algorithm Development in Infectious and Immune-mediated Diseases.

Date: June 23–24, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G51, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Thomas F. Conway, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G51, Rockville, MD 20852, 240–507–9685, *thomas.conway@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 26, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11799 Filed 6–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Clinical Applications.

Date: July 15, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jeanette M. Hosseini, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892, (301) 496–2456, *jeanetteh@mail.nih.gov*.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Translational Research Program on Therapy for Visual Disorders (R24).

Date: July 22, 2022.

Time: 10:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ashley Fortress, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892, (301) 827–8613, *ashley.fortress@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 27, 2022.

Victoria E. Townsend

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11811 Filed 6–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Detection of HIV for Self-Testing (R61/R33 Clinical Trial Not Allowed).

Date: June 30, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G21A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Dimitrios N. Vatakis, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G21A, Rockville, MD 20852, 301–761–7176, *dimitrios.vatakis@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 26, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11800 Filed 6–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct

drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438 (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2022–11821 Filed 6–1–22; 8:45 am]

BILLING CODE 4160–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0016]

Meetings To Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of meetings.

SUMMARY: The Federal Emergency Management Agency (FEMA) is holding quarterly status meetings under each of the six Plans of Action, in the corresponding order listed below, to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic.

- Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to Respond to COVID–19.
- Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID–19.
- Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Diagnostic Test Kits and other Testing Components to Respond to COVID–19.
- Plan of Action to Establish a National Strategy for the Manufacture,

Allocation, and Distribution of Medical Devices to Respond to COVID–19.

- Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19.
- Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to Respond to COVID–19.

DATES:

- Thursday, June 2, 2022, from 2:00 p.m. to 3:00 p.m. Eastern Time (ET).
- Thursday, June 16, 2022, from 1:30 p.m. to 2:30 p.m. ET.
- Thursday, June 23, 2022, from 1:30 p.m. to 2:30 p.m. ET.
- Thursday, June 30, 2022, from 1:30 p.m. to 2:30 p.m. ET.
- Thursday, July 21, 2022, from 1:30 p.m. to 2:30 p.m. ET.
- Tuesday, July 26, 2022, from 1:30 p.m. to 2:30 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Mary Anne Lyle, Office of Business, Industry, and Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212–1666.

SUPPLEMENTARY INFORMATION: Notice of these meetings is provided as required by section 708(h)(8) of the Defense Production Act (DPA), 50 U.S.C. 4558(h)(8), and consistent with 44 CFR part 332.

The DPA authorizes the making of ''voluntary agreements and plans of action'' with representatives of industry, business, and other interests to help provide for the national defense.[1] The President's authority to facilitate voluntary agreements with respect to responding to the spread of COVID–19 within the United States was delegated to the Secretary of Homeland Security in Executive Order 13911.[2] The Secretary of Homeland Security further delegated this authority to the FEMA Administrator.[3]

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the **Federal Register** a ''Voluntary Agreement, Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic'' (Voluntary Agreement).[4] Unless terminated earlier, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Agreement may be used to prepare for or respond to any pandemic, including COVID–19, during that time.

On December 7, 2020, the first plan of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID–19 (PPE Plan of Action)—was finalized.[5] The PPE Plan of Action established several sub-committees under the Voluntary Agreement, focusing on different aspects of the PPE Plan of Action.

On May 24, 2021, four additional plans of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Diagnostic Test Kits and other Testing Components to respond to COVID–19, the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to respond to COVID–19, the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to respond to COVID–19, and the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to respond to COVID–19—were finalized.[6] These plans of action established several sub-committees under the Voluntary Agreement, focusing on different aspects of each plan of action.

On October 15, 2021, the sixth plan of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19—was finalized.[7] This plan of action established several sub-committees under the Voluntary Agreement, focusing on different transportation categories.

The meetings are chaired by the FEMA Administrator's delegates from the Office of Response and Recovery (ORR) and Office of Policy and Program Analysis (OPPA), attended by the Attorney General's delegates from the U.S. Department of Justice, and attended by the Chairman of the Federal Trade Commission's delegates. In implementing the Voluntary Agreement, FEMA adheres to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

Meeting Objectives: The objectives of the meetings are as follows:

1. Convene the Requirements Sub-Committees under each of the six Plans of Action to establish priorities related to the COVID–19 response under the Voluntary Agreement.
2. Gather Requirements Sub-Committee Participants and Attendees to ask targeted questions for situational awareness.
3. Identify pandemic-related information gaps and areas that merit sharing by holding these regular quarterly meetings of the Requirements Sub-Committees with key stakeholders.
4. Identify potential Objectives and Actions that should be completed under the Requirements Sub-Committees.

Meetings Closed to the Public: By default, the DPA requires meetings held to implement a voluntary agreement or plan of action be open to the public.[8] However, attendance may be limited if the Sponsor[9] of the Voluntary Agreement finds that the matter to be discussed at a meeting falls within the purview of matters described in 5 U.S.C. 552b(c), such as trade secrets and commercial or financial information.

The Sponsor of the Voluntary Agreement, the FEMA Administrator, found that these meetings to implement the Voluntary Agreement involve matters which fall within the purview of matters described in 5 U.S.C. 552b(c) and the meetings are therefore closed to the public.

Specifically, these meetings may require participants to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for meetings to be closed to the public pursuant to 5 U.S.C. 552b(c)(4).

The success of the Voluntary Agreement depends wholly on the

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[1] 50 U.S.C. 4558(c)(1).

[2] 85 FR 18403 (Apr. 1, 2020).

[3] DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

[4] 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the **Federal Register** on the same day. 85 FR 50049 (Aug. 17, 2020).

[5] *See* 85 FR 78869 (Dec. 7, 2020). *See also* 85 FR 79020 (Dec. 8, 2020).

[6] *See* 86 FR 27894 (May 24, 2021). *See also* 86 FR 28851 (May 28, 2021).

[7] *See* 86 FR 57444 (Oct. 15, 2021). *See also* 87 FR 6880 (Feb. 7, 2022).

[8] *See* 50 U.S.C. 4558(h)(7).

[9] ''[T]he individual designated by the President in subsection (c)(2) [of section 708 of the DPA] to administer the voluntary agreement, or plan of action.'' 50 U.S.C. 4558(h)(7).

willing participation of the private sector participants. Failure to close these meetings to the public could reduce active participation by the signatories due to a perceived risk that sensitive company information could be released to the public. A public disclosure of a private sector participant's information executed prematurely could reduce trust and support for the Voluntary Agreement.

A resulting loss of support by the participants for the Voluntary Agreement would significantly hinder the implementation of the Agency's objectives. Thus, these meeting closures are permitted pursuant to 5 U.S.C. 552b(c)(9)(B).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11842 Filed 6–1–22; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2022–0031]

Agency Information Collection Activities: IMMVI Veterans Portal, Webform 1601–0032

AGENCY: Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until August 1, 2022. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments, identified by docket number Docket # DHS–2022–0031, at:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # DHS–2022–0031. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: On February 2, 2021 President Biden signed Executive Order 14012 Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans. The role of the White House Domestic Policy Council (DPC) is to convene executive departments and agencies (agencies) to coordinate the formulation and implementation of the Administration's domestic policy objectives. Consistent with that role, the DPC shall coordinate the Federal Government's efforts to welcome and support immigrants, including refugees, and to catalyze State and local integration and inclusion efforts. In furtherance of these goals, the DPC shall convene a Task Force on New Americans, which shall include members of agencies that implement policies that impact immigrant communities.

In response to E.O. 14012, on July 2, 2021, the Secretaries of Homeland Security and Veterans Affairs announced a new joint initiative, the Immigrant Military Members and Veterans Initiative (IMMVI), to support our Nation's noncitizen service members, veterans, and their immediate family members and directed their departments to identify and prioritize the return of military service members, veterans, and their immediate family members who were unjustly removed from the United States and ensure that they receive the benefits to which they may be entitled.

The information to be collected for self-disclosure would include: A-Number, USCIS Receipt Numbers (if any), Name, Date of Birth, Country of Residence, Email, Phone Number, Branch and Dates of Military Service, Address, reason for requesting assistance, and Name and Contact Information of Representative, if applicable.

To carry out the goals of IMMVI, DHS is proposing this new data collection to offer noncitizen current and former military members and their families an opportunity to seek assistance from DHS. The purpose of this information collection is to achieve efficiencies in making contact with individuals, better understand their needs, and track and report the number and types of inquiries received. This information will assist DHS in improving access to immigration services and VA health benefits. DHS plans to collect relevant information to provide assistance at the point the individual submits this information on the new website for benefits and immigration assistance. The information collected through this public facing webform will be voluntarily provided by the users.

A new webform hosted on dhs.gov will be established to allow for individuals to submit the necessary information to make contact with the government to seek assistance. Additionally, the government provides an email address for those who are not able to access the webform. The government will then reach out to the individual to provide them with the necessary information needed to request immigration or VA benefits. The progress of the inquiries will be tracked in a DHS case management system.

The non-citizen current or former servicemember or their family member will submit their information through a webform on *dhs.gov*. The information will be transmitted to government systems and shared with the cooperating DHS components and agencies assisting the former military members and their families. All information related to the individual's request and action taken by the government will be noted in the case management system for tracking and appropropriate follow through and action.

If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83–I), describe any methods used to minimize burden.

All information received through the DHS website will be reviewed by trained DHS federal staff assigned to IMMVI and stored in a DHS case management system. No information will be shared with other agencies without the appropriate privacy releases from the individuals accessing the portal. All information received through the portal and any actions taken in response to the information collected will be stored in a DHS case management system.

This is a new information collection request.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security (DHS).
Title: IMMVI Veterans Portal, Webform 1601–NEW.
OMB Number: 1601–0032.
Frequency: Annually.
Affected Public: Public.
Number of Respondents: 500.
Estimated Time per Respondent: 1.
Total Burden Hours: 13,535.00.

Kalinka Cihlar,

Executive Deputy Director, Business Management Directorate.

[FR Doc. 2022–11820 Filed 6–1–22; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2022–0035]

Homeland Security Advisory Council

AGENCY: The Office of Partnership and Engagement (OPE), The Department of Homeland Security (DHS).

ACTION: Notice of a closed Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet virtually on Friday, June 17, 2022. The meeting will be closed to the public.

DATES: The meeting will take place from 10:30 a.m. to 11:15 a.m. ET on Friday, June 17, 2022.

Public participation: The meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Michael Miron at 202–282–8000 or *HSAC@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. Appendix), which requires a portion of each FACA committee meeting to be open to the public unless the President, or the head of the agency to which the advisory committee reports, determines that a portion of the meeting may be closed to the public in accordance with 5 U.S.C. 552b(c).

The HSAC provides organizationally independent, strategic, timely, specific, actionable advice, and recommendations to the Secretary of Homeland Security on matters related to homeland security. The Council consists of senior executives from government, the private sector, academia, law enforcement, and non-governmental organizations.

The HSAC will meet in a closed session from 10:30 a.m. to 11:15 a.m. ET to participate in sensitive discussions with DHS senior leadership regarding DHS Southwest Border operations.

Basis for Closure: In accordance with Section 10(d) of FACA, the Secretary of Homeland Security has determined this meeting must be closed during this session as the disclosure of the information relayed would be detrimental to the public interest for the following reasons:

The HSAC will participate in a sensitive operational discussion containing For Official Use Only and Law Enforcement Sensitive information. This discussion will include information regarding threats facing the United States at the Southwest Border and how DHS plans to address those threats. The session is closed pursuant to 5 U.S.C. 552b(c)(7) and(9)(B).

Dated: May 31, 2022.

Michael J. Miron,

Deputy Executive Director, Homeland Security Advisory Council, Department of Homeland Security.

[FR Doc. 2022–11983 Filed 6–1–22; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–ES–2021–0168; FXES111607MRG01–223–FF07CAMM00]

Marine Mammals; Incidental Take During Specified Activities; Proposed Incidental Harassment Authorization for Southeast Alaska Stock of Northern Sea Otters in Ketchikan, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application; proposed incidental harassment authorization; draft environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, in response to a request under the Marine Mammal Protection Act of 1972, as amended, from the United States Coast Guard, propose to authorize nonlethal, incidental take by harassment of small numbers of the Southeast Alaska stock of northern sea otters between July 1, 2022, and June 30, 2023. The applicant requested this authorization for take that may result from activities associated with a floating dock expansion project in the Tongass Narrows at the U.S. Coast Guard Base Ketchikan. We estimate that this project may result in the nonlethal incidental take of up to five northern sea otters from the Southeast Alaska stock. This proposed authorization, if finalized, will be for up to 35 takes of 5 northern sea otters by Level B harassment only. No injury or mortality is expected or will be authorized.

DATES: Comments on the proposed incidental harassment authorization and the accompanying draft environmental assessment must be received by July 5, 2022.

ADDRESSES: *Document availability:* You may view this proposed authorization, draft environmental assessment, the application package, supporting information, and the lists of references cited herein at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2021–0168, or these documents may be requested as described under **FOR FURTHER INFORMATION CONTACT**.

Comment submission: You may submit comments on this proposed authorization by one of the following methods:

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R7–ES–2021–0168, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, Virginia 22041–3803.
- *Electronic submission:* Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–ES–2021–0168. We will post all comments at *https://www.regulations.gov.* You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. See Request for Public Comments for more information.

FOR FURTHER INFORMATION CONTACT: Sierra Franks, Marine Mammals Management, U.S. Fish and Wildlife Service, MS–341, 1011 East Tudor Road, Anchorage, Alaska, 99503, by email at *R7mmmregulatory@fws.gov;* or by telephone at 1–800–362–5148. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361, *et seq.*) authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals in response to requests by U.S. citizens (as defined in title 50 of the Code of Federal Regulations (CFR) in part 18, at 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) within a specific geographic region for periods of not more than 1 year. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service (Service or we). According to the MMPA, the Service shall authorize this harassment if we find that such taking for the 1-year period:

(1) Is of small numbers of marine mammals of a species or stock;

(2) will have a negligible impact on such species or stocks; and

(3) will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses by Alaska Natives.

If the requisite findings are made, we will issue an authorization that sets forth the following, where applicable:

(a) Permissible methods of taking;

(b) means of effecting the least practicable adverse impact on such species or stock and its habitat and the availability of the species or stock for subsistence uses; and

(c) requirements for monitoring and reporting of such taking by harassment, including, in certain circumstances, requirements for the independent peer review of proposed monitoring plans or other research proposals.

The term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. ''Harassment'' means any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as ''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 (the MMPA defines this as ''Level B harassment'').

The terms ''negligible impact'' and ''unmitigable adverse impact'' are defined in 50 CFR 18.27 (*i.e.,* regulations governing small takes of marine mammals incidental to specified activities) as follows: ''Negligible impact'' is 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. ''Unmitigable adverse impact'' means an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term ''small numbers'' is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates ''small numbers'' with ''negligible impacts.'' We recognize ''small numbers'' and ''negligible impact'' as separate and distinct considerations when reviewing requests for incidental harassment authorizations (IHA) under the MMPA (see *Natural Res. Def. Council, Inc.* v. *Evans,* 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of takes of marine mammals and evaluate if that take is small relative to the size of the species or stock.

The term ''least practicable adverse impact'' is not defined in the MMPA or its enacting regulations. For this IHA, we ensure the least practicable adverse impact by requiring mitigation measures that are effective in reducing the impact of project activities, but they are not so restrictive as to make project activities unduly burdensome or impossible to undertake and complete.

If the requisite findings are made, we will issue an IHA, which will set forth the following, where applicable: (i) Permissible methods of taking; (ii) other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for subsistence uses by coastal-dwelling Alaska Natives (if applicable); and (iii) requirements for monitoring and reporting such taking by harassment.

Summary of Request

On September 10, 2021, the United States Coast Guard (hereafter ''USCG'' or ''the applicant'') submitted an adequate and complete request to the Service for authorization to take by Level B harassment a small number of northern sea otters (*Enhydra lutris kenyoni*) (hereafter ''sea otters'' or ''otters'' unless another species is specified) from the Southeast Alaska stock. The USCG expects take by harassment may occur during the construction of their floating dock in the Tongass Narrows at the USCG Base Ketchikan in Ketchikan, Alaska.

Description of Specified Activities and Specific Geographic Region

The specified activity (the ''project'') involves installation of ten 61-centimeter (cm) (24-inch (in)) steel guide pipes for a floating dock section at the USCG Base Ketchikan. Pipes will be installed over a period of up to 30 days between July 1, 2022, and June 30, 2023. The project will entail three phases of sound-producing construction. First, depending upon the overburden thickness and bedrock bottom conditions, pre-drilling sockets for each guide pile would be drilled. Two piles are expected to be drilled per day, taking 60 minutes each, for a total of 2 hours of rock-socket drilling noise per day. Following pre-drilling, 61-cm (24-in) steel pipes would be inserted into the rock sockets and a vibratory hammer would be used to insert and position the pile within individual sockets. Finally, an impact driver would be used to proof the newly installed piles by tapping each pile five times and then stabilizing using tremie concrete in the pile socket.

Additional project details may be reviewed in the application materials available as described under **ADDRESSES** or may also be requested as described under **FOR FURTHER INFORMATION CONTACT**.

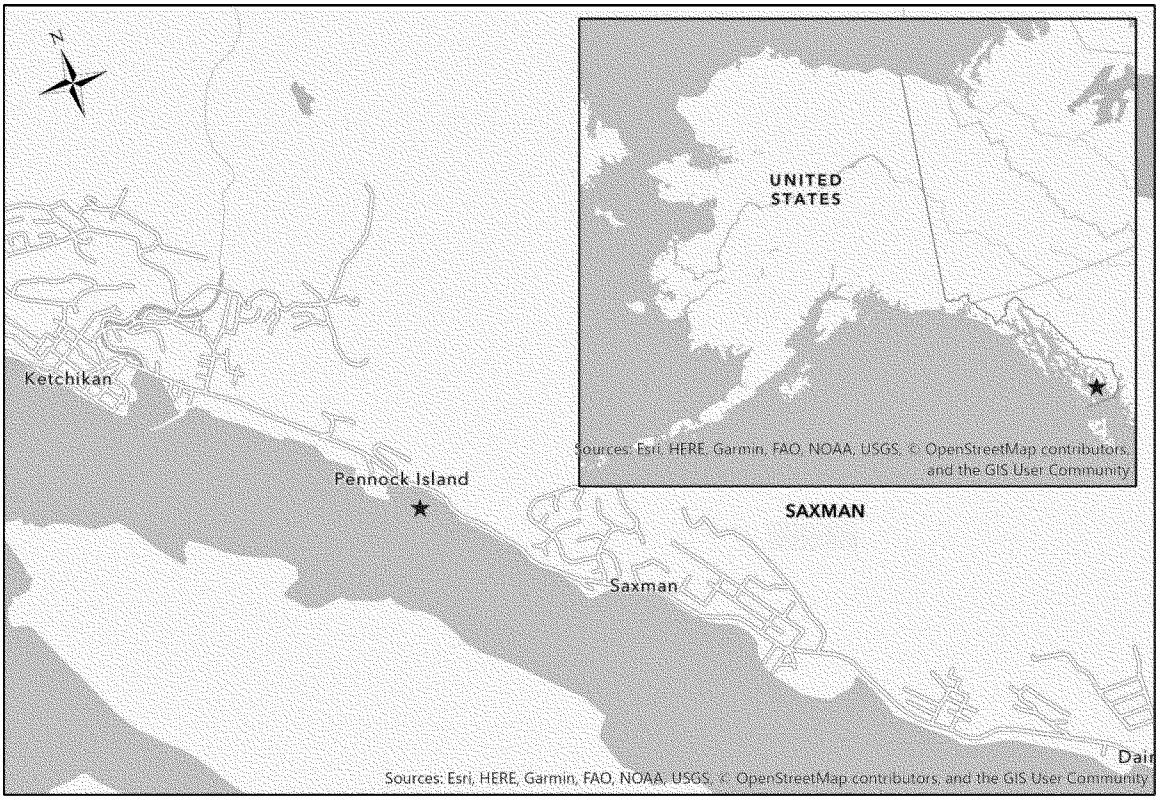

Figure 1. Specified geographic region of the pile-driving activities.

Description of Marine Mammals in the Specific Geographic Region

The northern sea otter is the only marine mammal under the Service's jurisdiction that normally occupies the Northeast Pacific Ocean. Sea otters in Alaska are represented by three stocks: The Southwest Alaska stock, the Southcentral Alaska stock, and the Southeast Alaska stock. Those in the Northeast Pacific Ocean belong to the Southeast Alaska stock. Detailed information about the biology of the Southeast Alaska stock can be found in the most recent stock assessment report (USFWS 2014), which can be found in *https://www.regulations.gov* in Docket No. FWS–R7–ES–2012–0019.

Sea otters may be distributed anywhere within the specific geographic region other than upland areas; however, they generally occur in shallow water near the shoreline. They are most commonly observed within the 40-meter (m) (131-foot (ft)) depth contour (USFWS 2014), although they can be found in areas with deeper water. Ocean depth is generally correlated with distance to shore, and sea otters typically remain within 1 to 2 kilometers (km) (0.62 to 1.24 miles (mi)) of shore (Riedman and Estes 1990). They tend to be found closer to shore during storms, but they venture farther out during good weather and calm seas (Lensink 1962; Kenyon 1969). In the 14 aerial surveys conducted from 1995 to 2012 in Southeast Alaska, 95 percent of otters were found in areas shallower than 40 m (131 ft) (Tinker et al. 2019). Areas important to mating for the Southeast Alaska stock include marine coastal regions containing adequate food resources within the 40-m (131-ft) depth contour.

The 1995–2012 survey data was incorporated into a spatiotemporal model of ecological diffusion using a Bayesian hierarchical framework (Eisaguirre et al. 2021). This model was used to develop the most recent estimate of 26,347 otters in the Southeast Alaska stock and generated otter abundance estimates at a resolution of 400 m by 400 m. Abundance values within the project area ranged from 0.13 to 0.27 otters per 0.16 square kilometer (km^2) (0.062 square miles (mi^2)). Distribution of the population during the proposed project is likely to be similar to that detected during sea otter surveys, as work will occur during the same time of the year that these surveys were conducted.

The documented home range sizes and movement patterns of sea otters illustrate the types of movements that could be seen among otters responding to the proposed activities. Sea otters are nonmigratory and generally do not disperse over long distances (Garshelis and Garshelis 1984). They usually remain within a few kilometers of their established feeding grounds (Kenyon 1981). Breeding males stay for all or part of the year in a breeding territory covering up to 1 km (0.62 mi) of coastline while adult females have home ranges of approximately 8 to 16 km (5 to 10 mi), which may include one or more male territories. Juveniles move greater distances between resting and foraging areas (Lensink 1962; Kenyon 1969; Riedman and Estes 1990; Estes and Tinker 1996). Although sea otters generally remain local to an area, they are capable of long-distance travel. Otters in Alaska have shown daily movement distances greater than 3 km (1.9 mi) at speeds up to 5.5 km per hour (km/hr) (3.4 mi per hour (mi/h)) (Garshelis and Garshelis 1984).

Potential Impacts of the Specified Activities on Marine Mammals

Exposure of Sea Otters to Noise

The specified activities have the potential to result in take of sea otters by harassment from noise. Here, we characterize ''noise'' as sound released into the environment from human activities that exceeds ambient levels or

interferes with normal sound production or reception by sea otters. The terms ''acoustic disturbance'' or ''acoustic harassment'' are disturbances or harassment events resulting from noise exposure. Potential effects of noise exposure are likely to depend on the distance of the otter from the sound source and the level of sound the otter receives. Temporary disturbance or localized displacement reactions are the most likely to occur. No lethal take or Level A harassment are anticipated, nor can the Service authorize lethal take through an IHA. Therefore, none will be authorized.

Whether a specific noise source will affect a sea otter depends on several factors, including the distance between the animal and the sound source, the sound intensity, background noise levels, the noise frequency, the noise duration, and whether the noise is pulsed or continuous. The actual noise level perceived by individual sea otters will depend on distance to the source, whether the animal is above or below water, atmospheric and environmental conditions, and aspects of the noise emitted.

We expect the actual number of otters experiencing Level B harassment by noise to be five or fewer. While individual otters may be taken more than once, the total number of incidental takes of sea otters is expected to be less than 35.

Sea Otter Hearing

Pile-driving activities produce sound frequencies that fall within the hearing range of sea otters. Controlled sound exposure trials on southern sea otters (*Enhydra lutris nereis*) indicate that otters can hear frequencies between 125 hertz (Hz) and 38 kilohertz (kHz) with best sensitivity between 1.2 and 27 kHz (Ghoul and Reichmuth 2014). Aerial and underwater audiograms for a captive adult male southern sea otter in the presence of ambient noise suggest the sea otter's hearing was less sensitive to high-frequency (greater than 22 kHz) and low-frequency (less than 2 kHz) sound than terrestrial mustelids but was similar to that of a California sea lion (*Zalophus californianus*). However, the subject otter was still able to hear low-frequency sounds, and the detection thresholds for sounds between 0.125–1 kHz were between 116–101 decibels (dB), respectively. Dominant frequencies of southern sea otter vocalizations are between 3 and 8 kHz, with some energy extending above 60 kHz (McShane et al. 1995; Ghoul and Reichmuth 2012a).

Exposure to high levels of sound may cause changes in behavior, masking of communications, temporary or permanent changes in hearing sensitivity, discomfort, and injury to marine mammals. Unlike other marine mammals, sea otters do not rely on sound to orient themselves, locate prey, or communicate underwater; therefore, masking of communications by anthropogenic sound is less of a concern than for other marine mammals. However, sea otters do use sound for communication in air (especially mothers and pups; McShane et al. 1995) and may avoid predators by monitoring underwater sound (Davis et al. 1987).

Exposure Thresholds

Noise exposure criteria for identifying underwater noise levels capable of causing Level A harassment (injury) to marine mammal species have been established for ''other marine carnivores,'' which includes sea otters using the same methods as those used by the National Marine Fisheries Service (NMFS) (Southall et al. 2019). These criteria are based on estimated levels of sound exposure capable of causing a permanent shift in sensitivity of hearing (*e.g.,* a permanent threshold shift (PTS) (NMFS 2018)). A PTS occurs when noise exposure causes hairs within the inner ear system to die.

Sound exposure thresholds incorporate two metrics of exposure: The peak level of instantaneous exposure likely to cause a PTS and the cumulative sound exposure level during a 24-hour period (SEL_{CUM}). They also include weighting adjustments for the sensitivity of different species to varying frequencies. The PTS-based injury criteria were developed from theoretical extrapolation of observations of temporary threshold shifts (TTS) detected in lab settings during sound exposure trials (Finneran 2015). For ''other marine carnivores,'' a PTS is predicted to occur at 232 dB peak or 203 dB SEL_{CUM} for impulsive sound and 219 dB SEL_{CUM} for nonimpulsive (continuous) sound.

Thresholds at which TTS is expected to occur have been used as a proxy for Level B harassment (see 70 FR 1871, January 11, 2005; 71 FR 3260, January 20, 2006; and 73 FR 41318, July 18, 2008). Southall et al. (2007) derived TTS thresholds for pinnipeds based on 212 dB peak and 171 dB SEL_{CUM}. Exposures resulting in TTS in pinnipeds were found to range from 152 to 174 dB (183 to 206 dB sound exposure level (SEL)) (Kastak et al. 2005) with a persistent TTS, if not a PTS, after 60 seconds of 184 dB SEL (Kastak et al. 2008). Kastelein et al. (2012) found small but statistically significant TTSs at approximately 170 dB SEL (136 dB, 60 minutes (min)) and 178 dB SEL (148 dB, 15 min). Southall et al. (2019) summarized these and other studies and used the data to develop TTS thresholds for ''other marine carnivores'' of 188 dB SEL_{CUM} for impulsive sounds and 199 dB SEL_{CUM} for nonimpulsive sounds.

The NMFS criteria (2018) do not identify thresholds for avoidance of Level B harassment. For pinnipeds, NMFS has adopted a 160-dB threshold for Level B harassment from exposure to impulse noise and a 120-dB threshold for continuous noise (NMFS 1998; HESS 1999; NMFS undated). These thresholds were developed from observations of mysticete (baleen) whales responding to airgun operations (*e.g.,* Malme et al. 1983a, b; Richardson et al. 1986, 1995) and from equating Level B harassment with noise levels capable of causing TTS in lab settings. Southall et al. (2007, 2019) assessed behavioral response studies and found considerable variability among pinnipeds. The authors determined that exposures between approximately 90 to 140 dB generally do not appear to induce strong behavioral responses in pinnipeds in water. However, they found behavioral effects, including avoidance, become more likely in the range between 120 to 160 dB, and most marine mammals showed some, albeit variable, responses to sound between 140 to 180 dB. Wood et al. (2012) later adapted the approach identified in Southall et al. (2007) to develop a probabilistic scale for marine mammal taxa at which 10 percent, 50 percent, and 90 percent of individuals exposed are assumed to produce a behavioral response. For many marine mammals, including pinnipeds, these response rates were set at sound pressure levels of 140, 160, and 180 dB, respectively.

We have evaluated these thresholds and determined that the Level B harassment threshold of 120 dB for nonimpulsive noise is not applicable to sea otters. The 120-dB threshold is based on studies conducted by Malme et al. in the 1980s, during which gray whales (*Eschrichtius robustus*) were exposed to experimental playbacks of industrial noise. Similar playback studies conducted off the coast of California (Malme 1983a, 1984) included a southern sea otter monitoring component (Riedman 1983, 1984). While the 1983 and 1984 studies detected probabilities of avoidance in gray whales comparable to those reported in Malme et al. (1988), there was no evidence of disturbance reactions or avoidance in southern sea otters. Thus, given the different range of frequencies to which sea otters and gray whales are sensitive, the NMFS 120-dB

threshold based on gray whale behavior is not appropriate for predicting sea otter behavioral responses, particularly for low-frequency sound.

Based on the lack of sea otter disturbance response or any other reaction to the 1980's playback studies and the absence of a clear pattern of disturbance or avoidance behaviors attributable to underwater sound levels up to approximately 160 dB resulting from low-frequency broadband noise, we assume 120 dB is not an appropriate behavioral response threshold for sea otters exposed to continuous underwater noise.

Thus, using the best available scientific information about sea otters, the Service has set 160 dB of received underwater sound as a threshold for Level B harassment for sea otters for this proposed IHA based on the work of Ghoul and Reichmuth (2012a, b), McShane et al. (1995), NOAA (2005), Riedman (1983), Richardson et al. (1995), and others. Exposure to in-water noise levels between 125 Hz and 38 kHz that are greater than 160 dB—for both impulsive and nonimpulsive sound sources—will be considered Level B harassment; thresholds for potentially injurious Level A harassment will be considered 232 dB peak or 203 dB SEL for impulsive sounds and 219 dB SEL for continuous sounds (table 1).

TABLE 1—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS ESTABLISHED BY SOUTHALL ET AL. (2019) THROUGH MODELING AND EXTRAPOLATION FOR "OTHER MARINE CARNIVORES," WHICH INCLUDES SEA OTTERS

[Values are weighted for other marine carnivores' hearing thresholds and given in cumulative sound exposure level (SEL_{CUM} dB re 20µPa in air and SEL_{CUM} dB re 1 µPa in water) for impulsive and nonimpulsive sounds, and unweighted peak sound pressure level (SPL) in air (dB re 20µPa) and water (dB 1µPa) (impulsive sounds only)]

	PTS			PTS		
	nonimpulsive	impulsive		nonimpulsive	impulsive	
	SEL_{CUM}	SEL_{CUM}	Peak SPL	SEL_{CUM}	SEL_{CUM}	Peak SPL
Air	157	146	170	177	161	176
Water	199	188	226	219	203	232

Evidence From Sea Otter Studies

The available studies of sea otter behavior suggest that sea otters may be more resistant to the effects of sound disturbance and human activities than other marine mammals. For example, at Soberanes Point, California, Riedman (1983) examined changes in the behavior, density, and distribution of southern sea otters that were exposed to recorded noises associated with oil and gas activity. The underwater sound sources were played at a level of 110 dB and a frequency range of 50 Hz to 20 kHz and included production platform activity, drillship, helicopter, and semisubmersible sounds. Riedman (1983) also observed the sea otters during seismic airgun shots fired at decreasing distances from the nearshore environment (50, 20, 8, 3.8, 3, 1, and 0.5 nautical miles (nm)) at a firing rate of 4 shots per minute and a maximum air volume of 4,070 cubic inches (in^3). Riedman (1983) observed no changes in the presence, density, or behavior of sea otters as a result of underwater sounds from recordings or airguns, even at the closest distance of 0.5 nm (<1 km or 0.6 mi). However, otters did display slight reactions to airborne engine noise. Riedman (1983, 1984) also monitored the behavior of sea otters along the California coast while they were exposed to a single 1,638 cubic centimeter (cm^3) (100 in^3) airgun and a 67,006 cm^3 (4,089 in^3) airgun array. Sea otters did not respond noticeably to the single airgun, and no disturbance reactions were evident when the airgun array was as close as 0.9 km (0.6 mi).

While at the surface, turbulence from wind and waves attenuates noise more quickly than in deeper water, reducing potential noise exposure (Greene and Richardson 1988; Richardson et al. 1995). Additionally, turbulence at the water's surface limits the transference of sound from water to air. A sea otter with its head above water will be exposed to only a small fraction of the sound energy traveling through the water beneath it. The average time spent above the water each day resting and grooming varies between male and female sea otters and seasonally. Esslinger et al. (2014) found in the summer months (*i.e.,* the season when the proposed action will take place), female otters foraged for an average of 8.78 hours per day while male otters foraged for an average of 7.85 hours per day. Male and female sea otters spent an average of 63 to 67 percent of their summer days at the surface resting and grooming. The amount of total time spent at the surface may help limit sea otters' exposure during noise-generating operations.

Sea otters generally show a high degree of tolerance to noise. In an exploration of potential deterrent techniques, Davis et al. (1988) found northern sea otters exhibited limited response to a variety of airborne and underwater sounds, including a warble tone, sea otter pup calls, killer whale (*Orcinus orca*) calls, air horns, and an underwater noise harassment system designed to drive marine mammals away from crude oil spills. While these stimuli did elicit reactions including startle responses and movement away from noise sources, reactions were only observed within 100–200 m (328–656 ft) of noise sources. Further, otters appeared to become habituated quickly, in as little as 2 hours and at most 3–4 days.

In locations that lack frequent human activity, sea otters appear to have a lower threshold for outward signs of disturbance. Sea otters in Alaska have exhibited escape behaviors in response to the presence and approach of vessels. Behaviors included diving or actively swimming away from a boat, hauled-out sea otters entering the water, and groups of sea otters disbanding and swimming in multiple different directions (Udevitz et al. 1995). Sea otters in Alaska have also been shown to avoid areas with heavy boat traffic but return to those same areas during seasons with less traffic (Garshelis and Garshelis 1984). In Cook Inlet, otters drifting on a tide trajectory that would have taken them within 500 m (0.3 mi) of an active offshore drilling rig tended to swim to change their angle of drift to avoid a close approach despite near-ambient noise levels from the work (BlueCrest 2013).

Individual sea otters in Southeast Alaska will likely show a range of responses to noise from pile-driving activities. Some otters will likely show startle responses, change direction of travel, dive, or prematurely surface. Sea otters reacting to survey activities may

divert time and attention from biologically important behaviors, such as feeding. Some animals may abandon the project area and return when the disturbance has ceased. Based on the observed movement patterns of wild sea otters (*i.e.,* Lensink 1962; Kenyon 1969, 1981; Garshelis and Garshelis 1984; Riedman and Estes 1990; Estes and Tinker 1996), we expect some individuals, independent juveniles, for example, will respond to pile-driving activities by dispersing to areas of suitable habitat nearby, while others, especially breeding-age adult males, will not be displaced.

Consequences of Disturbance

The reactions of wildlife to disturbance can range from short-term behavioral changes to long-term impacts that affect survival and reproduction. When disturbed by noise, animals may respond behaviorally (*e.g.,* escape response) or physiologically (*e.g.,* increased heart rate, hormonal response) (Harms et al. 1997; Tempel and Gutierrez 2003). The energy expense and associated physiological effects could ultimately lead to reduced survival and reproduction (Gill and Sutherland 2000; Frid and Dill 2002). For example, South American sea lions (*Otaria byronia*) visited by tourists exhibited an increase in the state of alertness and a decrease in maternal attendance and resting time on land, thereby potentially reducing population size (Pavez et al. 2015). In another example, killer whales that lost feeding opportunities due to boat traffic faced a substantial (18 percent) estimated decrease in energy intake (Williams et al. 2006). Such disturbance effects can have population-level consequences. Increased disturbance rates have also been associated with a decline in abundance of bottlenose dolphins (*Tursiops* sp.) (Bejder et al. 2006; Lusseau et al. 2006).

These examples illustrate direct effects on survival and reproductive success, but disturbances can also have indirect effects. Response to noise disturbance is considered a nonlethal stimulus that is similar to an antipredator response (Frid and Dill 2002). Sea otters are susceptible to predation, particularly from killer whales and eagles (*Accipitridae* spp.) and have a well-developed antipredator response to perceived threats. For example, Limbaugh (1961) found the presence of a harbor seal (*Phoca vitulina*) did not appear to disturb sea otters, but otters demonstrated a fear response in the presence of a California sea lion by actively looking above and beneath the water.

Although an increase in vigilance or a flight response is nonlethal, a tradeoff occurs between risk avoidance and energy conservation. An animal's reactions to noise disturbance may cause stress and direct an animal's energy away from fitness-enhancing activities such as feeding and mating (Frid and Dill 2002; Goudie and Jones 2004). For example, southern sea otters in areas with heavy recreational boat traffic demonstrated changes in behavioral time budgeting showing decreased time resting and changes in haul-out patterns and distribution (Benham et al. 2006; Maldini et al. 2012). Chronic stress can also lead to weakened reflexes, lowered learning responses (Welch and Welch 1970; van Polanen Petel et al. 2006), compromised immune function, decreased body weight, and abnormal thyroid function (Seyle 1979).

Changes in behavior resulting from anthropogenic disturbance can include increased agonistic interactions between individuals or temporary or permanent abandonment of an area (Barton et al. 1998). The extent of previous exposure to humans (Holcomb et al. 2009), the type of disturbance (Andersen et al. 2012), and the age or sex of the individuals (Shaughnessy et al. 2008; Holcomb et al. 2009) may influence the type and extent of response.

Effects on Habitat and Prey

Physical and biological features of habitat essential to the conservation of sea otters include the benthic invertebrates (urchins, mussels, clams, etc.) that otters eat and the shallow rocky areas and kelp beds that provide cover from predators. Important sea otter habitat in the project area include coastal areas within the 40-m (131-ft) depth contour where high densities of otters have been detected. The MMPA allows the Service to identify avoidance and minimization measures for effecting the least practicable adverse impact of the specified activity on important habitats. Pile-driving activities may impact sea otters within this important habitat; however, the project is not likely to cause lasting effects to habitat. Although a permanent floating dock is being constructed as a part of this project, the area where it is being placed is not likely to serve as important habitat as it is immediately adjacent to an existing operational dock.

The primary prey species for sea otters are sea urchins, abalone, clams, mussels, crabs, and squid (Tinker and Estes 1999). When preferential prey are scarce, otters will also eat kelp, turban snails (*Tegula* spp.), octopuses (*e.g., Octopus* spp.), barnacles (*Balanus* spp.), sea stars (*e.g., Pycnopodia helianthoides),* scallops (*e.g., Patinopecten caurinus),* rock oysters (*Saccostrea* spp.), worms *(e.g., Eudistylia* spp.), and chitons (*e.g., Mopalia* spp.) (Riedman and Estes 1990). A shift to less-preferred prey species may result in more energy spent foraging or processing the prey items; however, the impacts of a change in energy expenditure are not likely seen at the population level (Newsome et al. 2015).

While any activity that may disturb the ocean bottom may cause a temporary increase in suspended sediment, turbidity is likely to have little impact on sea otters and prey species (Todd et al. 2015); however, there may be some impacts from increased sedimentation. Sea otters attempting to forage near these activities could have reduced visibility that may result in failed foraging attempts and a potential shift to less-preferred prey species. This scenario may result in more energy spent foraging or processing the prey items; however, the impacts of a change in energy expenditure are not likely seen at the population level (Newsome et al. 2015). Additionally, the benthic invertebrates may be impacted by increased sedimentation, which could alter the benthic community resulting in more opportunistic species that recover quickly to activities resulting in sedimentation, such as dredging (Kotta et al. 2009). Although foraging of sea otters could be impacted through sedimentation, it is more likely that sea otters would be temporarily displaced from the area due to noise and not from effects due to increased turbidity.

Several recent reviews and empirical studies have addressed the effects of noise on invertebrates (Carroll et al. 2017). Behavioral changes, such as an increase in lobster (*Homanus americanus*) feeding levels (Payne et al. 2007), an increase in wild-caught captive reef squid (*Sepioteuthis australis*) avoidance behavior (Fewtrell and McCauley 2012), and deeper digging by razor clams (*Sinonovacula constricta;* Peng et al. 2016), have been observed following experimental exposures to sound. Physical changes have also been seen in response to increased sound levels, including changes in serum biochemistry and hepatopancreatic cells in a lobster species (*H. americanus;* Payne et al. 2007) and long-term damage to the statocysts required for hearing in several cephalopod species (Andre et al. 2011; Sole et al. 2013).

The effects of increased sound levels on benthic invertebrate larvae have been

mixed. Desoto et al. (2013) found impaired embryonic development in scallop (*Pecten novaezelandiae*) larvae when exposed to 160 dB. Christian et al. (2004) noted a reduction in the speed of egg development of bottom-dwelling crabs following exposure to noise; however, the sound level (221 dB at 2 m or 6.6 ft) was far higher than the proposed construction activities will produce.

While these studies provide evidence of deleterious effects to invertebrates as a result of increased sound levels, Carroll et al. (2017) caution that there is a wide disparity between results obtained in field and laboratory settings. In experimental settings, changes were observed only when animals were housed in enclosed tanks and many were exposed to prolonged bouts of continuous, pure tones. We would not expect similar results in open marine conditions. It is unlikely that noises generated by survey activities will have any lasting effect on sea otter prey given the short-term duration of sounds produced by each component of the proposed work.

Potential Impacts on Subsistence Uses

The proposed specified activities will occur near marine subsistence harvest areas used by Alaska Natives from Ketchikan and the surrounding areas. The majority of sea otter harvests in these areas occur around Prince of Wales, Gravinia, and Kuiu Islands. Between 2018 and 2021, approximately 118 sea otters were harvested from these areas, averaging 30 per year (although numbers from 2021 are preliminary). Only two otters were taken in Ketchikan during this time period (one in 2020, one in 2021).

The proposed project would occur at an active USCG facility. The area potentially affected by the proposed project does not significantly overlap with current subsistence harvest areas. Construction activities will not preclude access to hunting areas or interfere in any way with individuals wishing to hunt. As a part of their environmental assessment completed in compliance with the National Environmental Policy Act, the USCG contacted the Ketchikan Indian Community and the Organized Village of Saxman. Both communities indicated that they did not have concerns with the project and do not believe it will impact the harvest of marine mammals. If any conflicts are identified in the future, the USCG will develop a Plan of Cooperation (POC) specifying the particular steps necessary to minimize any effects the project may have on subsistence harvest.

Mitigation and Monitoring

If an IHA for the project is issued, it must specify means for effecting the least practicable adverse impact on sea otters and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance and the availability of sea otters for subsistence uses by coastal-dwelling Alaska Natives.

In evaluating what mitigation measures are appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses, we considered the manner and degree to which the successful implementation of the measures are expected to achieve this goal. We considered the nature of the potential adverse impact being mitigated (likelihood, scope, range), the likelihood that the measures will be effective if implemented, and the likelihood of effective implementation. We also considered the practicability of the measures for applicant implementation (*e.g.,* cost, impact on operations).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, the applicants have proposed mitigation measures including the following:

- Development of a marine mammal monitoring and mitigation plan;
- Establishment of shutdown and monitoring zones;
- Visual mitigation monitoring by designated Protected Species Observers (PSO);
- Site clearance before startup;
- Limiting in-water activity to daylight hours;
- Soft-start procedures; and
- Shutdown procedures.

These measures are further specified under Proposed Authorization, part *B. Avoidance and Minimization.* The Service has not identified any additional (*i.e.,* not already incorporated into the USCG request) mitigation or monitoring measures that are practicable and would further reduce potential impacts to sea otters and their habitat.

Estimated Incidental Take

Characterizing Take by Level B Harassment

As discussed in *Evidence from Sea Otter Studies,* an individual sea otter's reaction to human activity will depend on the otter's prior exposure to the activity, the potential benefit that may be realized by the individual from its current location, its physiological status, or other intrinsic factors. The location, timing, frequency, intensity, and duration of the encounter are among the external factors that will also influence the animal's response. The Service has identified the following sea otter behaviors as indicating possible Level B harassment:

- Swimming away at a fast pace on belly (*i.e.,* porpoising);
- Repeatedly raising the head vertically above the water to get a better view (spyhopping) while apparently agitated or while swimming away;
- In the case of a pup, repeatedly spyhopping while hiding behind and holding onto its mother's head;
- Abandoning prey or feeding areas;
- Temporary disruption to nurse and/or rest (applies to dependent pups);
- Temporary disruption to rest (applies to independent animals);
- Temporary disruption to use movement corridors;
- Temporary disruption to mating behaviors;
- Shifting/jostling/agitation in a raft so that the raft disperses;
- Sudden diving of an entire raft; or
- Flushing animals off a haulout.

This list is not meant to encompass all possible behaviors; other situations may also indicate Level B harassment.

Reactions capable of causing injury are characterized as Level A harassment events. The project is not anticipated to result in Level A harassment due to exposure of otters to noise capable of causing PTS. However, it is also important to note that, depending on the duration and severity of the above-described Level B harassment behaviors, such responses could constitute Level A harassment.

Calculating Take

We assumed all animals exposed to underwater sound levels that meet or exceed the acoustic exposure criteria shown in the TTS column of table 1 will experience take by Level B harassment due to exposure to underwater noise. Spatially explicit zones of ensonification were established around the proposed construction location to estimate the number of otters that may be exposed to these sound levels. We determined the number of otters present in the ensonification zones using density information generated by Eisaguirre et al. (2021).

The project can be divided into three major components: rock socket drilling, vibratory hammering, and pile-driving using an impact driver. Each of these components will generate a different type of in-water noise. Vibratory hammering will produce nonimpulsive or continuous noise, impact driving will produce impulsive noise, and down-the-hole rock socket drilling is considered

to produce both impulsive and continuous noise (NMFS 2020).

The level of sound anticipated from each project component was established using recorded data from pile-driving in Kodiak, Alaska (a proxy for rock-socket drilling and vibratory hammering; Denes et al. 2016), and Eugene, Oregon (a proxy for impact driving; Caltrans 2020). The NMFS Technical Guidance and User Spreadsheet (NMFS 2018, 2020) was used to determine the distance at which sound levels would attenuate to Level A harassment thresholds, and empirical data from the proxy projects was used to determine the distance at which sound levels would attenuate to Level B harassment thresholds (table 2). The weighting factor adjustment included in the NMFS User Spreadsheet accounts for sound created in portions of an organism's hearing range where they have less sensitivity. We used the weighting factor adjustment for otariid pinnipeds (2), as they are the closest available physiological and anatomical proxy for sea otters. The spreadsheet also incorporates a transmission loss coefficient, which accounts for the reduction in sound level outward from a sound source. We used the NMFS-recommended transmission loss coefficient of 15 for coastal pile-driving activities to indicate simple spread (NMFS 2020).

TABLE 2—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE

[Sound levels for all sources are unweighted and given in dB re 1 μPa. Nonimpulsive sounds are in the form of mean maximum root mean square (RMS) sound pressure level (SPL) as it is more conservative than cumulative sound exposure level (SEL) or peak SPL for these activities. Impulsive sound sources are in the form of SEL for a single strike (s-s)]

Sound Source	Rock-socket drilling		Vibratory hammering	Impact driver
	Nonimpulsive	Impulsive		
Sound level	166 dB re 1μPa RMS SPL mean maximum at 10 m.	154 dB SEL $_{s-s}$	155.5 dB re 1μPa RMS SPL mean maximum at 10 m.	178 dB SEL $_{s-s}$ (equivalent to 190 dB re 1μPa RMS).
Source	Denes et al. 2016	Denes et al. 2016	Denes et al. 2016	Caltrans 2020.
Timing per pile	60 minutes/pile	60 minutes/pile10 strikes/second36,000 strikes/pile.	6 minutes/pile	5 strikes/pile.
Maximum piles per day	2	2	2	2.
Maximum number of days.	5		5	5.
Distance to below Level A Harassment threshold.	7.9 m (25.9 ft)		0.0 m (0.0 ft)	0.8 m (2.6 ft).
Distance to below Level B Harassment threshold.	25 m (82 ft)		5 m (16 ft)	1,000 m (3,281 ft).
Sea otters in affected 400-m × 400-m area.	0.23		0.23	4.1.
Potential sea otters affected by sound.	1		1	5.
Days of activity	5		5	5.
Potential harassment events.	5		5	25.

To determine the number of sea otters that may experience in-water sound greater than 160 dB, we determined the number of sea otters present in each 400-m × 400-m pixel of the sea otter density raster (figure 2) developed by Eisaguirre et al. (2021) and rounded these values to the nearest whole number. We estimated up to one otter may be present in the rock-socket drilling and vibratory hammering ensonification zones and up to five otters may be present in the impact driving zone. Because these zones overlap (*i.e.,* the otter in the rock-socket and vibratory hammering zones is also within the impact driving zone), we estimated the project will result in a total of five sea otters experiencing Level B harassment through behavioral change. One sea otter would experience this harassment for up to 15 days, and four sea otters would experience take for up to 5 days (table 2) for a total of 35 takes of 5 sea otters. No Level A harassment (*i.e.,* injury) is anticipated or authorized. While in-water noise will be at a level capable of causing PTS from up to 7.9 m from the source location, operations will be shut down should any marine mammal come within 20 m of project activities.

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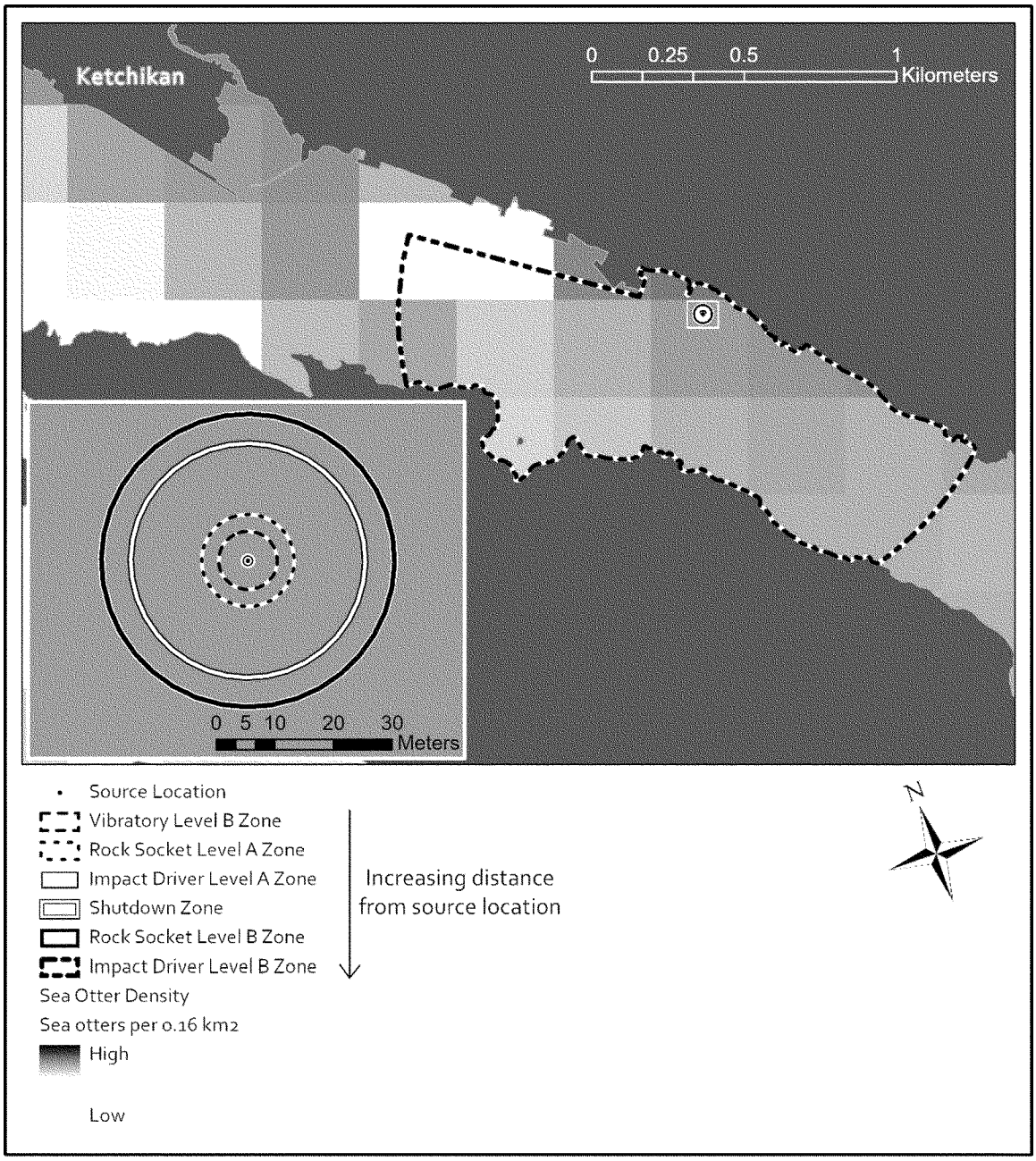

Figure 2. Project area, source location, and Level A Harassment and Level B Harassment ensonification zones for each project component overlaid on sea otter density raster by Eisaguirre et al. (2021).

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Critical Assumptions

We estimate 35 takes of 5 sea otters by Level B harassment will occur due to the proposed specified activities. To conduct this analysis and estimate the potential amount of Level B harassment, several critical assumptions were made.

Otter density was calculated using a Bayesian hierarchical model created by Eisaguirre et al. (2021), which includes assumptions that can be found in the original publication.

Sound level estimates for construction activities were generated using sound source verification from recent pile-driving activities in Kodiak, Alaska, and Eugene, Oregon. Environmental conditions in these locations, including water depth, substrate, and ambient sound levels are similar to those in the project location but not identical. Further, estimation of ensonification zones were based on sound attenuation models using a simple spreading loss model. These factors may lead to actual sound values differing slightly from those estimated here.

Finally, the pile-driving activities described here will also create in-air noise. Because sea otters spend over half of their day with their heads above water (Esslinger et al. 2014), they will be exposed to increases in in-air noise from construction equipment. However, we have calculated Level B harassment with the assumption that an individual may be harassed only one time per 24-hour period, and underwater sound levels will be more disturbing and

extend farther than in-air noise. Thus, while sea otters may be disturbed by noise both in air and underwater, we have relied on the more conservative underwater estimates.

Findings

Sea otters exposed to project-produced sounds are likely to respond with temporary behavioral modification or displacement. Project activities could temporarily interrupt the feeding, resting, and movement of sea otters. Because activities will occur during a limited amount of time and in a localized region, the impacts associated with the project are likewise temporary and localized. The anticipated effects are short-term behavioral reactions and displacement of sea otters near active operations.

Sea otters that encounter the specified activity may exert more energy than they would otherwise due to temporary cessation of feeding, increased vigilance, and retreat from the project area. We expect that affected sea otters will tolerate this exertion without measurable effects on health or reproduction. The anticipated takes will be due to short-term Level B harassment in the form of TTS, startling reactions, or temporary displacement. Chronic exposure to sound levels that cause TTS may lead to PTS (which would constitute Level A harassment) under certain circumstances. While more research into the relationship between chronic noise exposure and PTS is needed (Finneran 2015), existing information indicates that the transition from temporary effects to permanent cellular damage requires a period of time greater than the duration of USCG's specified activities, and as such no PTS is anticipated to result from the USCG's specified activities (Southall et al. 2019).

Small Numbers

We estimate 35 instances of take by Level B harassment of 5 northern sea otters from the Southeast Alaska stock due to behavioral responses or TTS associated with noise exposure. These levels represent a small proportion of the most recent stock abundance estimate for the Southeast Alaska stock. Take of 5 otters is 0.019 percent of the best available estimate of the current population size of 26,347 animals in the Southeast Alaska stock (Eisaguirre et al. 2021) (5 ÷ 26,347 = 0.00019). Predicted levels of take were determined based on estimated density of sea otters in the project area and ensonification zones developed using empirical evidence from similar geographic areas. Based on these numbers, we propose a finding that the proposed project will take only a small number of marine mammals of a species or stock.

Negligible Impact

We propose a finding that any incidental take by level B harassment resulting from the proposed project cannot be reasonably expected to, and is not reasonably likely to, adversely affect the stock through effects on annual rates of recruitment or survival and, therefore, will have no more than a negligible impact on the Southeast Alaska stock of northern sea otters. In making this finding, we considered the best available scientific information, including the biological and behavioral characteristics of the stock, the most recent information on stock distribution and abundance within the area of the specified activities, the current and expected future status of the stock (including existing and foreseeable human and natural stressors), the potential sources of disturbance caused by the project, and the potential responses of marine mammals to this disturbance. In addition, we reviewed applicant-provided materials, information in our files and datasets, published reference materials, and species experts.

Sea otters are likely to respond to proposed activities with temporary behavioral modification or displacement. These reactions are unlikely to have consequences for the long-term health, reproduction, or survival of affected animals. Most animals will respond to disturbance by moving away from the source, which may cause temporary interruption of foraging, resting, or other natural behaviors. Affected animals are expected to resume normal behaviors soon after exposure with no lasting consequences. One otter is estimated to be exposed to construction noise for up to 15 days and four otters are estimated to be exposed to construction noise for up to 5 days, resulting in repeated exposures.

The proposed activities will result in a very small area of increased sound levels above the Level A harassment thresholds. However, the applicant has established a shutdown zone that is greater than the potential Level A harassment zone. Thus, no otters are expected to experience sounds at or above Level A harassment thresholds. Furthermore, Level A harassment is not anticipated as a result of chronic sound exposure because the duration of the specified activities is not believed to be sufficient to cause such effects. (Southall et al. 2019). The area that will experience noise greater than Level B harassment thresholds due to rock-socket drilling and vibratory hammering is very small, and an animal that may be disturbed could easily escape the noise by moving to nearby quiet areas. Further, sea otters spend over half of their time above the surface during the summer months (Esslinger et al. 2014), thus their ears will not be exposed to continuous noise, and the amount of time it may take for permanent injury is considerably longer than that of mammals primarily under water. Some animals may exhibit more severe responses typical of Level B harassment, such as fleeing, ceasing feeding, or flushing from a haul-out. These responses could have temporary, yet significant, biological impacts for affected individuals but are unlikely to result in measurable changes in survival or reproduction.

Although the specified activities may result in approximately 35 incidental takes of 5 otters from the Southeast Alaska stock, we do not expect this level of harassment to affect annual rates of recruitment or survival or result in adverse effects on the stock.

Our proposed finding of negligible impact applies to incidental take associated with the proposed activities as mitigated by the avoidance and minimization measures identified in the USCG's mitigation and monitoring plan. These mitigation measures are designed to minimize interactions with and impacts to sea otters. These measures and the monitoring and reporting procedures are required for the validity of our finding, and adherence to them would be required in a final IHA if issued.

Impact on Subsistence

We propose a finding that the USCG's anticipated harassment will not have an unmitigable adverse impact on the availability of the Southeast Alaska stock of northern sea otters for taking for subsistence uses. In making this finding, we considered the lack of overlap between the timing and location of the proposed activities and the timing and location of subsistence harvest activities in the area of the proposed project. We also considered the applicant's consultation with subsistence communities, which indicated no conflicts, proposed measures for avoiding impacts to subsistence harvest, and commitment to development of a POC, should any concerns be identified.

Required Determinations

National Environmental Policy Act (NEPA)

We have prepared a draft environmental assessment in accordance with the NEPA (42 U.S.C. 4321, *et seq.*). We have preliminarily concluded that authorizing 35 nonlethal, incidental takes by Level B harassment of up to 5 northern sea otters from the Southeast Alaska stock in the specified geographic region during the specified activities during the regulatory period would not significantly affect the quality of the human environment and, thus, preparation of an environmental impact statement for this IHA is not required by section 102(2) of NEPA or its implementing regulations. We are accepting comments on the draft environmental assessment as indicated above in **DATES** and **ADDRESSES.**

Endangered Species Act (ESA)

Under the ESA (16 U.S.C. 1536(a)(2)), all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. The proposed project will occur entirely within the range of the Southeast Alaska stock of the northern sea otter, which is not listed as threatened or endangered under the ESA. The measures included in the proposed IHA will not affect other listed species or designated critical habitat.

Government-to-Government Consultation

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Tribes in developing programs for healthy ecosystems. We are also required to consult with Alaska Native Claims Settlement Act (ANCSA) Corporations in certain circumstances. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture and to make information available to Alaska Natives. Our efforts are guided by the following policies and directives:

(1) The Native American Policy of the Service (January 20, 2016);

(2) the Alaska Native Relations Policy (currently in draft form);

(3) Executive Order 13175 (January 9, 2000) and the Presidential Memorandum on Indigenous Traditional Ecological Knowledge and Federal Decision Making (November 15, 2021);

(4) Department of the Interior Secretarial Orders 3206 (June 5, 1997), 3225 (January 19, 2001), 3317 (December 1, 2011), and 3342 (October 21, 2016); and

(5) the Department of the Interior's policies on consultation with Tribes and with Alaska Native Corporations.

We have evaluated possible effects of the proposed IHA on federally recognized Alaska Native Tribes and ANCSA Corporations. The Service has determined that authorizing the Level B harassment of up to five sea otters from USCG's specified activities would not have any Tribal implications or ANCSA Corporation implications and, therefore, Government-to-Government consultation or Government-to-ANCSA Corporation consultation is not necessary. However, we invite continued discussion, either about the project and its impacts or about our coordination and information exchange throughout the IHA/POC public comment process.

Proposed Authorization

We propose to authorize up to 35 incidental takes by level B harassment of 5 northern sea otters from the Southeast Alaska stock. This authorized take is limited to disruption of behavioral patterns that may be caused by construction activities conducted by the USCG in Ketchikan Alaska, from July 1, 2022, to June 30, 2023. We anticipate no Level A harassment or mortality to northern sea otters resulting from the activities.

A. General Conditions for Issuance of the Proposed IHA

1. The taking or harassment of northern sea otters from the Southeast Alaska stock whenever the required conditions, mitigation, monitoring, and reporting measures are not fully implemented as required by the IHA will be prohibited. Failure to follow measures specified may result in the suspension or revocation of the IHA.

2. If take exceeds the level or type identified in the proposed authorization (*e.g.,* greater than 35 incidents of incidental take of 5 otters by Level B harassment), the IHA will be invalidated and the Service will reevaluate its findings. If project activities cause unauthorized take, such as Level A harassment due to pile-driving noise, acute distress, or any indication of the separation of mother from pup, the USCG must take the following actions: (i) Cease its activities immediately (or reduce activities to the minimum level necessary to maintain safety); (ii) report the details of the incident to the Service's Marine Mammal Management (MMM) office within 48 hours; and (iii) suspend further activities until the Service has reviewed the circumstances, determined whether additional mitigation measures are necessary to avoid further unauthorized taking, and notified the USCG that it may resume project activities.

3. All operations managers and machine operators must receive a copy of the IHA and maintain access to it for reference at all times during project work. These personnel must understand, be fully aware of, and be capable of implementing the conditions of the IHA at all times during project work.

4. The IHA will apply to activities associated with the proposed project as described in this document and in the USCG request (USCG 2021). Changes to the proposed project without prior authorization may invalidate the IHA.

5. The USCG's request will be approved and fully incorporated into the IHA, unless exceptions are specifically noted herein or in the final IHA. The application includes:

- The USCG's original request for an IHA, dated July 22, 2021; and
- A revised application, dated September 10, 2021.

6. Operators will allow Service personnel or the Service's designated representative to visit project work sites to monitor impacts to sea otters and subsistence uses of sea otters at any time throughout project activities so long as it is safe to do so. ''Operators'' are all personnel operating under the USCG's authority, including all contractors and subcontractors.

B. Avoidance and Minimization

7. Construction activities must be conducted using equipment that generates the lowest practicable levels of underwater sound within the range of frequencies audible to sea otters.

8. During all pile-installation activities, regardless of predicted sound levels, a physical interaction shutdown zone of 20 m (66 ft) must be enforced. If a sea otter enters the shutdown zone, in-water activities must be delayed until either the animal has been visually observed outside the shutdown zone, or 15 minutes have elapsed since the last observation time without redetection of the animal.

9. If the impact driver has been idled for more than 30 minutes, an initial set of three strikes from the impact driver must be delivered at reduced energy, followed by a 1-minute waiting period, before full-powered proofing strikes.

10. In-water activity must be conducted in daylight. If environmental conditions prevent visual detection of sea otters within the shutdown zone, in-water activities must be stopped until visibility is regained.

C. Monitoring

11. Operators will work with PSOs to apply mitigation measures and will recognize the authority of PSOs up to and including stopping work, except where doing so poses a significant safety risk to personnel.

12. Duties of the PSOs include watching for and identifying sea otters, recording observation details, documenting presence in any applicable monitoring zone, identifying and documenting potential harassment, and working with operators to implement all appropriate mitigation measures.

13. Monitoring of the shutdown zone must continue for 30 minutes following completion of pile installation.

D. Measures To Reduce Impacts to Subsistence Users

14. Prior to conducting the work, the USCG will take the following steps to reduce potential effects on subsistence harvest of sea otters:

- Avoid work in areas of known sea otter subsistence harvest;
- Discuss the planned activities with subsistence stakeholders including Southeast Alaska villages and traditional councils;
- Identify and work to resolve concerns of stakeholders regarding the project's effects on subsistence hunting of sea otters; and
- If any concerns remain, develop a POC in consultation with the Service and subsistence stakeholders to address these concerns.

E. Reporting Requirements

15. The USCG must notify the Service at least 48 hours prior to commencement of activities.

16. Reports will be submitted to the Service's MMM weekly during project activities. The reports will summarize project work and monitoring efforts.

17. A final report will be submitted to the Service's MMM within 90 days after completion of work or expiration of the IHA. It will summarize all monitoring efforts and observations, describe all project activities, and discuss any additional work yet to be done. Factors influencing visibility and detectability of marine mammals (*e.g.,* sea state, number of observers, fog, and glare) will be discussed. The report will describe changes in sea otter behavior resulting from project activities and any specific behaviors of interest. Sea otter observation records will be provided in the form of electronic database or spreadsheet files. The report will assess any effects the USCG's operations may have had on the availability of sea otters for subsistence harvest and if applicable, evaluate the effectiveness of the POC for preventing impacts to subsistence users of sea otters.

18. Injured, dead, or distressed sea otters that are not associated with project activities (*e.g.,* animals found outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must be reported to the Service within 24 hours of discovery. Photographs, video, location information, or any other available documentation shall be provided to the Service.

19. All reports shall be submitted by email to *fw7_mmm_reports@fws.gov.*

20. The USCG must notify the Service upon project completion or end of the work season.

Request for Public Comments

If you wish to comment on this proposed authorization, the associated draft environmental assessment, or both documents, you may submit your comments by any of the methods described in **ADDRESSES**. Please identify if you are commenting on the proposed authorization, draft environmental assessment or both, make your comments as specific as possible, confine them to issues pertinent to the proposed authorization or draft environmental assessment, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph that you are addressing. The Service will consider all comments that are received before the close of the comment period (see **DATES**).

Comments, including names and street addresses of respondents, will become part of the administrative record for this proposal. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Peter Fasbender,

Assistant Regional Director, Fisheries and Ecological Services, Alaska Region.

[FR Doc. 2022–11848 Filed 6–1–22; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–ES–2021–0171; FF07CAMM00–FX–ES111607MRG01]

Marine Mammals; Letters of Authorization To Take Pacific Walruses and Polar Bears in the Beaufort Sea, Alaska, and Northern Sea Otters in Cook Inlet, Alaska, in 2021

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended, the U.S. Fish and Wildlife Service issued Letters of Authorization for the nonlethal take of polar bears and Pacific walruses incidental to oil and gas industry exploration, development, and production activities in the Beaufort Sea and the adjacent northern coast of Alaska as well as northern sea otters in Cook Inlet, Alaska, in 2021. This notice announces the lists of Letters of Authorizations issued in calendar year 2021. The Letters of Authorization stipulate conditions and methods that minimize impacts to polar bears, Pacific walruses, and northern sea otters from these activities.

ADDRESSES:

Document availability: You may view this notice as well as the Letters of Authorization at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2021–0171, or these documents may be requested as described under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Charles Hamilton, Marine Mammal Management, U.S. Fish and Wildlife Service, MS 341, 1011 East Tudor Road, Anchorage, Alaska 99503, by email at *R7mmmRegulatory@fws.gov* or by telephone at 1–800–362–5148. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make

international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: On August 5, 2016, the U.S. Fish and Wildlife Service (Service) published in the **Federal Register** a final rule (81 FR 52276) establishing regulations that allow us to authorize the nonlethal, incidental, unintentional take of small numbers of polar bears (*Ursus maritimus*) and Pacific walruses (*Odobenus rosmarus divergens*) during year-round oil and gas industry exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. These incidental take regulations (ITRs) were located in subpart J in part 18 of title 50 of the Code of Federal Regulations (CFR) and were effective through August 5, 2021. The rule prescribed a process under which we issue Letters of Authorization (LOAs) to applicants conducting activities as described under the provisions of the regulations.

On August 5, 2021, the Service published in the **Federal Register** a new rule (86 FR 42982) that replaced the previous ITRs and expires on August 5, 2026. This new rule similarly prescribes a process under which we issue LOAs to applicants conducting activities as described under the provisions of the regulations.

Each LOA stipulates conditions or methods that are specific to the activity and location. Holders of the LOAs must use methods and conduct activities in a manner that minimizes to the greatest extent practicable adverse impacts on Pacific walruses and polar bears and their habitat, and on the availability of these marine mammals for subsistence purposes. No intentional take or lethal incidental take is authorized under these regulations.

In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) and our regulations at 50 CFR part 18, subpart J, in 2021, we issued LOAs to the companies in the Beaufort Sea and adjacent northern coast of Alaska shown in table 1. The Service notes that in August 2021 we issued the following LOAs (21–01, 21–02, 21–03, 21–04, 21–05, 21–06, 21–07, 21–08). After issuance of the LOAs, the Service determined that they should be revised to better reflect requirements pertaining to monitoring potential polar bear denning activity; therefore, the Service issued corrected LOAs in October 2021 reflecting this revision. Further, the Service has received requests from certain LOA holders that their issued LOA be amended to reflect new activities or a change in existing activities. The Service includes in the table below all original LOAs, corrected LOAs, and amended LOAs issued in 2021.

TABLE 1—LETTERS OF AUTHORIZATION ISSUED FOR OIL AND GAS DEVELOPMENT ACTIVITIES IN THE BEAUFORT SEA, ALASKA, IN 2021

Company	Project	LOA No.
Conoco Philips Alaska	Oil and gas exploration and development activities of the Kuparuk and Alpine oilfields and associated units. **This LOA was issued under the 2016–2021 ITRs.*	16–13 [2nd Amendment].
Conoco Philips Alaska	Geotechnical survey within the Arctic Slope Regional Corporation mine site and the installation of four survey monuments around the existing Colville Delta No. 4 gravel pad. **This LOA was issued under the 2016–2021 ITRs.*	21–02.
Exxon Mobil/Hilcorp	Operational activities in support of the Point Thomson production facility in the Point Thomson Unit (PTU) of the North Slope, Alaska. (Date issued: 08/05/2021).	21–01.
Exxon Mobil/Hilcorp	Operational activities in support of the Point Thomson production facility in the PTU of the North Slope, Alaska. (Date issued: 10/18/2021).	21–01 [Corrected].
Exxon Mobil	Operational activities in support of the Point Thomson production facility in the PTU of the North Slope, Alaska. (Date issued: 12/09/2021).	21–01 [Amended].
Eni U.S. Operating	Oil and gas drilling and production on Spy Island drillsite and Oooguruk drillsite, maintenance and operation of wells and facilities at Oliktok production pad, and operation of facilities at Oooguruk tie-in pad and Nikaitchuq operations center. (Date issued: 08/05/2021).	21–02.
Eni U.S. Operating	Oil and gas drilling and production on Spy Island drillsite and Oooguruk drillsite, maintenance and operation of wells and facilities at Oliktok production pad, and operation of facilities at Oooguruk tie-in pad and Nikaitchuq operations center. (Date issued: 10/18/2021).	21–02 [Corrected].
Oil Search Alaska	Constructing and maintaining pads, gravel roads, ice roads, and a boat launch; drilling and associated well-testing; installing temporary facilities, pipelines, and culverts; and conducting field surveys within and adjacent to the Pikka Unit. (Date issued: 8/5/2021).	21–03.
Oil Search Alaska	Constructing and maintaining pads, gravel roads, ice roads, and a boat launch; drilling and associated well-testing; installing temporary facilities, pipelines, and culverts; and conducting field surveys within and adjacent to the Pikka Unit. (Date issued: 10/18/2021).	21–03 [Corrected].
Glacier Oil and Gas Corporation	Ice road construction, exploration, development, and oil production activities associated with the Badami oilfield in the North Slope. (Date issued: 08/05/2021).	21–04.
Glacier Oil and Gas Corporation	Ice road construction, exploration, development, and oil production activities associated with the Badami oilfield in the North Slope. (Date issued: 10/18/2021).	21–04 [Corrected].
Hilcorp	Oil and gas exploration, production, development and support activities in the Milne Point, Duck Island (Endicott), Northstar Island, and Prudhoe Bay operation areas of the North Slope. (Date issued: 08/05/2021).	21–05.
Hilcorp	Oil and gas exploration, production, development and support activities in the Milne Point, Duck Island (Endicott), Northstar Island, and Prudhoe Bay operation areas of the North Slope. (Date issued: 10/18/2021).	21–05 [Corrected].

TABLE 1—LETTERS OF AUTHORIZATION ISSUED FOR OIL AND GAS DEVELOPMENT ACTIVITIES IN THE BEAUFORT SEA, ALASKA, IN 2021—Continued

Company	Project	LOA No.
Conoco Philips Alaska	This field-wide LOA is for activities associated with the operations at the Kuparuk River Unit, Colville River Unit, Greater Mooses Tooth Unit, and surrounding non-unit area. (Date issued: 08/05/2021).	21–06.
Conoco Philips Alaska	This field-wide LOA is for activities associated with the operations at the Kuparuk River Unit, Colville River Unit, Greater Mooses Tooth Unit, and surrounding non-unit area. (Date issued: 10/18/2021).	21–06 [Corrected].
Conoco Philips Alaska	Construction on the Greater Mooses Tooth Two Pad/Mooses Tooth 7 within the National Petroleum Reserve—Alaska. (Date issued: 08/05/2021).	21–07.
Conoco Phillips Alaska	Construction on the Greater Mooses Tooth Two Pad/Mooses Tooth 7 within the National Petroleum Reserve–Alaska. (Date issued: 10/18/2021).	21–07 [Corrected].
Alyeska Pipeline Service Company	Operation and maintenance of the Trans Alaska Pipeline System, which extends from Pump Station 1 in the Prudhoe Bay oilfield to the Valdez Marine Terminal. (Date issued: 08/18/2021).	21–08.
Alyeska Pipeline Service Company	Operation and maintenance of the Trans Alaska Pipeline System, which extends from Pump Station 1 in the Prudhoe Bay oilfield to the Valdez Marine Terminal. (Date issued: 10/18/2021).	21–08 [Corrected].
Conoco Philips	Activities associated with plugging and abandonment of existing exploration wells (Scout 1, Cassin 1, and Cassin 6) in the Bear Tooth Unit and construction and maintenance of ice pads and ice roads. (Date issued: 09/15/2021).	21–09.
Conoco Philips Alaska	Activities associated with plugging and abandonment of existing exploration wells (Scout 1, Cassin 1, and Cassin 6) in the Bear Tooth Unit and construction and maintenance of ice pads and ice roads. (Date issued: 12/01/2021).	21–09 [Amended].
SAExploration, Inc	Narwhal Phase II Seismic Survey in the National Petroleum Reserve—Alaska and Kuukpik Corporation lands. (Date issued: 12/03/2021).	21–10.

* The 2016–2021 ITRs were established by a final rule published at 81 FR 52276, August 5, 2016.

On August 1, 2019, the Service published in the **Federal Register** a final rule (84 FR 37716) establishing regulations that allow us to authorize the nonlethal, incidental, unintentional take of small numbers of northern sea otters (*Enhydra lutris kenyoni*) during year-round oil and gas industry exploration, development, production, and transportation activities in Cook Inlet, Alaska. The rule established subpart K in part 18 of title 50 of the CFR and is effective through August 1, 2024. The rule prescribes a process under which we issue LOAs to applicants conducting activities as described under the provisions of the regulations.

Each LOA stipulates conditions or methods that are specific to the activity and location. Holders of the LOAs must use methods and conduct activities in a manner that minimizes to the greatest extent practicable adverse impacts on northern sea otters and their habitat and on the availability of northern sea otters for subsistence purposes. No intentional take or lethal incidental take is authorized under these regulations.

In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) and our regulations at 50 CFR part 18, subpart K, in 2021, we issued an LOA to the following company in Cook Inlet, Alaska, as shown in table 2.

TABLE 2—LETTER OF AUTHORIZATION ISSUED FOR OIL AND GAS DEVELOPMENT ACTIVITIES IN COOK INLET, ALASKA, IN 2021

Company	Project	LOA No.
Hilcorp Alaska	Hilcorp's Lower Cook Inlet Outer Continental Shelf geohazard survey, Lower Cook Inlet exploratory drilling, North Cook Inlet Unit subsea well plug and abandonment activity, and routine maintenance of pipelines and platforms in the Cook Inlet.	21–CI–01.

Authority: We issue this notice under the authority of the MMPA (16 U.S.C. 1361 *et seq.*).

Peter Fasbender,

Assistant Regional Director/Fisheries and Ecological Services, Alaska Region.

[FR Doc. 2022–11849 Filed 6–1–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1009]

Bulk Manufacturer of Controlled Substances Application: Bulk Manufacturer of Marihuana: Nusachi Labs, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: The Drug Enforcement Administration (DEA) is providing notice of an application it has received from an entity applying to be registered to manufacture in bulk basic class(es) of controlled substances listed in schedule I. DEA intends to evaluate this and other pending applications according to its regulations governing the program of growing marihuana for scientific and medical research under DEA registration.

DATES: Registered bulk manufacturers of the affected basic class(es), and

applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before August 1, 2022.

ADDRESSES: DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.''

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) prohibits the cultivation and distribution of marihuana except by persons who are registered under the CSA to do so for lawful purposes. In accordance with the purposes specified in 21 CFR 1301.33(a), DEA is providing notice that the entity identified below has applied for registration as a bulk manufacturer of schedule I controlled substances. In response, registered bulk manufacturers of the affected basic class(es), and applicants therefor, may submit electronic comments on or objections of the requested registration, as provided in this notice. This notice does not constitute any evaluation or determination of the merits of the application submitted.

The applicant plans to manufacture bulk active pharmaceutical ingredients (API) for product development and distribution to DEA registered researchers. If the application for registration is granted, the registrant would not be authorized to conduct other activity under this registration aside from those coincident activities specifically authorized by DEA regulations. DEA will evaluate the application for registration as a bulk manufacturer for compliance with all applicable laws, treaties, and regulations and to ensure adequate safeguards against diversion are in place.

As this applicant has applied to become registered as a bulk manufacturer of marihuana, the application will be evaluated under the criteria of 21 U.S.C. 823(a). DEA will conduct this evaluation in the manner described in the rule published at 85 FR 82333 on December 18, 2020, and reflected in DEA regulations at 21 CFR part 1318.

In accordance with 21 CFR 1301.33(a), DEA is providing notice that on March 16, 2022, Nusachi Labs, LLC, 2909 Armory Drive, Nashville, Tennessee 37204, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–11826 Filed 6–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–954]

Bulk Manufacturer of Controlled Substances Application: Sigma Aldrich Research Biochemicals, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Sigma Aldrich Research Biochemicals, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before August 1, 2022. Such persons may also file a written request for a hearing on the application on or before August 1, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on December 29, 2021, Sigma Aldrich Research Biochemicals, Inc., 400–600 Summit Drive, Burlington, Massachusetts 01803, applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Cathinone	1235	I
4-Methyl-N-Methylcathinone	1248	I
Methaqualone	2565	I
JWH–018 & AM678	7118	I
1-(5-Fluoropentyl)-3-(1-Naphthoyl)Indole	7201	I
Lysergic Acid Diethylamide	7315	I
Tetrahydrocannabinols	7370	I
Mescaline	7381	I
2,5-Dimethoxyamphetamine	7396	I
3,4-Methylenedioxymethamphetamine	7405	I
Alpha-Methyltryptamine	7432	I
Dimethyltryptamine	7435	I
5-Methoxy-N,N-Diisopropyltryptamine	7439	I
1-Benzylpiperazine	7493	I
2-(2,5-Dimethoxyphenyl)Ethanamine	7517	I
3,4-Methylenedioxypyrovalerone	7535	I
3,4-Methylenedioxy-N-Methylcathinone	7540	I
Heroin	9200	I
Normorphine	9313	I
Norlevorphanol	9634	I
Acetyl Fentanyl	9821	I
Amphetamine	1100	II

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Nabilone	7379	II
Phencyclidine	7471	II
Cocaine	9041	II
Codeine	9050	II
Ecgonine	9180	II
Levorphanol	9220	II
Meperidine	9230	II
Methadone	9250	II
Morphine	9300	II
Thebaine	9333	II
Levo-Alphacetylmethadol (LAAM)	9648	II
Noroxymorphone	9668	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Fentanyl	9801	II

The company plans to manufacture reference standards.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–11823 Filed 6–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1017]

Importer of Controlled Substances Application: Unither Manufacturing LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Unither Manufacturing LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 5, 2022. Such persons may also file a written request for a hearing on the application on or before July 5, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on April 8, 2022, Unither Manufacturing LLC, 331 Clay Road, Rochester, New York 14623–3226, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II

The company plans to import the listed controlled substance solely for updated analytical testing purposes for European customer requirements. This analysis is required to allow the company to export domestically-manufactured finished dosage forms to foreign markets. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–11824 Filed 6–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1008]

Bulk Manufacturer of Controlled Substances Application: Bulk Manufacturer of Marihuana: FPC Group LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: The Drug Enforcement Administration (DEA) is providing notice of an application it has received from an entity applying to be registered to manufacture in bulk basic class(es) of controlled substances listed in schedule I. DEA intends to evaluate this and other pending applications according to its regulations governing the program of growing marihuana for scientific and medical research under DEA registration.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before August 1, 2022.

ADDRESSES: DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment

field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.''

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) prohibits the cultivation and distribution of marihuana except by persons who are registered under the CSA to do so for lawful purposes. In accordance with the purposes specified in 21 CFR 1301.33(a), DEA is providing notice that the entity identified below has applied for registration as a bulk manufacturer of schedule I controlled substances. In response, registered bulk manufacturers of the affected basic class(es), and applicants therefor, may submit electronic comments on or objections of the requested registration, as provided in this notice. This notice does not constitute any evaluation or determination of the merits of the application submitted.

The applicant plans to manufacture bulk active pharmaceutical ingredients (API) for product development and distribution to DEA registered researchers. If the application for registration is granted, the registrant would not be authorized to conduct other activity under this registration aside from those coincident activities specifically authorized by DEA regulations. DEA will evaluate the application for registration as a bulk manufacturer for compliance with all applicable laws, treaties, and regulations and to ensure adequate safeguards against diversion are in place.

As this applicant has applied to become registered as a bulk manufacturer of marihuana, the application will be evaluated under the criteria of 21 U.S.C. 823(a). DEA will conduct this evaluation in the manner described in the rule published at 85 FR 82333 on December 18, 2020, and reflected in DEA regulations at 21 CFR part 1318.

In accordance with 21 CFR 1301.33(a), DEA is providing notice that on November 18, 2021, FPC Group LLC, 1601 South East 1st Street, Lawton, Oklahoma 73501, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–11825 Filed 6–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before July 5, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

Two construction standards, ''Medical Services and First Aid'' (§ 1926.50), and ''General Requirements for Storage'' (§ 1926.250), contain posting provisions. Paragraph (f) of § 1926.50 requires employers to conspicuously post emergency telephone numbers for physicians, hospitals, or ambulances at their worksites if 911 emergency telephone service is not locally available; in the event that a worker has a serious injury at a worksite, this posting requirement helps expedite emergency medical treatment of the worker. Paragraph (a)(2) of § 1926.250 specifies that employers must post the maximum safe load limits of floors located in storage areas inside buildings or other structures under construction, unless the floors or slabs are on grade (sitting on the ground). This provision prohibits employers from overloading floors in areas used to store material and equipment where a structure's floors are not supported directly by the ground. This requirement is intended to prevent floor collapses which could seriously injure or kill workers. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 2, 2022 (87 FR 11736).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits (29 CFR 1926.50 and 1926.250).

OMB Control Number: 1218–0093.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 885,922.

Total Estimated Number of Responses: 263,262.

Total Estimated Annual Time Burden: 55,184 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2022–11794 Filed 6–1–22; 8:45 am]

BILLING CODE 4510–26–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–61 and CP2022–67; MC2022–62 and CP2022–68]

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:* June 6, 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).:* MC2022–61 and CP2022–67; *Filing Title:* USPS Request to Add Priority Mail Express Contract 94 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 26, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* June 6, 2022.

2. *Docket No(s).:* MC2022–62 and CP2022–68; *Filing Title:* USPS Request to Add Priority Mail Contract 743 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 26, 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:* June 6, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–11862 Filed 6–1–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 2, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 26, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 94 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–61, CP2022–67.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–11817 Filed 6–1–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 2, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 26, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 743 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–62, CP2022–68.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–11818 Filed 6–1–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94994; File No. SR–PEARL–2022–09]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Remove Certain Credits and Increase Trading Permit Fees

May 26, 2022.

On March 30, 2022, MIAX PEARL, LLC (''MIAX Pearl'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to remove certain credits and increase trading permit fees. The proposed rule change was published for comment in the **Federal Register** on April 18, 2022.[3]

On May 17, 2022, MIAX Pearl withdrew the proposed rule change (SR–PEARL–2022–09).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11787 Filed 6–1–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94991; File No. SR–NYSE–2022–14]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Modify Certain Pricing Limitations for Securities Listed on the Exchange Pursuant to a Primary Direct Floor Listing

May 26, 2022.

On April 7, 2022, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow companies to modify certain pricing limitations for securities listed on the Exchange pursuant to a Primary Direct Floor Listing. The proposed rule change was published for comment in the **Federal Register** on April 19, 2022.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 3, 2022. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates July 18, 2022 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2022–14).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11792 Filed 6–1–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94993; File No. SR–PEARL–2022–23]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Remove Certain Credits and Increase Trading Permit Fees

May 26, 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 May 17, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to amend its monthly Trading Permit [3] fees

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94696 (April 12, 2022), 87 FR 22987. Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-pearl-2022-09/srpearl202209.htm.*

[4] 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. 94708 (April 13, 2022), 87 FR 23300 (April 19, 2022). Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nyse-2022-14/srnyse202214.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

for Members [4] and no longer provide two monthly credits associated with Trading Permit and non-transaction fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to amend the monthly Trading Permit fees for Members and to no longer provide two monthly credits associated with Trading Permit and non-transaction fees. The proposed changes are designed to update the Exchange's Trading Permit fees to reflect their current value—rather than their value when MIAX Pearl was a new options exchange five years ago—based on the Exchange's ability to deliver value to its customers through technology, liquidity and functionality. Newly-opened exchanges often charge lower fees for certain services such as memberships to attract order flow to an exchange, and later amend their fees to reflect the true value of those services,[5] absorbing all costs to provide those services in the meantime. Allowing newly-opened exchanges time to build and sustain market share before increasing non-transaction fees encourages market entry and promotes competition. In fact, the Exchange socialized the proposed fee increases with Members prior to first implementing the changes. During that process, some Members stated that they anticipated a potential increase due to the lower rates the Exchange historically charged. Each of these changes are described below.

A Trading Permit confers the right to transact on the Exchange [6] and are available to all Members. The Exchange notes that requiring a Trading Permit to trade on the Exchange and charging a monthly fee for such is comparable to other monthly membership requirements and associated fees charged by other exchanges and is described further below. Trading Permits, like membership fees, grant access and allow Members to be active on the Exchange, thus providing the ability to submit orders and trade on the Exchange, in the manner consistent with the membership type. Without a Trading Permit, or ''membership'' as referred to by other exchanges, a Member cannot directly trade on the Exchange. Therefore, a Trading Permit is a means to directly access the Exchange, which offers meaningful value. The Exchange has not amended its Trading Permit fees since the fees were first adopted in 2018.[7]

The Exchange has two types of Members, Electronic Exchange Members [8] (''EEMs'') and Market Makers.[9] The Exchange currently charges monthly fees for Trading Permits pursuant to Exchange Rule 200(f), which varies based on the interface used by the Member and the Member's average monthly trading volumes. The Exchange provides two interfaces to access the MIAX Pearl System,[10] the FIX Interface [11] and MEO Interface,[12] and all Members are able to use either interface based on their business models and needs. The FIX Interface is the industry-wide uniform message format and provides lower bandwidth, less capacity, and fewer Exchange resources. EEMs, who are primarily order flow providers, are the primary users of the FIX Interface.[13] Meanwhile, the MEO Interface is the more robust interface offering lower latency and higher throughput. Market Makers primarily use the MEO Interface.[14]

The Exchange offers three time-in-force modifiers:[15] Day Limit (''Day''), Immediate-Or-Cancel (''IOC''), and Good-Till Cancel (''GTC'').[16] While all order types are available for use on either interface, only the time-in-force modifiers of IOC and Day are available on the MEO Interface.[17] Market Makers utilize the time-in-force of Day on orders to be posted on the MIAX Pearl Options Book [18] and to meet Market

[4] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[5] *See, e.g.,* Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), also *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rulefilings/filings/2020/SR-NYSENat-2020-05.pdf.* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero); *see also* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (introduction of membership fees by MEMX).

[6] *See* Exchange Rule 200(a).

[7] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[8] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[9] The term ''Market Maker'' or ''MM'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange Rules. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[10] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[11] The term ''FIX Interface'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[12] The term ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[13] The Exchange does not propose to amend the fees for EEM Clearing Firms, which is set at $250 per month and not based on the amount of volume conducted on the Exchange. The term ''EEM Clearing Firm'' means an EEM that solely clears transactions on the Exchange and does not connect to the Exchange via either the FIX Interface or MEO Interface. *See* the Definitions Section of the Fee Schedule.

[14] Today, seven Members that are EEMs and twelve Members that are Market Makers utilize the MEO Interface. Based on their own business decisions and needs, some EEMs elect to utilize the MEO Interface today due to its lower latency and higher throughput. Also, Members that act as both an EEM and Market Maker may choose to ulitlize only the MEO Interface for both activities as a means to streamline their architecture between them and the Exchange. No Market Maker utilizes the FIX Interface.

[15] *See* MIAX Pearl Options Exchange User Manual, Section 6, Order Types, *available at https://www.miaxoptions.com/exchange-functionality/pearl* (last visited May 16, 2022).

[16] *See, e.g.,* Exchange Rule 516.

[17] *See* preamble to Exchange Rule 516 (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). *See also* Section 4.1.1.2 of the MEO Interface Specification, *available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf* (indicating that the time—in-force instructions of IOC and Day are available on the MEO interface).

[18] The term ''Book'' means the electronic book of buy and sell orders and quotes maintained by the System. *See* Exchange Rule 100.

Makers' continuous quoting obligations under Exchange Rule 605(d).[19] Other Market Makers that primarily remove liquidity tend to be more latency sensitive and utilize the time-in-force of IOC on orders when looking to remove liquidity from the MIAX Pearl Options Book. The MEO Interface allows the submission of Cancel-Replacement orders,[20] which allow for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions.[21] Cancel-Replacement orders are primarily used by Market Makers as part of their continuous quoting obligation. Market Makers primary users of the MEO Interface due to its lower latency, higher throughput, and available time-in-force instructions and order types that assist them in satisfying their market making obligations.

Removal of Monthly Trading Permit Fee Credits

Monthly Volume Credit

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the credits applicable to the Monthly Volume Credit for Members. The Exchange established the Monthly Volume Credit in 2018 [22] to encourage Members to send increased Priority Customer [23] order flow to the Exchange, which the Exchange applied to the assessment of non-transaction fees for that Member. Prior to and during periods when this proposal was not in effect, the Exchange applied a different Monthly Volume Credit depending on whether the Member connects to the Exchange via the FIX or MEO Interface. Prior to and during periods when this proposal was not in effect, the Exchange assessed the Monthly Volume Credit to each Member that has executed Priority Customer volume along with that of its affiliates,[24] not including Excluded Contracts,[25] of at least 0.30% of MIAX Pearl-listed Total Consolidated Volume (''TCV''),[26] as set forth in the following table:

Type of member connection	Monthly volume credit
Member that connects via the FIX Interface	$250
Member that connects via the MEO Interface	1,000

If a Member connects via both the MEO Interface and FIX Interface and qualifies for the Monthly Volume Credit based upon its Priority Customer volume, the greater Monthly Volume Credit shall apply to such Member. Prior to and during periods when this proposal was not in effect, the Monthly Volume Credit was a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

The Exchange proposes an amendment to the Definitions section of the Fee Schedule to delete the definition and remove the Monthly Volume Credit. The Exchange established the Monthly Volume Credit when it first launched operations to encourage members to increase their order flow by providing a credit to those that exceeded a volume threshold. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share even without the Monthly Volume Credit.

Trading Permit Fee Credit

The Exchange proposes to amend Section 3)b) of the Fee Schedule to remove the Trading Permit fee credit that is denoted in footnote ''*'' below the Trading Permit fee table. Prior to and during periods when this proposal was not in effect, the Trading Permit fee credit was applicable to Members that connected via both the MEO and FIX Interfaces. Members who connect via both the MEO and FIX Interfaces are assessed the rates for both types of Trading Permits, but these Members received a $100 monthly credit towards the Trading Permit fees applicable to the MEO Interface prior to and during periods when this proposal was not in effect. The Exchange proposes to remove the Trading Permit fee credit and delete footnote ''*'' from Section 3)b) of the Fee Schedule.

The Exchange established the Trading Permit fee credit when it first launched operations to attract order flow and increase membership by lowering the costs for Members that connect via the MEO Interface and FIX Interface. The Trading Permit fee credit has achieved its purpose and the Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership population on the Exchange.

Amendments to Monthly Trading Permit Fees

The Exchange proposes to amend the Fee Schedule to amend the fees for Trading Permits. As a self-regulatory organization, the Exchange's membership department reviews applicants to ensure that each application complies with Exchange

[19] Only the time-in-force modifiers of IOC and Day are available on the MEO Interface. *See id.* (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). *See also* MIAX Pearl Options Exchange MEO Interface Specification, Section 4.1.1.2, *available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf* (indicating that the time—in-force instructions of IOC and Day are available on the MEO interface).

[20] *See* MIAX Pearl Options Exchange User Manual, Section 6, Interfaces and Liquidity Types, *available at https://www.miaxoptions.com/exchange-functionality/pearl* (last visited May 16, 2022).

[21] *See* Exchange Rule 516(d).

[22] *See supra* note 7.

[23] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

[24] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[25] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[26] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

Rule 200 as well as other requirements for membership.[27] Applicants must meet the Exchange's qualification criteria prior to approval. The new member review includes, but is not limited to, the registration and qualification of associated persons, financial health of the proposed member, the validity of the required clearing relationship, and the history of disciplinary matters. Approved new Members are required to comply with Exchange's By-Laws and Rules and are subject to regulation by the Exchange.

The Exchange believes that there are many factors that may cause a market participant to decide to become a member of a particular exchange. Among various factors, the Exchange believes market participants consider: (i) An exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. The Exchange believes that the decision to become a member of an exchange, particularly as a registered market maker, is a complex one that is not solely based on non-transactional costs assessed by an exchange. Market participants weigh the tradeoff between where they choose to deploy liquidity versus where trading opportunities exist. Of course, the cost of membership may factor into a decision to become a member of a certain exchange, but the Exchange believes it is by no means the only factor when comparing exchanges.

The Exchange assesses Trading Permit fees based upon the monthly total volume executed by the Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the total TCV in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' [28] in the Definitions section of the Fee Schedule. The Exchange also assesses Trading Permit fees based upon the type of interface used by the Member to connect to the Exchange—the FIX Interface and/or the MEO Interface.

Current Trading Permit Fees. Prior to and during periods when this proposal was not in effect, each Member who connected to the System via the FIX Interface was assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $250;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $350; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $450.

Each Member who connected to the System via the MEO Interface was assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $300;

(ii) If its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $400; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $500.

Proposed Trading Permit Fees. As discussed below, the pull on Exchange resources associated with the review of membership applications and the surveillance and retention of increased message traffic due to increased trading volumes continue to increase since the Trading Permit fee was first adopted in 2018.[29] The Exchange proposes to amend its Trading Permit fees as follows. Each Member who connects to the System via the FIX Interface will be assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, $500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, $1,000; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, $1,500.

Each Member who connects to the System via the MEO Interface will be assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, $2,500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, $4,000; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, $6,000.

As discussed above, both the MEO Interface and FIX Interface are available to all Members and each Member may choose which interface to utilize based on their own business needs. The MEO Interface is primarily used by Market Makers due to its robustness, lower latency, and higher throughput and, as discussed below, utilizes greater Exchange resources due to the increased volume of message traffic that travels through the MEO interface. Trading Permit fees for Members who connect through the MEO Interface are, therefore, higher than the Trading Permit fees for Members who connect through the FIX Interface. The FIX Interface provides lower capacity and bandwidth and, therefore, utilizes less Exchange resources. The FIX Interface is primarily used by order flow providers, who tend to be less latency sensitive and submit less orders and messages than Market Makers.

The Exchange has not amended its Trading Permit fees since the fees were first adopted in 2018.[30] The Exchange notes that its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''), charge EEMs a similar, fixed flat trading permit fee of $1,500,[31] which equals the top tier proposed herein for users of the FIX Interface and also primarily consists of EEMs. MIAX and MIAX Emerald also charge tiered trading permit fees to Market Makers as the Exchange proposes herein for users of the MEO Interface, which also primarily consists of Market Makers. However, the Exchange's proposed fees for users of the MEO Interface range from $2,500 to $6,000 while the fees on MIAX and MIAX Emerald range from $7,000 to $22,000. The Exchange also proposes to base its pricing on trading volume while MIAX and MIAX Emerald base their trading permit fees on number of options classes assigned to the Market Maker or the percentage of volume in option classes.[32]

[27] The Exchange's Membership Department must ensure, among other things, that an applicant is not statutorily disqualified.

[28] *See* the Definitions Section of the Fee Schedule for the monthly volume thresholds associated with each Tier.

[29] *See supra* note 7.

[30] *Id.*

[31] *See* the MIAX Fee Schedule, Section 3)b) and MIAX Emerald Fee Schedule, Section 3)b), *available at https://www.miaxoptions.com/fees* (last visited May 16, 2022).

[32] Both MIAX and MIAX Emerald charge Market Makers a monthly fee of $7,000 for up to 10 classes or up to 20% of classes assigned by volume, $12,000 for up to 40 classes or up to 35% of classes assigned by volume, $17,000 for up to 100 classes or up to 50% of classes assigned by volume, or

Continued

As illustrated by the table below, the Exchange notes that the proposed fees for the Exchange's Trading Permits are in line with, or cheaper than, the similar trading permit and membership fees charged by other options exchanges. The below table also illustrates how the Exchange has historically undercharged for access via Trading Permits as compared to other options exchanges. The Exchange believes other exchanges' membership and trading permit fees are useful examples of alternative approaches to providing and charging for access and provides the below table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar access.

Exchange	Monthly membership/trading permit fee
MIAX Pearl Options (as proposed)	Trading Permit access via FIX Interface: Tier 1: $500. Tier 2: $1,000. Tier 3: $1,500. Trading Permit access via MEO Interface: Tier 1: $2,500. Tier 2: $4,000. Tier 3: $6,000.
NYSE Arca, Inc. ("NYSE Arca") [33]	Options Trading Permits: Office and Clearing Firms: $1,000. Market Makers: $6,000 for up to 175 option issues. Additional $5,000 for up to 350 option issues. Additional $4,000 for up to 1,000 option issues. Additional $3,000 for all option issues. Additional $1,000 for the 5th OTP and each OTP thereafter.
NYSE American, LLC ("NYSE American") [34].	ATP Trading Permits: Clearing Member: $1,000. Order Flow Provider: $1,000. Market Makers: $8,000 for up to 60 plus the bottom 45% of option issues. Additional $6,000 for up to 150 plus the bottom 45% of option issues. Additional $5,000 for up to 500 plus the bottom 45% of option issues. Additional $4,000 for up to 1,100 plus the bottom 45% of option issues. Additional $3,000 for all option issues. Additional $2,000 for 6th to 9th ATPs (plus additional fee for premium products).
Nasdaq PHLX LLC ("Nasdaq PHLX") [35]	Streaming Quote Trader ("SQT") permit fees: Tier 1 (up to 200 option classes): $0.00. Tier 2 (up to 400 option classes): $2,200. Tier 3 (up to 600 option classes): $3,200. Tier 4 (up to 800 option classes): $4,200. Tier 5 (up to 1,000 option classes): $5,200. Tier 6 (up to 1,200 option classes): $6,200. Tier 7 (all option classes): $7,200. Remote Market Maker Organization ("RMMO") permit fees: Tier 1 (less than 100 option classes): $5,000. Tier 2 (more than 100 and less than 999 option classes): $8,000. Tier 3 (1,000 or more option classes): $11,000.
Nasdaq ISE LLC ("Nasdaq ISE") [36]	Access Fees: Electronic Access Members ("EAMs"): $500. Primary Market Maker: $5,000 per membership. Competitive Market Maker: $2,500 per membership.
Cboe Exchange, Inc. ("Cboe") [37]	Electronic Trading Permit Fees: Market Maker: $5,000.

$22,000 for over 100 classes or over 50% of classes assigned by volume up to all classes listed on MIAX or MIAX Emerald, as applicable. *Id.*

[33] *See* NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1, *available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf* (last visited May 16, 2022). NYSE Arca's Options Trading Permit fee is the analog to the Exchange's Trading Permit fee for Members who use the FIX interface. NYSE Arca's Options Trading Permit fee for Market Makers is the analog for the Exchange's Trading Permit fee for Members who use the MEO interface.

[34] *See* NYSE American Options Fee Schedule, Section III, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23–24, *available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf* (last visited May 16, 2022). NYSE American's ATP Trading Permit fee for Clearing Members and Order Flow Providers is the analog for the Exchange's Trading Permit fee for Members that use the FIX interface. NYSE American's ATP Trading Permit fee for Market Makers is the analog for the Exchange's Trading Permit fee for Members that use the MEO interface.

[35] *See* Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees, *available at https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207* (last visited May 16, 2022). Nasdaq PHLX Options' SQT and RMMO fees is the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface.

[36] *See* Nasdaq ISE Options 7 Pricing Schedule, Section 8.A. Access Services, *available at https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207* (last visited May 16, 2022). Nasdaq ISE Options' EAM Access Fee is the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface. Nasdaq ISE Options' Primary and Competitive Market Maker Access Fees are the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface.

[37] *See* Cboe Fee Schedule, Electronic Trading Permit Fees, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (last visited May 16, 2022). Cboe's Electronic Access Permit fee and Clearing TPH fee are the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface. Cboe's Market Maker Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface.

[38] *See* Cboe C2 Fee Schedule, Access Fees, *available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/* (last visited May 16, 2022). C2's Market Maker Access Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface. C2's Electronic Access Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface.

[39] *See* ''Membership Fees'' section of the Cboe BZX Options Fee Schedule, *available at https://www.cboe.com/us/options/membership/fee_schedule/bzx* (last visited May 16, 2022)/. The Exchange understands Cboe BZX Options charges the same Membership Fee to all of its Options Members.

[40] Under the Exchange's tiered structure, a Member may trade approximately 106,000 more contracts on the Exchange than on Cboe BZX Options and continue to qualify for the Exchange's lowest tier. For example, a Member would qualify for Tier 1 of the Exchange's tiered pricing structure where that Member's total volume as a percentage of TCV is between 0.00% and 0.30%. Assuming an average of 37 million contracts are traded each day during a month, that Member would qualify for Tier 1 where that Member traded less than 111,000 contracts that day and be charged $500, the same fee as Cboe BZX Options, where that Member connects via the FIX Interface. On Cboe BZX Options, the Exchange understands that same member would no longer qualify for their lowest tier when their ADV equals or exceeds 5,000 contracts and be charged a fee of $1,000 for that month.

Exchange	Monthly membership/trading permit fee
Cboe C2 Exchange, Inc. (''Cboe C2'') [38]	Electronic Access Permit: $3,000. Clearing TPH Permit: $2,000. Access Permit Fees for Market Makers: $5,000.
Cboe BZX Exchange, Inc. (''Cboe BZX Options'') [39].	Electronic Access Permits: $1,000. $500 where member has an ADV < 5,000 contracts traded.[40] $1,000 where member has an ADV ≥ 5,000 contracts traded.

Implementation and Procedural History

The proposed rule change will be immediately effective. The Exchange initially filed this proposal on July 1, 2021, with the proposed fees being immediately effective.[41] Between August 2021 and February 2022, the Exchange withdrew and refiled the proposed rule change, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange's cost methodology, and address questions contained in the Commission's suspension orders.[42] The Commission received one comment letter on the filings.[43] The Commission again suspended the proposed fees on February 18, 2022.[44] The Commission received one comment letter on that filing.[45] The Exchange then provided Trading Permits at the lower rates for the month of March 2022 and absorbed all associated costs with the lower rates.

On March 30, 2022, the Exchange withdrew the proposed rule change that was previously suspended by the Commission on February 18, 2022. After providing Trading Permits at the lower rates for the month of March 2022, on March 30, 2022, the Exchange submitted a revised proposal for effectiveness beginning April 1, 2022.[46] This revised proposal argued that the proposed fees were constrained by competition based on a similar filing for permit/membership fees by MEMX LLC (''MEMX'').[47] The Commission received one comment letter on that filing.[48] The Exchange withdrew this revised proposal and submitted a further revised filing providing additional support for its competition based justification on May 17, 2022.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[49] in general, and furthers the objectives of Section 6(b)(4) of the Act[50] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The proposed changes to the pricing schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [51]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [52]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [53] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [54] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [55] In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors

[41] *See* Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (SR–PEARL–2021–32).

[42] *See* Securities Exchange Act Release Nos. 92797 (August 27, 2021), 86 FR 49399 (September 2, 2021) (SR–PEARL–2021–32) (''Suspension Order 1''); 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR–PEARL–2021–54); 93895 (January 4, 2022), 87 FR 1217 (January 10, 2022) (SR–PEARL–2021–59).

[43] *See* Letter from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 28, 2021 (''SIG Letter 1'').

[44] *See* Securities Exchange Act Release No. 94287 (February 18, 2022), 87 FR 10837 (February 25, 2022) (SR–PEARL–2022–05) (''Suspension Order 2'').

[45] *See* Letter from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated March 15, 2022 (''SIG Letter 2'').

[46] *See* Securities Exchange Act Release No. 94696 (April 12, 20222), 87 FR 22987 (April 18, 2022) (SR–PEARL–2022–09).

[47] *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (proposal to adopt monthly membership fees).

[48] *See* Letter from Brian Sopinsky, SIG, to Vanessa Countryman, Secretary, Commission, dated May 9, 2022 (''SIG Letter 3'').

[49] 15 U.S.C. 78f(b).

[50] 15 U.S.C. 78f(b)(4) and (5).

[51] *See* NetCoalition, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[52] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[53] *See* NetCoalition, 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[54] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[55] *Id.*

beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [56]

The Exchange believes that there are many factors that may cause a market participant to decide to become a member of a particular exchange including: (i) An exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. As discussed above, the Exchange believes that the decision to become a member of an exchange, particularly as a registered market maker, is a complex one that is not solely based on non-transactional costs assessed by an exchange. Market participants weigh the tradeoff between where they choose to deploy liquidity versus where trading opportunities exist. Of course, the cost of membership, ports and market data may factor into a decision to become a member of a certain exchange, but the Exchange believes it is by no means the only factor when comparing exchanges.

Market Makers

Market makers play an important role on options exchanges as they provide liquidity. In options markets, registered market makers are assigned options series [57] and are required to quote in those options series for a specified time period during the day.[58] Typically, a lead or primary market maker [59] will be required to quote for a longer period of time during the day as compared to other market makers registered on an exchange.[60] Additionally, market makers are typically required to quote within a certain width on options markets.[61] Greater liquidity on options markets benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of market makers in turn facilitates tighter spreads. Market participants are attracted to options markets that have ample liquidity and tighter spreads in options series.

Trading Functionality

An exchange's trading functionality attracts market participants who may elect, for example, to submit an order into a price improving auction,[62] enter a complex order,[63] or utilize a particular order type.[64] Different options exchanges offer different trading functionality to their members. For example, with respect to priority and allocation of an order book, some options exchanges have price/time allocation,[65] some have a size pro-rata allocation,[66] while other exchanges offer both allocation models.[67] The allocation methodology on a particular options exchange's order book may attract certain market participants. Also, the manner in which some options markets structure their solicitation auction,[68] or opening process,[69] may be attractive to certain market participants. Finally, some exchanges have trading floors [70] which may accommodate trading for certain market participants or trading firms.[71]

Product Offerings

Introducing new and innovative products to the marketplace designed to meet customer demands may attract market participants to a particular options venue. New products in the options industry may allow market participants greater trading and hedging opportunities, as well as new avenues to manage risks. The listing of new options products enhances competition among market participants by providing investors with additional investment vehicles, as well as competitive alternatives, to existing investment products. An exchange's proprietary product offering may attract order flow to a particular exchange to trade a particular options product.[72]

Transaction Pricing

The pricing available on a particular exchange may impact a market participant's decision to submit order flow to a particular options venue. The options industry is competitive. Clear substitutes to the Exchange exist in the market for options security transaction services; the Exchange is only one of sixteen options exchanges to which market participants may direct their order flow and memberships. Within this environment, market participants can freely, and often do, shift their order flow and memberships among the Exchange and competing venues in response to changes in their respective pricing schedules.

Removal of Monthly Volume Credit and Trading Permit Fee Credit

The Exchange believes its proposal to remove the Monthly Volume Credit is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to achieve the extra credits associated with the Monthly Volume Credit for submitting Priority Customer volume to the Exchange and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Monthly Volume Credit from the Fee Schedule for business and competitive reasons. The Exchange established the Monthly Volume Credit when it first launched operations to encourage members to increase their order flow by providing a credit to those that exceeded a volume threshold. The

[56] *See* U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Rule filings Relating to Fees,'' (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidancesro-rule-filings-fees.*

[57] *See* Exchange Rule 602, Phlx, ISE, Nasdaq GEMX, Inc. (''GEMX''), Nasdaq MRX, Inc. (''MRX''), Nasdaq BX, Inc. (''BX'') and Nasdaq Options Market (''NOM'') Options 2, Section 3; Cboe Rule 5.50; BOX Exchange LLC (''BOX'') Rule 8030; MIAX Rule 602; and NYSE Arca Rule 6.35–O.

[58] *See* Exchange Rule 604, ISE, GEMX and MRX, Phlx, BX and NOM Options 2, Section 5; Cboe Rule 5.52; BOX Rule 8050; MIAX Rule 604; and NYSE Arca Rule 6.37A–O.

[59] Options markets refer to the primary market maker on an exchange in several ways.

[60] *See* Exchange Rule 604, BX Options 2, Section 4; ISE, GEMX and MRX, and Phlx Options 2, Section 5; BOX Rule 8055; MIAX Rule 604; and NYSE Arca Rule 6.37A–O.

[61] *See* BX Options 2, Section 4; ISE, GEMX and MRX, Phlx and NOM Options 2, Section 5; and Cboe Rule 5.52; BOX Rule 8040.

[62] *See* ISE, GEMX, MRX, Phlx and BX Options 3, Section 13; MIAX Rule 515A; Cboe Rule 5.37; and BOX Rules 7150 and 7245. The Exchange does not currently offer a price improving auction.

[63] *See* Phlx and ISE Options 3, Section 14; MIAX Rule 518; Cboe Rule 5.33; BOX Rule 7240; and NYSE Arca Rule 6.91–O. The Exchange does not currently offer complex order functionality.

[64] *See* Exchange Rule 516, ISE, GEMX, MRX, Phlx, BX and NOM Options 3, Section 7; MIAX Rule 516; Cboe Rule 5.6; BOX Rule 7110; and NYSE Arca Rule 6.62–O.

[65] *See* Exchange Rule 514, Cboe Rule 5.85; BOX Rule 7130; and NYSE Arca Rule 6.76–O.

[66] *See* Phlx, ISE, GEMX and MRX Options 3, Section 10; and BOX Rule 7135.

[67] *See* BX Options 3, Section 10. While BX's rule permits both price/time and size pro-rata allocation, all symbols on BX are currently designated as Price/Time. See also BOX Rules 7130 and 7135. MIAX's rule permits both Price-Time and Pro-Rata allocation. See also MIAX Rule 514.

[68] *See* ISE, GEMX and MRX Options 3, Section 11; NYSE American Rules 971.1NY and 971.2NY; and Cboe Rule 5.39.

[69] *See* Exchange Rule 503, ISE, GEMX, MRX, Phlx, BX and NOM Options 3, Section 8; Cboe Rule 5.31, MIAX Rule 503, BOX Rule 7070, and NYSE Arca Rule 6.64–O.

[70] Today, Phlx, Cboe, BOX, NYSE Arca, and NYSE American LLC have a trading floor. Trading floors require an on-floor presence to execute options transactions.

[71] There are certain features of open outcry trading that are difficult to replicate in an electronic trading environment. The Exchange has observed, and understands from various market participants, that they have had difficulty executing certain orders, such as larger orders and high-risk and complicated strategies, in an all-electronic trading configuration without the element of human interaction to negotiate pricing for these orders.

[72] *See, e.g.,* options on the Nasdaq-100 Index® available on ISE, GEMX and Phlx and Cboe's Market Volatility Index®. Currently, the Exchange does not list any proprietary products.

Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share even without the Monthly Volume Credit.

The Exchange believes its proposal to remove the Trading Permit fee credit for Members that connect via both the MEO Interface and FIX Interface is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to receive the credit and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Trading Permit fee credit for business and competitive reasons. The Exchange established the Trading Permit fee credit to lower the costs for Members that connect via the MEO Interface and/or FIX Interface as a means to attract order flow and memberships after the Exchange first launched operations. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership on the Exchange.

Trading Permit Fee Increase

The Exchange believes that there is value in being a Member of the Exchange, retaining that Membership as the Exchange's market share has grown, and that the proposed Trading Permit fees are reasonable because, as illustrated by the above table, they are in the range of similar types of membership fees charged to analogous categories of market participants by other exchanges with similar market share.[73] The proposed monthly Trading Permit fees are lower than or comparable to the membership and trading permit fees imposed by several other national securities exchanges that charge such fees.[74]

The Exchange believes that the proposed monthly Trading Permit fees are not unfairly discriminatory because they would be assessed equally across all Members or firms that seek to become Members. As discussed above, both the MEO Interface and FIX Interface are available to all Members and each Member may choose which interface to utilize based on their own business needs. The MEO Interface is primarily used by Market Makers due to its functionality, robustness, lower latency, and higher throughput and utilizes greater Exchange resources due to the increased volume of message traffic that travel through the MEO interface. Trading Permit fees for Members who connect through the MEO Interface are higher than the Trading Permit fees for Members who connect through the FIX Interface. The FIX Interface provides lower capacity and bandwidth and, therefore, utilizes less Exchange resources. The FIX Interface is primarily used by order flow providers, who tend to be less latency sensitive and submit less orders and messages than Market Makers.

Over the period from April 2021 until September 2021, the Exchange processed 3.15 billion messages via the FIX Interface (0.43% of total messages received). Over that same time period, the Exchange processed 731.4 billion messages (99.57% of total messages received) over the MEO Interface. This marked difference between the number of FIX and MEO messages processed, when mapped to servers, software, storage, and networking results in a much higher allocation of total capital and operational expense to support the MEO Interface. For one, the Exchange incurs greater expense in maintaining the resilience of the MEO Interface to ensure its ongoing operation in accordance with Regulation SCI. Another, the Exchange must purchase and expand its storage capacity to retain these increased messages in compliance with its record keeping obligations. The Exchange's membership application team reviews each new membership application for compliance with Exchange rules. The Exchange must also expend additional resources to surveil and ensure proper regulatory oversight of this increased message traffic. These pulls on Exchange resources have only increased since it first adopted the Trading Permit fee in March of 2018[75] when the Exchange's trading volume for that month averaged 3.94%.[76] Today, the Exchange's average daily trading volume for May 2022 is 4.56%.[77] This additional volume increases the costs to the Exchange to surveil and regulate its market while also procuring additional capacity to store and monitor those messages in compliance with its record keeping obligations under the Exchange Act. Therefore, the proposed monthly Trading Permit fees are not unfairly discriminatory because they would be assessed equally across all Members based on the type of interface and related usage of Exchange resources.

The Exchange believes that the proposed monthly Trading Permit fees are not unfairly discriminatory because no broker-dealer is required to become a Member of the Exchange. Instead, many market participants awaited the Exchange growing to a certain percentage of market share before they would join as a Member of the Exchange. In addition, many market participants still have not joined the Exchange despite the Exchange's growth in recent years to consistently be approximately 4–5% of the overall equity options market share. To illustrate, the Exchange currently has 41 Members.[78] However, based on publicly available information regarding a sample of the Exchange's competitors, NYSE American Options has 75 members, NYSE Arca Options has 71 members, and Cboe has 94 members.[79] Accordingly, the vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether membership to the Exchange is appropriate and worthwhile, and no broker-dealer is required to become a member of the Exchange. Specifically, neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.

The Exchange acknowledges that competitive forces may require certain broker-dealers to be members of all equity options exchanges. However, the Exchange believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory, even for a broker-dealer that deems it necessary to join the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fees.

The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted above, specific factors include, but are not limited to: (i) An exchange's available liquidity in options series; (ii)

[73] *See supra* notes 33–39 and accompanying text.

[74] *See id.*

[75] *See supra* note 7.

[76] *See* ''Market at a Glance'', *available at https://www.miaxoptions.com/* (last visited May 16, 2022).

[77] *Id.*

[78] *See* MIAX Pearl Options Exchange Member Directory, *available at https://www.miaxoptions.com/exchange-members/pearl.*

[79] *See* NYSE American Options Membership Directory, *available at https://www.nyse.com/markets/american-options/membership* (last visited March 9, 2022); NYSE Arca Options Membership Directory, *available at https://www.nyse.com/markets/arca-options/membership* (last visited March 9, 2022); Cboe Members and Sponsored Participants, Form 1 Amendment dated February 17, 2022, Exhibit M, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22000797.pdf* (last visited March 9, 2022).

trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services. The decision to become a member of an exchange is made at the beginning of the relationship, and is no less subject to competition than trading fees or market data.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at the Exchange.[80] If the Exchange is not at the NBBO, the Exchange will route an order to any away market that is at the NBBO to prevent a trade-through and also ensure that the order was executed at a superior price.[81]

Some other broker-dealers may not deem it necessary to be a Member of the Exchange and may elect to access the Exchange through other means. In lieu of joining an exchange, a third-party may be utilized to execute an order on an exchange. For example, a third-party broker-dealer Member of MRX may be utilized by a retail investor to submit orders into an exchange. An institutional investor may utilize a broker-dealer, a service bureau,[82] or request sponsored access [83] through a member of an exchange in order to submit an order directly to an options exchange.[84] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange.[85] Market participants may elect any of the above models and weigh the varying costs when determining how to submit trades to an exchange. Depending on the number of orders to be submitted, technology, ability to control submission of orders, and projected revenues, a market participant may determine one model is more cost efficient as compared to the alternatives.

In June 2021, the month immediately preceding the initial implementation of this proposed fee change, the Exchange had 20 users of the MEO Interface and 28 users of the FIX Interface. These numbers remained stagnant until August 2021, where one Member that utilized the MEO Interface ceased utilizing the MEO Interface and again in December 2021 where one Member that utilized the FIX Interface ceased utilizing the FIX Interface. Also, the Exchange has not experienced any Member decreasing their trading activity on the Exchange in order to move to a lower tier and be charged the corresponding lower fee. In fact, between June 2021 and July 2021, one Member of the MEO Interface moved up from Tier 1 to Tier 3 due to increasing their trading volume on the Exchange The Exchange has not experienced a net decrease in subscribers due to the fee increase, because the Exchange believes numerous considerations are taken into account when deciding to be a member of an exchange, including, but not limited to: (i) An exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing when socializing the change. Fees are not the sole consideration. As stated above, the Exchange socialized the proposed fee increase with Members prior to first implementing the change. During that process, some Members stated that they anticipated a potential increase due to the lower rates the Exchange historically charged.

Lastly, the Exchange believes the proposed tiered fees provide for an equitable allocation of reasonable dues, fees and other charges because it is similar to other tiered pricing structures on other options exchanges. The Exchange implemented the tiered pricing structure based on the type of interface and trading volume when it first adopted Trading Permit fees in 2018 and the Exchange does not propose to amend the volume requirements associated with each Tier. Rather, the Exchange simply seeks to amend the associated fees. The Exchange proposes to charge users of the FIX Interface monthly fees ranging from $500 to $1,500 based on trading volume. Users of the FIX Interface are primarily EEMs, which generally consist of order flow providers. Cboe charges monthly electronic trading permit fees based on the category of participant, such as $3,000 for Electronic Access Permit holders and $2,000 for Clearing TPH Permit holders (the Exchange notes that it only charges $250 per month for EEM Clearing Firms). Cboe's Electronic Access Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface and is higher than the Exchange's proposed highest tier.

Under the Exchange's tiered structure, a Member may trade approximately 106,000 more contracts on the Exchange than on Cboe BZX Options and continue to qualify for the Exchange's lowest Tier. For example, a Member would qualify for Tier 1 of the Exchange's tiered pricing structure where that Member's total volume as a percentage of TCV is between 0.00% and 0.30%. Assuming an average of 37 million contracts are traded each day during a month, that Member would qualify for Tier 1 where that Member traded less than an ADV of 111,000 contracts and be charged $500 for the month, the same fee as Cboe BZX Options, where that Member connects via FIX.[86] On Cboe BZX Options, the Exchange understands that same member would no longer qualify for their lowest tier when their ADV equals or exceeds 5,000 contracts and be charged a fee of $1,000 for that month.[87]

[80] *See* Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), *available at https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.*

[81] Exchange Members may elect to not route their orders by marking an order as ''do-not-route.'' In this case, the order would not be routed.

[82] Service bureaus provide access to market participants to submit and execute orders on an exchange. On the Exchange, a Service Bureau may be a Member. Some Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders. As noted herein only Members may submit orders or quotes through ports.

[83] Sponsored Access is an arrangement whereby a member permits its customers to enter orders into an exchange's system that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[84] This may include utilizing a Floor Broker and submitting the trade to one of the five options trading floors.

[85] The Exchange notes that it does not have insight into the economics of such a relationship where a broker-dealer utilizes another entity to access the Exchanges. It is presumed that a third-party that provides access to an exchange does so on behalf of multiple broker-dealers and provides access to multiple exchanges. It is also presumed that any increased volume that might cause such third party to achieve a higher Trading Permit pricing tier maybe offset through achieving a higher rebate on the Exchange or other economic arrangement between the parties.

[86] *See* ''Membership Fees'' section of the Cboe BZX Options Fee Schedule, *available at https://www.cboe.com/us/options/membership/fee_schedule/bzx* (last visited April 13, 2022). The Exchange understands Cboe BZX Options charges the same Membership Fee to all of its Options Members.

[87] The Exchange proposes to also charge a fee of $1,000 per month to Members that qualify for Tier 2, the same as BZX's highest tier. The Exchange acknowledges that the Exchange's Trading Permit fee would be higher than BZX where a Member qualifies for Tier 3.

The proposed Trading Rights Fee compare favorably with those of other options exchanges. The Exchange's proposed monthly Trading Permit Fees for users of the MEO Interface, which are primarily Market Makers, range from $2,500 to $6,000 based on trading volume. Basing such fees on trading volume is analogous to other options exchanges that base their similar fees charged to Market Makers based on the number of options classes traded. For example, NYSE Arca charges Market Makers a base fee of $6,000 and charges additional fees ranging from $1,000 to $5,000 on top of the base fee and depending on the options issues assigned, could result in monthly options trading permit fees ranging from $6,000 to $19,000 (or higher), which is higher than the Exchange's highest proposed tier of $6,000. NYSE American charges electronic Market Makers a base fee of $8,000 and charges additional fees ranging from $500 to $6,000 on top of the base fee and depending on the options issues assigned, which could result in monthly options trading permit fees ranging from $8,000 to $28,500 (or higher), also higher than the Exchange's highest proposed tier of $6,000.

Further, the tiered pricing structure does not raise any new competitive issues as it has been in place since 2018 [88] and similar membership pricing structures are utilized at other exchanges. Basing membership pricing based on volume is not a new or novel concept as other exchanges employ similar volume requirements based on options classes traded or assigned.[89] The Exchange does not propose to amend its volume criteria, only the associated fees. The Exchange must consider Members ability to discontinue their memberships when considering any potential changes to its tiered volume requirements and that Members ability to transition to another exchange they view offers more attractive volume thresholds and pricing.

The proposed fees, therefore, represent the equitable allocation of reasonable dues, fees and other charges because the fees are generally lower than other exchanges and the proposed tiered fees are similar to other tiered pricing structures on other options exchanges.[90]

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[91] the Exchange believes that the proposed rule change would not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the removal of the Monthly Volume Credit and Trading Permit fee credit will not place certain market participants at a relative disadvantage to other market participants because, in order to attract order flow when the Exchange first launched operations, the Exchange established these credits to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions, including the Exchange's overall membership and the current type and amount of volume executed on the Exchange. The Exchange believes that the Exchange's rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.

As described above, the Exchange's proposed Trading Permit fees are lower than or similar to the cost of membership and trading permits on other exchanges,[92] and therefore, may stimulate intramarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, membership and trading permit fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see a decline in membership as a result. As stated above, the number of FIX and MEO Interface users remained stagnant until August 2021, where one Member that utilized the MEO Interface ceased utilizing that interface and again in December 2021, where one Member that utilized the FIX Interface ceased utilizing that interface.

The Exchange also does not believe charging different fees for MEO and FIX Interface users and basing the amount of such fees on trading volume would impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the FIX Interface is the uniform industry message protocol used by most exchanges and provides lower throughput and bandwidth than the MEO Interface. Users are free to use either interface based on their business need and the pricing structure is aligned with the interface used, its pull on Exchange resources, and the Member's monthly trading volume. The tiered pricing structure is based on the type of interface and trading volume in place on the Exchange today and the Exchange does not propose to amend the volume requirements associated with each Tier. Rather, it is simply seeking to amend the associated fees. Basing such fees on trading volume would may also stimulate intramarket competition because it is analogous to other exchanges that base like fees on options classes traded or assigned. A Member may cease being a Member if they believe the tiered structure is not appropriate or that another exchange presents a better value. Likewise, a market participant that is not already a Member may cease membership on another exchange or become a Member of MIAX Pearl where they deem the Exchange's Trading Permit fee to be a better value based on its trading activity and business needs.

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power regarding memberships or in the execution of multiply-listed equity and ETF options order flow. Over the course of 2021, the Exchange's market share has fluctuated between approximately 3–6% of the U.S. equity options industry.[93] The Exchange is not aware of any evidence that a market share of approximately 3–6% provides the Exchange with anti-competitive pricing power when it comes to competition for memberships. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue memberships in response to fee changes. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to

[88] *See supra* note 7.

[89] *See supra* notes 33–35.

[90] The Exchange does not charge a separate fee to Market Makers for options assignments.

[91] 15 U.S.C. 78f(8).

[92] *See supra* notes 33–39.

[93] *See supra* note 76.

attract and retain memberships on the Exchange.

The proposed fee change will not impact intermarket competition because it will apply to all Members equally. Also, Members are free to use either the FIX or MEO Interface and may choose the interface that better meets their business needs based on their trading models and behavior. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

As described above, the Commission initially received SIG Letter 1 on its initial proposal.[94] The Exchange responded to SIG Letter 1 in its subsequent filing. The Commission also received SIG Letter 2 on a later filing for the same proposal,[95] which the Exchange responded to in a prior filing. The Commission then received SIG Letter 3 on a later filing for the same proposal.[96] SIG Letter 3 does not raise any new issues regarding the proposal and simply repeats prior complaints.

The Exchange initially justified this proposal with cost-based justifications to support the proposed fee changes. In the Exchange's prior proposed rule changes, the Exchange determined to utilize a competition based approach to support the proposed fee changes. Because the SIG Letters are primarily focused on the Exchange's prior cost justifications, the Exchange believes SIG's assertions are no longer germane to the current filing as the Exchange no longer utilizes a cost justification to support the proposed fees.

Pursuant to the Guidance, Staff may consider whether a proposed fee is constrained by significant competitive forces in assessing the reasonableness of the proposed fee.[97] This is in line with a recent filing by MEMX, in which MEMX argued its proposed monthly membership fee was reasonable because it was constrained by competitive forces.[98] MEMX's monthly membership fee filing received no comment letters and remains in effect today, past the Commission's 60-day suspension deadline. The Exchange's trading permit fees are the conceptual equivalent of MEMX's ''membership fee,'' BOX's ''participant fee'' and ''market maker trading permit fee,'' and other exchanges' ''access'' fees: They are all fees to solely provide access and allow activity to the specific marketplace. These are all monthly fees assessed to members for trading on each particular exchange. The Exchange now argues that its proposed fees are constrained by competition in the same way MEMX's membership fees are constrained by competition.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[99] and Rule 19b–4(f)(2) [100] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2022–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2022–23. 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–PEARL–2022–23 and should be submitted on or before June 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[101]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11788 Filed 6–1–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94998; File No. SR–NSCC–2022–801]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of No Objection To Advance Notice To Introduce Central Clearing for Securities Financing Transaction Clearing Service

May 27, 2022.

I. Introduction

On March 28, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–NSCC–2022–801 (''Advance Notice''), 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

[94] *See supra* note 43.

[95] *See supra* note 45.

[96] *See supra* note 48.

[97] *See supra* note 56.

[98] *See supra* note 47.

[99] 15 U.S.C. 78s(b)(3)(A)(ii).

[100] 17 CFR 240.19b–4(f)(2).

[101] 17 CFR 200.30–3(a)(12).

Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Exchange Act'').[2] The Advance Notice was published for comment in the **Federal Register** on April 19, 2022.[3] The Commission has received comments regarding the proposal.[4] This publication serves as notice of no objection to the Advance Notice.

II. Description of the Proposed Rule Change

A. Overview of Proposal

NSCC proposes to expand its central counterparty (''CCP'') services to include securities financing transactions (''SFTs''), also referred to generally as securities lending.[5] SFTs are transactions in which a securities lender loans securities to a securities borrower, for a fee. The borrowers typically use the borrowed securities to cover short sales or fails to deliver that may result from either short or long sales.[6] A lender typically lends securities to generate income through the fees that it charges.

As a CCP, NSCC would interpose itself between the securities lender and borrower and become the counterparty to each entity. NSCC would then be obligated to complete the transaction, that is, to return loaned securities to the lender and collateral to the borrower, even if a lender or borrower in an SFT fails to satisfy its obligations, thereby assuming the risk of each entity's failure to perform to each other.

Specifically, NSCC would novate and guarantee SFTs that involve eligible securities, meaning equity securities (including ETFs) cleared at NSCC with a particular per share price, initially set at $5 or greater. The service would be limited to overnight SFTs (*i.e.,* with a one business day term), with the ability for the parties to extend an expiring SFT into a new transaction.

The SFT service would be available to existing NSCC members.[7] In addition, NSCC would create two new membership categories that would be able to submit SFTs for central clearing: Sponsoring Members that would sponsor institutional clients into NSCC and act as a principal to SFTs with their clients, and Agent Clearing Members that submit SFTs on behalf of institutional customers strictly as an agent. These two new types of membership would allow the proposed service to meet the existing market practices for SFTs, where different types of entities employ different trading strategies and relationships to accommodate their regulatory and other requirements.

Consistent with its risk management for all other transactions in equity securities, NSCC would collect margin from the lender and borrower for novated SFTs to address the credit risk arising from such transactions. NSCC would also identify potential liquidity exposures if an SFT member were to default and address that potential need in its risk management.

According to NSCC, the proposed SFT clearing service would provide several benefits for market participants, including increased balance sheet netting benefits, capital efficiency opportunities, and mitigation of fire sale risk.[8] With respect to balance sheet netting benefits and capital efficiency opportunities, NSCC states that the SFT clearing service may allow participants to net down payables and receivables related to the SFTs on their balance sheets because such payables and receivables have one counterparty, NSCC. In turn, NSCC states that because of the capital requirements arising under Basel III rules that favor a netted balance sheet,[9] market participants may reduce the amount of capital they are required to hold under the applicable leverage requirements.[10]

In addition, NSCC believes that the proposal would reduce the potential for market disruption from fire sales for a number of reasons.[11] First, NSCC believes that it would be able to better manage default scenarios by conducting a centralized and orderly liquidation of the defaulter's SFT positions.[12] NSCC represents that a centralized and orderly liquidation would result in substantially less price depreciation and market disruption compared to the multiple independent non-defaulting parties racing against one another to liquidate the positions. Second, NSCC would be able to liquidate the defaulter's net positions instead of gross positions, meaning that a position that needs to be liquidated would be smaller in size and a market disruption can be minimized. Third, by guaranteeing SFTs through central clearing, NSCC believes that it would be able to provide confidence to market participants in a stressed market scenario, thereby lessening any inclination to rush to unwind transactions.[13]

B. Securities Financing Transaction Clearing Service

NSCC proposes to introduce central clearing for SFTs by establishing rules governing (1) key aspects of the SFTs; (2) SFT participant categories; and (3) SFT risk management, as elaborated below.

(1) Key Aspects of the SFTs

Overnight SFTs. The proposed SFT clearing service would apply to transactions with a one business day term (*i.e.,* overnight SFTs) in eligible equity securities. NSCC represents that the proposal applies to overnight SFTs, as opposed to open SFTs, to offer balance sheet netting and capital efficiency opportunities, which require a scheduled settlement date.[14] However, a lender and a borrower would have an option to extend an expiring SFT by rolling it, or a portion thereof, into a new, linked SFT. Accordingly, an expiring SFT would be eligible for renewal every day.

Operational Issues. SFTs would be required to be submitted to NSCC on a locked-in basis and matched between the lender and the borrower.[15] NSCC would receive underlying SFT securities from a lender, send them to a borrower,

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] Securities Exchange Act Release No. 94695 (April 12, 2022), 87 FR 23328 (April 19, 2022) (SR–NSCC–2022–801) (''Notice of Filing''). NSCC also filed related proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, seeking approval of proposed changes to their rules necessary to implement the Advance Notice. 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The proposed rule change was published in the **Federal Register** on April 19, 2022. Securities Exchange Act Release No. 94694 (April 12, 2022), 87 FR 23372 (April 19, 2022) (SR–NSCC–2022–003).

[4] Comments are available at *https://www.sec.gov/comments/sr-nscc-2022-801/srnscc2022801.htm.*

[5] The Options Clearing Corporation (''OCC'') operates a stock loan program as a CCP. NSCC's new service is similar to OCC's service with one key difference: unlike OCC's service, which only covers transactions between OCC's direct members (*i.e.,* broker to broker), NSCC's new service would allow indirect participation by buy-side clients. *See* Section II.B.(2).

[6] A short sale is any sale of securities that a seller does not own or has borrowed. *See* 17 CFR 242.200(a).

[7] Capitalized terms not defined herein are defined in the NSCC Rules & Procedures (''Rules''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[8] *See* Notice of Filing, *supra* note 3, at 23329–30.

[9] *See* 12 CFR 217.10(c)(4)(ii)(E)–(F).

[10] The Basel III capital and leverage requirements, as implemented by the U.S. banking regulators, mandate banks and depository institutions to hold certain amounts of capital. *See generally, e.g.,* 12 CFR part 3; 12 CFR part 217; 12 CFR part 252, subpart Q; 12 CFR part 324.

[11] *See* Notice of Filing, *supra* note 3, at 23329.

[12] *Id.*

[13] *See* Notice of Filing, *supra* note 3, at 23329–30.

[14] *See* Notice of Filing, *supra* note 3, at 23330–31.

[15] Specifically, the transaction data for an SFT must be submitted by an entity that the parties have selected, which could be either a member or a third-party vendor. The SFT members would select which approved submitter to use, and NSCC would have to approve any entity serving as an approved submitter.

receive cash collateral equal to no less than 100% of the market value of the securities from the borrower, and send it to the lender.[16]

When an SFT settles, in general, NSCC would essentially reverse the transaction of the prior day by receiving the underlying SFT securities from the borrower and returning them to the lender, and receiving the cash collateral from the lender and returning it to the borrower. NSCC would also pass through daily interest,[17] as applicable. If the parties decide to extend into a linked SFT, instead of transferring the underlying securities and collateral, NSCC would transfer the daily interest and calculate and pass through a mark-to-market payment on the underlying securities, effectively putting the parties in a position of closing the settling SFT and starting a new SFT.

Eligible Equity Securities. As an initial matter, NSCC would provide the proposed SFT service for securities that are eligible to be processed through NSCC's Continuous Net Settlement (''CNS'') System,[18] and have a per share price of $5 or more.[19] If the price of the underlying securities of a novated SFT falls below the threshold price established by NSCC, that SFT would continue to be novated to NSCC, but the margin required for such SFT would be 100% of the market value of such underlying securities until the per share price of the underlying securities equals or exceeds the threshold price.

Recall, Buy-In, and Accelerated Settlement. Consistent with the existing bilateral market, NSCC proposes to introduce recall, buy-in, and accelerated settlement features in its proposed SFT clearing service. Under the proposal, a lender would have a right to recall an existing SFT and stop the SFT from being extended.

Once a lender issues a recall notice, a borrower would be required to satisfy its final settlement obligations by the recall date, which would be the second business day following NSCC's receipt of such notice. If the borrower fails to satisfy its final settlement obligations by the recall date, the lender could go to the market to conduct a buy-in in a commercially reasonable manner,[20] that is, to purchase some or all of securities equivalent to the underlying securities that are the subject to the SFT and charge the borrower for the cost of this purchase or to elect to be deemed to have purchased such securities.[21] Similar to a lender's recall right, a borrower would have a right to accelerate the scheduled final settlement of an SFT that has been novated to NSCC. NSCC states that this right is required to ensure that certain borrowers would be able to satisfy their regulatory requirements.[22]

(2) SFT Participant Categories

The proposed SFT clearing service would be available for SFTs entered into between two current NSCC members. In addition, NSCC proposes new categories of membership that are designed to accommodate current bilateral SFT arrangements.[23]

First, the Sponsoring Member/Sponsored Member categories would accommodate principal-style trades, in which a Sponsoring Member acting as principal for its own account completes a Sponsored Member's trades using its own inventory. Typically, in these types of arrangements, a Sponsoring Member can earn a profit from the bid-ask spread differences between its Sponsored Member trades and any offsetting trades.

Second, the Agent Clearing Member category would accommodate transactions by firms who typically conduct trades on an agent basis for their institutional clients. An Agent Clearing Member would arrange a transaction on behalf of an institutional client and charge fees for the services (rather than taking spreads).[24] Such client firms may, as part of their business models and agreed-upon investment guidelines, only permit agented transactions, making the Agent Clearing Member a better fit.

According to NSCC, the costs of clearing that may be passed through to the institutional clients, whether as Sponsored Members or as clients to the Agent Clearing Members (''Customers''), by its intermediary would be largely equivalent.[25] However, one key difference between Sponsored Members and Customers would be that Sponsored Members would have a contractual relationship with NSCC while the Agent Clearing Member's Customers would not. NSCC states that, from the perspective of an institutional firm client, whether to become a Sponsored Member or Customer to an Agent Clearing Member may be determined based on who the client's current clearing intermediaries are and the nature of the client's commercial arrangement with its intermediaries.[26] NSCC states that giving a choice to institutions to become a Sponsored Member or Customer should facilitate additional central clearing of SFTs.[27]

Sponsoring Members. All NSCC members would be eligible to apply to become Sponsoring Members, so long as they meet the specified requirements.[28] For operational and administrative purposes, NSCC would interact solely with the Sponsoring Member as the agent of its Sponsored Members, and the

[16] To address regulatory and investment guideline requirements applicable to certain institutional firms (*e.g.,* Section 17(f) of the Investment Company Act of 1940 and Rule 17f–2 thereunder), a participant would be permitted to transfer an additional cash haircut above 100% (*e.g.,* 102%) to such institutional firms as part of this initial settlement of the SFT.

[17] NSCC refers to this daily interest as a ''Rate Payment.''

[18] NSCC processes clearance and settlement of equity securities using the CNS System. Securities are CNS-eligible if they are eligible for book-entry transfer on the books of DTC, not subject to certain transfer restrictions, and not subject to certain corporate actions. NSCC, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures (December 2021), *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/NSCC_Disclosure_Framework.pdf.* (''NSCC Disclosure'').

NSCC would maintain a list of the securities that may underlie an SFT that NSCC will accept. Such list would not be a rule but a separate document maintained by NSCC and available to members, consistent with NSCC's practice for equity securities. *See* Notice of Filing, *supra* note 3, at 23331; Rule 3 (Lists to be Maintained) of the Rules, *supra* note 8.

[19] Notice of Filing, *supra* note 3, at 23331. NSCC selected $5 as the per share price minimum for underlying equity securities because $5 is a common share price minimum adopted in brokerage margin eligibility schedules. NSCC may modify the eligible equity securities' minimum share price and would announce any such change via notice to its members. *See id.*

[20] After a buy-in, the lender would give written notice to NSCC of its costs to purchase the relevant SFT securities or the buy-in costs. NSCC would then transfer the costs from the borrower to the lender, and the SFT would be closed.

[21] NSCC states that the requirement that a party exercising buy-in rights do so in a ''commercially reasonable manner'' is the current industry standard, as reflected in the Master Securities Loan Agreement published by Securities Industry and Financial Markets Association. *See* Notice of Filing, *supra* note 3, at 23332–33; Section 13.1 of the Master Securities Loan Agreement published by Securities Industry and Financial Markets Association.

[22] Specifically, NSCC states that borrowers may have the need to accelerate settlement of securities lending transactions if they lose a ''permitted purpose'' for such loans under Regulation T. *See* 12 CFR 220.1–220.12.

[23] *See* Notice of Filing, *supra* note 3, at 23330.

[24] *See* Notice of Filing, *supra* note 3, at 23337.

[25] *See* Notice of Filing, *supra* note 3, at 23338.

[26] *See id.*

[27] *See* Notice of Filing, *supra* note 3, at 23330.

[28] 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 certain financial requirements. 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, for example, for a new member that has yet to demonstrate a track record of financial responsibility and operational capability. Moreover, after becoming a Sponsoring Member, it would be obligated to notify NSCC if it is no longer compliant with the relevant standards and qualifications. NSCC would have a right to review the financial responsibility and operational capability of Sponsoring Members.

Sponsoring Member would be responsible for posting the required margin on Sponsored Member transactions and for covering any default loss allocated to Sponsored Members.[29]

Sponsoring Members would unconditionally guarantee to NSCC the payment and performance of their Sponsored Members' 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 proposal, the Sponsoring Member would be required to satisfy those settlement obligations on behalf of a Sponsored Member if the Sponsored Member defaults and fails to perform its settlement obligations. Moreover, Sponsoring Members would be subject to an activity limit based on the perceived volatility of its portfolio as compared to its capital.[30]

Sponsored Members. Sponsored Members would be required to be either a qualified institutional buyer[31] or a legal entity that satisfies the financial requirements necessary to be a qualified institutional buyer. Sponsored Members would enter into an agreement with NSCC whereby Sponsored Members would agree to terms and conditions NSCC identifies as necessary in order to protect NSCC and its members. Sponsored Members would not be full-service NSCC members, but instead would be limited members which rely on the Sponsoring Members to access NSCC's services.

A Sponsored Member would only be eligible to submit transactions in which its respective Sponsoring Member is the counterparty (*i.e.,* ''done with'' transactions). However, a Sponsored Member can be sponsored by more than one Sponsoring Member, should it wish to continue to transact with different entities.

Agent Clearing Members. Agent Clearing Members would serve as agent and credit intermediary for its institutional clients. Agent-style trading is the manner in which such agent lenders are typically approved to transact in securities lending transactions on behalf of their Customers. All NSCC members would be eligible to apply to become Agent Clearing Members in NSCC, so long as they meet the specified requirements.

In addition, Agent Clearing Members would be subject to similar responsibilities as Sponsoring Members. Specifically, an Agent Clearing Member would be responsible for posting to NSCC the required margin for its Customers' activity and covering any default loss allocable to its Customers. Agent Clearing Member transactions would be subject to the same activity limit applicable to Sponsored Member transactions.

An 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.[32] Unlike Sponsored Members, Customers would not have any direct relationship with NSCC and would not need to apply to become a member or enter into an agreement with NSCC. Moreover, the Agent Clearing Members would be able to submit transactions with a counterparty other than the Agent Clearing Member, resulting in transactions ''done away'' from the Agent Clearing Member.

(3) Risk Management

Under the proposal, NSCC would centrally manage risks associated with SFTs in a manner consistent with other transactions in equity securities that NSCC clears.

Calculation of Margin. NSCC would require all SFT members to provide margin with respect to their SFT activity, subject to a $250,000 minimum amount. NSCC is proposing to calculate an SFT member's required margin by applying the methodology used to determine margin for transactions in equity securities. Specifically, the determination would include certain risk-based margin components[33] that are currently applicable to NSCC's equity securities transactions.

NSCC would determine an SFT member's required margin independently of the member's other positions, including its equity securities transaction positions outside of the SFTs. NSCC would not net a member's SFT positions with its other positions to determine margin, except for the margin liquidity adjustment charge component. Because NSCC would aggregate all members' margins together as its clearing fund[34] regardless of whether they are for SFTs or CNS transactions, an SFT or CNS member default may impact NSCC's clearing fund as a whole. In other words, a default by an SFT member may impact non-SFT members and vice versa.

NSCC would require that a certain portion of its margin be a combination of cash and eligible securities, *i.e.,* the specific Treasury securities that NSCC accepts as collateral. NSCC would also have the discretion to require an SFT member to post its margin in a higher proportion of cash than would otherwise be required, based on the current market conditions and the SFT member's financial and operational capabilities.

For transactions submitted by Sponsoring Members or Agent Clearing Members, NSCC would require that the Sponsoring Members and Agent Clearing Members establish an account or accounts for the margin collected on behalf of Sponsored Members and Customers, respectively. This account would be separate from the Sponsoring Member or Agent Clearing Member's proprietary account. NSCC would determine the required margin for transactions for each Sponsored Member and Customer on a gross basis, that is, separately without netting. The margin obligated for a Sponsoring Member or Agent Clearing Member would be the sum of the individual margin amounts determined for each Sponsored Member and Customer to ensure that the total margin amount represents the sum of each individual institutional client's activity.

[29] NSCC aggregates all members' margin together with certain other deposits required under NSCC's Rules as its clearing fund. NSCC would be able to access the clearing fund should a defaulted member's own margin be insufficient to satisfy losses to NSCC caused by the liquidation of that member's portfolio. *See* Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, *supra* note 8.

[30] Specifically, if the sum of the margin charges applied by NSCC to capture the risks related to market price movement applicable to its Sponsored Member sub-accounts and its other accounts at NSCC exceeds its required net assets or equity capital, the Sponsoring Member would not be permitted to submit new Sponsored Member transactions, unless otherwise determined by NSCC.

[31] The term qualified institutional buyer is defined by Rule 144A under the Securities Act of 1933, as amended. *See* 17 CFR 230.144A.

[32] Like a Sponsoring Member, an Agent Clearing Member would be obligated to notify NSCC if it is no longer in compliance with the relevant standards and qualifications. NSCC would have a right to review Agent Clearing Members' financial and operational capability.

[33] Specifically, it would include the volatility charge, mark-to-market charge, special charge, margin required differential component charge, coverage component charge, and margin liquidity adjustment (''MLA'') charge set forth in NSCC's Rules, as well as charges for non-returned SFTs, which is similar to the charges that NSCC for CNS fails under its Rules. A further description of these charges is available in Procedure XV of NSCC's Rules and in the NSCC Disclosure. For the volatility charge, NSCC would consider the potential future exposure of a given portfolio based on historical price movements and the margin floor, and it would also determine margin to address the risk due to a high concentration level in a single stock (''gap risk''). For the MLA charge, NSCC would consider the risk when a member's portfolio contains large net unsettled positions in a particular group of securities with a similar risk profile or in a particular asset type, which could pose particular liquidation risk in the event of a default.

[34] *See supra* note 31.

Default Management. NSCC's proposed rules would specify the procedures that it would use to centrally manage the default of that member,[35] including liquidating the underlying securities and meeting the final settlement obligations. If there is an SFT member default, NSCC would continue paying to and receiving from a non-defaulting SFT member the difference in market value of the underlying securities with respect to the novated SFTs until final settlement. By continuing to process the difference in market value, NSCC would maintain the non-defaulting SFT member in largely the same position as if the defaulting SFT member has not defaulted.

In addition, in the event an SFT member defaults, NSCC would have all the rights and obligations of the defaulting party, whether it was the lender or borrower in relation to such default-related SFTs. For example, if a borrower defaults, NSCC would assume all the rights of a lender and the defaulting borrower, and be able to issue a recall notice and conduct a buy-in in a commercially reasonable manner.[36] On the other hand, if a lender defaults, NSCC would be able to deliver a recall notice to a borrower to stop the final settlement date of a default-related SFT from being further delayed.

To the extent that an SFT default generates a loss larger than the resources that the defaulter has provided to NSCC, *i.e.,* its margin and the proceeds from its liquidated portfolio, NSCC's loss allocation rule would apply to all members including Sponsoring Members and Agent Clearing Members.[37]

Liquidity Risk. The proposal also describes how NSCC manages potential liquidity exposures arising from clearing SFT transactions. Currently, NSCC is required to hold sufficient liquidity resources to cover the largest settlement obligation stemming from the cleared CNS positions, assuming a member default. Under the proposal, NSCC's liquidity exposures would also include settlement obligation arising from SFT positions. Specifically, the liquidity obligations relating to SFT would include the daily market to market of the underlying securities as well as any final cash settlement obligation owed by the defaulting member.

To account for a potentially higher liquidity need as a result of the SFT expansion, NSCC is planning to utilize its current suite of qualifying liquidity resources, including the supplemental liquidity deposit. NSCC may collect supplemental liquidity deposits from members whose default would pose the largest liquidity exposure to NSCC.[38] Accordingly, such deposits may be used to address any heightened liquidity exposures stemming from clearing SFTs because the deposits, by design, act to cover the difference between a member's peak liquidity need and NSCC's liquidity resources.

III. Discussion and Notice of no Objection

Although the Clearing Supervision Act does not specify a standard of review for an Advance Notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.[39] Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.[40] Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):[41]

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among other areas.[42]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act.[43] These rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.[44] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.[45] As discussed below, the Commission believes the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[46] and in the Clearing Agency Rules, in particular Rules 17Ad–22(e)(6), (e)(7), (e)(18), (e)(19), and (e)(21).[47]

A. Consistency With Section 805(b) of the Clearing Supervision Act

(1) Reducing Systemic Risks and Supporting the Stability of the Broader Financial System

The Commission believes that NSCC's proposal to introduce the central clearing of SFTs is consistent with the objectives of reducing systemic risk and supporting the stability of the broader financial system.

As described above in Section II.A., through central clearing, NSCC would be able to reduce each SFT member's counterparty credit risk by becoming a counterparty to all SFTs. Central clearing would also help reduce risk because unlike bilateral transactions involving multiple counterparties, a market participant would be able to transact with one counterparty, subject to uniform and transparent risk management practices and centralized default management, minimizing the

[35] NSCC would be able to take actions listed above when NSCC ''ceases to act'' for an SFT member. The factors NSCC would consider in making the decision to cease to act include the member's suspension from any regulatory organization, failure to make a payment to NSCC, or other financial issues. *See* Rules 46 (Restrictions on Access to Service) and 18 (Procedures for When the Corporation Ceases to Act) of the Rules, *supra* note 8.

[36] The proposal would specify that in the case of a default-related SFT, the commercial reasonableness of a buy-in shall be determined by NSCC based on whether such buy-in would create a disorderly market in the relevant SFT security, consistent with the applicable market standard. *See supra* note 23.

[37] Specifically, under NSCC's loss allocation rule, NSCC would use its own capital (referred to as the ''Corporate Contribution'') and then allocate losses to members pro rata via rounds of cash calls. *See* Rule 4 (Clearing Fund) of the Rules, *supra* note 8.

[38] *See* Rule 4A (Supplemental Liquidity Deposits) of the Rules, *supra* note 8.

[39] *See* 12 U.S.C. 5461(b).

[40] 12 U.S.C. 5464(a)(2).

[41] 12 U.S.C. 5464(b).

[42] 12 U.S.C. 5464(c).

[43] 17 CFR 240.17Ad–22. NSCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[44] 17 CFR 240.17Ad–22.

[45] The issues raised by the commenters that are outside the scope of this Advance Notice are generally not addressed here because they are not relevant to the Commission's decision. The standard of review for the proposal is whether the proposal is consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act and Rule 17Ad–22(e) under the Exchange Act.

[46] 12 U.S.C. 5464(b).

[47] 17 CFR 240.17Ad–22(e)(6), (e)(7), (e)(18), (e)(19), and (e)(21).

risk of potential fire sales. In addition, central clearing would provide netting efficiencies by allowing SFT members to offset cash payables and receivables, which in turn, would allow SFT members to reduce their required collateral amount and create capital efficiencies.

For these reasons, the Commission believes that the proposal should help decrease the operational, credit, and liquidity risk of SFTs relative to those made outside of central clearing through risk management, novation, trade guarantee, and netting. Accordingly, the Commission believes that, through the new SFT clearing service, the proposal would help reduce systemic risks and support the stability of the broader financial system, consistent with Section 805(b) of the Act.[48]

(2) Promoting Robust Risk Management and Safety and Soundness

The Commission believes that NSCC's proposal is consistent with the objectives of promoting robust risk management and promoting safety and soundness at NSCC.

As described in Section II.B.(3), NSCC proposes to manage the risks associated with the new SFT central clearing service in a manner consistent with its risk management of other equity securities transactions and provide a centralized method to manage any defaults. First, NSCC would manage its credit risk with respect to SFTs by requiring minimum margin deposits and applying specific aspects of its margin methodology to determine the appropriate margin to cover the risks posed by the SFTs, as well as by applying an additive margin component designed to address any high concentration risk posed by cleared SFTs. When calculating margin, NSCC would not net SFT members' SFT positions with other CNS position, and NSCC also would not net across Sponsored Member accounts or Customer accounts, thereby collecting greater amounts of margin and improving overall resilience of NSCC. NSCC also would specify that a certain portion of margin be in cash and eligible Treasury clearing fund securities to protect against market risk of the collateral. Further, as described in Section II.B.(2), NSCC would apply activity limits to ensure that SFT members' financial resources are sufficient to meet their margin requirements.

Second, as described in Section II.B.(3), NSCC would include an SFT member's potential liquidity exposures as part of NSCC's potential liquidity need. This means that, if a member's SFT activity were to drive NSCC's potential liquidity need, that member would have to provide supplemental liquidity under NSCC's existing rules, to ensure that NSCC would maintain adequate resources to satisfy liquidity needs arising from its SFT settlement obligations.

Third, the proposal would provide a procedure to address SFT member defaults to allow NSCC to take timely action to contain losses and continue to meet its obligations. Specifically, NSCC would have a right to close out a defaulting member's positions, assume the rights of the non-defaulting party in relation to such default-related SFTs, and apply its loss allocation procedure if the defaulting member's resources are insufficient to cover a loss. The loss allocation procedure would provide an orderly application of funds to absorb any loss.[49] Taken together, these procedures should minimize the likelihood that losses arising out of an SFT member default would exceed NSCC's prefunded resources and threaten the safety and soundness of NSCC's ongoing operations.

For the foregoing reasons, the Commission believes that the proposal would promote robust risk management and safety and soundness at NSCC,[50] consistent with Section 805(b) of the Act.[51]

B. Consistency with Rule 17Ad–22(e)(6)(i)

Rule 17Ad–22(e)(6)(i) under the Exchange Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[52]

As described above in Section II.B.(3)(i), NSCC proposes to establish margin requirements to cover its credit exposures to the SFT members. First, NSCC proposes to collect margin from SFT members, including the application of both a minimum margin amount and of NSCC's existing margin system that contains multiple component charges designed to cover various types of risk and meet applicable regulatory requirements.[53] Second, NSCC would apply more conservative approaches to the calculation of SFT, as compared to NSCC's existing margin system. For example, unlike the current calculation of the volatility of a member's net unsettled positions, NSCC would apply a more stringent method to address risks associated with issuer-specific events affecting the price of the concentrated security within the SFT portfolio, and risk associated with liquidating a defaulted SFT member's portfolio with a large position by asset class, relative to market-wide liquidity.[54] Further, NSCC would not net SFTs against other equity transactions at NSCC when determining margin requirements, to ensure that margins associated with SFTs would not be reduced by other equity transactions outside of the SFTs. Separately, it would collect margin on a gross basis for different Sponsored Members or different Customers, thereby accounting and collecting margin for each individual Sponsored Member and Customer.

Because NSCC applies its risk-based margin methodology, tailored to address SFTs, the Commission believes that the proposal is reasonably designed to cover NSCC's credit exposures from SFT members and consistent with Rules 17Ad–22(e)(6)(i).

C. Consistency With Rule 17Ad–22(e)(7)

Rule 17Ad–22(e)(7)(i) under the Exchange Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum maintaining sufficient liquid resources at the minimum in all

[48] 12 U.S.C. 5464(b).

[49] *See supra* note 39.

[50] A large number of commenters expressed concerns that the proposal is designed to exclusively benefit large institutions by obscuring and facilitating negligent risky behavior, and the proposal would hamper a fair and transparent market. *See, e.g.,* Letters from Zachary Williams and from Rob Sanders, dated April 19, 2022. The commenters' concerns generally rely on the premise that SFTs are designed to promote short sales and potentially naked short sales that such commenters believe should be illegal. *See, e.g.,* Letters from Adam and from Bennett Zhang, dated April 19, 2022. Any SFTs that would be cleared as part of the proposed service are transactions that occur bilaterally today, and the proposal does not impact Commission rules applicable to short sales. Because this Advance Notice is not addressing short sales, and is designed to reduce risks associated with bilateral SFTs, the Commission believes that the commenters' concerns related to short sales are outside the scope of the Advance Notice and the Proposed Rule Change.

[51] 12 U.S.C. 5464(b).

[52] 17 CFR 240.17Ad–22(e)(6)(i).

[53] *See supra* note 35.

[54] *See id.*

relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions.[55]

As described above in Section II.B.(3)(ii), when calculating its liquidity need, in addition to liquidity exposures relating to other equity positions, NSCC would include all the differences in market value of the underlying securities owed by a defaulting SFT member in the event an SFT member defaults, as well as all novated open SFT transactions of a defaulting SFT. This determination of the liquidity need is designed to ensure that NSCC would cover any liquidity need associated with its final settlement obligations to non-defaulting SFT members and members. NSCC currently relies on various liquidity resources, all of which would be available in the event of a liquidity shortfall relating to SFTs. The Commission believes that NSCC's existing liquidity risk management framework, including NSCC's ability to collect supplemental liquidity if a member's activity, including its SFT activity, increases NSCC's liquidity need,[56] would be sufficient to ensure that NSCC would continue to meet its regulatory obligations.

The Commission believes that NSCC's proposal to manage its potential liquidity exposures associated with SFTs by using its established liquidity resources is reasonably designed to manage the liquidity risk that may arise in the SFT central clearing service, and consistent with Rule 17Ad–22(e)(7)(i).[57]

D. Consistency With Rule 17Ad–22(e)(18)

Rule 17Ad–22(e)(18) under the Exchange Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with participation requirements on an ongoing basis.[58]

First, the Commission believes that the proposal is reasonably designed to establish objective, risk-based, and publicly-disclosed criteria for SFT members. As described above, all members would be eligible to apply to become Sponsoring Members or Agent Clearing Members subject to such criteria, similar to how NSCC currently provides membership criteria for its members. For example, if a Sponsoring or Agent Clearing Member applicant is a registered broker-dealer, it would be subject to particular financial resource requirements, as specified in the proposed rule. Only a qualified institutional buyer or a legal entity that satisfies the financial requirements necessary to be a qualified institutional buyer would be eligible to be a Sponsored Member. In addition, an applicant must provide adequate assurances for its financial responsibility and operational capability.

Second, the proposal is reasonably designed to allow direct and indirect participants to access the new SFT central clearing service by establishing new membership categories to allow for such access by particular types of market participants. For example, a participant who cannot or does not want to meet the requirements to become either a member, a Sponsoring Member, or an Agent Clearing Member can participate as a Sponsored Member or as a Customer, the latter of which does not have a direct relationship with NSCC.

Third, the proposal is reasonably designed to allow NSCC to monitor compliance with participation requirements on an ongoing basis. The proposal would require an SFT member to notify NSCC if it is no longer in compliance with applicable requirements to be an SFT member, and allow NSCC to inspect SFT members' financial resources and operational capability on an ongoing basis.

For the foregoing reasons, the Commission believes that the proposal is consistent with Rule 17Ad–22(e)(18).[59]

E. Consistency With Rule 17Ad–22(e)(19)

Rule 17Ad–22(e)(19) under the Exchange Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities.[60]

The proposal allows Sponsoring Members to submit Sponsored Members' transactions to NSCC, and Agent Clearing Members to submit its Customers' transactions to NSCC. In both cases, Sponsoring Members and Agent Clearing Members would be ultimately responsible to NSCC for Sponsored Members' and Customers' transactions and liable to satisfy all settlement obligations. Both Sponsoring Members and Agent Clearing Members serve as the processing agent for all the Sponsored Member and Customer transactions responsible for posting margin and satisfying any losses arising from the client transactions. Sponsoring Members and Customers do not have any direct mechanism to submit their own margin or settle transactions directly with NSCC. Moreover, even though Sponsored Members would be principally liable for their own settlement obligations, Sponsoring Members' guaranty requires Sponsoring Members to satisfy settlement obligations on behalf of its Sponsored Members.

By calculating and collecting margins for Sponsored Members' and Customers' transactions and providing certainty that Sponsoring Members and Agent Clearing Members would be responsible for their Sponsored Members' and Customers' transactions, the Commission believes that the proposal

[55] 17 CFR 240.17Ad–22(e)(7)(i).

[56] NSCC is required to have policies and procedures reasonably designed to monitor and manage its liquidity risk by maintaining sufficient liquid resources at the minimum to effect settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions, and by determining that amount and regularly testing the sufficiency of its liquidity resources. 17 CFR 240.17Ad–22(e)(7)(i) and (vi). Pursuant to this regulatory requirement, NSCC's Liquidity Risk Management Framework outlines NSCC's liquidity resources and liquidity risk management practices. *See* Securities Exchange Act Release No. 82377 (December 21, 2017), 82 FR 61617 (December 28, 2017). One such liquidity resource is NSCC's supplemental liquidity deposit, which is designed to withstand NSCC's fluctuating peak liquidity needs and source adequate liquidity at all times. To do so, NSCC allocates a funding obligation to those members driving peak liquidity needs that surpass NSCC's available liquidity resources through SLDs. *See* Securities Exchange Act Release No. 71000 (December 5, 2013), 78 FR 75400 (December 11, 2013).

[57] 17 CFR 240.17Ad–22(e)(7)(i).

[58] 17 CFR 240.17Ad–22(e)(18).

[59] *Id.*

[60] 17 CFR 240.17Ad–22(e)(19).

is consistent with Rule 17Ad–22(e)(19).[61]

F. Consistency With Rule 17Ad–22(e)(21)

Rule 17Ad–22(e)(21) under the Exchange Act requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves, including the clearing agency's clearing and settlement arrangements and the scope of products cleared or settled.[62]

As described above in Section II.B.(1) and (2), the proposal is designed to reflect the current structure of the bilateral securities lending market, ensuring that relevant features and market participants subject to differing regulatory requirements and existing contractual relationships can be accommodated as part of the service provided by NSCC. For example, the proposal would allow for central clearing of SFTs with a one business day term, in order to provide a scheduled settlement date so that the transaction may be eligible for balance sheet netting benefit as explained in Section II.(B)(1). Second, the proposal would allow accelerated settlement so that certain market participants are able to quickly unwind their SFTs to satisfy applicable regulatory requirements. Third, the proposed membership categories would accommodate principal and agency trading to allow different types of market participants to enter into the new SFT central clearing service, consistent with their business models and applicable regulatory requirements.

Accordingly, the Commission believes that the proposal is reasonably designed to be efficient and effective in meeting the requirements of its participants and the market it serves, and consistent with Rule 17Ad–22(e)(21).[63]

VI. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR–NSCC–2022–801) and that NSCC is *authorized* to implement the proposal as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–NSCC–2022–003, whichever is later.

[61] *Id.*

[62] 17 CFR 240.17Ad–22(e)(21).

[63] *Id.*

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11839 Filed 6–1–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94988; File No. SR–OCC–2022–002]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change Concerning the Options Clearing Corporation's Governance Arrangements

May 26, 2022.

I. Introduction

On February 7, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2022–002 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to amend certain of its governing documents by (1) clarifying that OCC's Public Directors (defined below) may not be affiliated with any designated contract market (''DCM'') or futures commission merchant (''FCM''); (2) allowing OCC's board of directors (the ''Board'') to delegate certain authorities to Board-level committees [3] or officers; (3) amending OCC's by-laws (the ''By-Laws'') with regard to stockholder consent; and (4) applying additional housekeeping amendments to the charter of the Board (''Board Charter'') and Committee Charters (collectively, the ''Charters'').[4] The Proposed Rule Change was published for public comment in the **Federal Register** on February 25, 2022.[5] The Commission received one comment regarding the Proposed Rule Change.[6] This order approves the Proposed Rule Change.

II. Background [7]

A. Public Director Qualifications

The Proposed Rule Change would amend Sections 6A and 12 of Article III of the By-Laws, the Fitness Standards adopted by the Board thereunder,[8] and the Board Charter to codify OCC's practice of nominating Public Directors who are, in addition to other qualifications, unaffiliated with DCMs and FCMs. Currently, OCC's By-Laws and Fitness Standards define Public Directors as individuals who are not affiliated with a national securities exchange, national securities association, or a broker or dealer in securities.[9] OCC notes that these restrictions were intended to broaden the mix of viewpoints and business expertise represented on the Board.[10] Subsequent to implementing these restrictions, OCC added futures market clearing memberships and expanded its services to include clearance of futures and futures options.[11] OCC's practice has been and is to nominate Public Directors who are independent from DCMs and FCMs, and it believes it is appropriate to codify this practice in its By-Laws, Fitness Standards, and Board Charter.[12] Similar to the existing restrictions related to national securities exchanges, securities associations, and brokers and dealers, OCC believes that the proposal to exclude DCM- or FCM-affiliated Public Directors would broaden the mix of viewpoints and business expertise represented on the Board.[13]

B. Delegated Authority

OCC proposes to amend the Charters to delegate authority from the Board to the Committees to review and approve certain routine initiatives and policies. In addition, OCC proposes to amend its

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Committees supporting OCC's Board include an Audit Committee (the ''AC''), a Compensation and Performance Committee (the ''CPC''), a Governance and Nominating Committee (the ''GNC''), a Risk Committee (the ''RC''), and a Technology Committee (the ''TC'') (collectively, the ''Committees''). The purpose, form, and function of the Committees is governed by each Committee's respective charter (*i.e.,* the ''AC Charter,'' the ''CPC Charter,'' the ''GNC Charter,'' the ''RC Charter,'' and the ''TC Charter'') (collectively, the ''Committee Charters'').

[4] *See* Notice of Filing *infra* note 5, 87 FR at 10881.

[5] Securities Exchange Act Release No. 94283 (Feb. 18, 2022), 87 FR 10881 (Feb. 25, 2022) (File No. SR–OCC–2022–002) (''Notice of Filing'').

[6] The comment on the Proposed Rule Change is available at *https://www.sec.gov/comments/sr-occ-2022-002/srocc2022002.htm.*

[7] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[8] *See* Fitness Standards for Directors, Clearing Members, and Others, *available at https://www.theocc.com/getmedia/40ab0b06-5e8a-441e-97e3-fab85d3cfe0b/fitness_standards.pdf.*

[9] *See* By-Laws Art. III § 6A & Interpretation and Policy .01.

[10] *See* Securities Exchange Act No. 30328 (Jan. 31, 1992), 57 FR 4784 (Feb. 7, 1992) (File No. SR–OCC–92–2).

[11] *See* Exchange Act Release No. 44434 (June 15, 2001), 66 FR 33283 (June 21, 2001) (File No. SR–OCC–2001–05).

[12] *See* Notice of Filing *supra* note 5, 87 FR at 10882.

[13] *Id.*

By-Laws and Committee Charters to delegate authority to authorize certain regulatory filings to a Committee or, in limited cases, an OCC officer.[14] However, as provided under the current Board Charter, in all instances, the Board would retain the obligation to oversee such delegated activity.[15]

Currently, the Charters delegate to the Committees the review of many routine initiatives or policies, but not usually the approval. Regulatory filings generally require approval by the full Board.[16] OCC believes that its current governance processes have several disadvantages, including mandating that numerous matters that otherwise would not occupy the time and attention of the Board be brought to the full Board for approval.[17] OCC also believes that requiring Board approval makes it more difficult to obtain authorization for regulatory filings between regularly scheduled Board meetings absent a special Board meeting.[18] In practice, the Board routinely delegates authority to Committees to approve initiatives, policy changes, and rule filings on a case-by-case basis when proposed changes are expected to be ready for Board-level review between regular Board meetings, in part because the Board relies on the business expertise of the directors appointed to the Committees to review and approve proposed changes within the scope of each Committee's responsibilities.

The Proposed Rule Change would delegate to the Committees authority for the review and approval of certain initiatives and policies, as well as approval of proposed rule changes for matters within the scope of authority of each Committee. Specifically, OCC proposes to amend the Charters to delegate authority to the Committees to review and approve the following initiatives and policies that currently require Board approval:

Committee	Initiatives and Policies
Audit Committee ("AC")	evaluation and appointment of an external auditor
Compensation and Performance Committee ("CPC")	review and approval of the: • corporate performance report (formerly the "Corporate Plan"); and • annual budget
Governance and Nominating Committee ("GNC")	review and approval of the: • Director Code of Conduct • Related Party Transaction Policy • Board self-evaluation questionnaire
Risk Committee ("RC")	review and approval of: • risk appetites and risk tolerances • changes to existing models

For matters that are within the scope of the Committee's responsibilities, each Committee generally would have the authority to amend OCC policies filed with the Commission as rules pursuant to the Exchange Act.[19] The Board would, however, retain sole approval authority for certain policies.[20] The Board would also retain the authority to revoke delegated authority and limit or modify the scope of such delegated authority, either in whole or in part, by Board resolution. OCC would also amend Article XI, Section 2 of the By-Laws to allow the Board to delegate authority to Committees to authorize the filing of proposed amendments to OCC's rules. Board approval would continue to be required for filings related to amendments that require a supermajority vote pursuant to Article XI, Section 2 of the By-Laws.[21] OCC would amend the Committee Charters to include among each Committee's functions and responsibilities the authorization of regulatory submissions within the scope of the functions and responsibilities delegated to each Committee.[22]

OCC also proposes to allow the Board to delegate authority to an OCC officer to make certain regulatory filings. OCC believes that such delegated authority would help OCC to more efficiently revise its rules to improve their clarity and ensure their consistency.[23] Factors the Board would consider in delegating such authority to an officer include, but are not limited to, the responsibilities and expertise of the officer to whom authority would be delegated and any limitations on the scope of the delegated authority, including limitations to the subject matter, materiality of the changes, the regulatory approval process required to implement the amendments, and the manner in which the officer must notify the Board or a Committee about filings approved pursuant to such authority. Such delegation authority and related factors are described in OCC's proposed changes to the Board Charter and Section 2 of Article XI of the By-

[14] Under OCC's By-Laws, the Board may elect one or more officers as it may from time to time determine are required for the effective management and operation of the Corporation. By-Laws Art. IV § 1. In addition, the Chairman, Chief Executive Officer and Chief Operational Officer each may appoint such officers, in addition to those elected by the Board, and such agents as they each shall deem necessary or appropriate to carry out the functions assigned to them. By-Laws Art. IV § 2.

[15] *See* Board Charter, *available at https://www.theocc.com/about/corporate-information/board-charter* (stating that ''[t]he Board may form and delegate authority to committees and may delegate authority to one or more of its members and to one or more designated officers of OCC. However, in all instances, the Board retains the obligation to oversee such delegated activity and to assure itself that delegation and reliance on the work of such delegates is reasonable.'').

[16] The Board has delegated the approval of fee change-related filings to the CPC, and the Board may delegate authority for approving individual filings on a case-by-case basis.

[17] *See* Notice of Filing *supra* note 5, 87 FR at 10882.

[18] *Id.*

[19] For example, with respect to risk management-related policies, OCC would amend the RC Charter by deleting the provisions requiring the RC to recommend changes to certain risk-related policies to the Board for approval. Instead, the RC would be authorized to approve such regulatory filings. The Board would continue to review OCC's risk management policies, procedures, and systems annually, but would delegate authority to approve intra-year changes to such policies and procedures to the RC.

[20] These include policies for which the Board has determined to retain oversight. For example, the Board would remain the sole authority to approve policies addressing decision-making in crises and emergencies. *See* Board Charter, available at *https://www.theocc.com/about/corporate-information/board-charter.*

[21] Amendments requiring a supermajority vote include amendments of the introduction to Chapter X of the Rules (involving Clearing Fund contributions), Rule 1002, Rule 1006, Rule 1009, and Rule 1010. By-Laws Art. XI § 2.

[22] The RC Charter currently grants the RC authority to ''authorize the filing of regulatory submissions pursuant to'' the performance of the responsibilities and functions that the Board shall delegate to the RC from time to time. *See* RC Charter, *available at https://www.theocc.com/about/corporate-information/board-charter.*

[23] *See* Notice of Filing *supra* note 5, 87 FR at 10883.

Laws.[24] Based on the factors identified above, OCC believes that the Chief Legal Officer and Chief Regulatory Officer have the appropriate responsibility and expertise to identify matters suitable for delegated approval based on the limits imposed with respect to the method of filing the proposed changes under the Exchange Act and the materiality of the proposed changes.[25]

C. By-Law Article XI

OCC proposes to amend Article XI of the By-Laws to remove the provision that allows OCC to treat an Exchange Director's vote as the consent of the stockholder who elected the Exchange Director for those amendments to the By-Laws that require stockholder consent. According to OCC, the provision codified a long-standing understanding between OCC and the stockholders to consider the affirmative vote of each Exchange Director as the approval of the stockholder.[26] To avoid potential conflicts between an Exchange Director's fiduciary duty as a director of OCC and the Exchange Director's fiduciary duty to the stockholder, the By-Laws provide that an Exchange Director may disclaim such stockholder consent.[27] It is OCC's current practice to obtain written consent from the stockholders for all matters that require such consent.[28] OCC contends that the Proposed Rule Change would eliminate the outdated authority in OCC's By-Laws to impute an Exchange Director's vote to constitute stockholder consent and better reflect current practice.[29] As a result, OCC's By-Laws would require written consent from the stockholders for all matters that require such consent.

D. Other Amendments to the Board Charter and Corporate Charters

The Proposed Rule Change would make other amendments to the Charters arising from the annual review of OCC's governance arrangements. These proposed amendments are intended to increase consistency across OCC's governance arrangements and to make other conforming changes to improve their clarity and transparency. These changes are described and broadly categorized below.[30]

(1) Clarity and Transparency

The Proposed Rule Change would amend the Board Charter to provide for a minimum of four meetings per year, rather than five. This change would align the Board Charter with the Committee Charters, which generally require at least four meetings each year. The Proposed Rule Change would also modify the attendance guidelines to provide that attendance telephonically or by videoconference for meetings scheduled for in-person attendance is discouraged. This change conforms with the current Director Code of Conduct and would be applied to each of the Committee Charters.

The Proposed Rule Change would also amend the discussion of the Board's mission to more accurately reflect that OCC's services to the industry are not limited to clearance and settlement.[31] The amendments would also clarify that the Board approves ''material,'' rather than ''major,'' changes in auditing and accounting principles and practices. This proposed change would align the Board Charter with language in the AC Charter.

The Proposed Rule Change would also revise the description of the Conflict of Interest Policy within the Board Charter. The current Conflict of Interest Policy does not define ''conflict of interest,'' but rather refers variously throughout the policy to different types of conflicts, including potential conflicts and apparent conflicts, which are referred to as those that may ''be reasonably perceived by others to raise questions about potential conflicts of interest.'' OCC would streamline the policy by defining ''conflict of interest'' as ''actual, potential or apparent conflicts of interest'' and referring to the new defined term ''conflict of interest'' throughout the policy instead of identifying specific types of conflicts (*i.e.,* potential or apparent) at various points throughout the policy. Accordingly, OCC would remove the current references to potential and apparent conflicts of interest scattered throughout the policy, including the references to apparent conflicts of interest described as matters that may ''be reasonably perceived by others to raise questions about potential conflicts of interest.'' These changes would align the Board Charter with the current Director Code of Conduct, which employs the same defined term. The Board Charter's discussion of ethics and conflicts of interest would also be amended to reflect the full title of the Director Code of Conduct and the corporate title for OCC's general counsel. In addition, the Board Charter would be updated to clarify that an Exchange Director's, Member Director's, or Public Director's qualification as independent for purposes of service on the AC is subject to the assessment of the Board and GNC, which includes other disqualifying material relationships, as provided by the current Board Charter.

OCC is also proposing to update the cadence of certain AC reviews to reflect that the AC shall conduct such reviews at each regular meeting of the AC.[32] The current AC Charter contemplates that the AC shall conduct certain reviews quarterly based on the assumption that regular meetings will occur quarterly. OCC believes that, while it is generally the case that regular meetings are scheduled each quarter, the proposed change would avoid the need to call special meetings to address items on a quarterly cadence if a regularly scheduled meeting happens to fall at the beginning of the next quarter or the end of the last quarter.[33] The cadence of reviews for other reports described as ''periodic'' or occurring ''regularly''

[24] OCC anticipates that if implemented, the Board would delegate authority to the Chief Legal Officer and Chief Regulatory Counsel to authorize regulatory filings that (1) may be filed for immediate effectiveness pursuant to Section 19(b)(3) of the Exchange Act, and (2) proposed rule changes that the Chief Legal Officer or Chief Regulatory Counsel determines in his or her discretion to constitute clarifications, corrections or minor changes, in each case other than filings that would amend OCC's By-Laws, Rules that require a supermajority vote of the Board to amend pursuant to Article XI, Section 2 of the By-Laws, or rule-filed policies for which the Board has retained oversight vis-à-vis the Committees. In addition, OCC anticipates that if implemented, the Board's delegation of authority would be conditioned on the officers notifying the Board of regulatory filings approved by delegated authority at the next regularly scheduled Board meeting. OCC expects to implement procedures to ensure the Board is so notified. *See* Notice of Filing *supra* note 5, 87 FR at 10883.

[25] *Id.*

[26] *See* Exchange Act Release No. 43630 (Nov. 28, 2000), 65 FR 75991, 75991 (Dec. 5, 2000) (File No. SR–OCC–00–05) (''Each of OCC's stockholders is a participant exchange of OCC, and each is entitled to elect one 'exchange director' to OCC's board of directors. It has been the practice of OCC and the exchanges to consider the affirmative vote of each exchange director to be the required approval of the stockholder that elected that exchange director. OCC is proposing to amend Article XI, Section 1 to provide more explicit authorization for this procedure.'').

[27] *Id.*

[28] *See* Notice of Filing *supra* note 5, 87 FR at 10884. Such matters would include amendments to Sections 2, 3 and 5 of Article II (By-Laws pertaining to Stockholders, including those addressing Special Meetings, Quorum, and Voting), Article III (By-Laws pertaining to the Board), as well as other Articles listed in Article XI. By-Laws Art. XI § 1.

[29] *Id.*

[30] Many of the components of the Proposed Rule Change may serve more than one purpose and could, therefore, be discussed in more than one category herein. The categorization of changes is not designed to denote otherwise.

[31] For example, OCC provides thought leadership and education to market participants and the public about the prudent use of products that OCC clears.

[32] Such reviews include, but are not limited to, regulatory inspection reports and OCC's system of internal controls.

[33] *See* Notice of Filing *supra* note 5, 87 FR at 10885.

would also be amended to reflect that that the review would be conducted at each regular meeting of the AC. Similar changes would be made to the CPC Charter and TC Charter.

OCC would amend the CPC Charter by removing gendered pronouns that assume the Chairman and Chief Executive Officer necessarily will be individuals who identify as male. Similar changes would be applied to the Board Charter and AC Charter. The Proposed Rule Change would also provide for CPC oversight of OCC's succession planning for ''critical roles,'' in alignment with terminology in OCC's policies and procedures that address succession planning. In addition, references to the ''Corporate Plan'' would be replaced with references to the ''corporate performance report,'' which better describes the initiative by which the CPC assesses OCC's performance against its corporate goals.

OCC would amend the RC Charter by changing the minimum number of meetings from six to four to align with the other Committee Charters, which generally require at least four meetings each year.

The Proposed Rule Change also includes administrative changes designed to enhance the clarity and conciseness of the Charters. For the Board Charter, OCC is proposing the following:

- Under the ''Mission of the Board'' heading, in the tenth bulleted item describing the Board's oversight role, removing ''such officer'' from ''approving the compensation of each such officer'' so that the bullet would state ''[o]verseeing the development and design of employee compensation, incentive, and benefit programs and evaluating the performance of any Executive Chairman, the Chief Executive Officer, and the Chief Operating Officer and approving the compensation of each'';
- under the ''Board Issues'' heading and ''Membership'' subheading: In the first paragraph of the ''Selection of Member Directs and Public Directors'' section, removing ''in order'' in ''retain a search firm in order to assist [the GNC] in these efforts'';
- in the second paragraph of the same section, replacing ''such annual meeting'' with ''the annual meeting,'' deleting ''as in effect from time to time'' from ''the Director Nomination Procedure as in effect from time to time,'' and deleting the introductory clause beginning the sentence, ''With respect to Member Directors'';
- in the ''Member Directors Changing Their Employment'' paragraph of the ''Retirement'' section, deleting ''with respect thereto'' and ''requirements of the'' in ''the [GNC] . . . shall recommend to the Board any action to be taken with respect thereto, consistent with the requirements of the By-Laws concerning the continued eligibility of such person to remain a Member Director;''
- under the ''Board Issues'' heading and ''Conduct'' subheading, the second paragraph of ''Distribution of Materials; Board Presentations'' in the ''Board Meetings'' section, replacing ''summaries/slides of presentations'' with ''materials''; and
- under the ''Management Structure, Evaluation and Succession'' heading and ''Management Structure'' section, deleting ''what is in'' in the phrase ''the specific needs of the business and what is in the best interest of OCC and the market participants it serves.''

OCC is also proposing certain administrative changes designed to enhance the clarity, conciseness, and consistency of the AC Charter. Specifically, OCC is proposing the following:

- Changing the reference to the AC's review of the ''Compliance Policy'' to the ''Compliance Risk Policy'' to align with the current title of that policy;
- modifying reference to the General Counsel to reflect that the General Counsel is OCC's Chief Legal Officer;
- clarifying that, in the section addressing competencies of AC members, ''working familiarity with basic finance and accounting practices'' means ''financial literacy'';
- under the ''Membership and Organization'' section, (i) in the first paragraph of the ''Composition'' section, abbreviating ''Board of Directors'' and removing extraneous references to the ''full'' Board and ''full Committee membership,'' and (ii) in the first paragraph of the ''Meetings'' section, replacing ''The Committee will'' with ''The Committee shall'' for consistency with the language of similar requirements; and
- under the ''Functions and Responsibilities'' section, in the ninth bulleted item concerning the AC's functions and responsibilities in discharging is oversight role, replacing ''at least once in a calendar year'' with ''at least once every calendar year.''

For the CPC Charter, OCC is proposing the following:

- In the ''Membership and Organization'' section, (i) in the first paragraph of the ''Composition'' section, replacing ''The Committee shall consist of'' with ''The Committee shall be comprised of''; and (ii) in the first paragraph of the ''Meetings'' section, replacing ''The Committee will'' with ''The Committee shall'' and deleting ''is'' in the phrase ''as is necessary'';
- in the ''Authority'' section and ''Scope'' subsection, correcting a reference to ''employees of the OCC,'' which should be ''employees of OCC;''
- for the bulleted items discussing the CPC's functions and responsibilities in discharging its oversight role in the ''Functions and Responsibilities'' section: In the fifth bulleted item, deleting the phrase ''with respect thereto''; in the eighth bulleted item replacing ''For each calendar year'' with ''Each calendar year''; and fifteenth bulleted item, replacing ''every two years'' with ''every two calendar years.''

For the GNC Charter, OCC is proposing the following:

- Under the ''Membership and Organization'' section, in the first paragraph of the ''Composition'' section, (i) replacing ''The Committee will be composed'' with ''The Committee shall be comprised,'' (ii) inserting ''at least'' before the required number of Exchange Director and Member Director membership on the GNC, and (iii) replacing ''The Committee Chair will be designated by the Board from among the Public Director Committee members'' with ''The Chair shall be a Public Director''; and
- for the bulleted items discussing the GNC's functions and responsibilities in discharging its oversight role in the ''Functions and Responsibilities'' section: In the eleventh bulleted item, replacing ''For each calendar year'' with ''Each calendar year''; and in the thirteenth bulleted item, replacing ''the manner in which'' with ''how.''

OCC also proposes certain administrative changes to the RC Charter, including (i) to specify that the RC recommends changes to OCC's Recovery and Orderly Wind-Down Plan ''for approval,'' consistent with language used with respect to policies for which the Board has retained approval authority with respect to amendments; and (ii) to replace ''examinations'' with ''audits'' in the description of the RC's oversight of internal or external audits of OCC's financial, collateral, risk model and third party risk management processes, consistent with the use of the term ''audit'' elsewhere in that description.

The proposed changes also include a few administrative changes designed to enhance the clarity and concision in the TC Charter. These minor administrative changes remove unnecessary verbiage or otherwise modify the verbiage in certain provisions.

(2) Clear and Direct Lines of Responsibility

The Proposed Rule Change would amend the Board Charter by clarifying that the Board has delegated to Committees the ''oversight'' of specific risks, not the ''management'' of those risks. OCC believes that this proposed change better aligns the Board Charter with the Committee Charters and better distinguishes responsibilities of the Board, Committees, and management.[34] The Board Charter would also be amended to replace reference to ''senior management'' or management in instances where referring to OCC's Management Committee would more clearly delineate OCC's governance structure.

The AC assists the Board in overseeing OCC's financial reporting process, OCC's system of internal control, OCC's auditing process, OCC's process for monitoring compliance with applicable laws and regulation, and OCC's compliance and legal risks.[35] The Proposed Rule Change would amend the AC Charter, and specifically the discussion of the AC's functions and responsibilities, by adding the AC's oversight of management's responsibility to ''measure'' compliance and legal risks to conform with the Board Charter, which provides that the Board oversees OCC's processes and frameworks for comprehensively managing such risks. In addition, the proposed changes provide that the AC recommends material changes in accounting principles and practices for Board approval, which aligns with the Board Charter, which provides that the Board oversees OCC's financial reporting, internal and external auditing, and accounting and compliance processes, including the approval of such major (*i.e.,* material) changes.

The Board established the CPC to assist in overseeing general business, regulatory capital, investment, corporate planning, and compensation and human capital risks, as well as executive management succession planning and performance assessment.[36] Consistent with the proposed change to the AC Charter, OCC proposes to amend the CPC Charter by describing the CPC's oversight of management's responsibility to ''measure'' general business risks, including as they relate to OCC's corporate performance report (formerly the ''Corporate Plan'') and corporate budget, capital requirements, human capital, compensation and benefit programs, management succession planning, and management performance assessment processes, arising from OCC's business activities in light of OCC's role as a systemically important financial market utility, to conform with similar language in the Board Charter. With respect to oversight of OCC's human resources programs, the Proposed Rule Change would amend the CPC Charter to reflect the CPC's oversight of OCC's diversity, equity, and inclusion efforts.

The Board established the GNC to assist the Board in overseeing OCC's corporate governance processes, including assessing the clarity and transparency of OCC's governance arrangements, establishing the qualifications necessary for Board service to ensure that the Board is able to discharge its duties and responsibilities, identifying and recommending to the Board candidates eligible for service as Public Directors and Member Directors, and resolving certain conflicts of interests.[37] The proposed changes to the GNC Charter are designed to clarify the Board's expectation that the GNC assist the Board in reviewing and proposing changes to the Board Charter, by stating that the GNC would recommend to the Board, where appropriate, changes to the Board Charter and Corporate Governance Principles.

The Board established the RC to assist the Board in overseeing OCC's financial, collateral, risk model and third-party risk management processes, among other responsibilities.[38] Consistent with the foregoing Committee Charter changes, the Proposed Rule Change would amend the RC Charter by describing the committee's oversight of management's responsibility to ''measure'' these risks arising from OCC's business activities in light of OCC's role as a systemically important financial market utility, which conforms with similar language in the Board Charter. OCC would also amend the RC Charter to provide that the RC shall review, and have the authority to approve, OCC's risk appetites and risk tolerances at least once every twelve months. Such a change would be consistent with the proposed delegation of authority for such reviews and approvals, discussed above. In addition, the Proposed Rule Change would consolidate discussion of the RC's functions and responsibilities with respect to oversight and annual review of OCC's management of liquidity risks and the adequacy of OCC's committed liquidity facilities. This change would streamline the RC Charter's discussion of liquidity risks.

The Board established the TC to assist the Board in overseeing OCC's information technology (''IT'') strategy and other company-wide operational capabilities.[39] Consistent with the foregoing Committee Charter changes, this proposed rule change would amend the TC Charter by describing the TC's oversight of management's responsibility to ''measure'' IT and other operational risks arising from OCC's business activities in light of OCC's role as a systemically important financial market utility to conform with similar language in the Board Charter. The Proposed Rule Change would also amend the TC Charter to reflect the TC's current practice of overseeing all security risks, not just information security risks.

(3) Consideration of Participants' Objectives and Other Relevant Stakeholders' Interests

The Proposed Rule Change would amend provisions governing the composition of the Board and the RC to reflect OCC's belief that strong and transparent governance with robust member input on relevant risk issues is necessary to provide effective risk management, consistent with OCC's current practice. Changes to the Board Charter and RC Charter would codify that one of the factors OCC considers when nominating Directors to the Board and RC is to obtain input from a broad array of market participants on risk management issues. OCC believes that this amendment would align the Board Charter and RC Charter with the By-Laws, which require significant Clearing Member representation on the Board.[40] OCC believes the Proposed Rule Change is consistent with the recommendation made by certain market participants that central counterparties like OCC have governance practices in place that obtain and address input from a broader array of market participants on risk issues.[41]

[34] *See* Notice of Filing *supra* note 5, 87 FR at 10884.

[35] *See* AC Charter, *available at https://www.theocc.com/about/corporate-information/board-charter.*

[36] *See* CPC Charter, *available at https://www.theocc.com/about/corporate-information/board-charter.*

[37] *See* GNC Charter, *available at https://www.theocc.com/about/corporate-information/board-charter.*

[38] *See* RC Charter, *available at https://www.theocc.com/about/corporate-information/board-charter.*

[39] *See* TC Charter, *available at https://www.theocc.com/about/corporate-information/board-charter.*

[40] *See* Notice of Filing *supra* note 5, 87 FR at 10884.

[41] *Id.*

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[42] After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act,[43] and Rule 17Ad–22(e)(2)[44] thereunder, as described in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions; and the rules are designed, in general, to protect investors and the public interest.[45] Based on its review of the record, and for the reasons described below, the Commission believes that the proposed changes to revise OCC's governance arrangements are consistent with being organized to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which OCC is responsible, and protect investors and the public interest.

The Commission believes that OCC's proposed changes to codify its practice of nominating Public Directors who are unaffiliated with DCMs and FCMs are consistent with Section 17A(b)(3)(F). This amendment would likely preserve OCC's ability to enhance diversity of representation on the Board and aid the Board in exercising its oversight of OCC's clearance and settlement functions to ensure that they are not just prompt and accurate, but are also structured to protect investors and promote the public interest. The Commission believes that the changes to OCC's governing documents to facilitate inclusion of the perspectives provided by non-DCM- and non-FCM-affiliated Public Directors should support the protection of the public interest because such Public Directors are not affiliated with and therefore should not have conflicts obligating them to represent the views of any DCM or FCM, in addition to any national securities exchange, securities association, broker, or dealer.

In response to the Notice of Filing,[46] the Commission received a comment opposing the proposal on the basis that it does not consider the interests of Clearing Members' customers, and only benefits OCC's biggest shareholders by enabling OCC to increase systemic risk.[47] The Commission disagrees with this assertion, as the proposed change to appoint non-DCM- and non-FCM-affiliated Public Directors would preserve OCC's ability to enhance Board diversity and improve stakeholder representation, rather than decrease it. By limiting the appointment of Public Directors to candidates unaffiliated with securities exchanges, securities associations, brokers, dealers, FCMs, and DCMs, OCC enhances rather than hinders its ability to consider and address the interests of stakeholders, including Clearing Members' customers and small shareholders.

OCC's proposed changes to establish a framework for delegated authority are also consistent with Section 17A(b)(3)(F). The Commission believes that the Proposed Rule Change would establish a clear and transparent framework for the delegation of authority from the Board to Committees and to officers to approve changes to certain rules. Such a framework would facilitate the efficient maintenance and administration of OCC's rules because it would allow the Board to delegate the approval of routine regulatory changes to Committees or officers, which would in turn leverage the specialized experience of the Committees or officers and expedite review and approval of routine matters. Facilitating the efficient maintenance and administration of OCC's rules would help to ensure that such rules promote the prompt and accurate clearance and settlement of securities transactions because the routine rule changes would not need to wait for Board approval. This would allow OCC to file such rule changes with the Commission more quickly and ensure that amendments to the clearance and settlement process are enacted promptly.

The commenter opposing the proposal argues that the Proposed Rule Change would ''concentrate power and risk while reducing checks and balances'' by, in part, increasing executive control while reducing Board control.[48] However, the Commission does not believe that the proposed changes would reduce Board control in practice, given that the Board would retain the obligation to oversee the delegated activity in all instances. Moreover, the Committees are comprised entirely of Board Directors, which means that any issues that are delegated to the Committees will be presented for Board Directors' consideration regardless.

The Commission further believes the proposed change to Article XI of OCC's By-Laws is consistent with Section 17A(b)(3)(F). Crucially, the Proposed Rule Change does not change the existing Article XI requirement that certain By-Law amendments cannot occur through the action of the Board without the approval of all of the stockholders. The proposed amendment to remove the language attributing an Exchange Director's vote to constitute stockholder consent is a reasonable step given OCC's current practice of obtaining written stockholder consents for all By-Law amendments that require them. The separation of the roles of individuals serving as both Board members and stockholder representatives would, in general, protect investors and the public interest.

Additionally, the Commission believes that the other housekeeping amendments to the Charters arising from the annual review of OCC's governance arrangements are consistent with Section 17A(b)(3)(F). As described above, many of the housekeeping amendments would resolve small inconsistencies within and across OCC's rules. The proposed changes would also more clearly define the responsibilities of the Board and Committees as well as codify that OCC's Board seeks to obtain input from a broad array of market participants on risk management issues. These housekeeping amendments to the Board and Committee Charters would, in general, protect investors and the public interest.

The Commission believes, therefore, that the proposal to (i) clarify that OCC's Public Directors may not be affiliated with any DCM or FCM; (ii) allow the Board to delegate authority to various Committees and officers to review and approve routine initiatives and policies and authorize certain regulatory filings; (iii) remove the portion of Article XI,

[42] 15 U.S.C. 78s(b)(2)(C).

[43] 15 U.S.C. 78q–1(b)(3)(F).

[44] 17 CFR 240.17Ad–22(e)(2).

[45] 15 U.S.C. 78q–1(b)(3)(F).

[46] *See* Notice of Filing *supra* note 5, 87 FR at 10881.

[47] The comment on the Proposed Rule Change is available at *https://www.sec.gov/comments/sr-occ-2022-002/srocc2022002.htm.*

[48] *Id.*

Section 1 of the By-Laws; and (iv) make certain housekeeping amendments to the Charters is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[49]

B. Consistency With Rule 17Ad–22(e)(2) under the Exchange Act

Rule 17Ad–22(e)(2) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, are clear and transparent, support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies and the objectives of owners and participants, specify clear and direct lines of responsibility, and consider the interests of participants' customers, securities issues and holders, and other relevant stakeholders of the covered clearing agency.[50]

The Commission believes the proposed changes to nominate Public Directors who are unaffiliated with DCMs and FCMs are consistent with Rule 17Ad–22(e)(2)(vi). The changes serve to enhance the diversity of the Board by requiring that OCC look beyond parties affiliated with exchanges, associations, and other such market participants when appointing Public Directors. This improved representation would in turn enable the Board to better consider the interests of participants' customers, securities issues and holders, and other relevant stakeholders of the covered clearing agency.

OCC's proposed changes to delegate authority are consistent with Rule 17Ad–22(e)(2)(v). The Commission believes that by delegating approval of certain regulatory changes to Committees, the authority to review and approve certain initiatives and policies or to direct certain regulatory filings would reside with the Committee that has oversight authority over the relevant subject matter for such initiatives, policies, and proposed changes. Such delegations would allocate the limited time and attention of the Board more efficiently. The proposed changes to delegate authority aid in specifying clear and direct lines of responsibility.

The Commission believes the proposed change to Article XI is consistent with Rule 17Ad–22(e)(2)(iii). By removing the provision that allows OCC to treat an Exchange Director's vote as the consent of the stockholder who elected the Exchange Director for those amendments to the By-Laws that require stockholder consent, the proposed change would resolve an Exchange Director's potential conflict of interest of acting with fiduciary duty as a director while also having a fiduciary duty to the stockholder. Given that OCC retains the requirement in Article XI for all stockholders to approve amendments to certain portions of the By-Laws, the proposed provision removal would not result in any negative impacts to the stockholder. Instead, the separation of the Exchange Director's roles as Board members and stockholder representatives would better support the public interest requirements of Section 17A.

Moreover, the Commission believes that all of the proposed housekeeping changes to the Charters are consistent with specific subsections of Rule 17Ad–22(e)(2) as described below.

Rule 17Ad–22(e)(2)(i) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.[51] The Commission believes that changes described above in Section II.D.1 are consistent with Rule 17Ad–22(e)(2)(i), in that they either improve the alignment of the governance documents or correct minor inaccuracies, which in turn creates stronger clarity and transparency. For example, OCC proposed changes across the charter to require the Board and Committees each to hold at least four meetings per year.

The commenter opposing the proposal argues that the Proposed Rule Change would ''concentrate power and risk while reducing checks and balances'' by, in part, reducing meeting frequency.[52] However, the Commission does not believe that the proposed changes to the Board's meeting frequency will negatively affect the ability of the Board to address stockholder concerns. By amending the number of Board meetings per year from five to four to align with the meeting frequency specified in the Committee Charters, OCC will potentially increase administrative efficiency and better ensure the Board or the Committees address all isssues critical to stakeholders. Additionally, the Proposed Rule Change does not preclude the Board from holding additional meetings as needed.

Rule 17A–22(e)(2)(v) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.[53] The Commission believes that the changes described above in Section II.D.2 are consistent with Rule 17Ad–22(e)(2)(v), as they each serve to clarify the specific responsibilities of the Board, the Committees, and officers.

Finally, Rule 17Ad–22(e)(2)(vi) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that consider the interests of participants' customers, securities issues and holders, and other relevant stakeholders of the covered clearing agency.[54] The proposed changes to the Board Charter and RC Charter to codify input from a broad array of market participants as one of the factors considered for nominating Directors to the Board and Risk Committee are consistent with this Rule, as the diversity of opinions would better consider a broader array of interests among OCC's relevant stakeholders.

The Commission believes, therefore, that the proposal to (i) clarify that OCC's Public Directors may not be affiliated with any DCM or FCM; (ii) allow the Board to delegate authority to various Committees and officers to review and approve routine initiatives and policies and authorize certain regulatory filings; (iii) remove the portion of Article XI, Section 1 of the By-Laws; and (iv) apply additional housekeeping amendments is consistent with the requirements of Rule 17Ad–22(e)(2)(i), (iii), (v), and (vi) under the Exchange Act.[55]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act[56] and the rules and regulations thereunder.

[49] 15 U.S.C. 78q–1(b)(3)(F).

[50] 17 CFR 240.17Ad–22(e)(2)(i), (iii), (v), and (vi).

[51] 17 CFR 240.17Ad–22(e)(2)(i).

[52] The comment on the Proposed Rule Change is available at *https://www.sec.gov/comments/sr-occ-2022-002/srocc2022002.htm*. The commenter also raised concerns abouit ''increasing roadblocks for potential new Board members.'' *Id*. However, the commenter does not specify what portions of the Proposed Rule Change would represent a ''roadblock,'' if any. In contrast, the Commission believes that a significant portion of the Proposed Rule Change would in fact make OCC's governance arrangements clearer and more transparent and also specify clear and direct lines of responsibility as discussed below.

[53] 17 CFR 240.17Ad–22(e)(2)(v).

[54] 17 CFR 240.17Ad–22(e)(2)(vi).

[55] 17 CFR 240.17Ad–22(e)(2)(i), (iii), (v), and (vi).

[56] In approving this Proposed Rule Change, the Commission has considered the proposed rules'

Continued

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[57] that the Proposed Rule Change (SR–OCC–2022–002) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11784 Filed 6–1–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94987; File No. SR–NYSECHX–2022–08]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Adopt Rules 10.9216(b) and 10.9217 in Connection With a Companion Filing To Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of Its Affiliates

May 26, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 13, 2022, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes, in connection with a companion filing to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of its affiliates, to (1) adopt new Rules 10.9216(b) and 10.9217 governing minor rule violations and fines; (2) add additional rules to the Exchange's list of current minor rule violations that would be transposed to proposed Rule 10.9217; and (3) move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain amendments and corrections. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with a companion filing to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of its affiliates,[4] the Exchange proposes to (1) adopt new Rules 10.9216(b) and 10.9217 governing minor rule violations and fines; (2) add additional rules to the Exchange's list of current minor rule violations that would be transposed to proposed Rule 10.9217; and (3) move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217and make certain amendments and corrections.

Background

Beginning in 2013, each of the Exchange's affiliates have adopted rules relating to investigation, discipline, sanction, and other procedural rules based on the rules of the Financial Industry Regulatory Authority (''FINRA'').[5] To facilitate rule harmonization among the Exchange's affiliates, the Exchange has separately proposed the NYSE Chicago Rule 10.8000 and 10.9000 Series based on the text of the NYSE Arca Rule 10.8000 and Rule 10.9000 Series, with certain changes, as described in its companion filing. In connection with adoption of the proposed NYSE Chicago Rule 10.8000 and 10.9000 Series,[6] the Exchange proposes to adopt NYSE Arca rules related to issuance of minor rule fines that would replace the Exchanges current Article 12, Rule 8 which sets forth the Exchange's Minor Rules Violation Plan (''MRVP'').[7]

Under current Article 12, Rule 8, in lieu of commencing a ''disciplinary proceeding'' as that term is used in Article 12 of the Exchange Rules, the Exchange may, subject to the requirements set forth in this Rule, impose a censure or fine, not to exceed

impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[57] 15 U.S.C. 78s(b)(2).

[58] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* SR–NYSECHX–2022–10.

[5] In 2013, the Commission approved the New York Stock Exchange LLC's (''NYSE'') adoption of FINRA's disciplinary rules. *See* Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02). In 2016, NYSE American LLC (''NYSE American'') adopted its Rule 8000 and Rule 9000 Series based on the NYSE and FINRA Rule 8000 and Rule 9000 Series. *See* Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR–NYSEMKT–2016–30). In 2018, the Commission approved NYSE National, Inc.'s (''NYSE National'') adoption of the NYSE National Rule 10.8000 and Rule 10.9000 Series based on the NYSE American and FINRA Rule 8000 and Rule 9000 Series. *See* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR–NYSENat–2018–02). In 2019, NYSE Arca, Inc. (''NYSE Arca'') adopted the NYSE Arca Rule 10.8000 and 10.9000 Series based on the NYSE American Rule 8000 and Rule 9000 Series. *See* Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR–NYSEArca–2019–15).

[6] *See* note 4, *supra.*

[7] The Exchange adopted its current MRVP in 1996. *See* Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) (SR–CHX–95–25) (Order). The original procedure authorizing the Exchange, in lieu of commencing disciplinary proceeding, to impose a fine, not to exceed $2,500, on any member, member organization, associated person or registered or nonregistered employee of a member or member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature was contained in as Article 12, Rule 9, now Article 12, Rule 8. The recommended dollar amounts for the first, second, third and subsequent violations, as calculated on a twelve-month rolling basis, of a rule designated as a minor rule violation was contained in a separate Recommended Fine Schedule in the Fee Schedule. *See id.,* 61 FR at 28918–19 & n. 10.

In 2011, the Exchange increased the maximum fine pursuant to the MRVP from $2,500 to $5,000 and also increased the recommended fines from $100/$500/$1,000 for 1st, 2nd and 3rd tier fines, respectively, to $250/$750/$1,500. The Exchange also recommended fines of $500/$1,000/$2,500 for other, more serious trading rule violations (*i.e.,* ones involving the potential for customer harm), as well as violations of the obligation to establish, maintain and enforce written supervisory procedures, and to provide information to the Exchange in connection with regulatory inquiries or other matters. Recommended fines of $1,000/$2,500/$5,000 were reserved for Trading Ahead violations. The Exchange also expanded the rolling time period in which violations would result in escalation to the next highest tier from 12 to 24 months. *See* Securities Exchange Act Release No. 64370 (April 29, 2011), 76 FR 25727, 25727 (May 5, 2011) (SR–CHX–2011–07) (Notice); Securities Exchange Act Release 64686 (June 16, 2011), 76 FR 36596 (June 22, 2011) (SR–CHX–2011–07) (Order). *See also* text accompanying note 20, *infra.*

$5,000,[8] on any Participant, Associated Person, or registered or non-registered employee of a Participant, for any violation of a rule of the Exchange, which violation the Exchange shall have determined is minor in nature.[9] For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to $2,500. For more serious violations, other disciplinary action may be sought.

Any censure or fine imposed pursuant to Article 12, Rule 8 and not contested shall not be publicly reported, except as may be required by Rule 19d–1 under the Exchange Act, and as may be required by any other regulatory authority. Any censure or fine that is contested may be publicly reported to the same extent that Exchange disciplinary proceedings may be publicly reported. Any fine imposed pursuant to Article 12, Rule 8 that (1) does not exceed $2,500 and (2) is not contested, shall be reported by the Exchange to the Securities and Exchange Commission (the ''Commission'') on a periodic, rather than a current, basis, except as may otherwise be required by Exchange Act Rule 19d–1 and by any other regulatory authority. Under Article 12, Rule 8(b), the Chief Enforcement Counsel or Chief Regulatory Officer (''CRO'') have the authority to impose a fine pursuant to the rule.

Under Article 12, Rule 8(c), in any action taken by the Exchange pursuant to the rule, the person against whom a censure or fine is imposed shall be served as provided in Article 12, Rule 1(c) with a written statement, signed by an Exchange officer setting forth (1) the rule(s) or policy(ies) alleged to have been violated; (2) the act or omission constituting each violation; (3) the sanctions imposed for each violation; (4) the date on which such action is taken; and (5) the date on which such determination becomes final and such fine, if any, becomes due and payable to the Exchange, or on which such action must be contested as provided in paragraph (e) of Article 12, Rule 8, such date to be not less than 15 days after the date of service of the written statement. Pursuant to Article 12, Rule 8(d), if the person fined pursuant to the rule pays the fine, such payment is deemed a waiver of any right to a disciplinary proceeding under Article 12 and any right to review or appeal. Commentary .01 to Article 12, Rule 8 provides that, with respect to subsection (d), a failure to pay a fine imposed Article 12, Rule 8 by the time it is due, without timely contesting the action upon which such fine was based pursuant to Article 12, Rule 8(e), shall be deemed a waiver by the person against whom the fine is imposed of such person's right to a disciplinary proceeding under Article 12 and any right to review or appeal.

Under Article 12, Rule 8(e), any person censured or fined pursuant to the rule may contest such censure or fine by filing with the Secretary a written response meeting the requirements of an Answer as provided in Article 12, Rule 4(b) no later than the date by which such determination must be contested. The Secretary may deny the answer if such answer is untimely or the answer fails to meet the standards of Article 12, Rule 4(b). If the Secretary denies the answer without leave to amend and refile, the sanction imposed by the Exchange pursuant to Article 12, Rule 8(b) shall become final and the censure shall be imposed and/or fine become due and payable. Unless denied by the Secretary, an answer filed by respondent is deemed accepted, at which point the matter shall become a ''Disciplinary Proceeding'' subject to the provisions of Article 12 applicable to disciplinary proceedings.

Pursuant to Article 12, Rule 8(f), the Exchange must prepare and announce to its Participants from time to time a listing of the Exchange rules and policies as to which the Exchange may impose censures or fines as provided in this Rule that must also indicate the specific or recommended dollar amount that may be imposed as a fine hereunder with respect to any violation of such rule or policy, or may indicate the minimum and maximum dollar amount that may be imposed by the Exchange with respect to any such violation. In applying the current Recommended Fine Schedule set forth in the Fee Schedule, the Exchange considers a violation as having occurred at the time that the underlying conduct of the Participant occurred. Nothing in Article 12, Rule 8 requires the Exchange to impose a censure or fine pursuant to the Rule with respect to the violation of any rule or policy included in any such listing and the Exchange shall be free, whenever it determines that any violation is not minor in nature, to proceed under other provisions of Article 12 rather than under Rule 8. Under Article 12, Rule 8(g), any fine assessed under Rule 8 cannot be deemed to satisfy any damages or liability incurred from the violation.

Article 12, Rule 8(h) sets forth the Exchange rules and policies that are subject to the MRVP.

Proposed Rule Change

The Exchange proposes to adopt new Rules 10.9216(b) and 10.9217 based on NYSE Arca Rules 10.9216(b) and 10.9217. The Exchange would retain the text of the Exchange's currently applicable list of minor rule violations in proposed Rule 10.9217 and make certain corrections and additions, as described below. In addition, the Exchange would move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain amendments and corrections. The Exchange proposes to add Rules 10.9216(b) and 10.9217 to Rule 10 governing disciplinary proceedings, other hearings and appeals that will house the proposed Rule 10.8000 and 10.9000 Series based on the text of the NYSE Arca Rule 10.8000 and Rule 10.9000 Series that is the subject of the Exchange's companion immediately effective filing.

Proposed Rule 10.9216(b)

Subsection (b) of proposed Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) would set forth the procedure for the imposition of fine for minor rule violations under the Exchange's new disciplinary rules based on NYSE Arca Rule 10.9216(b).[10] Proposed Rule 10.9216(b)(1) would provide that, notwithstanding Rule 10.9211,[11] the Exchange may, subject to the

[8] Proposed Rule 10.9217 would retain the Exchange's maximum $5,000 fine for minor rule violations under current Article 12, Rule 8. While proposed Rule 10.9217 would allow the Exchange to administer fines up to $5,000, the Exchange is only seeking relief from the reporting requirements of paragraph (c)(1) of Rule 19d–1 for fines administered under proposed Rule 10.9217 that do not exceed $2,500.

[9] As set forth in Article 12, Rule 8(f), the Exchange is not required to impose a censure or fine with respect to the violation of any rule or policy included in any such listing and the Exchange shall be free, whenever it determines that any violation is not minor in nature, to proceed under other provisions of Article 12 rather than under Article 12, Rule 8.

[10] Proposed subsection (a) would establish the procedures by which a Participant, Participant Firm or covered person, prior to the issuance of a complaint, could execute a letter of acceptance, waiver, and consent accepting a finding of violation, consenting to the imposition of sanctions and waiving the right to a hearing or appeal. Proposed Rule 10.9216(a) would be adopted as part of the Exchange's companion filing. *See* note 4, *supra.*

[11] Proposed Rule 10.9211 (Authorization of Complaint) would be adopted as part of the Exchange's companion filing and would permit Enforcement to request the authorization from the Chief Regulatory Officer (''CRO'') to issue a complaint against any Participant, Participant Firm and covered persons of a Participant or Participant Firm, thereby commencing a disciplinary proceeding.

requirements set forth in paragraphs (b)(2) through (b)(4), impose a fine in accordance with the fine amounts and fine levels set forth in proposed Rule 10.9217 and/or a censure on any Participant,[12] Participant Firm or covered person [13] with respect to any rule listed in Rule 10.9217. If Enforcement has reason to believe a violation has occurred and if the Participant, Participant Firm or covered person does not dispute the violation, Enforcement may prepare and request that the Participant, Participant Firm or covered person execute a minor rule violation letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Participant's, Participant Firm's or covered person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel,[14] and any right of review by the Exchange Board of Directors (''Board''), the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter would describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed would be a date to be determined by Regulatory Staff.[15]

Proposed Rule 10.9216(b)(2)(A)(i) would provide that if a Participant, Participant Firm or covered person submits an executed minor rule violation letter, the submission of such a letter by the Participant, Participant Firm or covered person also waives any right to claim bias or prejudgment of the CRO, the Board, Counsel to the Board, or any Director, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.

Proposed Rule 10.9216(b)(2)(A)(ii) would provide that if a Participant, Participant Firm or covered person submits an executed minor rule violation letter, by the submission such Participant, Participant Firm or covered person also waives any right to claim that a person violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.[16]

Proposed Rule 10.9216(b)(2)(B) would provide that if a minor rule violation letter is rejected, the Participant, Participant Firm or covered person would be bound by the waivers made under proposed paragraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation letter was executed and submitted and ending upon the rejection of the minor rule violation letter.

Proposed Rule 10.9216(b)(3) would provide that if the Participant, Participant Firm or covered person executes the minor rule violation letter, it would be submitted to the CRO. The CRO, on behalf of the SRO Board, may accept or reject such letter.

Proposed Rule 10.9216(b)(4) would provide that if the letter is accepted by the CRO, it would be deemed final and that any fine imposed pursuant to the proposed Rule and not contested would not be publicly reported, except as may be required by Rule 19d–61 under the Act, and as may be required by any other regulatory authority.

Proposed Rule 10.9216(b)(4) would further provide that if the letter is rejected by the CRO, the Exchange may take any other appropriate disciplinary action with respect to the alleged violation or violations. Subsection (b)(4) would also provide that if the letter is rejected, the Participant, Participant Firm or covered person would not be prejudiced by the execution of the minor rule violation letter under proposed paragraph (b)(1) and that the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

As noted above, proposed Rule 10.9216(b) is substantially the same as NYSE Arca Rule 10.9216(b).

Proposed Rule 10.9217

The Exchange also proposes to adopt Rule 10.9217 based on NYSE Arca Rule 10.9217, which would be titled ''Violations Appropriate for Disposition Under Rule 10.9216(b)''.

Proposed Rule 10.9217(a) would provide that any Participant, Participant Firm or covered person may be subject to a fine, not to exceed $5,000,[17] under Rule 10.9216(b) with respect to any rules listed below and that the fine amounts and fine levels set forth below would apply to the fines imposed.

Proposed Rule 10.9217(b) would provide that Regulatory Staff designated by the Exchange would have the authority to impose a fine pursuant to the proposed Rule.

Proposed Rule 10.9217(c) would provide that any person or organization found in violation of a minor rule would not be required to report such violation on SEC Form BD or Form U–4 if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Subsection (c) would further provide that any fine imposed in excess of $2,500 would be subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d–1 under the Act.

Proposed Rule 10.9217(d) would provide that nothing in the proposed Rule would require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan and that if the Exchange determines that any violation is not minor in nature, the

[12] The term ''Participant'' is defined in Article 1, Rule 1(s) to mean, among other things, any Participant Firm that holds a valid Trading Permit and that a Participant shall be considered a ''member'' of the Exchange for purposes of the Act. If a Participant is not a natural person, the Participant may also be referred to as a Participant Firm, but unless the context requires otherwise, the term Participant shall refer to an individual Participant and/or a Participant Firm. For the avoidance of doubt, this rule filing and the proposed disciplinary rules will use the phrase Participant and/or Participant Firm.

[13] ''Covered person'' would be defined in proposed Rule 10.9120(g) in the companion filing as an Associated Person as defined in Article 1, Rule 1(d) and any other person subject to the jurisdiction of the Exchange.

[14] ''Hearing Panel'' and ''Extended Hearing Panel'' would be defined in proposed Rule 10.9120(s) and (p), respectively, in the companion filing. The term ''Hearing Panel'' would mean an Adjudicator that is constituted under proposed Rule 10.9231 to conduct a disciplinary proceeding governed by the proposed Rule 10.9200 Series, that is constituted under the proposed Rule 10.9520 Series or the proposed Rule 10.9550 Series to conduct a proceeding, or that is constituted under the Rule 10.9800 Series to conduct a temporary cease and desist proceeding. The term ''Extended Hearing Panel'' would mean an Adjudicator that is constituted under proposed Rule 10.9231(c) to conduct a disciplinary proceeding that is classified as an ''Extended Hearing'' and is governed by the proposed Rule 10.9200 Series.

[15] ''Regulatory Staff'' would be defined in proposed Rule 10.9120(x) in the companion filing as (1) any officer or employee reporting, directly or indirectly, to the CRO of the Exchange; and (2) FINRA staff acting on behalf of the Exchange in connection with the proposed Rule 10.8000 Series and Rule 10.9000 Series.

[16] Rule 10.9143 (Ex Parte Communications) would prohibit certain ex parte communications. Proposed 10.9144 (Separation of Functions) would establish separation of functions and provide for waivers.

[17] *See* note 8, *supra.*

Exchange may, at its discretion, proceed under the proposed Rule 10.9000 Series rather than under proposed Rule 10.9217.

The next section would be titled ''List of Rule Violations and Fines Applicable Thereto'' and would provide that any Participant, Participant Firm or covered person may be subject to a fine under proposed Rule 10.9216(b) with respect to any rules listed below.

Proposed Rule 10.9217(e) would be titled ''Exchange Rules and Policies subject to a Minor Rule Violation'' and would set forth the list of rules under which a Participant, Participant Firm or covered person may be subject to a fine under a minor rule violation letter as described in proposed Rule 10.9216(b). The Exchange would retain the list of rules currently set forth in Article 12, Rule 8(h) under the existing headings for ''Reporting and Record Retention Violations'' and ''Minor Trading Rule Violations'' with the following additions and changes.

First, the Exchange would add subsection (b) of Article 6, Rule 2 (Registration and Approval of Participant Personnel) to proposed Rule 10.9217(e)(13).

Article 6, Rule 2 currently sets forth certain employee registration, approval and other exchange requirements. Specifically, Article 6, Rule 2(a) governs registration of representatives, as defined in Article 6, Rule 14(b)(1), with the Exchange and is currently eligible for a minor rule fine under Article 12, Rule 8(h). Article 6, Rule 2(b) provides for the registration of principals, as defined in Article 6, Rule 14(a)(1). The Exchange proposes that the registration requirements of principals set forth in Article 6, Rule 2(b) be eligible for a minor rule fine. The proposed change would be consistent with the practice on the Exchange's affiliates whose comparable rule requiring the registration of principals is eligible for a minor rule fine.[18]

Second, the Exchange would add subsections (a) and (b) of Article 6, Rule 5 (Supervision of Representatives and Branch and Resident Offices) to proposed Rule 10.9217(e)(14). As discussed below, the Exchange's current minor rule incorrectly references Article 6, Rule 5(b) for violations relating to written supervisory procedures. The correct reference should be to Article 6, Rule 5(c), which the Exchange proposes to retain as proposed Rule 10.9217(e)(15).

Article 6, Rule 5(a) (Adherence to Law) provides that no Participant shall engage in conduct in violation of the Act, as amended, rules or regulations thereunder, the Bylaws or the Rules of the Exchange, or any written interpretation thereof and that every Participant is responsible for reasonably supervising its associated persons to prevent such violations. The requirement to reasonably supervise individuals to ensure compliance with applicable laws, rules and regulations, is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.[19]

Article 6, Rule 5(b) (Designation of persons with supervisory authority) provides that each Participant Firm must designate a principal executive officer, general partner or managing partner to hold overall authority and responsibility for the firm's internal supervision and compliance with securities laws and regulations. This designated supervisor may formally delegate his or her supervisory duties and authority to other persons within the firm. The Rule further provides that Participants must maintain, for a period of not less than six years (the first two years in an easily accessible place), records of the names of all persons who are designated as supervisory personnel and the dates for which those designations are effective. In the absence of such designation by a Participant Firm, the Firm's General Partner(s), President, Chief Executive Officer or other principal executive officer shall be deemed to be responsible for a Firm's internal supervision and compliance function. In addition, each Participant Firm shall designate and specifically identify to the Exchange on Schedule A of Form BD one or more principals to serve as a Chief Compliance Officer. The requirement in Article 6, Rule 5(b) to designate and specifically identify persons with supervisory responsibility is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.[20] The Exchange accordingly proposes to permit minor rule fines for violations of Article 6, Rule 5(b).

As noted, Article 12, Rule 8(h)(1)(N) of the Exchange's current minor rule plan makes failure to establish, maintain and enforce written supervisory procedures under Article 6, Rule 5(b) eligible for a minor rule fine. However, as described above Article 6, Rule 5(b) relates to the designation of persons with supervisory authority and not written supervisory procedures, which is governed by Article 6, Rule 5(c). In 2011, Article 12, Rule 8 was amended to include, among other things, new reporting and recordkeeping provisions, which included ''written supervisory procedures (Article 6, Rule 5(b)).'' [21] At the time, Article 6, Rule 5(b) was titled ''Written supervisory procedures'' and contained the text of current subsection (c). In 2013, the Exchange filed to amend Article 6, Rule 5. As part of that filing, subsection (a), which was titled ''Designation of persons with supervisory authority,'' became new subsection (b), and old subsection (b), which was titled ''Written supervisory procedures,'' became current subsection (c).[22] The Exchange did not, however, update Article 12, Rule 8 to reflect that Article 6, Rule 5(b) had become Article 6, Rule 5(c). The Exchange proposes to make that correction in the text of proposed Rule 10.9217(e)(15). The Exchange notes that the requirement to establish, maintain and enforce written procedures is also currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.[23]

Finally, the Exchange proposes a new subsection (f) titled ''Recommended Fine Schedule'' that would reproduce the current Recommended Fine Schedule from the Fee Schedule with the following changes and corrections. The Recommended Fine Schedule in the Fee Schedule would be deleted:

- The Exchange would add a new sub-heading titled ''Reporting and Record Retention Violations'' [24] that would set forth the corresponding fines for first, second and third and subsequent violations for the rules set forth under the heading ''Reporting and Record Retention Violations'' in proposed Rule 10.9217(e).
- The first 12 entries as well as entries 16 through 23 would be reproduced without change from the

[18] *See, e.g.,* NYSE National Rules 2.2(c) (Obligations of ETP Holders and the Exchange) and 10.9217(f). The entirety of NYSE National Rule 2.2 is eligible for minor rule treatment; registration of principals under NYSE Nationals' rules is governed by subsection (c).

[19] *See* NYSE Arca Rule 11.18(a) (Supervision) and 10.9217(g)(8).

[20] *See* NYSE Arca Rule 11.18(b)(2) & (4) (Supervision) and 10.9217(g)(8).

[21] *See* Securities Exchange Act Release No. 64370 (April 29, 2011), 76 FR 25727, 25727 (May 5, 2011) (SR–CHX–2011–07) (Notice); Securities Exchange Act Release 64686 (June 16, 2011), 76 FR 36596 (June 22, 2011) (SR–CHX–2011–07) (Order). *See generally* note 7, *supra.*

[22] *See* Securities Exchange Act Release No. 70597 (October 2, 2013), 78 FR 62728, 62732 (October 22, 2013) (SR–CHX–2013–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change).

[23] *See* NYSE Arca Rule 11.18(c) (Supervision) and 10.9217(g)(8).

[24] Immediately before the new sub-heading, the Exchange would include the following text based on NYSE Arca Rule 10.9217: ''These fines are intended to apply to minor violations. For more serious violations, other disciplinary action may be sought.''

current Recommended Fine Schedule in the Fee Schedule.

• Item 13 would be ''Registration and Approval of Participant Personnel (Article 6, Rule 2(a) & (b))''. The proposed first, second and third level fines for violations of Article 6, Rule 2(b) of $250 for the first violation, $750 for the second violation and $1,500 for the third and subsequent violations would be the same as those in the Exchange's current Recommended Fine Schedule in the Fee Schedule for violations of Article 6, Rule 2(a).

• Items 14 and 15—''Failure to Comply with Supervision Requirements (Article 6, Rule 5(a) & (b))'' and ''Written Supervisory Procedures (Article 6, Rule 5(c)),'' respectively—would be added to proposed Rule 10.9271(f) consistent with the changes to proposed Rule 10.9217(e)(14) and (15) described above. The proposed first, second and third level fines for violations of Article 6, Rule 5(a) and (b) in proposed Rule 10.9217(e)(14) and Article 6, Rule 5(c) in proposed Rule 10.9217(e)(15) would be $500 for the first violation, $1,000 for the second violation and $2,500 for the third and subsequent violations. These fine levels would be the same as the current fines in the Recommended Fine Schedule in the Fee Schedule for violations of Article 6, Rule 5(b).

• Finally, item 24 would be ''Consolidated Audit Compliance Rule (Rule 6.6800 Series).'' The corresponding fine ''Up to $2,500.00'' would be transposed from current Article 12, Rule 8 to new footnote ** following ''Rule 6.6800 Series.'' [25] The Exchange would also add the current text from Article 12, Rule 8(a) providing that ''For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to $2,500. For more serious violations, other disciplinary action may be sought'' to new footnote **.

• The Exchange would add a new second sub-heading titled ''Minor Trading Rule Violations'' that would set forth the corresponding fines for first, second and third and subsequent violations for the 11 rules set forth under the heading ''Minor Trading Rule Violations'' in proposed Rule 10.9217(e), with the following changes and corrections:

○ The entry for ''Failure to clear the Matching System (Article 20, Rule 7)'' and corresponding fines would not be included. This rule was deleted from Article 12, Rule 8 8(h)(2)(F) in 2019 as part of the transition of trading on the Exchange to the Pillar trading platform but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.[26]

○ The Exchange would include ''Short Sales (Rule 7.16)'' as item 10. Rule 7.16 was added to Article 12, Rule 8 in 2019 as part of the transition of trading on the Exchange to the Pillar trading platform but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.[27] The proposed first, second and third level fines for violations of Rule 7.16 of $500 for the first violation, $1,000 for the second violation and $2,500 for the third and subsequent violations are the same as those in NYSE Arca Rule 10.9217(i)(1)1. for violations of NYSE Arca Rule 7.16–E.[28]

○ Finally, the Exchange would include ''Failure to comply with Authorized Trader requirements (Rule 7.30)'' as item 11. Rule 7.30 was also added to Article 12, Rule 8 as part of the transition to Pillar in 2019 but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.[29] The proposed first, second and third level fines for violations of Rule 7.30 of $1,000 for the first violation, $2,500 for the second violation and $3,500 for the third and subsequent violations are the same as those in NYSE Arca Rule 10.9217(i)(1)5. for violations of NYSE Arca Rule 7.30–E.[30]

As noted, proposed subsection (a) of proposed Rule 10.9217 is substantially the same as NYSE Arca Rule 10.9217(a) except for changes reflecting the Exchange's membership. The Exchange proposes that a fine thereunder would not exceed $5,000 (the amount reflected in current Article 12, Rule 8).[31]

Proposed subsections (b), (c) and (d) are also substantially the same as NYSE Arca Rule 10.9217(b), (c) and (d) with the only changes reflecting the Exchange's membership.

Unlike current Article 12, Rule 8(e) described above, proposed Rule 10.9216(b) and Rule 10.9217 would not permit a Respondent to contest a minor rule violation letter. Rather, as proposed, if the Respondent rejects the minor rule violation letter, then a complaint must be filed under proposed Rule 10.9211, and the minor rule violation letter may not be introduced into evidence.[32] The Exchange believes the proposed rule is appropriate because it will harmonize the Exchange's minor rule violation process with its affiliates' rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[33] in general, and furthers the objectives of Section 6(b)(5) of the Act,[34] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules. The Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of its rules governing reporting, record retention and trading in situations where either a cautionary action letter or a more formal disciplinary action may not be warranted or appropriate.

As noted, the Exchange would retain its list of minor rule violations with certain technical and conforming amendments, while adopting its affiliates' process for imposing minor rule violation fines.[35] In addition, as set forth in the Exchange's companion filing and herein, the Exchange believes that adding certain rules to its list of eligible minor rule violations based on

[25] In 2020, the Exchange added the Consolidated Audit Trail (''CAT'') industry member compliance rules to the list of minor rule violations in Article 12, Rule 8 and the corresponding fine up to $2,500. At the time, the Exchange inadvertently did not amend the Recommended Fine Schedule in the Fee Schedule. *See* Securities Exchange Act Release No. 89410 (July 28, 2020), 85 FR 46741 (August 3, 2020) (SR–CHX–2020–21).

[26] *See* Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345, 55349 (October 16, 2019) (SR–CHX–2019–08).

[27] *See id.*

[28] *See* NYSE Arca Rule 7.16–E (Short Sales) & 10.9217(i)(1)1.

[29] *See* Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345, 55349 (October 16, 2019) (SR–CHX–2019–08).

[30] *See* NYSE Arca Rule 7.30–E (Authorized Traders) & 10.9217(i)(1)5.

[31] *See* note 8, *supra.*

[32] *See* proposed Rule 10.9216(b)(4).

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(5).

[35] *See* NYSE Arca Rule 10.9216(b), NYSE Rule 9216(b), & NYSE American Rule 9216(b). *See also generally* FINRA Rule 9216(b).

the rules of its affiliate will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

Specifically, the proposed additions are designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of its rules governing general registration and supervision requirements in situations where a more formal disciplinary action may not be warranted or appropriate. As provided for in proposed Rule 10.9217(d), nothing in proposed Rule 10.9217 would require the Exchange to impose a minor rule fine for a violation of any eligible rule and that if the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed with formal disciplinary action rather than under proposed Rule 10.9217.

The Exchange also believes that adding rules based on the rules of its affiliate to its list of eligible minor rule violations would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, Article 6, Rule 2(b), 5(a) and 5(b) are substantially similar to NYSE National and NYSE Arca rules of similar purpose, which are each separately eligible for a minor rule fine under the respective market's version of proposed Rule 10.9217.[36]

Further, the Exchange believes that the proposed additions to its list of rules eligible for minor rule fines based on the rules of its affiliate are consistent with Section 6(b)(6) of the Act,[37] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations pursuant to the Exchange's rules and would increase the amounts of fines in order for the Exchange to better deter violative activity and to harmonize its rules with that of its affiliates.

The Exchange believes that moving the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and removing it from the Fee Schedule would add clarity and transparency to the Exchange's rules by reflecting the recommended fines for minor rule violations in the same place in the Exchange's rules. Similarly, updating the Recommended Fine Schedule to delete obsolete rules and add recommended fines for rules that were added to the list of minor rules but inadvertently omitted from the Recommended Fine Schedule would also add clarity and transparency to the Exchange's rules. The Exchange believes that adding such clarifying language would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion.

Further, the Exchange believes that adding recommended fines for Rule 7.16 and Rule 7.30 that were inadvertently omitted from the current Recommended Fine Schedule based on the fines for the same rules set forth in the rules of its affiliate would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, the proposed first, second and third level fines for violations of Rule 7.16 are the same as those in NYSE Arca Rule 10.9217(i)(1)1. for violations of NYSE Arca Rule 7.16–E, and the proposed first, second and third level fines for violations of Rule 7.30 are the same as those in NYSE Arca Rule 10.9217(i)(1)5. for violations of NYSE Arca Rule 7.30–E.[38]

Finally, the Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members consistent with Sections 6(b)(7) and 6(d) of the Act.[39] Proposed Rules 10.9216(b) and 10.9217 would not preclude a Participant, Participant Firm or covered person from rejecting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to update the Exchange's rules to strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct and to harmonize its rules with the rules of its affiliate.

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. 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–NYSECHX–2022–08 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–NYSECHX–2022–08. 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

[36] *See* text accompanying notes 18–23, *supra.*

[37] 15 U.S.C. 78f(b)(6).

[38] *See* notes 27–29, *supra.*

[39] 15 U.S.C. 78f(b)(7) & 78f(d).

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–NYSECHX–2022–08 and should be submitted on or before June 23, 2022.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[40] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[41] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act[42] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[43] which governs minor rule violation plans.

The Commission believes that Rules 10.9216(b) and 10.9217, which are based on the rules of an affiliate exchange, are an effective way to discipline a member for a minor violation of a rule. The Commission also believes that the proposed addition of certain rules to the Exchange's list of current minor rule violations provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. In addition, the Commission believes that the Exchange's proposal to move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain amendments and corrections are consistent with the Act because these changes will add clarity to the Exchange's rules.

In approving the propose rule change, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under Rules 10.9216(b) and 10.9217. The Commission believes that a violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rules 10.9216(b) and 10.9217 provide a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rules 10.9216(b) and 10.9217 or whether a violation requires formal disciplinary action.

For the same reasons as discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[44] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**.[45] The proposal will assist the Exchange in preventing fraudulent and manipulative practices by allowing the Exchange to adequately enforce compliance with, and provide appropriate discipline for, violations of Exchange rules. Moreover, the proposed changes raises no new or novel issues. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[46] and Rule 19d–1(c)(2) thereunder,[47] that the proposed rule change (SR–NYSECHX–2022–08) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11789 Filed 6–1–22; 8:45 am]

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[40] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[41] 15 U.S.C. 78f(b)(5).

[42] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[43] 17 CFR 240.19d–1(c)(2).

[44] 15 U.S.C. 78s(b)(2).

[45] As stated above, the Commission notes that the proposed rule change was submitted in connection with an immediately effective companion filing, SR–NYSECHX–2022–10, adopting investigation, disciplinary, sanction and other procedural rules modeled on the rules of the Exchange's affiliates. *See supra* note 4 and accompanying text. In SR–NYSECHX–2022–10, the Exchange states that it intends to announce by Information Memorandum with at least 30 days advance notice the operative date of the rules proposed in SR–NYSECHX–2022–10, which also includes proposed Rules 10.9216(b) and 10.9217. Thus, proposed Rules 10.9216(b) and 10.9217 will be operative at the same time as all the rules proposed in SR–NYSECHX–2022–10.

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 240.19d–1(c)(2).

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94999; File No. SR–NYSEArca–2021–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Disapproving a Proposed Rule Change To List and Trade Shares of the One River Carbon Neutral Bitcoin Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

May 27, 2022.

I. Introduction

On September 20, 2021, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the One River Carbon Neutral Bitcoin Trust (''Trust'') under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on October 5, 2021.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93171 (Sept. 29, 2021), 86 FR 55073 (Oct. 5, 2021)

On November 10, 2021, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 21, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On March 18, 2022, the Commission designated a longer period for Commission action on the proposed rule change.[8]

This order disapproves the proposed rule change. The Commission concludes that NYSE Arca has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), and in particular, the requirement that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [9]

When considering whether NYSE Arca's proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices, the Commission applies the same standard used in its orders considering previous proposals to list bitcoin[10]-based commodity trusts and bitcoin-based trust issued receipts.[11] As the Commission has explained, an exchange that lists bitcoin-based exchange-traded products (''ETPs'') can meet its obligations under Exchange Act Section 6(b)(5) by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference bitcoin assets.[12]

The standard requires such surveillance-sharing agreements since they ''provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' [13] The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading the underlying assets for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules.[14] The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.[15]

(''Notice''). Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nysearca-2021-67/srnysearca202167.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93553 (Nov. 10, 2021), 86 FR 64276 (Nov. 17, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93840 (Dec. 21, 2021), 86 FR 73826 (Dec. 28, 2021).

[8] *See* Securities Exchange Act Release No. 94475 (Mar. 18, 2022), 87 FR 16808 (Mar. 24, 2022).

[9] 15 U.S.C. 78f(b)(5).

[10] Bitcoins are digital assets that are issued and transferred via a decentralized, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the ''bitcoin blockchain.'' The bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions. *See, e.g.,* Notice, 86 FR at 55075.

[11] *See* Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR–BatsBZX–2016–30) (''Winklevoss Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and To List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 88284 (Feb. 26, 2020), 85 FR 12595 (Mar. 3, 2020) (SR–NYSEArca–2019–39) (''USBT Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93700 (Dec. 1, 2021), 86 FR 69322 (Dec. 7, 2021) (SR–CboeBZX–2021–024) (''WisdomTree Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 93859 (Dec. 22, 2021), 86 FR 74156 (Dec. 29, 2021) (SR–NYSEArca–2021–31) (''Valkyrie Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Kryptoin Bitcoin ETF Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93860 (Dec. 22, 2021), 86 FR 74166 (Dec. 29, 2021) (SR–CboeBZX–2021–029) (''Kryptoin Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 94006 (Jan. 20, 2022), 87 FR 3869 (Jan. 25, 2022) (SR–NYSEArca–2021–37) (''SkyBridge Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94080 (Jan. 27 2022), 87 FR 5527 (Feb. 1, 2022) (SR–CboeBZX–2021–039) (''Wise Origin Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the NYDIG Bitcoin ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 94395 (Mar. 10, 2022), 87 FR 14932 (Mar. 16, 2022) (SR–NYSEArca–2021–57) (''NYDIG Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Global X Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94396 (Mar. 10, 2022), 87 FR 14912 (Mar. 16, 2022) (SR–CboeBZX–2021–052) (''Global X Order''); and Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the ARK 21Shares Bitcoin ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94571 (Mar. 31, 2022), 87 FR 20014 (Apr. 6, 2022) (SR–CboeBZX–2021–052) (''ARK 21Shares Order''). See also Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust Under NYSE Arca Equities Rule 8.201, Securities Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247 (Apr. 3, 2017) (SR–NYSEArca–2016–101) (''SolidX Order''). The Commission also notes that orders were issued by delegated authority on the following matters: Order Disapproving a Proposed Rule Change To List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (SR–NYSEArca–2017–139) (''ProShares Order''); Order Disapproving a Proposed Rule Change To List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR–CboeBZX–2018–001) (''GraniteShares Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93559 (Nov. 12, 2021), 86 FR 64539 (Nov. 18, 2021) (SR–CboeBZX–2021–019) (''VanEck Order''); Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts), Securities Exchange Act Release No. 94620 (Apr. 6, 2022), 87 FR 21676 (Apr. 12, 2022) (SR–NYSEArca–2021–53) (''Teucrium Order''); and Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Valkyrie XBTO Bitcoin Futures Fund Under Nasdaq Rule 5711(g) (Commodity Futures Trust Shares), Securities Exchange Act Release No. 94853 (May 5, 2022), 87 FR 28848 (May 11, 2022) (SR–NASDAQ–2021–066) (''Valkyrie XBTO Order'').

[12] *See* USBT Order, 85 FR at 12596. *See also* Winklevoss Order, 83 FR at 37592 n.202 and accompanying text (discussing previous Commission approvals of commodity-trust ETPs); GraniteShares Order, 83 FR at 43925–27 nn.35–39 and accompanying text (discussing previous Commission approvals of commodity-futures ETPs).

[13] *See* Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70959 (Dec. 22, 1998) (''NDSP Adopting Release''). *See also* Winklevoss Order, 83 FR at 37594; ProShares Order, 83 FR at 43936; GraniteShares Order, 83 FR at 43924; USBT Order, 85 FR at 12596.

[14] *See* NDSP Adopting Release, 63 FR at 70959.

[15] *See* Winklevoss Order, 83 FR at 37592–93; Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O'Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), *available at https://*

Continued

In the context of this standard, the terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[16] A surveillance-sharing agreement must be entered into with a ''significant market'' to assist in detecting and deterring manipulation of the ETP, because a person attempting to manipulate the ETP is reasonably likely to also engage in trading activity on that ''significant market.'' [17]

Consistent with this standard, for the commodity-trust ETPs approved to date for listing and trading, there has been in every case at least one significant, regulated market for trading futures on the underlying commodity—whether gold, silver, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group (''ISG'') membership in common with, that market.[18] Moreover, the surveillance-sharing agreements have been consistently present whenever the Commission has approved the listing and trading of derivative securities, even where the underlying securities were also listed on national securities exchanges—such as options based on an index of stocks traded on a national securities exchange—and were thus subject to the Commission's direct regulatory authority.[19]

Listing exchanges have also attempted to demonstrate that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, including that the bitcoin market as a whole or the relevant underlying bitcoin market is ''uniquely'' and ''inherently'' resistant to fraud and manipulation.[20] In response, the Commission has agreed that, if a listing exchange could establish that the underlying market inherently possesses a unique resistance to manipulation beyond the protections that are utilized by traditional commodity or securities markets, it would not necessarily need to enter into a surveillance-sharing agreement with a regulated significant market.[21] Such resistance to fraud and manipulation, however, must be novel and beyond those protections that exist in traditional commodity markets or equity markets for which the Commission has long required surveillance-sharing agreements in the context of listing derivative securities products.[22]

As discussed in more detail below, NYSE Arca does *not* assert that the Exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size.[23] Rather, NYSE Arca contends that the proposal is consistent with Section 6(b)(5) of the Exchange Act because the design of the methodology and framework of the Index (as defined herein) is sufficiently resistant to market manipulation.[24] In addition, NYSE Arca states that the ''significant liquidity in the spot market and resultant minimal impact of market orders on the overall price of bitcoin, in conjunction with the Trust's offering only in-kind creation and redemption of Shares with respect to [a]uthorized [p]articipants, further mitigates the risk associated with potential manipulation and financially disincentivizes manipulation of the Index.'' [25]

In the analysis that follows, the Commission examines whether the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act by addressing: In Section III.B.1 assertions that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices; and in Section III.B.2 assertions relating to NYSE Arca's surveillance-sharing agreements related to bitcoin.

Based on the analysis, the Commission concludes that NYSE Arca has not established that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the requisite surveillance-sharing agreement. And as mentioned above, NYSE Arca does not assert that it has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to bitcoin. Moreover, as discussed further below, NYSE Arca repeats various assertions made in prior bitcoin-based ETP proposals that the Commission has previously addressed and rejected—and more importantly, NYSE Arca does not respond to the Commission's reasons for rejecting those assertions but merely repeats them. As a result, the Commission is unable to find that the proposed rule change is consistent with the statutory requirements of Exchange Act Section 6(b)(5).

The Commission emphasizes that its disapproval of this proposed rule change does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as discussed below, NYSE Arca has not met its burden to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5).

II. Description of the Proposed Rule Change

As described in more detail in the Notice,[26] the Exchange proposes to list

www.sec.gov/divisions/marketreg/mr-noaction/isg060394.htm.

[16] *See* Winklevoss Order, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that will provide guidance to market participants. *See id.*

[17] *See* USBT Order, 85 FR at 12597.

[18] *See* Winklevoss Order, 83 FR at 37594.

[19] *See* USBT Order, 85 FR at 12597; Securities Exchange Act Release No. 33555 (Jan. 31, 1994), 59 FR 5619, 5621 (Feb. 7, 1994) (SR–Amex–93–28) (order approving listing of options on American Depository Receipts (''ADRs'')). The Commission has also required a surveillance-sharing agreement in the context of index options even when (i) all of the underlying index component stocks were either registered with the Commission or exempt from registration under the Exchange Act; (ii) all of the underlying index component stocks traded in the U.S. either directly or as ADRs on a national securities exchange; and (iii) effective international ADR arbitrage alleviated concerns over the relatively smaller ADR trading volume, helped to ensure that ADR prices reflected the pricing on the home market, and helped to ensure more reliable price determinations for settlement purposes, due to the unique composition of the index and reliance on ADR prices. *See* Securities Exchange Act Release No. 26653 (Mar. 21, 1989), 54 FR 12705, 12708 (Mar. 28, 1989) (SR–Amex–87–25) (stating that ''surveillance-sharing agreements between the exchange on which the index option trades and the markets that trade the underlying securities are necessary'' and that ''[t]he exchange of surveillance data by the exchange trading a stock index option and the markets for the securities comprising the index is important to the detection and deterrence of intermarket manipulation.''). And the Commission has required a surveillance-sharing agreement even when approving options based on an index of stocks traded on a national securities exchange. *See* Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221, 28224 (June 24, 1992) (SR–Amex–91–22) (stating that surveillance-sharing agreements ''ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses'').

[20] *See* USBT Order, 85 FR at 12597.

[21] *See* Winklevoss Order, 83 FR at 37580, 37582–91 (addressing assertions that ''bitcoin and bitcoin [spot] markets'' generally, as well as one bitcoin trading platform specifically, have unique resistance to fraud and manipulation); *see also* USBT Order, 85 FR at 12597.

[22] *See* USBT Order, 85 FR at 12597.

[23] *See infra* Section III.B.2.

[24] *See* Notice, 86 FR at 55080.

[25] *Id.* at 55082.

[26] *See* Notice, *supra* note 3. *See also* Amendment No. 1 to the Registration Statement on Form S–1, dated October 6, 2021, filed by the Trust with the Commission under the Securities Act of 1933 (File No. 333–256407) (''Registration Statement'').

and trade the Shares of the Trust under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is to track the performance of bitcoin, as measured by the performance of the MVIS One River Carbon Neutral Bitcoin Index (''Index''), adjusted for the Trust's expenses and other liabilities.[27] As discussed below, the Index is designed to reflect the performance of bitcoin in U.S. dollars on a carbon neutral basis. In seeking to achieve its investment objective, the Trust would hold bitcoin and would value its Shares based on the same methodology used to calculate the Index, as adjusted to reflect the expenses associated with offsetting carbon credits.[28] The Trust would not purchase or sell bitcoin directly, although the Trust may direct the Custodian to sell or transfer bitcoin to pay certain expenses.[29] The Trust would not hold cash or cash equivalents; however, there may be situations where the Trust would hold cash on a temporary basis.[30] The Trust would not hold futures, options, or options on futures.[31]

The Index value would be the benchmark value of the bitcoin, less the estimated daily cost of offsetting the carbon emissions [32] of a single bitcoin.[33] The Index is the aggregation of executed trade data for ''major'' bitcoin spot platforms.[34] According to NYSE Arca, to be eligible for inclusion in the Index, a constituent bitcoin platform must enforce policies to ensure fair and transparent market conditions and have processes in place to impede illegal or manipulative trading practices. Additionally, each constituent bitcoin platform must comply with applicable law and regulation, including proper anti-money laundering (''AML'') and know-your-customer (''KYC'') procedures.[35] More than 160 global spot platforms are evaluated monthly based on data transparency, KYC stringency, and transaction monitoring.[36] The Index is constructed using bitcoin price feeds from eligible bitcoin spot markets [37] and volume weighted median price averages, calculated over 20 intervals in rolling three-minute increments, less the estimated cost of offsetting the daily carbon emissions attributable to each bitcoin in the network.[38]

The Trust intends to offset the carbon footprint associated with bitcoin once a quarter by paying for the instantaneous retirement of voluntary carbon credits equal to the daily estimated carbon emissions associated with the bitcoins held by the Trust.[39] The Trust has entered into an agreement with LIRDES S.A., d/b/a Moss Earth (''Moss''), a company located in Uruguay, to pay for carbon credit tokens created by Moss (''MCO2 Tokens'') representing certified reductions in greenhouse gas emissions.[40] The MCO2 Tokens issued by Moss are carbon offsets encrypted and tokenized, utilizing blockchain technology, and are stored on a registry managed by Verra.[41] The Trust would purchase MCO2 Tokens from Moss at the end of March, June, September, and December at pre-negotiated prices, and Moss would instantaneously retire the tokens to the Ethereum blockchain.[42] The number of MCO2 Tokens paid for by the Trust would equal the aggregated sum of offsets implied by the daily carbon emissions for a single bitcoin over the preceding quarter, multiplied by the average number of bitcoins held in the Trust's portfolio during the quarter, with a view towards tracking the carbon footprint offset estimate calculated by the Index.[43] The Trust would not hold the carbon offset MCO2 Tokens as an asset. Instead, the Trust would pay for the MCO2 Tokens and retire the tokens to the Ethereum blockchain to reduce global carbon emissions by the carbon dioxide tonnage (or tonnage of other similar greenhouse gases) corresponding to such tokens.[44]

BNY Mellon would calculate the net asset value (''NAV'') of the Trust once each Exchange trading day. The NAV for a normal trading day would be released after 4:00 p.m. E.T. (often by 5:30 p.m. E.T. and almost always by

[27] *See* Notice, 86 FR at 55073. The sponsor of the Trust is One River Digital Asset Management, LLC (''Sponsor''), a Delaware limited liability company and a wholly-owned subsidiary of One River Asset Management, LLC. The trustee for the Trust is Delaware Trust Company. The marketing agent for the Trust is Foreside Global Services, LLC. The Bank of New York Mellon (''BNY Mellon'') would act as the Trust's administrator and transfer agent. The custodian for the Trust, Coinbase Custody Trust Company, LLC (''Custodian''), would hold all of the Trust's bitcoin on the Trust's behalf and retain custody of the Trust's bitcoin in an account for the Trust (''Bitcoin Account''). *See id.*

[28] *See id.* at 55074. According to the Sponsor, ''[t]he Trust intends to offset the carbon footprint associated with the bitcoin it holds by paying for the retirement of voluntary carbon credits equal to the daily estimated carbon emissions associated with the bitcoins held by the Trust.'' *See* Registration Statement at 47. *See also infra* notes 39–41 and accompanying text (further describing ''carbon credits'').

[29] *See* Notice, 86 FR at 55074.

[30] *See id.* The Trust has entered into a cash custody agreement with BNY Mellon under which BNY Mellon would act as custodian of the Trust's cash and cash equivalents. *See id.*

[31] *See id.*

[32] *See infra* note 44 and accompanying text (generally describing the connection between electricity usage and consumption with, and the carbon emission intensity of such electricity consumption relating to, the bitcoin mining network). *See also* Registration Statement at 3.

[33] *See* Notice, 86 FR at 55075. The Index methodology was developed by MV Index Solutions GmbH (''MVIS'') and is monitored by the One River Index Committee (''Committee''), an independent, third-party calculation agent for the Index. MVIS, with the assistance of its affiliates, is also the calculation agent for the Index and for the MVIS® CryptoCompare Bitcoin Benchmark Rate (''BBR''), which measures the value of the underlying bitcoin represented by, and is the bitcoin benchmark component for, the Index. The current constituent bitcoin platforms of the BBR are Coinbase, Gemini, Bitstamp, Kraken, and itBit. *See id.* at 55074–75.

[34] *See id.* at 55075. *See also* Sponsor Letter at 6–7 (describing how the Index is transparent and rules-based).

[35] *See* Notice, 86 FR at 55075.

[36] *See id.*

[37] The Committee selects the Index's eligible spot markets and evaluates them semi-annually, with the final selections to be made on the third Friday of January and July or during market disruptions where a market review is warranted, as determined by the Committee. *See id.*

[38] *See id.* at 55074.

[39] *See id.* According to the Exchange, voluntary carbon credits are certified and standardized under the Verra Verified Carbon Standard (''Verra''), an organization that establishes and manages standards and programs in connection with voluntary carbon credits, and the Trust would only utilize carbon credits that meet the Verra standards. *See id.* at 55074–75.

[40] *See id.* at 55075. Upon expiration of its agreement with Moss in April 2031, the Trust would either enter into a replacement agreement or pay for the retirement of MCO2 Tokens or similar carbon credits at then-current spot prices for such instruments. *See id.*

[41] *See id.* According to the Exchange, the MCO2 Token is a digital representation of a carbon credit that is stored on a registry by Verra and can be acquired in over-the-counter (''OTC'') or publicly-traded markets. Moss purchases carbon credits from projects that are certified under Verra's Verified Carbon Standard. Each circulating MCO2 Token is intended to represent a claim on a certified carbon credit held in an aggregated pool of carbon credits within the Moss account on the Verra registry. Tokenized carbon credits are fungible and do not represent a claim on a specific underlying carbon credit issued to a specific carbon reduction project. *See id.*

[42] *See id.* at 55075 & n.10.

[43] *See id.* at 55075.

[44] *See id.* at 55075 & n.10. According to the Exchange, the cost of the carbon offset used in the Index is calculated in the following steps. First, electricity consumption for the bitcoin mining network is recorded daily. Second, geolocation of bitcoin miners identifies the location of electricity usage. Third, for each location, the average production of electricity by its source of production (*e.g.,* solar, coal) is recorded. This estimates the carbon emission intensity of electricity consumption in the bitcoin network. Fourth, total electricity consumption is multiplied by the carbon intensity of the bitcoin network to estimate total carbon emissions. These steps allow MVIS to obtain a daily estimate of the carbon emissions necessary to run the bitcoin network. The total carbon emissions of the bitcoin network are divided by the total number of bitcoins in circulation to estimate the carbon emissions attributable to each bitcoin on each day. Finally, the carbon emission attributable to each bitcoin is multiplied by the MCO2 Token market price of a carbon offset. *See id.* at 55074. The daily accumulation of the carbon offset component of the Index measures the totality of the cost of the carbon offset required for holding a single bitcoin over the accumulation period. *See id.* at 55075.

8:00 p.m. E.T.).[45] The NAV per Share of the Trust would be equal to the median price of the bitcoin used in the calculation of the Index, less the Trust's liabilities, including the cost of carbon measured in the Index, divided by the total number of outstanding Shares. The accumulation of the daily carbon offset costs calculated in the Index would act as an expense to the Trust. The payment for the retirement of carbon offsets by the Trust would occur once per quarter of the calendar year, and the number of MCO2 Tokens retired would equal the aggregated sum of offsets implied by the daily carbon footprint for each bitcoin held by the Trust during the quarter. The NAV would accrue the estimated carbon cost daily.[46]

The Trust would provide website disclosure of its bitcoin holdings daily.[47] The Intraday Indicative Value (''IIV'') per Share would be widely disseminated every 15 seconds during the NYSE Arca Core Trading Session (normally 9:30 a.m. E.T. to 4:00 p.m. E.T.) by the Trust and by one or more major market data vendors and would be available through on-line information services. The IIV would be calculated by using the prior day's closing NAV per Share of the Trust as a base and updating that value throughout the trading day to reflect changes in the most recently reported price level of the Index as reported by Bloomberg, L.P. or another reporting service.[48]

The Trust would process all creations and redemptions in-kind and only in one or more blocks of 50,000 Shares (''Baskets'').[49] When creating Shares, authorized participants would deliver, or facilitate the delivery of, bitcoin to the Bitcoin Account in exchange for Shares, and when redeeming Shares, the Trust, through the Custodian, would deliver bitcoin to authorized participants.

Although the Trust would create Baskets only upon the receipt of bitcoins, and redeem Baskets only by distributing bitcoins, a separate cash exchange process would be made available to authorized participants. Under the cash exchange process, an authorized participant would be able to deposit cash with BNY Mellon, which would facilitate the purchase or sale of bitcoins through a liquidity provider (''Liquidity Provider'') on behalf of an authorized participant. The bitcoin purchased (or sold) by the Liquidity Provider in connection with the cash exchange process would, in turn, be delivered to (or from, as appropriate) the Custodian, on behalf of the Trust, in exchange for Baskets.[50]

III. Discussion

A. The Applicable Standard for Review

The Commission must consider whether NYSE Arca's proposal is consistent with the Exchange Act. Section 6(b)(5) of the Exchange Act requires, in relevant part, that the rules of a national securities exchange be designed ''to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [51] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [52]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[53] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[54] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[55]

B. Whether NYSE Arca Has Met Its Burden To Demonstrate That the Proposal Is Designed To Prevent Fraudulent and Manipulative Acts and Practices

1. Assertions That Other Means Besides Surveillance-Sharing Agreements Will Be Sufficient To Prevent Fraudulent and Manipulative Acts and Practices

As stated above, the Commission has recognized that a listing exchange could demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with a comprehensive surveillance-sharing agreement with a regulated market of significant size, including by demonstrating that the bitcoin market as a whole or the relevant underlying bitcoin market is uniquely and inherently resistant to fraud and manipulation.[56] Such resistance to fraud and manipulation must be novel and beyond those protections that exist in traditional commodities or securities markets.[57]

(a) Assertions Regarding Bitcoin and Bitcoin Markets

NYSE Arca does not assert that the bitcoin market as a whole or the relevant underlying bitcoin market is uniquely and inherently resistant to fraud and manipulation. The Exchange, however, does assert that the ''significant liquidity in the spot market and resultant minimal impact of market orders on the overall price of bitcoin, in conjunction with the Trust's offering only in-kind creation and redemption of Shares . . . mitigates the risk associated with potential manipulation and financially disincentivizes manipulation of the Index.'' [58]

In support of the proposal, the Exchange states that ''bitcoin is dominant, accounting for more than 49% of the total market capitalization of cryptoassets'' and that, ''[a]s of June 2021, the market cap for [b]itcoin is over $600 billion.'' [59] In addition, NYSE Arca

[45] *See id*. at 55076–77.

[46] *See id*. at 55076.

[47] *See id*. at 55082.

[48] *See id*. at 55077.

[49] *See id*. at 55074, 55077.

[50] *See id*. at 55074.

[51] 15 U.S.C. 78f(b)(5). Pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act. Exchange Act Section 6(b)(5) states that an exchange shall not be registered as a national securities exchange unless the Commission determines that ''[t]he rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.'' 15 U.S.C. 78f(b)(5).

[52] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[53] *See id*.

[54] *See id*.

[55] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017) (''Susquehanna'').

[56] *See* USBT Order, 85 FR at 12597 n.23. The Commission is not applying a ''cannot be manipulated'' standard. Instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *See id.*

[57] *See id*. at 12597.

[58] *See* Notice, 86 FR at 55082.

[59] *See* Notice, 86 FR at 55078. *See also* letter from Sponsor (Jan. 16, 2022) (''Sponsor Letter'') at 1

states that bitcoin has the ''longest history of any cryptoasset'' and ranks as one of the most widely used, if not the most widely used, cryptoassets in the global token market, with ''more than 38 million unique bitcoin wallet addresses holding a positive balance, which shows a steady increase in the number of bitcoin owners and depth of ownership over the last four years.'' [60] Moreover, the Exchange provides that bitcoin investors hold bitcoin for a relatively long time, as ''58% of owners maintain ownership for longer than a one-year period, and 70% of all holders are in profitable positions.'' [61]

NYSE Arca also states that the bitcoin marketplace is maturing. The Exchange cites to increased institutional participation, noting that public and established companies now hold bitcoin, and that other financial market participants (*e.g.,* insurance companies and pension funds) appear to be ''embracing cryptoassets.'' [62] The Exchange also provides that ''the rise in the digital economy has led to an increase in activity within the regulated banking system, reflecting increased institutional demand.'' [63] Moreover, according to the Exchange, ''licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services.'' [64]

Additionally, NYSE Arca states that the Commodity Futures Trading Commission (''CFTC'') has ''exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptoasset trading, including, in certain cases, against defendants for direct trading of cryptoassets.'' [65] Specifically, NYSE Arca contends that the CFTC ''has historically asserted jurisdiction over spot market commodities trading, where manipulative trading in the spot market can affect its derivatives market.'' [66]

Finally, according to NYSE Arca, certain other regulatory bodies, such as the U.S. Department of the Treasury's Financial Crimes Enforcement Network (''FinCEN''), the U.S. Office of the Comptroller of the Currency (''OCC''), and the Board of Governors of the Federal Reserve System (''Federal Reserve'') have recently proposed or clarified rules to enhance transparency,[67] custody,[68] and account services [69] relating to ''cryptoassets'' or ''digital assets,'' respectively.[70]

As with the previous proposals, the Commission here concludes that the Exchange's assertions about the general liquidity, growth, and acceptance of the bitcoin market do not constitute other means to prevent fraud and manipulation sufficient to justify dispensing with the requisite surveillance-sharing agreement. While the Exchange states that the significant liquidity in the spot market and resultant minimal impact of market orders on the overall price of bitcoin mitigates the risk associated with potential manipulation, such assertion is general and conclusory. Indeed, apart from the market capitalization of bitcoin and the number of unique bitcoin wallet addresses, NYSE Arca provides no analysis or evidence of liquidity in the bitcoin spot market or its assertion that there is ''minimal impact of market orders'' on the price of bitcoin. Likewise, NYSE Arca provides no analysis or evidence to demonstrate how liquidity or minimal impact of market orders serves to detect and deter potential fraud and manipulation.[71] As stated above, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[72]

While the Sponsor and NYSE Arca provide figures describing the size of the bitcoin spot market,[73] such information is not sufficient to support the finding that other means besides surveillance-sharing agreements exist to prevent fraud or manipulation. NYSE Arca does

(stating that the expansion of bitcoin market capitalization to nearly one trillion dollars and average daily turnover of $18.7 billion is above many well-known single name equity trading volumes such as Apple Inc.).

[60] *See* Notice, 86 FR at 55078.

[61] *See id.*

[62] *See id.* Specifically, NYSE Arca states that ''[e]stablished companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, have recently announced substantial investments in bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy)'' and that ''MassMutual Insurance Company, one of the nation's oldest private companies and a historically conservative investor, has purchased over $100 million in bitcoin.'' *Id.*

[63] *Id. See also* letter from Paul Grewal, Chief Legal Officer, Coinbase (Jan. 11, 2022) (''Coinbase Letter'') at 3–4 (restating NYSE Arca's assertions and generally observing ''growth in the use of crypto assets to participate in decentralized finance, or DeFi, applications such as peer-to-peer borrowing and lending, with the total value allocated towards decentralized finance globally growing from under $1 billion to over $15 billion from December 31, 2019 to December 31, 2020,'' and ''a positive trend in the total market capitalization of crypto assets which indicates increased adoption''); Sponsor Letter at 1–2 (generally asserting that the rising value of bitcoin has accompanied advancement in information around its operational quality and the development of novel techniques designed to increase transparency and negate the risk of manipulation).

[64] *See* Notice, 86 FR at 55078.

[65] *See id.* at 55079.

[66] *See id.* at 55079–80. The Exchange specifically cites to two cases, *CFTC* v. *Gelfman Blueprint* (No. 17–7181) (S.D.N.Y. Sept. 21, 2017) and *CFTC* v. *Patrick K. McDonnell & Cabbagetech Corp., d/b/a Coin Drop Markets,* (No. 18–CV–0361) (E.D.N.Y. Aug. 24, 2018), where, according to the Exchange, the CFTC asserted jurisdiction over the spot market when ''there was little to no derivatives trading in the United States'' or the ''case did not indicate that there was any derivatives trading conducted,'' respectively. *See id.* NYSE Arca surmises that the ''[c]ourts have taken an expansive interpretation of the CFTC's jurisdiction over trading in particular virtual currency products on the basis that futures trading in such products as a class already occurs.'' *See id. See also* Coinbase Letter at 5 (asserting that the Commission should rely on the CFTC to exercise its traditional fraud authority to ensure the underlying bitcoin market is free of manipulation, and that these safeguards should satisfy the Commission).

[67] *See* Notice, 86 FR at 55078–79. NYSE Arca states that FinCEN has proposed rulemaking initiatives aimed at enhancing transparency, which would require certain financial institutions to collect, retain, share, and report to FinCEN information related to certain transactions involving convertible virtual currency or certain digital assets, including identification information of persons engaged in such transactions. *See id.* According to NYSE Arca, such proposed rules ''are intended to reduce anonymity and promote transparency within the cryptoasset markets generally and of cryptoasset exchanges specifically, including the exchanges that compose the bitcoin component of the Index.'' *Id.* NYSE Arca also provides that, in March 2021, the Financial Action Task Force (''FATF'') issued updated draft guidance that, ''when issued in final form, would significantly broaden the reach of certain anti-money laundering, including know-your-customer, compliance requirements applicable to transactions in virtual assets or involving virtual asset service providers.'' *Id.* While NYSE Arca acknowledges that ''FinCEN has not finalized its proposed rules yet, and the FATF guidance does not have the force of law,'' NYSE Arca argues that ''these actions signal a concerted effort among regulatory bodies to introduce requirements that would reduce anonymity of cryptoasset transactions and implement stronger anti-money laundering compliance measures among industry participants.'' *Id.*

[68] *See* Notice, 86 FR at 55080. According to the Exchange, ''the [OCC] has made clear that federally-chartered banks are able to provide custody services for cryptoassets and other digital assets.'' *Id.*

[69] *See id.* According to the Exchange, ''the [Federal Reserve] proposed guidelines to evaluate the requests for account services at Federal Reserve Banks in light of recent changes to the financial payments landscape.'' *Id.*

[70] The Exchange also mentions technological advancements in the bitcoin protocol, as well as advancements in regulatory frameworks, both on a global and national scale, such as the Bank of International Settlements' provision of consultation on prudential treatment of cryptoassets. *See* Notice, 86 FR at 55079.

[71] *See supra* note 58 and accompanying text. The Exchange does not directly tie the asserted liquidity or development of the bitcoin market to an argument that such market evolution provides sufficient means to justify dispensing with the requisite surveillance sharing agreement. In addition, the Exchange makes no assertions that bitcoin is resistant to price manipulation.

[72] *See supra* note 55. The Commission has previously considered and rejected similar arguments about the liquidity and growth of the bitcoin spot market and general statements about the maturation of the bitcoin market. *See, e.g.,* Valkyrie Order, 86 FR at 74159.

[73] *See supra* note 59 and accompanying text.

not provide meaningful analysis, based on data points provided, that the concerns previously articulated by the Commission relating to fraud and manipulation of the bitcoin market have been mitigated. For example, NYSE Arca does not sufficiently refute the presence of possible sources of fraud and manipulation in the bitcoin spot market generally that the Commission has raised in previous orders. Such possible sources have included (1) ''wash'' trading,[74] (2) persons with a dominant position in bitcoin manipulating bitcoin pricing,[75] (3) hacking of the bitcoin network and trading platforms, (4) malicious control of the bitcoin network, (5) trading based on material, non-public information, including the dissemination of false and misleading information, (6) manipulative activity involving purported ''stablecoins,'' including Tether (USDT), and (7) fraud and manipulation at bitcoin trading platforms.[76] Additionally, although NYSE Arca represents that ''there are more than 38 million unique bitcoin wallet addresses holding a positive balance, which shows a steady increase in the number of bitcoin owners and depth of ownership over the last four years,'' [77] such figure, on its own, regarding the *number* of wallet addresses holding bitcoin do not provide any information on the *concentration* of bitcoin within or among such wallets, or take into account that a market participant with a dominant ownership position could use dominant market share to engage in manipulation.[78]

Further, although the Exchange describes the bitcoin marketplace as maturing with increased institutional participation and acceptance,[79] the Exchange does not elaborate on how such participation and acceptance would mitigate against fraud and manipulation.

In support of its proposal, NYSE Arca also states that the ''CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptoasset trading.'' [80] The Commission has long recognized that the CFTC maintains some jurisdiction over the bitcoin spot market. However, under the Commodity Exchange Act, the CFTC does not have *regulatory* authority over bitcoin spot trading platforms.[81] Except in certain limited circumstances, bitcoin spot trading platforms are not required to register with the CFTC, and the CFTC does not set standards for, approve the rules of, examine, or otherwise regulate bitcoin spot markets.[82] As the CFTC itself stated, while the CFTC ''has an important role to play,'' U.S. law ''does not provide for direct, comprehensive Federal oversight of underlying Bitcoin or virtual currency spot markets.'' [83] In addition, while certain bitcoin derivatives exchanges that trade bitcoin futures and options on bitcoin futures are regulated by the CFTC, the CFTC's regulations do not extend to the bitcoin spot platforms, including the bitcoin spot platforms comprising the Index.

Moreover, even if, as the Exchange maintains, the CFTC ''has historically asserted jurisdiction over spot market commodities trading, where manipulative trading in the spot market can *affect its derivatives market*'' [84] (emphasis added), the Exchange fails to explain why the CFTC's ability to bring enforcement action is a sufficient basis for the Exchange to dispense with the requirement to enter into a surveillance-sharing agreement with a regulated market of significant size. Specifically, where here the Shares of the proposed ETP would trade on a *securities market,* the Exchange fails to explain why it is relevant to the proposal that the CFTC can bring enforcement actions when spot trading affects the *derivatives market.* Moreover, the Commission also has the ability to bring enforcement actions for a wide array of causes, including fraud and manipulation, in the securities market. Despite this, as stated above, surveillance-sharing agreements have been consistently present whenever the Commission has approved the listing and trading of derivative securities, even where the underlying securities were also listed on national securities exchanges—such as options based on an index of stocks traded on a national securities exchange—and were thus subject to the Commission's direct regulatory authority.[85]

Further, while the Exchange describes how other U.S. regulatory bodies have clarified or considered rulemaking initiatives to enhance transparency, custody, and account services relating to cryptoassets and other digital assets,[86] NYSE Arca fails to explain how such initiatives serve as a suitable substitute or regulatory supplement to dispense with the need for the Exchange to enter into a surveillance-sharing agreement with a regulated market of significant size. As discussed above, it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading the underlying assets for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules.[87] Such agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one

[74] *See infra* note 107 and accompanying text.

[75] *See infra* note 78 and accompanying text.

[76] *See* USBT Order, 85 FR at 12600–01 & nn.66–67 (discussing J. Griffin & A. Shams, *Is Bitcoin Really Untethered?* (October 28, 2019), *available at https://ssrn.com/abstract=3195066* and published in 75 J. Finance 1913 (2020)); Winklevoss Order, 83 FR at 37585–86.

[77] *See supra* note 60 and accompanying text.

[78] *See, e.g.,* Winklevoss Order, 83 FR at 37584; USBT Order, 85 FR at 12600–01; WisdomTree Order, 86 FR at 69325; Valkyrie Order, 86 FR at 74160; Kryptoin Order, 86 FR at 74170; Skybridge Order, 87 FR at 3783–84; Wise Origin Order, 87 FR at 5531; ARK 21Shares Order, 87 FR at 20019. *See also* Registration Statement at 21 (disclosing that: (a) Some entities hold large amounts of bitcoin relative to other market participants, (b) as of the date of the [Registration Statement], the ''largest [100] bitcoin wallets held a substantial amount of the outstanding supply of bitcoin and it is possible that some of these wallets are controlled by the same person or entity,'' and (c) ''it is possible that other persons or entities control multiple wallets that collectively hold a significant number of bitcoin, even if each wallet individually only holds a small amount,'' and ''[a]s a result of this concentration of ownership, large sales by such holders could have an adverse effect on the market price of bitcoin'').

[79] *See supra* notes 62–64 and accompanying text.

[80] *See* Notice, 86 FR at 55079.

[81] *See* USBT Order, 85 FR at 12604; WisdomTree Order, 86 FR at 69328; Valkyrie Order, 86 FR at 74162; SkyBridge Order, 87 FR at 3877; ARK 21Shares Order, 87 FR at 20023.

[82] *See id.*

[83] *See* Winklevoss Order, 83 FR at 37599 n.288 (quoting CFTC Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets (Jan. 4, 2018), at 1, *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/backgrounder_virtualcurrency01.pdf*).

[84] *See supra* note 66 and accompanying text.

[85] *See supra* note 19 and accompanying text.

[86] According to the Exchange, the OCC clarified that ''federally-chartered banks are able to provide custody services for cryptoassets and other digital assets''; the Federal Reserve proposed guidelines to evaluate the requests for account services; and FinCEN has proposed rulemaking initiatives to ''require certain cryptoasset transactions to be subject to [AML] compliance''; FATF has issued updated draft guidance that ''would significantly broaden the reach of certain anti-money laundering, including [KYC], compliance requirements applicable to transactions in virtual assets or involving virtual asset service providers''; and the Treasury's Office of Foreign Assets Control (''OFAC'') has ''brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.'' *See supra* notes 67–70 and accompanying text.

[87] *See* NDSP Adopting Release, 63 FR at 70959.

party to the agreement from obtaining this information from, or producing it to, the other party.[88] NYSE Arca fails to explain how the additional regulatory clarifications or rulemaking initiatives serve the function of a surveillance-sharing agreement in preventing, and sharing information about, fraud and manipulation.[89]

In addition, NYSE Arca does not address risk factors specific to the bitcoin blockchain and bitcoin platforms, described in the Trust's Registration Statement, that undermine the argument that the concerns previously articulated by the Commission relating to fraud and manipulation of the bitcoin market have been mitigated.[90] For example, the Registration Statement acknowledges that the ''spot markets through which bitcoin and other digital assets trade are new and largely unregulated, and therefore, may be more exposed to fraud and security breaches that established, regulated exchanges for other financial assets or instruments''; that there is a risk of ''manipulation of bitcoin spot markets by customers and/or the closure or temporary shutdown of such exchanges due to fraud''; that ''many spot markets and OTC market venues, do not provide the public with significant information regarding their ownership structure, management teams, corporate practices or oversight of customer trading''; that ''[o]ver the past several years, a number of bitcoin spot markets have been closed or faced issues due to fraud''; that ''[t]he nature of the assets held at bitcoin spot markets makes them appealing targets for hackers and a number of bitcoin spot markets have been victims of cybercrimes''; that the bitcoin blockchain could be vulnerable to a ''51% attack,'' in which a bad actor (or actors) or botnet that controls a majority of the processing power of the bitcoin network may be able to alter the bitcoin blockchain on which the bitcoin network and bitcoin transactions rely; and that ''digital asset networks have been subject to malicious activity achieved through control of over 50% of the processing power on the network.'' [91]

(b) Assertions Regarding the Index

The Exchange states that the ''use of the Index eliminates those bitcoin spot markets with indicia of suspicious, fake, or non-economic volume from the NAV calculation methodology pursuant to which the Trust prices its Shares.'' [92] In addition, the Exchange asserts that the use of multiple eligible bitcoin spot markets is designed to mitigate the potential for idiosyncratic market risk.[93] NYSE Arca also contends that the use of 20 rolling three-minute increments in the construction of the Index means that a malicious actor would need sustained efforts to ''manipulate the market over an extended period of time, or would need to replicate efforts multiple times, potentially triggering review from the spot market or regulators, or both.'' [94] The Exchange also states that ''[a]ny attempt to manipulate the NAV would require a substantial amount of capital distributed across a majority of the eligible spot markets, and potentially coordinated activity across those markets, making it more difficult to conduct, profit from, or avoid the detection of market manipulation.'' [95]

Based on assertions made and the information provided, the Commission can find no basis to conclude that NYSE Arca has articulated other means to prevent fraud and manipulation that are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The record does not demonstrate that the proposed methodology for calculating the Index would make the proposed ETP resistant to fraud or manipulation such that a surveillance-sharing agreement with a regulated market of significant size is unnecessary. Specifically, NYSE Arca has not assessed the possible influence that spot platforms not included among the Index's underlying bitcoin platforms would have on the Index.[96] The record does not establish that the broader bitcoin market is inherently and uniquely resistant to fraud and manipulation. Accordingly, to the extent that trading on platforms not directly used to calculate the Index affects prices on the Index's underlying bitcoin platforms, the characteristics of those other platforms—where various kinds of fraud and manipulation from a variety of sources may be present and persist—may affect whether the Index is resistant to manipulation.

Moreover, NYSE Arca's assertions that the Index's methodology helps make the Index resistant to manipulation are contradicted by the Registration Statement's own statements. Specifically, the Registration Statement states, among other things, that ''a number of bitcoin spot markets have been closed or faced issues due to fraud'' and that ''[t]he nature of the assets held at bitcoin spot markets makes them appealing targets for hackers and a number of bitcoin spot markets have been victims of cybercrimes.'' [97] The Index's constituent bitcoin platforms are a subset of the bitcoin trading venues currently in existence.

With respect to the Index specifically, the Registration Statement also states that ''[p]ricing sources used by the Index are digital asset spot markets that facilitate the buying and selling of bitcoin and other digital assets''; ''[a]lthough many pricing sources refer to themselves as ''exchanges,'' they are not registered with, or supervised by, the [Commission] or CFTC and do not meet the regulatory standards of a national securities exchange or designated contract market.'' [98] The Sponsor further states in the Registration Statement that ''[t]he Index is based on various inputs which include price data from various third-party bitcoin spot markets'' and ''[t]he [MVIS] does not guarantee the validity of any of these inputs, which may be subject to technological error, manipulative activity, or fraudulent

[88] *See supra* note 15 and accompanying text.

[89] NYSE Arca provides no data, information, or analysis as to how clarifications by the OCC regarding custody or by the Federal Reserve regarding account services address the Commission's concerns about fraud and manipulation. Likewise, initiatives by FinCEN, FATF, and OFAC related to AML, KYC, and sanctions do not serve as a substitute for, and are not otherwise the dispositive factor in the analysis regarding, the importance of having a surveillance-sharing agreement with a regulated market of significant size relating to bitcoin. For example, AML and KYC policies and procedures do not substitute for the sharing of information about market trading activity or clearing activity, and do not substitute for regulation of national securities exchanges. *See* USBT Order, 85 FR at 12603 n.101 and accompanying text. *See also* Kryptoin Order, 86 FR at 74172 n.79 (discussing how a commenter asserts that global bitcoin and cryptocurrency markets are subject to increasing levels of regulation, oversight, and enforcement actions by global governments and regulatory bodies, but provides no data, information, or analysis as to how, among other things, any such regulation makes the listing and trading of the ETP shares inherently resistant to fraud and manipulation).

[90] *See, e.g.,* SkyBridge Order, 87 FR at 3873; ARK 21Shares Order, 87 FR at 20019–20.

[91] *See* Registration Statement at 4, 10–11, 15.

[92] *See* Notice, 86 FR at 55080.

[93] *Id.*

[94] *Id.*

[95] *Id. See also* Sponsor Letter at 2 (further asserting that novel indices, such as the Index, ''provide not only a robust price for the spot bitcoin market but also negate the risk of market manipulation,'' and that to manipulate the Index would require sustained intervention across multiple exchanges during a period of peak market liquidity).

[96] While NYSE Arca asserts that the Index's use of a median price limits the ability of outlier prices to affect the Index, the Commission has no basis on which to conclude that the Index's constituent bitcoin platforms are insulated from prices of others that engage in or permit fraud or manipulation. *See supra* notes 37–38 and accompanying text.

[97] *See* Registration Statement at 10, 25.

[98] *See id.* at 29.

reporting from their initial source.'' [99] And, although the Sponsor raises concerns regarding fraud and security of bitcoin platforms, as well as concerns specific to the Index's constituent bitcoin platforms, the Exchange does not explain how or why such concerns are consistent with its assertion that the Index is resistant to fraud and manipulation. Indeed, the Trust's Registration Statement undermines NYSE Arca's arguments and assertions about how the Index is resistant fraud and manipulation.

Moreover, although the Exchange states that the Index's ''oversight [is] managed by an independent committee'' [100] and that the Committee selects the Index's constituent platforms from multiple eligible markets (and thus mitigate the potential for idiosyncratic market risk), the record does not provide any other details about the oversight of the Committee and how its selection processes mitigate fraud and manipulation of the constituent bitcoin platforms. Given the lack of information, the record does not suggest that the oversight or the selection process represents a unique measure to resist or prevent manipulation beyond mechanisms that exist in securities or commodities markets.[101] Rather, the oversight performed by the Committee appears to be for the purpose of ensuring the accuracy and integrity of the Index.[102] Such oversight serves a fundamentally different purpose as compared to the regulation of national securities exchanges and the requirements of the Exchange Act. While the Commission recognizes that this may be an important function in ensuring the integrity of the Index, such requirements do not imbue either the Committee or the Index's underlying bitcoin platforms with regulatory authority similar to that the Exchange Act confers upon self-regulatory organizations such as national securities exchanges.[103]

NYSE Arca also argues that the use of 20 rolling three-minute increments means that a malicious actor would need to sustain efforts to manipulate the market over an extended period of time, or would need to replicate efforts multiple times, potentially triggering review from the spot market or regulators, or both.[104] However, NYSE Arca does not show or explain how the proposed use of 20 rolling three-minute increments to calculate the Index value would effectively be able to eliminate fraudulent or manipulative activity that is not transient. Fraud and manipulation in the bitcoin spot market could persist for a ''significant duration.'' [105] The Exchange also does not connect the use of the partitions [106] to the duration of the effects of the wash and fictitious trading that may exist in the bitcoin spot market.[107]

NYSE Arca also does not explain the significance of the Index's unsubstantiated resistance to manipulation to the overall analysis of whether the proposal to list and trade the Shares is designed to prevent fraud and manipulation. Even assuming that NYSE Arca's argument is that, if the Index is resistant to manipulation, the Trust's NAV, and thereby the Shares as well, would be resistant to manipulation, NYSE Arca has not established in the record a basis for such conclusion.[108] That assumption aside, the Commission notes that the Shares would trade at market-based prices in the secondary market, not at NAV, which then raises the question of the significance of the NAV calculation to the manipulation of the Shares.[109]

Because NYSE Arca does not address or provide any analysis with respect to these issues, the Commission cannot conclude that the Index aids in the determination that the proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices. The Exchange has not demonstrated that the Index methodology makes the proposed ETP resistant to manipulation. While the proposed procedures for calculating the Index using prices from the constituent bitcoin platforms may be intended to provide some degree of protection against attempts to manipulate the Index, these procedures are not sufficient for the Commission to dispense with the requisite surveillance-sharing agreement with a regulated market of significant size.

(c) Assertion Regarding the Create/Redeem Process

NYSE Arca also asserts that, because the Trust will, in ordinary circumstances, not purchase or sell bitcoin, but instead process all creations and redemptions in-kind in transactions with authorized participants, ''the Trust is uniquely protected against potential attempts by bad actors to manipulate the price of bitcoin on spot markets contributing to the Index and thereby the Trust's NAV calculation.'' [110] According to NYSE Arca, this is true even with respect to transactions with authorized participants who rely on the cash exchange process described above because the Trust will create (or redeem, as appropriate) Baskets only upon the receipt (or distribution, as appropriate) of bitcoin, and will not create or redeem any Baskets based on the receipt or distribution of cash alone.[111] Thus, as NYSE Arca argues, ''even if a bad actor were able to temporarily manipulate the price of bitcoin on a spot market or manipulate enough of the volume of the markets to overwhelm the protections designed into the Index and thereby the NAV, the fact that the Trust will create or redeem Baskets only upon receipt or distribution of bitcoin (in all circumstances barring a forced redemption) means that the amount of

[99] *See id.*

[100] *See* Notice, 86 FR at 55080.

[101] Further, the Commission has previously considered and rejected arguments about the valuation of bitcoin according to a benchmark or reference price mitigating concerns about fraud and manipulation. *See, e.g.,* SolidX Order, 82 FR at 16258; Winklevoss Order, 83 FR at 37587–90; USBT Order, 85 FR at 12599–601.

[102] *See supra* notes 33 & 37 and accompanying text.

[103] *See* 15 U.S.C. 78f(b).

[104] *See supra* notes 94–95 and accompanying text.

[105] *See* USBT Order, 85 FR at 12601 n.66; *see also id.* at 12607; Kryptoin Order, 86 FR at 74172.

[106] *See supra* notes 37–38 and accompanying text.

[107] *See* WisdomTree Order, 86 FR at 69327; Kryptoin Order, 86 FR at 74172.

[108] Putting aside NYSE Arca's various assertions about bitcoin and developments of the bitcoin market, the Index, and the Shares, NYSE Arca also does not address concerns the Commission has previously identified, including the susceptibility of bitcoin markets to potential trading on material, non-public information (such as plans of market participants to significantly increase or decrease their holdings in bitcoin; new sources of demand for bitcoin; the decision of a bitcoin-based investment vehicle on how to respond to a ''fork'' in the bitcoin blockchain, which would create two different, non-interchangeable types of bitcoin), or to the dissemination of false or misleading information. *See* Winklevoss Order, 83 FR at 37585. *See also* USBT Order, 85 FR at 12600–01; WisdomTree Order, 86 FR at 69329 n.114; Kryptoin Order, 86 FR at 74174 n.107; Skybridge Order, 87 FR at 3872; Wise Origin Order, 87 FR at 5533 n.89; ARK 21Shares Order, 87 FR at 20022 n.117.

[109] *See* Registration Statement at 5 (stating that the NAV of the Trust may deviate from the market price of its Shares for a number of reasons, including price volatility, trading activity, normal trading hours for the Trust, the calculation methodology of the NAV, and/or the closing of bitcoin trading platforms due to fraud, failure, security breaches or otherwise); Registration Statement at 30 (disclosing that shareholders should be aware that the public trading price per Share may be different from the NAV for a number of reasons, including price volatility, trading activity, the closing of bitcoin trading platforms due to fraud, failure, security breaches or otherwise, and the fact that supply and demand forces at work in the secondary trading market for Shares are related, but not identical, to the supply and demand forces influencing the market price of bitcoin).

[110] *See* Notice, 86 FR at 55080. According to the Exchange, except to pay certain expenses or in the case of a forced redemption or other ordinary circumstances, the Trust will not purchase or sell bitcoin directly. *See id.* at 55080 n.43. *See also* Coinbase Letter at 2.

[111] *See* Notice, 86 FR at 55080.

bitcoin per Share held by the Trust would not be impacted.'' [112]

NYSE Arca has not demonstrated that in-kind creations and redemptions provide the Shares with a unique resistance to manipulation.[113] The Commission has previously addressed similar assertions.[114] As the Commission stated before, in-kind creations and redemptions are a common feature of ETPs, and the Commission has not previously relied on the in-kind creation and redemption mechanism as a basis for excusing exchanges that list ETPs from entering into surveillance-sharing agreements with significant, regulated markets related to the portfolio's assets.[115] Accordingly, the Commission is not persuaded here that the Trust's in-kind creations and redemptions afford it a unique resistance to manipulation.

2. Assertions That NYSE Arca Has Entered Into a Comprehensive Surveillance-Sharing Agreement With a Regulated Market of Significant Size

As NYSE Arca has not demonstrated that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, the Commission next examines whether the record supports the conclusion that NYSE Arca has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size relating to the underlying assets. In this context, the term ''market of significant size'' includes a market (or group of markets) as to which (i) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (ii) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[116]

In its proposal, however, NYSE Arca does not identify any market as a ''market of significant size'' and accordingly makes no assertions regarding, and provides no information to establish, either prong of the ''market of significant size'' determination.[117] The requirements of Section 6(b)(5) of the Exchange Act apply to the rules of national securities exchanges. Accordingly, the relevant obligation for a comprehensive surveillance-sharing agreement with a regulated market of significant size, or other means to prevent fraudulent and manipulative acts and practices that are sufficient to justify dispensing with the requisite surveillance-sharing agreement, resides with the listing exchange. Because there is insufficient evidence in the record demonstrating that NYSE Arca has satisfied this obligation, the Commission cannot approve the proposed ETP for listing and trading on NYSE Arca.

Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.[118]

For the reasons discussed above, NYSE Arca has not met its burden of demonstrating that the proposal is consistent with Exchange Act Section 6(b)(5),[119] and, accordingly, the Commission must disapprove the proposal.[120]

C. Other Comments

One commenter argues that the approval of a futures-based ETP should allow for the Commission to approve NYSE Arca's proposal because a futures-based ETP and the Trust are both reliant on bitcoin's underlying price, and ETPs that invest in bitcoin futures contracts present substantially similar risk of manipulation as the Trust.[121]

The Commission disagrees with the premise of the argument. The proposed rule change does not relate to the same underlying holdings as either exchange-traded funds registered under the Investment Company Act of 1940 that provide exposure to bitcoin through CME bitcoin futures or bitcoin futures ETPs. The Commission considers the proposed rule change on its own merits and under the standards applicable to it. Namely, with respect to this proposed rule change, the Commission must apply the standards as provided by Section 6(b)(5) of the Exchange Act, which it has applied in connection with its orders considering previous proposals to list bitcoin-based commodity trusts and bitcoin-based trust issued receipts.[122]

Moreover, when the Commission recently approved proposals by NYSE Arca and Nasdaq to list and trade shares of ETPs holding bitcoin futures contracts that trade on the Chicago Mercantile Exchange, Inc. (''CME'') as their only non-cash holdings, the Commission found that each listing exchange had met its obligations under Exchange Act Section 6(b)(5) by demonstrating that the exchange had a comprehensive surveillance-sharing agreement with a regulated market of significant size *related to CME bitcoin futures contracts.* In each such case, however, the proposed ''significant'' regulated market (*i.e.,* the CME) with

[112] *See id.* The Exchange asserts that, because the Trust will generally not accept cash in order to create new Shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed Shares, ''the ratio of bitcoin per Share that [a]uthorized [p]articipants will tender (for creations) or receive (for distributions) will not change as a result of any changes in the price per Share, even if the [a]uthorized [p]articipant relies on the cash exchange process to facilitate such creation or redemption.'' *Id.*

[113] The Sponsor also asserts that the creation/redemption process is at the core of bringing the ''[NAV] of the underlying holdings as close to the traded value of the product as possible'' and notes that the ''in-kind exchange for redemption and creation of Shares is more efficient than cash,'' but the Sponsor provides no other explanation as to whether in-kind creations and redemptions mitigate against the Commission's concerns regarding fraud and manipulation in the bitcoin market or justify dispensing with the requisite surveillance-sharing agreement. *See* Sponsor Letter at 6.

[114] *See* Winklevoss Order, 83 FR at 37589–90; USBT Order, 85 FR at 12607–08; VanEck Order, 86 FR at 64546; WisdomTree Order, 86 FR at 69329; Kryptoin Order, 86 FR at 74174; SkyBridge Order, 87 FR at 3874; Wise Origin Order, 87 FR at 5533; ARK 21Shares Order, 87 FR at 20022.

[115] *See, e.g.,* iShares COMEX Gold Trust, Securities Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751–55 (Jan. 26, 2005) (SR-Amex-2004–38); iShares Silver Trust, Securities Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14969, 14974 (Mar. 24, 2006) (SR-Amex-2005–072).

[116] *See* Winklevoss Order, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that provides guidance to market participants. *See id.*

[117] *See* Valkyrie Order, 86 FR at 74163.

[118] *See* 15 U.S.C. 78s(b)(2)(C).

[119] 15 U.S.C. 78f(b)(5).

[120] In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). The Sponsor argues that the growth of digitalized U.S. dollars demonstrates that the technological advancements in bitcoin are symbiotic with fiat currencies, reinforcing the operational efficiencies to be gained from final and virtually instantaneous settlement. *See* Sponsor Letter at 4. The Sponsor also asserts that, just as an in-kind exchange for redemption and creation of Shares is more efficient than cash, establishing this precedent may also lead to the natural extension of investors seeking in-kind delivery as they consume custodial and other financial services directly, and that, in this case, ''exchange traded products would be a transition to a more digitalized, personalized, and efficient form of automated financial services.'' *See* Sponsor Letter at 6. For the reasons discussed throughout, however, *see supra* note 51, the Commission is disapproving the proposed rule change because it does not find that the proposed rule change is consistent with the Exchange Act. *See also* USBT Order, 85 FR at 12615.

[121] *See* Coinbase Letter at 2.

[122] *See supra* note 12. *See also* VanEck Order, 86 FR at 64552; Skybridge Order, 87 FR at 3881 n.177. *See generally* Teucrium Order & Valkyrie XBTO Order, *supra* note 11.

which the listing exchange had a surveillance-sharing agreement was the *same* market on which the underlying bitcoin assets (*i.e.,* CME bitcoin futures contracts) traded; and thus in each such case, the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate a futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. However, as the Commission stated, this reasoning does not extend to spot bitcoin ETPs. Spot bitcoin markets are not currently ''regulated.'' As explained in the Teucrium Order and the Valkyrie XBTO Order, if an exchange seeking to list a spot bitcoin ETP relies on the CME as the regulated market with which it has a comprehensive surveillance-sharing agreement, the assets held by the spot bitcoin ETP would not be traded on the CME; and because of this important difference, with respect to a spot bitcoin ETP, there would be reason to question whether a surveillance-sharing agreement with the CME would, in fact, assist in detecting and deterring fraudulent and manipulative misconduct affecting the price of the spot bitcoin held by that ETP. In any event, however, in the current proposal, NYSE Arca does not identify any market as a ''market of significant size.''

The Commission also received comment letters that addressed the general nature of bitcoin [123] and the maturation of custodial practices relating to the safekeeping of bitcoin.[124] Ultimately, however, additional discussion of these topics is unnecessary, as they do not bear on the basis for the Commission's decision to disapprove the proposal.

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.[125]

[123] *See* Letter from Sam Ahn (Oct. 7, 2021).

[124] *See* Coinbase Letter at 4.

[125] As the Commission, for the reasons stated above, does not find the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder, the Commission does not address here the Exchange's proposal as it pertains the Trust's investment objective to reflect the performance of bitcoin in U.S. dollars on a carbon neutral basis through MCO2 Tokens.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–NYSEArca–2021–67 be, and hereby is, disapproved.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94989; File No. SR–NASDAQ–2022–027]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Modify Certain Pricing Limitations for Companies Listing in Connection With a Direct Listing With a Capital Raise

May 26, 2022.

On March 21, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow companies to modify certain pricing limitations for companies listing in connection with a Direct Listing with a Capital Raise in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq. The proposed rule change was published for comment in the **Federal Register** on April 8, 2022.[3] On May 19, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve or disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comments on the proposed rule change.

On May 23, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. Amendment No. 1 to the proposed rule change is 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, as modified by Amendment No. 1, from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94592 (April 4, 2022), 87 FR 20905 (April 8, 2022).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94947 (May 19, 2022), 87 FR 31915 (May 25, 2022). The Commission designated July 7, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

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 companies listing in connection with a Direct Listing with a Capital Raise in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq. This Amendment No. 1 supersedes the original filing in its entirety.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is filing this amendment to SR–NASDAQ–2022–027 [6] in order to: (i) Clarify Nasdaq's view of the applicability of Securities Act Rule 430A and mechanics of complying with the disclosures required under federal securities laws by a company listing in connection with a Direct Listing with a Capital Raise in circumstances where the actual price calculated by the Cross is outside of the price range established by the issuer in its effective registration statement; (ii) specify that if the company's certification to Nasdaq that

[6] Securities Exchange Act Release No. 94592 (April 4, 2022), 84 FR 20905 (April 8, 2022) (the ''Initial Proposal'').

the company does not expect that offering price above the price range would materially change the company's previous disclosure in its effective registration statement includes an upside limit, Nasdaq will not execute the cross if it results in the offering price above such limit; and (iii) make minor technical changes to improve the structure, clarity and readability of the proposed rules. This amendment supersedes and replaces the Initial Proposal in its entirety.

In 2021, Nasdaq adopted Listing Rule IM–5315–2 to permit a company to list in connection with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange (a ''Direct Listing with a Capital Raise''); [7] created a new order type (the ''CDL Order''), which is used during the Nasdaq Halt Cross (the ''Cross'') for the shares offered by the company in a Direct Listing with a Capital Raise; and established requirements for disseminating information, establishing the opening price and initiating trading through the Cross in a Direct Listing with a Capital Raise.[8] For a Direct Listing with a Capital Raise, Nasdaq rules currently require that the actual price calculated by the Cross be at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement (the ''Pricing Range Limitation'').

Nasdaq now proposes to modify the Pricing Range Limitation [9] such that, provided other requirements are satisfied, a Direct Listing with a Capital Raise can also be executed in the Cross at a price that is at or above the price that is as low as 20% below the lowest price in the price range established by the issuer in its effective registration statement; [10] or at a price above the highest price of such price range. Specifically, to execute at a price outside of the price range, the company's registration statement must contain a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering were less than or exceeded the amount assumed in such price range and the company has publicly disclosed and certified to Nasdaq that the company does not expect that such price would materially change the company's previous disclosure in its effective registration statement. Nasdaq also proposes to make related conforming changes.

Current Direct Listing With a Capital Raise Requirements

Currently, a Direct Listing with a Capital Raise must begin trading on Nasdaq following the initial pricing through the Cross, which is described in Rules 4120(c)(9) and 4753.[11]

Currently, in addition to pricing within the Pricing Range Limitation,[12] Rule 4120(c)(9) requires that in the case of a Direct Listing with a Capital Raise, for purposes of releasing securities for trading on the first day of listing, Nasdaq, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade. In addition, under Rule 4120(c)(9)(B) Nasdaq will release the security for trading only if all market orders will be executed in the Cross. If there is insufficient buy interest to satisfy the CDL Order and all other market orders, or if the Pricing Range Limitation is not satisfied, the Cross would not proceed and such security would not begin trading. In such event, because the Cross cannot be conducted, the Exchange would postpone and reschedule the offering and notify market participants via a Trader Update that the Direct Listing with a Capital Raise scheduled for that date has been cancelled and any orders for that security that have been entered on the Exchange would be cancelled back to the entering firms.[13]

Proposed Change to Rule 4120(c)(9)

While many companies are interested in alternatives to traditional IPOs, based on conversations with companies and their advisors Nasdaq believes that there may be a reluctance to use the existing Direct Listing with a Capital Raise rules because of concerns about the Pricing Range Limitation.

One potential benefit of a Direct Listing with a Capital Raise 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, in a Direct Listing with a Capital Raise the initial sale price 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, in the Approval Order the Commission stated that:

> The opening auction in a Direct Listing with a Capital Raise provides for a different price discovery method for IPOs which may reduce the spread between the IPO price and subsequent market trades, a potential benefit to existing and potential investors. In this way, the proposed rule change may result in additional investment opportunities while providing companies more options for becoming publicly traded.[14]

A successful initial public offering of shares requires sufficient investor interest. If an offering cannot be completed due to lack of investor interest, there is likely to be a substantial amount of negative publicity for the company and the offering may be delayed or cancelled. The Pricing Range Limitation imposed on a Direct Listing with a Capital Raise (but not on a traditional IPO) increases the probability of such a failed offering because the offering cannot proceed without some delay not only for the lack of investor interest, but also if investor interest is greater than the company and its advisors anticipated. In the Approval Order, the Commission noted a frequent academic observation of traditional firm commitment underwritten offerings that the IPO price, 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.[15] Nasdaq believes that the price range in a company's effective registration statement for a Direct Listing with a Capital Raise would similarly be determined by the company and its advisors and, therefore, there

[7] A Direct Listing with a Capital Raise includes situations where 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.

[8] *See* Securities Exchange Act Release No. 91947 (May 19, 2021), 86 FR 28169 (May 25, 2021) (the ''Approval Order'').

[9] On February 24, 2022, the Commission issued an order disapproving a similar proposal by Nasdaq. Securities Exchange Act Release No. 94311 (February 24, 2022), 87 FR 11780 (March 2, 2022) (the ''Disapproval Order''). Nasdaq believes that this proposal addresses the issues raised by the Commission in the Disapproval Order.

[10] References in this proposal 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. Separately, as explained in more details below, Nasdaq proposes to prescribe that the 20% threshold below the lowest price in the price range will 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.

[11] *See* Listing Rule IM–5315–2.

[12] *See* Rule 4120(c)(9)(B).

[13] Nasdaq will postpone and reschedule the offering only if either or both such conditions are not met.

[14] *See* Approval Order, 86 FR at 28177.

[15] *See* Approval Order, footnote 91.

may be instances of offerings where the price determined by the Nasdaq opening auction will exceed the highest price of the price range in the company's effective registration statement.

As explained above, under the existing rule a security subject to a Direct Listing with a Capital Raise cannot be released for trading by Nasdaq if the actual price calculated by the Cross is above the highest price of the price range established by the issuer in its effective registration statement. In this case, Nasdaq would have to cancel or postpone the offering until the company amends its effective registration statement. At a minimum, such a delay exposes the company to market risk of changing investor sentiment in the event of an adverse market event. In addition, as explained above, the determination of the public offering price of a traditional IPO is not subject to limitations similar to the Pricing Range Limitation for a Direct Listing with a Capital Raise, which, in Nasdaq's view, could make companies reluctant to use this alternative method of going public despite its expected potential benefits. This reluctance could result in denying investors and companies the benefits of this different price discovery method.

Accordingly, Nasdaq proposes to modify the Pricing Range Limitation such that in the case of the Direct Listing with a Capital Raise, a security could be released for trading by Nasdaq if the actual price at which the Cross would occur is as much as 20% below the lowest price of the price range established by the issuer in its effective registration statement. In addition, a security could be released for trading by Nasdaq if the actual price at which the Cross would occur was above the highest price in the price range established by the issuer in its effective registration statement.[16] In such cases (whether lower or higher than the price range) the company will be required to specify the quantity of shares registered in its registration statement, as permitted by Securities Act Rule 457,[17] and that registration statement will be required to contain a sensitivity analysis (the company must also certify to Nasdaq in that regard) explaining how the company's plans would change if the actual proceeds from the offering are less than or exceed the amount assumed in the price range established by the issuer in its effective registration statement.[18] In addition, the company will be required to publicly disclose and certify to Nasdaq prior to beginning of the Display Only Period that the company does not expect that such offering price would materially change the company's previous disclosure in its effective registration statement. If the company's certification submitted to Nasdaq in that regard includes an upside limit, as described below, Nasdaq will not execute the Cross if it results in the offering price above such limit. The goal of these requirements is to have disclosure that allows investors to see how changes in share price ripple through critical elements of the disclosure.[19]

Nasdaq believes that this approach 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. Nasdaq believes such guidance also allows deviation above the price range beyond the 20% threshold if such change or deviation does not materially change the previous disclosure. Accordingly, Nasdaq believes that a company listing in connection with a Direct Listing with a Capital Raise can specify the quantity of shares registered, as permitted by Securities Act Rule 457, and, when 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 the instructions to 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) when there is a deviation above the price range beyond the 20% threshold noted in the instructions to 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. For purposes of this rule, the 20% threshold will 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.[20]

Nasdaq notes that the Commission previously stated that while Securities Act Rule 430A permits companies to omit specified price-related information from the prospectus included in the registration statement at the time of effectiveness, and later file the omitted information with the Commission as specified in the rule, it neither prohibits a company from conducting a registered offering at prices beyond those that would permit a company to provide pricing information through a Securities Act Rule 424(b) prospectus supplement nor absolves any company relying on the rule from any liability for potentially misleading disclosure under the federal securities laws.[21] Accordingly, the burden of complying with the disclosures required under federal securities laws, including providing any disclosure necessary to avoid any material misstatements or omissions, remains with the issuer. In that regard, Nasdaq believes that the Post-Pricing Period, applicable in circumstances where the actual price calculated by the Cross is outside of the price range established by the issuer in its effective registration statement, as described below, provides the Company an opportunity, prior to the completion of

[16] In the prior proposal, Nasdaq proposed different requirements based on whether the Cross would occur at a price that was within 20% of the price range. *See* Disapproval Order. Nasdaq is eliminating this proposed distinction and is proposing herein to treat all prices outside of the price range the same.

[17] 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. Nasdaq proposes to require that companies selling shares through a Direct Listing with a Capital Raise will register securities by specifying the quantity of shares registered and not a maximum offering amount. *See also* Compliance & Disclosure Interpretation of Securities Act Rules #227.03 at *https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm.*

[18] The price range in the preliminary prospectus included in the effective registration statement must be a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K.

[19] 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. An example of this disclosure could be: 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.

[20] Nasdaq believes that applying additional protections related to the disclosure requirements in the registration statement and the certifications to Nasdaq, as described above, to all instances where the Cross is executed outside the disclosed price range addresses an issue the Commission raised in the Disapproval Order. *See* footnote 5 above. For brevity, proposed rules define the ''Price Range'' as the price range established by the issuer in its preliminary prospectus included in the effective registration statement, including the maximum and the minimum prices of such range; and ''DLCR Price Range'' as the price range that includes any price that is below the Price Range and at or above the price that is 20% below the lowest price of the Price Range, or is above the highest price of the Price Range. If the company's certification includes an upside limit, the DLCR Price Range is as defined in the preceding sentence, but subject to the upper limit provided by the Company in its certification.

[21] Securities Exchange Act Release No. 93119 (September 24, 2021), 86 FR 54262 (September 30, 2021).

the offering, to provide any necessary additional disclosures that are dependent on the price of the offering, if any; and/or determine and confirm to Nasdaq that no additional disclosures are required under federal securities laws based on the actual price calculated by the Cross.

Nasdaq also proposes to adopt a new Price Volatility Constraint and disseminate information about whether the Price Volatility Constraint has been satisfied, which will indicate whether the security may be ready to trade. Prior to releasing a security for trading, Nasdaq allows a ''Pre-Launch Period'' of indeterminate length, during which price discovery takes place. The Price Volatility Constraint requires that the Current Reference Price has not deviated by 10% or more from any Current Reference Price during the Pre-Launch Period within the previous 10 minutes. The Pre-Launch Period will continue until at least five minutes after the Price Volatility Constraint has been satisfied. Nasdaq will also introduce the Near Execution Price which is the Current Reference Price at the time the Price Volatility Constraint has been satisfied; and set the Near Execution Time as such time. This change will provide investors with notice that the Cross nears execution and allows a period of at least five minutes for investors to modify their orders, if needed, based on the Near Execution Price, prior to the execution of the Cross and the pricing of the offering. Further, to assure that the Near Execution Price is a meaningful benchmark for investors, and that the offering price does not deviate substantially from the Near Execution Price, Nasdaq proposes to require, in addition to other the existing conditions stated in proposed Rule 4120(c)(9)(B)(vii), that the Cross may execute only if the actual price calculated by the Cross is no more than 10% below or above the Near Execution Price (the ''10% Price Collar'').

Nasdaq notes that imbalance between the buy and sell orders could sometimes cause the Current Reference Price to fall outside the 10% Price Collar after the Price Volatility Constraint has been satisfied. Such price fluctuations could be temporary, and the Current Reference Price may return to and remain within the 10% Price Collar. The price fluctuation could also be lasting such that the Current Reference Price remains outside the 10% Price Collar. Given this, Nasdaq proposes to assess the Current Reference Price vis-à-vis the 10% Price Collar 30 minutes after the Near Execution Time. If at that time the Current Reference Price is outside the 10% Price Collar, all requirements of the Pre-Launch Period shall reset and must be satisfied again.[22] Once the Price Volatility Constraint has been satisfied anew, the Current Reference Price at such time will become the updated Near Execution Price and such time will become the updated Near Execution Time. This process will continue iteratively, if new resets are triggered, until the Cross is executed, or the offering is postponed.

If the Current Reference Price 30 minutes after the Near Execution Time is within the 10% Price Collar, price formation may continue without limitations until Nasdaq, in consultation with the financial advisor to the issuer, makes the determination that the security is ready to trade (and certain existing conditions restated in proposed Rule 4120(c)(9)(B)(vii) are met). However, if at any time 30 minutes after the Near Execution Time the Current Reference Price is outside the 10% Price Collar, all requirements of the Pre-Launch Period shall reset and must be satisfied again, in the same manner as described in the immediately preceding paragraph.

Given that, as proposed, there may be a Direct Listing with a Capital Raise that could price outside the price range of the company's effective registration statement and that there may be no upside limit above which the Cross could not proceed,[23] Nasdaq proposes to enhance price discovery transparency by providing readily available, real time pricing information to investors. To that end Nasdaq will disseminate, free of charge, the Current Reference Price on a public website, such as *Nasdaq.com*, during the Pre-Launch Period and indicate whether the Current Reference Price is within the price range established by the issuer in its effective registration statement. Once the Price Volatility Constraint has been satisfied, Nasdaq will also disseminate the Near Execution Price, the Near Execution Time and the 30-minute countdown from such time. The disclosure will indicate that the Near Execution Price and the Near Execution Time may be reset, as described above, if the security is not released for trading within 30 minutes of the Near Execution Time and the Current Reference Price at such time (or at any time thereafter) is more than 10% below or more than 10% above the Near Execution Price.

In this way, investors interested in participating in the opening auction will be informed when volatility has settled to a range that will allow the open to take place and they will be informed of the price range at which the auction would take place. If the price moves outside, and remains outside this range, 30 minutes after the original range was set they will be informed of the new range and will have at least five minutes to reevaluate their investment decision.[24]

Nasdaq also proposes to prohibit market orders (other than by the Company through its CDL Order) from the opening of a Direct Listing with a Capital Raise. This will protect investors by assuring that investors only purchase shares at a price at or better than the price they affirmatively set, after having the opportunity to review the Company's effective registration statement including the sensitivity analysis describing how the Company will use any additional proceeds raised. Accordingly, an investor participating in a Direct Listing with a Capital Raise will make their initial investment decision prior to the launch of the offering by setting the price in their limit order above which they will not buy shares in the offering, but will also have an opportunity to reevaluate their initial investment decision during the price formation process of the Pre-Launch Period based on the Near Execution Price. Under the proposed rule, such investor will have at least five minutes once the Near Execution Price has been set and before the offering may be priced by Nasdaq to modify their order, if needed. As described above, all relevant price formation information

[22] For the avoidance of doubt, while the Price Volatility Constraint cannot initially be satisfied sooner than ten minutes after the beginning of the Pre-Launch Period, if it is subsequently reset, the Price Volatility Constraint can be satisfied again in less than ten minutes because it would look back at prior pricing during the Pre-Launch Period (including pricing prior to the reset) to determine if the Current Reference Price has deviated by 10% or more from any Current Reference Price within the previous 10 minutes.

[23] If the company's certification submitted to Nasdaq pursuant to proposed Listing Rule 4120(c)(9)(B)(vii)d.2. includes an upside limit and the actual price calculated by the Cross exceeds such limit, Nasdaq will postpone and reschedule the offering.

[24] Nasdaq believes that the introduction, as described above, of the 10% Price Collar, the Near Execution Price, the Near Execution Time, the 30-minute reset and the five minute prohibition on executing the Cross after the Price Volatility Constraint has been satisfied addresses concerns the Commission raised in the Disapproval Order. *See* footnote 5 above. Specifically, in the Disapproval Order, the Commission stated that, as previously proposed, ''investors could be misled that the opening cross 'nears execution' and that the disseminated Current Reference Price will likely be close to the opening auction price when, in fact, the auction may not occur for a considerable time and the opening auction price may differ substantially.'' As revised, the opening auction price must remain within 10% of the price publicly announced as the Near Execution Price for the auction to occur and investors will have enhanced disclosure about the possibility that the Price Volatility Constraint could be reset.

will be disseminated by Nasdaq on a public website in real time.

In addition, to protect investors and assure that they are informed about the attributes of a Direct Listing with a Capital Raise, Nasdaq proposes to impose specific requirements on Nasdaq members with respect to a Direct Listing with a Capital Raise. These rules will require members to provide to a customer, before that customer places an order to be executed in the Cross, a notice describing the mechanics of pricing a security subject to a Direct Listing with a Capital Raise in the Cross, including information regarding the location of the public website where Nasdaq will disseminate the Current Reference Price.

To assure that members have the necessary information to be provided to their customers, Nasdaq proposes to distribute, at least one business day prior to the commencement of trading of a security listing in connection with a Direct Listing with a Capital Raise, an information circular to its members that describes any special characteristics of the offering, and Nasdaq's rules that apply to the initial pricing through the mechanism outlined in Nasdaq Rule 4120(c)(9)(B) and Nasdaq Rule 4753 for the opening auction, including information about the notice they must provide customers and other Nasdaq requirements that:

- Members 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; and

- members in recommending transactions for a security subject to a Direct Listing with a Capital Raise 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 members, and (ii) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in such security.

These member requirements are intended to remind members of their obligations to ''know their customers,'' increase transparency of the pricing mechanisms of a Direct Listing with a Capital Raise, and help assure that investors have sufficient price discovery information.

In each instance of a Direct Listing with a Capital Raise, Nasdaq's information circular[25] will inform the market participants that the auction could price up to 20% below the lowest price of the price range in the company's effective registration statement and specify what that price is. Nasdaq will also indicate in such circular whether or not there is an upside limit above which the Cross could not proceed, based on the company's certification, as described above. Nasdaq will also remind the market participants that Nasdaq prohibits market orders (other than by the Company) from the opening of a Direct Listing with a Capital Raise.

To assure that the issuer has the ability, prior to the completion of the offering, to provide any necessary additional disclosures that are dependent on the price of the offering, Nasdaq proposes to introduce to the operation of the Cross a brief Post-Pricing Period, in circumstances where the actual price calculated by the Cross is outside of the price range established by the issuer in its effective registration statement. Specifically, in such circumstances, Nasdaq will initiate a Post-Pricing Period following the calculation of the actual price. During the Post-Pricing Period the issuer must confirm to Nasdaq that no additional disclosures are required under federal securities laws based on the actual price calculated by the Cross. During the Post-Pricing Period no additional orders for the security may be entered in the Cross and no existing orders in the Cross may be modified. The security shall be released for trading immediately following the Post-Pricing Period. If the Company cannot provide the required confirmation, then Nasdaq will postpone and reschedule the offering.

Proposed Conforming Changes to Listing Rule IM–5315–2

Listing Rule IM–5315–2 allows a company that has not previously had its common equity securities registered under the Act to list its common equity securities on the Nasdaq Global Select Market 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.

Listing Rule IM–5315–2 provides that in determining whether a company listing in connection with a Direct Listing with a Capital Raise satisfies the Market Value of Unrestricted Publicly Held Shares[26] for initial listing on the Nasdaq Global Select Market, the Exchange will deem such company to have met the applicable requirement if the amount of the company's Unrestricted Publicly Held Shares before the offering along with the market value of the shares to be sold by the company in the Exchange's opening auction in the Direct Listing with a Capital Raise is at least $110 million (or $100 million, if the company has stockholders' equity of at least $110 million).

Listing Rule IM–5315–2 further provides that, for this purpose, the Market Value of Unrestricted Publicly Held Shares will be calculated using a price per share equal to the lowest price of the price range disclosed by the issuer in its effective registration statement.

Because Nasdaq proposes to allow the opening auction to price up to 20% below the lowest price of the price range established by the issuer in its effective registration statement, Nasdaq proposes to make a conforming change to Listing Rule IM–5315–2 to provide that the price used to determine such company's compliance with the Market Value of Unrestricted Publicly Held Shares is the price per share equal to the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement. Nasdaq will determine that the company has met the applicable bid price and market capitalization requirements based on the same per share price. This price is the minimum price at which the company could sell its shares in the Direct Listing with a Capital Raise transaction and so assures that the company will satisfy these requirements at any price at which the auction successfully executes.

Any company listing in connection with a Direct Listing with a Capital Raise would continue to be subject to, and required to meet, all other applicable initial listing requirements, including the requirements to have the applicable number of shareholders and at least 1,250,000 Unrestricted Publicly Held Shares outstanding at the time of initial listing, and the requirement to have a price per share of at least $4.00 at the time of initial listing.[27]

Proposed Conforming Changes to Rules 4753(a)(3)(A) and 4753(b)(2)

Nasdaq proposes to amend Rules 4753(a)(3)(A) and 4753(b)(2) to conform

[25] The information circular is an industry wide free service provided by Nasdaq.

[26] *See* Listing Rules 5005(a)(23) and 5005(a)(45).

[27] *See* Listing Rules 5315(f)(1), (e)(1) and (2), respectively. Rule 5315(f)(1) requires a security to have: (A) At least 550 total holders and an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or (B) at least 2,200 total holders; or (C) a minimum of 450 round lot holders and at least 50% of such round lot holders must each hold unrestricted securities with a market value of at least $2,500.

the requirements for disseminating information and establishing the opening price through the Cross in a Direct Listing with a Capital Raise to the proposed amendment to allow the opening auction to price as much as 20% below the lowest price of the price range established by the issuer in its effective registration statement.

Specifically, Nasdaq proposes changes to Rules 4753(a)(3)(A) and 4753(b)(2) to make adjustments to the calculation of the Current Reference Price, which is disseminated in the Nasdaq Order Imbalance Indicator, in the case of a Direct Listing with a Capital Raise and for how the price at which the Cross will execute. These rules currently provide that where there are multiple prices that would satisfy the conditions for determining a price, the fourth tie-breaker for a Direct Listing with a Capital Raise is the price that is closest to the lowest price of the price range disclosed by the issuer in its effective registration statement.[28]

To conform these rules to the modification of the Pricing Range Limitation change, as described above, Nasdaq proposes to modify the fourth tie-breaker for a Direct Listing with a Capital Raise, to use the price closest to the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement.[29]

Lastly, Nasdaq proposes to clarify several provisions of the existing rules by restating the provisions of Rules 4120(c)(8)(A) and (c)(9)(A) in a clear and direct manner without substantively changing them. Specifically, Nasdaq proposes to clarify the mechanics of the Cross by specifying that Nasdaq will initiate a 10-minute Display Only Period only after the CDL Order had been entered. This clarification simply states what is already implied by the rule because the Cross and the offering may not proceed without the company's order to sell the securities in a Direct Listing with a Capital Raise. Similarly, Nasdaq proposes to clarify without changing the existing rule that Nasdaq shall select price bands for purposes of applying the price validation test in the Cross in connection with a Direct Listing with a Capital Raise. Under the price validation test, the System compares the Expected Price with the actual price calculated by the Cross to ascertain that the difference, if any, is within the price bands. Nasdaq shall select an upper price band and a lower price band. The default for an upper and a lower price band is set at zero. If a security does not pass the price validation test, Nasdaq may, but is not required to, select different price bands before recommencing the process to release the security for trading.[30] Nasdaq also proposes to clarify that the ''actual price,'' as the term is used in the rule, is the Current Reference Price at the time the system applies the price bands test.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[31] in general, and furthers the objectives of Section 6(b)(5) of the Act,[32] 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.

Nasdaq believes that the proposed amendment to modify the Pricing Range Limitation is consistent with the protection of investors because this approach is similar to the pricing of an IPO where an issuer is permitted to price outside of the price range disclosed by the issuer in its effective registration statement in accordance with the SEC's Staff guidance, as described above.[33] Specifically, Nasdaq believes that a company listing in connection with a Direct Listing with a Capital Raise can specify the quantity of shares registered, as permitted by Securities Act Rule 457, and, when 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 the instructions to 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) when there is a deviation above the price range beyond the 20% threshold noted in the instructions to 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. As a result, Nasdaq will allow the Cross to take place as low as 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement, but no lower, and so this is the minimum price at which the company could be listed. In addition, to better inform investors and market participants, Nasdaq will issue an industry wide circular to inform the participants that the auction could price up to 20% below the lowest price of the price range in the company's effective registration statement and specify what that price is. Nasdaq will also indicate in such circular whether or not there is an upside limit above which the Cross could not proceed, based on the company's certification, as described above. Nasdaq will also remind the market participants that Nasdaq prohibits market orders (other than by the Company) from the opening of a Direct Listing with a Capital Raise.

To assure that the issuer has the ability, prior to the completion of the offering, to provide any necessary additional disclosures that are dependent on the price of the offering, Nasdaq proposes to introduce to the operation of the Cross a brief Post-Pricing Period, in circumstances where the actual price calculated by the Cross is at or above the price that is 20% below the lowest price and below the lowest price of the price range established by the issuer in its effective registration statement; or is above the highest price of the price range established by the issuer in its effective registration statement (but below the upside limit in the company's certification submitted to Nasdaq pursuant to proposed Listing Rule 4120(c)(9)(B)(vii)d.2., if any). Specifically, in such circumstances, Nasdaq will initiate a Post-Pricing Period following the calculation of the actual price. During the Post-Pricing Period the issuer must confirm to Nasdaq that no additional disclosures are required under federal securities laws based on the actual price calculated by the Cross, with such confirmation ending the Post-Pricing Period. During the Post-Pricing Period no additional orders for the security

[28] To illustrate: The bottom of the range is $10. More than one price exists within the range under the previous set of tie-breakers such that both $10.15 and $10.25, satisfy all other requirements. The operation of the fourth tie-breaker will result in the auction price of $10.15 because it is the price that is closest to $10.

[29] Note that using the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement as a tie-breaker (rather than the price representing the bottom of the range) does not change the outcome in the example in footnote 25 above because $10.15 is the price that is closest to either.

[30] This function is provided by the underwriter in an IPO and by a Financial Advisor in a Direct Listing. The Commission previously approved Nasdaq performing this function. *See* Approval Order.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] 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.*

may be entered in the Cross and no existing orders in the Cross may be modified. The security shall be released for trading immediately following the Post-Pricing Period. If the Company cannot provide the required confirmation, then Nasdaq will postpone and reschedule the offering. Nasdaq believes that this modification is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market because it will help assure that a company listing in connection with a Direct Listing with a Capital Raise complies with the disclosure requirements under federal securities laws and that investors receive all required information.

Nasdaq believes that the proposal to allow a Direct Listing with a Capital Raise to price above any price above the price range of the company's effective registration statement is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market investors because this approach is similar to that of pricing a traditional IPO. In addition, to protect investors Nasdaq proposes to enhance price discovery transparency by providing readily available, real time pricing information to investors. To that end Nasdaq will disseminate, free of charge, the Current Reference Price on a public website (such as *Nasdaq.com*) during the Pre-Launch Period and indicate whether the Current Reference Price is within the price range established by the issuer in its effective registration statement.

Nasdaq believes that the provision prohibiting market orders (other than by the Company) from the opening of a Direct Listing with a Capital Raise is designed to protect investors because this provision will assure that investors only purchase shares at a price that is at, or better than, the price they affirmatively set, after having the opportunity to review the Company's effective registration statement including the sensitivity analysis describing how the Company will use any additional proceeds raised.

Nasdaq also proposes to adopt a new Price Volatility Constraint and disseminate information about whether the Price Volatility Constraint has been satisfied, which will indicate whether the security may be ready to trade. The Price Volatility Constraint requires that the Current Reference Price has not deviated by 10% or more from any Current Reference Price within the previous 10 minutes. The Pre-Launch Period will continue until at least five minutes after the Price Volatility Constraint has been satisfied. Nasdaq will also introduce the Near Execution Price which is the Current Reference Price at the time the Price Volatility Constraint has been satisfied; and set the Near Execution Time at such time. This change will provide investors with notice that the Cross nears execution and a period of at least five minutes to modify their orders, if needed, based on the Near Execution Price, prior to the execution of the Cross and the pricing of the offering. Further, to help assure that the offering price does not deviate substantially from the Near Execution Price, Nasdaq proposes to require, in addition to other conditions described above, that the Cross may execute only if the actual price calculated by the Cross is within the 10% Price Collar. Nasdaq believes that these changes are designed to protect investors and the public interest because an investor participating in a Direct Listing with a Capital Raise will make their initial investment decision prior to the launch of the offering by setting the price in their limit order above which they will not buy shares in the offering, but will also have an opportunity to reevaluate their initial investment decision during the price formation process of the Pre-Launch Period based on the Near Execution Price. Under the proposed rule, such investor will have at least five minutes once the Near Execution Price has been set and before the offering may be priced by Nasdaq to modify their order, if needed. While the auction may take longer than this five minute period to complete, investors are protected during this time because the Price Volatility Constraint will reset if the actual price calculated by the Cross is more than 10% below or above the Near Execution Price. Once the Price Volatility Constraint has been satisfied, Nasdaq proposes to disseminate the Near Execution Price and the Near Execution Time on a public website, such as *Nasdaq.com*.

Nasdaq believes that the proposal to reset the Price Volatility Constraint, the Near Execution Price and the Near Execution Time in the circumstances described above is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market investors because in certain circumstances an imbalance between the buy and sell orders could sometimes cause the Current Reference Price to fall outside the 10% Price Collar after the Price Volatility Constraint has been satisfied. These provisions will protect investors by increasing the information available to them in connection with the price formation process during the opening auction.

To protect investors and increase transparency, Nasdaq also proposes to disseminate on a public website, such as *Nasdaq.com*, the 30-minute countdown from the Near Execution Time and indicate that the Near Execution Price and the Near Execution Time may be reset, as described above, if the security is not released for trading within 30 minutes of the Near Execution Time and the Current Reference Price at such time (or at any time thereafter) is outside the 10% Price Collar.

In addition, to protect investors and assure that they are informed about the attributes of a Direct Listing with a Capital Raise, Nasdaq proposes to impose specific requirements on Nasdaq members with respect to a Direct Listing with a Capital Raise. These rules will require members to provide to a customer, before that customer places an order to be executed in the Cross, a notice describing the mechanics of pricing a security subject to a Direct Listing with a Capital Raise in the Cross, including information regarding the dissemination of the Current Reference Price on a public website such as *Nasdaq.com*.

To assure that members have the necessary information to be provided to their customers, Nasdaq proposes to distribute, at least one business day prior to the commencement of trading of a security listing in connection with a Direct Listing with a Capital Raise, an information circular to its members that describes any special characteristics of the offering, and Nasdaq's rules that apply to the initial pricing through the mechanism outlined in Nasdaq Rule 4120(c)(9)(B) and Nasdaq Rule 4753 for the opening auction, including information about the notice they must provide customers and other Nasdaq requirements that:

- Members 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; and
- members in recommending transactions for a security subject to a Direct Listing with a Capital Raise 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 members, and (ii) the customer can evaluate the special characteristics, and

is able to bear the financial risks, of an investment in such security.

These member requirements are consistent with the protection of investors because they are designed to remind members of its obligations to ''know their customers,'' increase transparency of the pricing mechanisms of a Direct Listing with a Capital Raise, and help assure that investors have sufficient price discovery information.

Nasdaq believes that the Commission Staff has already concluded that pricing 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 is appropriate for a company conducting an initial public offering notwithstanding it being outside of the range stated in an effective registration statement, and investors have become familiar with this approach at least since the Commission Staff last revised Compliance and Disclosure Interpretation 227.03 in January 2009.[34] Allowing Direct Listings with a Capital Raise 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 Chair Gensler's recent call to treat ''like cases alike.'' [35]

Nasdaq believes that the proposed amendments to Listing Rule IM–5315–2 and Rules 4753(a)(3)(A) and 4753(b)(2) to conform these rules to the modification of the Pricing Range Limitation is consistent with the protection of investors. These amendments would simply substitute Nasdaq's reliance on the price equal to the lowest price of the price range disclosed by the issuer in its effective registration statement to the price that is 20% below such lowest price, making it more difficult to meet the requirements. In the case of Listing Rule IM–5315–2, a company listing in connection with a Direct Listing with a Capital Raise would still need to meet all applicable initial listing requirements based on the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement. In the case of the Rules 4753(a)(3)(A) and 4753(b)(2) such price, which is the minimum price at which the Cross will occur, will serve as the fourth tie-breaker where there are multiple prices that would satisfy the conditions for determining the auction price, as described above. Nasdaq believes that this proposal to resolve a potential tie among the prices that satisfy all other requirements in the Cross, by choosing the price that is closest to the price that is 20% below the range, is consistent with Section 6(b)(5) of the Act because it is designed to protect investors by providing them with the most advantageous offering price among possible alternative prices.

Nasdaq also believes that the proposal, by eliminating an impediment to companies using a Direct Listing with a Capital Raise, will help removing potential impediments to free and open markets consistent with Section 6(b)(5) of the Exchange Act while also supporting capital formation.

Finally, Nasdaq believes that the proposal to clarify several provisions of the existing rules without changing them is designed to remove impediments to and perfect the mechanism of a free and open market because such changes make the rules easier to understand and apply without changing their substance.

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 amendments would not impose any burden on competition, but would rather increase competition. Nasdaq believes that allowing listing venues to improve their rules enhances competition among exchanges. Nasdaq also believes that this proposed change will give issuers interested in this pathway to access the capital markets additional flexibility in becoming a public company, and in that way promote competition among service providers, such as underwriters and other advisors, to such companies.

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. 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–2022–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–NASDAQ–2022–027, and should be submitted on or before June 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11785 Filed 6–1–22; 8:45 am]

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[34] *https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm.*

[35] *See https://www.sec.gov/news/speech/gensler-healthy-markets-association-conference-120921.*

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94990; File No. SR–BSECC–2022–001]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Nasdaq Amended and Restated Certificate of Incorporation

May 26, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2022, Boston Stock Exchange Clearing Corporation (''BSECC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by BSECC. 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

BSECC is filing this proposed rule change to amend the Amended and Restated Certificate of Incorporation (''Certificate'') of its parent corporation, Nasdaq, Inc. (''Nasdaq'' or the ''Company''), to increase Nasdaq's authorized share capital.

The text of the proposed rule change is available on BSECC's website at *https://listingcenter.nasdaq.com/rulebook/bsecc/rules,* at the principal office of BSECC, and at the Commission's Public Reference Room.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSECC 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. BSECC 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 the proposed rule change is to amend the Nasdaq Certificate[3] to increase the total number of authorized shares of Nasdaq common stock, par value $0.01 per share (''Common Stock''). Specifically, BSECC proposes to amend Article Fourth, Section A such that the total number of shares of Stock (*i.e.,* capital stock) that Nasdaq is authorized to issue would be increased from 330,000,000 to 930,000,000 shares, and the portion of that total constituting Common Stock would be changed from 300,000,000 to 900,000,000 shares. As amended, Article Fourth, Section A of the Certificate would provide:

> The total number of shares of Stock which Nasdaq shall have the authority to issue is Nine Hundred Thirty Million (930,000,000), consisting of Thirty Million (30,000,000) shares of Preferred Stock, par value $.01 per share (hereinafter referred to as ''Preferred Stock''), and Nine Hundred Million (900,000,000) shares of Common Stock, par value $.01 per share (hereinafter referred to as ''Common Stock'').[4]

As noted above, the proposed amendments to the Certificate were approved by the Nasdaq Board of Directors (''Nasdaq Board'') on March 23, 2022. The proposed amendments to the Certificate would be effective when filed with the Secretary of State of Delaware, which would not occur until approval of the amendments by the stockholders of Nasdaq is obtained at the 2022 Annual Meeting of the Stockholders on June 22, 2022 and until this proposed rule change becomes effective and operative.

The trading price of Nasdaq's Common Stock has risen significantly over the past several years. Since Nasdaq first became a publicly traded company in 2002, the total number of authorized shares of Common Stock has remained constant at 300,000,000 shares. However, over the last five years, the trading price of Nasdaq's Common Stock has increased by approximately 162%.[5] As the trading price of Nasdaq's Common Stock has risen, the Nasdaq Board has carefully evaluated the effect of the trading price of the Common Stock on the liquidity and marketability of the Common Stock. The Nasdaq Board believes that this price appreciation may be affecting the liquidity of the Common Stock, making it more difficult to efficiently trade and potentially less attractive to certain investors. Accordingly, the Nasdaq Board approved pursuing a 3-for-1 stock split by way of a stock dividend, pursuant to which the holders of record of shares of Common Stock would receive, by way of a dividend, two shares of Common Stock for each share of Common Stock held by such holder (the ''Stock Dividend''). The Nasdaq Board's approval of the Stock Dividend was contingent upon this proposed rule change becoming effective and operative, and Nasdaq stockholder approval of the proposed amendments to the Certificate.

The number of shares of Common Stock proposed to be issued in the Stock Dividend exceeds Nasdaq's authorized but unissued shares of Common Stock. The proposed rule change would increase Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend.

The proposed changes would not otherwise alter the Certificate, including the limitations on voting and ownership set forth in Article Fourth, Section C of the Certificate that generally provides no person who beneficially owns shares of common stock or preferred stock of Nasdaq in excess of 5% of the then-outstanding securities generally entitled to vote may vote the shares in excess of 5%. This limitation mitigates the potential for any Nasdaq shareholder to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries, and facilitates the self-regulatory subsidiaries' and the Commission's ability to carry out their regulatory obligations under the Act.

2. Statutory Basis

BSECC believes that its proposal is consistent with Section 17A(b)(3)(A) of the Act,[6] in that it enables BSECC to be so organized as to have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq owns 100% of the equity interest in Nasdaq BX, Inc., which in turn owns 100% of the equity interest in BSECC. BSECC's affiliates, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, The Nasdaq Stock Market LLC, Nasdaq PHLX LLC, and Stock Clearing Corporation of Philadelphia will each concurrently submit substantially the same rule filings to propose the changes described herein.

[4] Nasdaq currently has no Preferred Stock outstanding.

[5] The price of one share of Common Stock on March 31, 2017 was $69.45 and the closing market price of one share of Common Stock on April 1, 2022 was $181.92 as reported on the Nasdaq Stock Market.

[6] 15 U.S.C. 78q–1(b)(3)(A).

control or for which it is responsible, to comply with the provisions of the Exchange Act and the rules and regulations thereunder, to enforce compliance by its participants with the rules of BSECC, and to carry out the purposes of the Exchange Act.

The proposal to increase Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend would not impact BSECC's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Article Fourth, Section C of the Certificate, and so the proposed changes would not enable a person to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries or to restrict the ability of the Commission or BSECC to effectively carry out their regulatory oversight responsibilities under the Act.

BSECC also believes that the proposal is consistent with Section 17A(b)(3)(F) of the Act[7] because it would not impact BSECC's governance or regulatory structure, which would continue to be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, 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.

BSECC believes that the proposed rule change would 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, because by increasing Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend, the proposed rule change will facilitate broader ownership of Nasdaq.

BSECC also notes that the proposed rule change is substantially similar to a prior proposal by Intercontinental Exchange, Inc. (''ICE''), which is the holding company for three national securities exchanges, including the New York Stock Exchange. The ICE proposal amended ICE's Certificate of Incorporation to effectuate a similar stock split as proposed by BSECC herein.[8] As such, BSECC does not believe that its proposal raises any new or novel issues not already considered by the Commission.

B. Clearing Agency's Statement on Burden on Competition

Because the proposed rule change relates solely to the number of authorized shares of Common Stock and shares of capital stock of the Company and not to the operations of BSECC, BSECC 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.

C. Clearing Agency'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) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

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–BSECC–2022–001 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–BSECC–2022–001. 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 BSECC. 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–BSECC–2022–001 and should be submitted on or before June 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11786 Filed 6–1–22; 8:45 am]

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[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] In particular, the ICE proposal increased ICE's total number of authorized shares of ICE common stock in order to effectuate a 5-for-1 stock split by way of a stock dividend. *See* Securities Exchange Act Release No. 78992 (September 29, 2016), 81 FR 69092 (October 5, 2016) (SR–NYSE–2016–57, SR–NYSEArca–2016–119, and SR–NYSEMKT–2016–80) (hereinafter, ''ICE Approval'').

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BSECC has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94986; File No. SR–SCCP–2022–01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Nasdaq Amended and Restated Certificate of Incorporation

May 26, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2022, Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by SCCP. 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

SCCP is filing this proposed rule change to amend the Amended and Restated Certificate of Incorporation (''Certificate'') of its parent corporation, Nasdaq, Inc. (''Nasdaq'' or the ''Company''), to increase Nasdaq's authorized share capital.

The text of the proposed rule change is available on the SCCP's website at *https://listingcenter.nasdaq.com/rulebook/sccp/rules,* at the principal office of SCCP, and at the Commission's Public Reference Room.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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. SCCP 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 the proposed rule change is to amend the Nasdaq Certificate [3] to increase the total number of authorized shares of Nasdaq common stock, par value $0.01 per share (''Common Stock''). Specifically, SCCP proposes to amend Article Fourth, Section A such that the total number of shares of Stock (*i.e.,* capital stock) that Nasdaq is authorized to issue would be increased from 330,000,000 to 930,000,000 shares, and the portion of that total constituting Common Stock would be changed from 300,000,000 to 900,000,000 shares. As amended, Article Fourth, Section A of the Certificate would provide:

> The total number of shares of Stock which Nasdaq shall have the authority to issue is Nine Hundred Thirty Million (930,000,000), consisting of Thirty Million (30,000,000) shares of Preferred Stock, par value $.01 per share (hereinafter referred to as ''Preferred Stock''), and Nine Hundred Million (900,000,000) shares of Common Stock, par value $.01 per share (hereinafter referred to as ''Common Stock'').[4]

As noted above, the proposed amendments to the Certificate were approved by the Nasdaq Board of Directors (''Nasdaq Board'') on March 23, 2022. The proposed amendments to the Certificate would be effective when filed with the Secretary of State of Delaware, which would not occur until approval of the amendments by the stockholders of Nasdaq is obtained at the 2022 Annual Meeting of the Stockholders on June 22, 2022 and until this proposed rule change becomes effective and operative.

The trading price of Nasdaq's Common Stock has risen significantly over the past several years. Since Nasdaq first became a publicly traded company in 2002, the total number of authorized shares of Common Stock has remained constant at 300,000,000 shares. However, over the last five years, the trading price of Nasdaq's Common Stock has increased by approximately 162%.[5] As the trading price of Nasdaq's Common Stock has risen, the Nasdaq Board has carefully evaluated the effect of the trading price of the Common Stock on the liquidity and marketability of the Common Stock. The Nasdaq Board believes that this price appreciation may be affecting the liquidity of the Common Stock, making it more difficult to efficiently trade and potentially less attractive to certain investors. Accordingly, the Nasdaq Board approved pursuing a 3-for-1 stock split by way of a stock dividend, pursuant to which the holders of record of shares of Common Stock would receive, by way of a dividend, two shares of Common Stock for each share of Common Stock held by such holder (the ''Stock Dividend''). The Nasdaq Board's approval of the Stock Dividend was contingent upon this proposed rule change becoming effective and operative, and Nasdaq stockholder approval of the proposed amendments to the Certificate.

The number of shares of Common Stock proposed to be issued in the Stock Dividend exceeds Nasdaq's authorized but unissued shares of Common Stock. The proposed rule change would increase Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend.

The proposed changes would not otherwise alter the Certificate, including the limitations on voting and ownership set forth in Article Fourth, Section C of the Certificate that generally provides no person who beneficially owns shares of common stock or preferred stock of Nasdaq in excess of 5% of the then-outstanding securities generally entitled to vote may vote the shares in excess of 5%. This limitation mitigates the potential for any Nasdaq shareholder to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries, and facilitates the self-regulatory subsidiaries' and the Commission's ability to carry out their regulatory obligations under the Act.

2. Statutory Basis

SCCP believes that its proposal is consistent with Section 17A(b)(3)(A) of the Act,[6] in that it enables SCCP to be so organized as to have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq owns 100% of the equity interest in Nasdaq PHLX LLC, which in turn owns 100% of the equity interest in SCCP. SCCP's affiliates, Boston Stock Exchange Clearing Corporation, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, The Nasdaq Stock Market LLC, and Nasdaq PHLX LLC will each concurrently submit substantially the same rule filings to propose the changes described herein.

[4] Nasdaq currently has no Preferred Stock outstanding.

[5] The price of one share of Common Stock on March 31, 2017 was $69.45 and the closing market price of one share of Common Stock on April 1, 2022 was $181.92 as reported on the Nasdaq Stock Market.

[6] 15 U.S.C. 78q–1(b)(3)(A).

control or for which it is responsible, to comply with the provisions of the Exchange Act and the rules and regulations thereunder, to enforce compliance by its participants with the rules of SCCP, and to carry out the purposes of the Exchange Act.

The proposal to increase Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend would not impact SCCP's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Article Fourth, Section C of the Certificate, and so the proposed changes would not enable a person to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries or to restrict the ability of the Commission or SCCP to effectively carry out their regulatory oversight responsibilities under the Act.

SCCP also believes that the proposal is consistent with Section 17A(b)(3)(F) of the Act [7] because it would not impact SCCP's governance or regulatory structure, which would continue to be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, 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.

SCCP believes that the proposed rule change would 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, because by increasing Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend, the proposed rule change will facilitate broader ownership of Nasdaq.

SCCP also notes that the proposed rule change is substantially similar to a prior proposal by Intercontinental Exchange, Inc. (''ICE''), which is the holding company for three national securities exchanges, including the New York Stock Exchange. The ICE proposal amended ICE's Certificate of Incorporation to effectuate a similar stock split as proposed by SCCP herein.[8] As such, SCCP does not believe that its proposal raises any new or novel issues not already considered by the Commission.

B. Clearing Agency's Statement on Burden on Competition

Because the proposed rule change relates solely to the number of authorized shares of Common Stock and shares of capital stock of the Company and not to the operations of SCCP, SCCP 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.

C. Clearing Agency'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) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

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–SCCP–2022–01 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–SCCP–2022–01. 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 SCCP. 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–SCCP–2022–01 and should be submitted on or before June 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11783 Filed 6–1–22; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] In particular, the ICE proposal increased ICE's total number of authorized shares of ICE common stock in order to effectuate a 5-for-1 stock split by way of a stock dividend. *See* Securities Exchange Act Release No. 78992 (September 29, 2016), 81 FR 69092 (October 5, 2016) (SR–NYSE–2016–57, SR–NYSEArca–2016–119, and SR–NYSEMKT–2016–80) (hereinafter, ''ICE Approval'').

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. SCCP has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Notification of Two Virtual Public Forums on Size Standards

AGENCY: Small Business Administration.

ACTION: Notification of virtual public forums on size standards.

SUMMARY: The U.S. Small Business Administration (SBA) is holding a series of two virtual public forums on size standards to update the public on the status of the ongoing second 5-year review of size standards as mandated by the Small Business Jobs Act of 2010 and to consider public testimony on proposed changes contained in the proposed rule titled *Small Business Size Standards: Manufacturing and Industries With Employee-Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade.* Testimony presented at these forums will become part of the administrative record for SBA's consideration when developing the final rule.

DATES: The virtual forum dates are as follows:

- Tuesday, June 14, 2022, from 1:00 p.m. to 3:00 p.m. EDT
- Thursday, June 16, 2022, from 1:00 p.m. to 3:00 p.m. EDT

ADDRESSES: The forums will be held via the Microsoft Teams platform. Registration is required to attend these virtual events. Visit SBA's size standards web page at *http://www.sba.gov/size* to register.

FOR FURTHER INFORMATION CONTACT: Samuel Castilla, Economist, Office of Size Standards, (202) 619–0389 or *sizestandards@sba.gov.* The phone number above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background

SBA is seeking public comments on a proposed rule (*Small Business Size Standards: Manufacturing and Industries With Employee-Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade* (87 FR 24752*,* April 26, 2022)) that would revise the employee-based small business size standards for businesses in nine North American Industrial Classification System (NAICS) sectors. The comment period ends on June 27, 2022.

The proposed changes in nine industrial sectors, including manufacturing, mining and transportation, will enable some mid-sized businesses to regain small business status and allow some advanced small businesses to retain small business status for a longer period, thereby allowing them to benefit from SBA's procurement and loan programs. These proposed revisions come on the heels of an SBA announcement (*https://www.sba.gov/article/2022/apr/04/sba-revises-small-business-size-standards-16-industrial-sectors-increase-eligibility-its-federal*) on April 4, 2022 in which the Agency discussed the issuance of four final rules to modify revenue-based small business size standards in 16 NAICS sectors to help increase small business eligibility for SBA's Federal contracting and loan programs.

In the April 26, 2022, proposed rule, SBA proposes to increase 150 employee-based size standards in nine NAICS sectors. SBA also proposes to retain the current 500-employee size standard for Federal procurement of supplies set aside for small businesses under the nonmanufacturer rule, which requires that small businesses qualifying as nonmanufacturers must have an average of 500 or fewer employees over the past 12 months, be primarily engaged in the wholesale or retail trade activities, take ownership or possession of the item with its personnel, equipment or facilities, consistent with industry practice, and supply the product of a U.S. small manufacturer.

The changes contained in the proposed rule are part of SBA's second five-year review of size standards, as required under the Small Business Jobs Act of 2010 (Sec. 1344, Pub. L. 111–240, 124 Stat. 2545 (September 27, 2010)). The revised size standards reflect SBA's considerations of the relevant industry and programmatic data and impacts of the ongoing COVID–19 pandemic on small businesses and the overall economy and Government response. In response to the pandemic, SBA is retaining current size standards where data otherwise suggests that size standards should be lowered.

As part of the review of size standards, SBA considers the structural characteristics of individual industries, including average firm size, the degree of competition, and Federal Government contracting trends. This ensures that small business size standards reflect current economic conditions in those industries. SBA's proposed size standards revisions rely on the ''Size Standards Methodology'' issued on April 11, 2019, and available at *http://www.sba.gov/size.*

II. Virtual Public Forums on Size Standards

Under this notice, SBA is advising the public that it is hosting a series of two virtual public forums on size standards to update the public on the status of the ongoing second five-year comprehensive review of size standards and consider public testimony on proposed changes contained in the April 2022 proposed rule. These forums also conform to the requirements of section 1344 of the Small Business Jobs Act of 2010 which requires SBA to hold not less than two public forums during its quinquennial review of size standards.

SBA considers public forums on size standards as a valuable component of its deliberations and believes that these forums will allow for constructive dialogue with small businesses and their representatives, industry trade associations, participants in SBA's contracting and financial assistance programs, and other stakeholders.

The format of these forums will consist of a panel of SBA representatives who will preside over the session. The oral and written testimony as well as any comments SBA receives will become part of the administrative record for SBA's consideration. Written testimony may be submitted in lieu of oral testimony on or before June 27, 2022, at *www.regulations.gov,* using the following RIN number: RIN 3245–AH09; by email to *Sizestandards@sba.gov* with subject line ''Comments to RIN 3245–AH09''; or by mail to Khem R. Sharma, Chief, Office of Size Standards, 409 3rd Street SW, Mail Code 6530, Washington, DC, 20416. SBA will analyze the testimony, both oral and written, along with any written comments received and respond to all comments in the final rule. However, during the public forum, SBA officials will not provide comment on the testimony of speakers. SBA requests that commenters focus on SBA's April 26, 2022, proposed rulemaking and the impacted industries described therein. SBA requests that commenters do not raise issues pertaining to industries not covered under the proposed rule, or issues outside the scope of the rule. Presenters are encouraged to provide a written copy of their testimony. SBA will accept written material that the presenter wishes to provide that further supplements his or her testimony. Electronic or digitized copies are encouraged.

The two virtual public forums on size standards will be held on Tuesday, June 14, 2022 and Thursday, June 16, 2022

beginning at 1:00 p.m. and ending at 3:00 p.m. (EDT); SBA will adjourn early if all testimony has been delivered before the end time.

III. Registration

Participants must pre-register to attend either of the two virtual public forums on size standards by visiting SBA's size standards web page at *http://www.sba.gov/size* and registering at the link provided. On the registration form, participants may indicate whether they would like to testify at the forum. After registering, participants will receive an email with an access to link and call-in information which can be used to access the forum on the scheduled date and time. Additional information about the forum is provided on SBA's announcements about updating size standards web page, available at *https://www.sba.gov/article?sortBy=Authored%20on%20Date&search=&articleCategory=All&program=Contracting&page=1,* and in the invitation that participants receive upon registration. SBA will attempt to accommodate all interested parties that wish to present testimony. Based on the number of registrants it may be necessary to impose time limits to ensure that everyone who wishes to testify can do so.

IV. Information on Service for Individuals With Disabilities

For information on services for individuals with disabilities or to request special assistance contact Samuel Castilla at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Sam Le,

Director, Office of Policy, Planning and Liaison.

[FR Doc. 2022–11858 Filed 6–1–22; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 11751]

60-Day Notice of Proposed Information Collection: Nonimmigrant Visa Application

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to August 1, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0012'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email:* You may comment on this notice by emailing *PRA_BurdenComments@state.gov.*
- *Phone:* You may leave a voicemail comment by calling (202) 485–7586. You must mention that your message is a *Comment on ''Application for Nonimmigrant Visa''* in your voicemail.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument, and supporting documents to Tonya Whigham, who may be reached at (202) 485–7586 or *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Nonimmigrant Visa Application; Online Nonimmigrant Visa Application.
- *OMB Control Number:* 1405–0182.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Visa Services (CA/VO).
- *Form Number:* DS–156; DS–160.
- *Respondents:* Nonimmigrant Visa Applicants; Individuals Seeking Boarding Foils for Purposes of Parole.
- *Estimated Number of Respondents:* 5,190,967.
- *Estimated Number of Responses:* 5,190,967.
- *Average Time Per Response:* 90 minutes.
- *Total Estimated Burden Time:* 7,786,450 hours.
- *Frequency:* Once per respondent's application for a nonimmigrant visa; once per respondent's request for a boarding foil.
- *Obligation to respond:* Required to Obtain Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The DS–160 and DS–156 collect biographical and other information from individuals seeking a nonimmigrant visa or individuals seeking a boarding foil for purposes of traveling to the United States to seek parole from the Department of Homeland Security. The consular officer uses the information collected to elicit information necessary to determine an applicant's eligibility for a nonimmigrant visa. The consular officer uses the information collected on the form to screen individuals seeking a boarding foil for purposes of obtaining parole pursuant to an agreement between the Department of State and the Department of Homeland Security. Most respondents use the DS–160; however, posts may authorize an individual to use the paper-based DS–156 in limited circumstances as outlined below.

Methodology

Respondents submit the DS–160 electronically over an encrypted connection to the Department via the internet. The respondent will be instructed to print the confirmation page containing bar code record locators, which the consular officer will use to the locate the form during processing.

The DS–156 is the paper-based version of the DS–160. In order to obtain a copy of the DS–156, an individual must contact the Embassy or consulate at which they are applying and request a copy. A consular officer may allow an individual to submit the DS–156 in the following limited circumstances when the DS–160 cannot be accessed and the:

- Respondent has an urgent medical or humanitarian travel need, and the consular officer has received explicit permission from the Visa Office to accept form DS–156.

• Respondent is a student or exchange visitor who must leave immediately in order to arrive on time for his/her course and the consular officer has explicit permission from the Visa Office to accept form DS–156.

• Respondent is a diplomatic or official traveler with urgent government business and form DS–160 has been unavailable for more than four hours; or

• Form DS–160 has been unavailable for more than three days and the officer receives explicit permission from the Visa Office.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2022–11837 Filed 6–1–22; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 11753]

Clean Energy Resources Advisory Committee; Meeting

ACTION: Announcement of meeting

SUMMARY: The Department of State will host a virtual, open meeting of the Clean Energy Resources Advisory Committee (CERAC). There will not be an in-person option for this meeting.

DATES: CERAC will meet virtually June 17, 2022 from 11:30 to 1:00 (EST).

ADDRESSES: *Participation:* Members of the public wishing to participate must RSVP by June 14, 2022 via email to *CERAC@state.gov* (subject line: RSVP). The Department will provide login information prior to the meeting. Requests for reasonable accommodation should be submitted no later than June 10, 2022. Reasonable accommodation requests received after that date will be considered, but may not be possible to fulfill.

FOR FURTHER INFORMATION CONTACT: Bureau of Energy Resources Energy Officer Ryan Dudek at *CERAC@state.gov;* (202) 805–3791.

SUPPLEMENTARY INFORMATION:

Purpose: This Committee will provide input and advice regarding energy minerals and metals, their supply chains, and end uses. This second meeting will focus on the advancement of environmental, social, and governance (ESG) standards across clean energy supply chains.

Statements: Comments should be emailed to *CERAC@state.gov* with ''PUBLIC COMMENT'' as the subject line at least 48 hours before the start of the meeting. During this meeting, there will not be an option for members of the public to make oral statements.

Amanda E. Rydel,

Administrative Officer, Office of Directives Management, Department of State.

[FR Doc. 2022–11828 Filed 6–1–22; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA 2022–0015]

Agency Information Collection Activities: Notice of Request for New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to submit one information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 1, 2022.

ADDRESSES: You may submit comments identified by Docket ID FHWA 2022–0015 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Raj Ailaney, (202) 366–6749, Department of Transportation, Federal Highway Administration, Office of Bridges and Structures, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Peer Exchange on Corrosion Prevention and Mitigation for Highway Bridges

OMB Control Number: (if applicable).

Summary: The Federal Highway Administration (FHWA) through their stewardship and oversight role provides support to State departments of transportation and other stakeholders in implementing the Federal-aid Highway Program (FAHP). In addition to overseeing the FAHP, FHWA supports State DOTs and other stakeholders in the development and construction of highway projects, including providing technical assistance in the implementation of preservation activities to maintain and improve the condition of their bridges. The FHWA also conducts research to develop tools, methods, and procedures to advance the practice in bridge preservation.

In September 2021, Government Accountability Office (GAO) in their report *Highway Bridges: Federal Highway Administration Could Better Assist States with Information on Corrosion Practices, GA0–21–104249* made a recommendation to FHWA to include activities in ongoing bridge preservation efforts, such as peer exchanges and case studies that focus on addressing the challenges states face with determining the circumstances under which specific corrosion practices and materials are most effective. To implement GAO's recommendation from the report, FHWA plans to conduct two regional peer exchanges. First peer exchange will include 9 States in the mid-west and north-east States which have environments with arid conditions or that experience frequent freeze/thaw cycles and use de-icing chemicals on their highway bridges, and second will include 9 States in the south-east and west States which have environments that experience freeze/thaw cycles and/or have highway bridges that are exposed to saltwater environment. These peer exchanges will focus on States' practices and materials used that mitigate bridge corrosion. Based on these shared experiences and lessons learned, FHWA will publish case studies and/or communicate the findings to States to improve their bridge preservation programs.

Respondents: State Departments of Transportation Agencies responsible for designing and maintaining highway bridges.

Estimated Average Burden per Response: The estimated average reporting burden per response is 16 hours for each State.

Estimated Total Annual Burden: The estimated total burden for 18 State respondents is 288 hours.

Public Comments Invited

You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of these information collections.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Ch. 35, as amended; and 49 CFR 1.48.

Issued On: May 27, 2022.

Michael Howell,

Information Collection Officer.

[FR Doc. 2022–11833 Filed 6–1–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2022–0016]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 1, 2022.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2022–0016 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Peter Clark, 202–366–2025, or Arnold Feldman, 202–366–2028, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Annual State Right-of-way Acquisition Data.

Background: Moving Ahead for Progress in the 21st Century (MAP–21) Section 1521 (d) amends the Uniform Relocation Assistance and Real Properties Acquisition Policy Act of 1970 Section 213 (b), codified in 42 U.S.C. 4633 by requiring ''that each Federal agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of this Act shall provide to the lead agency an annual summary report that describes the activities conducted by the Federal agency.''

Respondents: Each of the 52 state DOT's will be asked to send an annual report to the division office which outlines state-specific acquisition data.

Frequency: Annually. Every October FHWA Office of Real Estate, HQ will request this data.

Estimated Average Burden per Response: Approximately 5 hours per response

Estimated Total Annual Burden Hours: Approximately 260 hours total for all 52 states.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued On: May 27, 2022.

Michael Howell,

Information Collection Officer.

[FR Doc. 2022–11834 Filed 6–1–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022–0011]

Agency Information Collection Activity Under OMB Review: All Stations Accessibility Program

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

ACTION: Emergency clearance notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for emergency approval of a proposed information collection. DOT requests that OMB authorize this collection of information on or before June 15, 2022. Upon receiving the requested six-month emergency approval by OMB, DOT will follow the normal PRA procedures to obtain extended approval for this proposed information collection. The purpose of this collection is to enable States and local government authorities that operate legacy rail fixed guideway public transportation systems to apply for grant assistance under the All Stations Accessibility Program. DOT is requesting emergency approval due to the urgency of making the associated funds available to the States and local government authorities that meet the eligibility requirements under the law. The ICR describes the nature of the information collection and their expected burdens.

DATES: Comments on this proposal for emergency review should be submitted by June 17, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 15 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* All comments received are part of the public record. Comments will generally be posted without change. Upon receiving the requested six-month emergency approval by OMB, FTA will follow the normal PRA procedures to

obtain extended approval for this proposed information collection.

FOR FURTHER INFORMATION CONTACT: Kevin Osborn, Office of Program Management—Urbanized Area Program Division, 1200 New Jersey Avenue SE, Mail Stop TPM–11, Washington, DC 20590, (202) 366–7519 or *Kevin.Osborn@dot.gov.*

SUPPLEMENTARY INFORMATION: FTA requests public comment on this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden (including hours and cost); (c) ways for FTA to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: All Stations Accessibility Program.

OMB Control Number: 2132–New.

Type of Request: Request for emergency approval of an information collection.

Abstract: The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58), establishes a new All Stations Accessibility Program (ASAP) to provide Federal competitive grants to assist eligible entities in financing capital and planning projects to upgrade the accessibility of legacy rail fixed guideway public transportation systems for people with disabilities, including those who use wheelchairs, by increasing the number of existing stations or facilities for passenger use that meet or exceed the new construction standards of Title II of the Americans with Disabilities Act of 1990. Funding under this program can be used to repair, improve, modify, retrofit, or relocate infrastructure of legacy stations or facilities for passenger use, including load-bearing members that are an essential part of the structural frame, to meet or exceed current ADA standards for buildings and facilities; or planning related to pursuing public transportation accessibility projects, assessments of accessibility, or assessments of planned modifications to legacy stations or facilities for passenger use.

FTA anticipates using an online, grant management system to collect the following information:

- Legal name of the applicant (*i.e.,* the legal name of the business entity), as well as any other identities under which the applicant may be doing business.
- Address, telephone, and email contact information for the applicant.
- Legal authority under which the applicant is established.
- Name and title of the authorized representative of the applicant (who will attest to the required certifications).
- DOT may also require the identity of external parties involved in preparation of the application, including outside accountants, attorneys, or auditors who may be assisting the business entity that is applying for assistance under this program.
- The specific statutory criteria that the applicant meets for eligibility under this program. The statute defines eligible applicants as state or local government authorities. Accordingly, DOT will require the applicant to identify which of these categories they meet, and how.
- Other identification numbers, including but not limited to the Employer/Taxpayer Identification Number (EIN/TIN), Data Universal Numbering System (DUNS) number, Unique Entity Identifier under 2 CFR part 25, etc. All applicants will be required to have pre-registered with the System for Award Management (SAM) at *https://sam.gov/SAM/.*
- Description of the applicant's business operations, in sufficient detail to demonstrate how the applicant meets the statutory requirement as a municipality or community owned utility.
- Responses to evaluation criteria listed in the Notice of Funding Opportunity.

FTA estimates that it will take applicants approximately 10 hours to complete the application process. FTA estimates that grant recipients will spend another 4 hours, annually, submitting post-award reports. The burden estimate below accounts for the total amount of effort involved.

Respondents: States and Local Government Authority.

Estimated Average Total Annual Respondents: 20.

Estimated Average Total Responses: 40.

Estimated Annual Burden Hours: 280.

Estimated Annual Burden Hours per Respondent: 14 Hours.

Frequency: Annually.

Nadine Pembleton,

Deputy Associate Administrator for Administration, Office of Administration.

[FR Doc. 2022–11860 Filed 6–1–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2022–0012]

Request for Information on Transit Bus Automation Research and Demonstrations

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Request for information.

SUMMARY: The Federal Transit Administration (FTA) continues to research Advanced Driver Assistance Systems (ADAS) and Automated Driving Systems (ADS) in public transportation use cases. In 2018, FTA completed its five-year Strategic Transit Automation Research Plan (STAR Plan). In preparation for the next five-year plan, FTA is issuing this request for information (RFI). This RFI seeks input from public and industry stakeholders on the next phase of research, collaboration and engagement, technology development, and demonstration of ADS or ADAS necessary to improve the safe, efficient, equitable and climate-friendly provision of public transportation and sustain the associated workforce. Comments received through this RFI will provide critical information for FTA to develop STAR Plan 2.0.

DATES: Comments are requested by August 1, 2022. Comments received after the closing date will be considered to the extent practicable.

ADDRESSES: You may file comments identified by docket number FTA–2022–0012 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *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 or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Except as provided below, all comments received into the docket will be made public in their entirety. The comments will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You should not include information in your comment that you do not want to be made public. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or at *https://www.transportation.gov/privacy.*

FOR FUTHER INFORMATION CONTACT: Danyell Diggs, Office of Research, Demonstration, and Innovation, (202) 366–1077 or *danyell.diggs@dot.gov.*

SUPPLEMENTARY INFORMATION: In January 2022, Secretary Buttigieg released USDOT's Innovation Principles, which call for experimentation and learning, collaboration, and flexibility to accommodate changing technologies, while serving the Department's policy priorities and supporting workers.[1] A major technology innovation area in surface transportation is the development and commercialization of ADAS and ADS. As a convener and facilitator, USDOT partners with a broad coalition of stakeholders to support the safe development, testing and integration of automated vehicle technologies.[2] Though automation is relatively mature in rail transit operations, the application of ADAS/ADS in transit bus operations continues to lag behind, despite its potential to enhance safety for operators, transit passengers, bicyclists, pedestrians, and those using micro-mobility devices such as scooters.[3]

FTA's transit bus automation research plan has been organized around four complementary work areas: (1) Enabling research; (2) integrated demonstrations; (3) strategic partnerships; and (4) stakeholder engagement, knowledge transfer, and technical assistance. Each work area encompasses several priority topics including, but not limited to, safety, accessibility, workforce impacts, and others. Enabling research explores fundamental questions for the transit industry to understand the costs, benefits, opportunities, and consequences of driver assist and fully automated technologies in the transit industry and implications for safe, accessible, and sustainable operations and maintenance. Integrated demonstrations provide real-world, test-bed studies of market-ready or near market-ready technologies. Demonstrations provide insight into technical performance, user acceptance, and capital and operational costs and aid in the development of standards, policies, and regulatory modernization. Strategic partnerships leverage the research of other agencies for applicability in the transit sphere. Stakeholder engagement involves broad outreach to gather input from diverse stakeholders.

To date, FTA has a number of demonstrations underway and has completed important research studies recommended in the STAR Plan. Information on all activities is available at: *https://www.transit.dot.gov/automation-research.*

Questions for the Public

Automation technologies have evolved and advanced within public transportation since the initial STAR Plan was published in 2018. More changes are expected as the transit industry further invests in automation solutions. To structure input and feedback to FTA on STAR Plan 2.0, please use the corresponding number and heading when providing responses to this request for information:

1. Priority Areas

The STAR Plan 2.0 needs to reassess the priorities and areas of activity for the next five years. Examples may include workforce development, sustainability and climate impacts, guidance for investment or deployment, accessibility, cybersecurity, equity, regulations and standards, and domestic manufacturing market support, among others.

FTA seeks information from stakeholders on:

- What topics should be a priority for FTA's transit bus automation research and demonstrations over the next five years? What specific activities or products should be a priority for FTA within these areas?
- For any priority areas identified, are there activities that stakeholders have undertaken? What were the challenges? Are there specific areas where FTA engagement may be needed?

2. Enabling Research

FTA has completed extensive enabling research, including:

- Market Analysis for Automated Transit Buses and Supporting Systems;
- Automation Policy Review;
- Business Case for Transit Automation;
- Transit Bus Applications of Light and Commercial Vehicle Automation Technology;
- Hazard and Safety Analysis of Automated Transit Bus Applications; and
- Test Facility Requirements for Automated Transit Vehicles;

FTA seeks information from stakeholders on:

- What specific research questions should be addressed by FTA-supported foundational research within the next five years? Possible topic areas for research include, but are not limited to, cybersecurity, equity, standards, and workforce training.

3. Integrated Demonstrations

The STAR Plan currently identifies five integrated demonstrations: Transit Bus Advanced Driver Assistance System (ADAS); Automated Shuttle; Maintenance, Yard, and Parking Operations; Mobility-on-Demand (MOD) Service; and Automated Bus Rapid Transit.

FTA seeks information from stakeholders on:

- Are these demonstration areas still needed? What additional or alternative demonstration areas are a priority?
- What are the biggest successes or challenges to deploying ADAS or ADS technologies for transit?

4. Strategic Partnerships

FTA routinely collaborates with other modal agencies across USDOT and participates in the community of practice to identify cross-cutting technologies with positive applicability for the transit industry.

FTA seeks information from stakeholders on:

- What ADAS/ADS technologies proven in other transportation applications would be useful and applicable to transit use cases? Please be specific and include examples where possible.

5. Stakeholder Engagement and Knowledge Transfer

To drive research into practice, FTA conducts multiple types of stakeholder engagement, including webinars, interviews, convening peer agencies, and presentations at conferences.

FTA seeks information from stakeholders on:

[1] *https://www.transportation.gov/priorities/innovation/us-dot-innovation-principles.*

[2] *https://www.transportation.gov/AV.*

[3] SAE International has defined six levels of driving automation, ranging from L0 (no driving automation) to L5 (full driving automation: *https://www.sae.org/standards/content/j3016_202104/. ADAS is generally categorized as L2–L3 while ADS is L4–L5.*

○ Are FTA's methods of stakeholder engagement sufficient? What other methods should FTA consider?

6. Workforce

Automation will not replace transit bus operators in the foreseeable future, nonetheless, transit bus automation and automated features will impact the transit workforce, including bus operators, maintenance workers, and the domestic supply chain, including bus manufacturers.

FTA seeks information from stakeholders on:

○ What activities have agencies undertaken to understand and prepare for the impacts of automation on their workforce? Please be specific and include examples where possible.

○ What types of new skills, training, and resources may be required for transit workforce development and transition?

○ What specific areas of workforce-related research should FTA consider?

○ What types of resources could FTA provide to help agencies and their workers adopt transit bus automation?

Please note, this RFI will serve as a planning document. The RFI should not be interpreted as policy, a solicitation for applications, or an obligation on the part of the Government.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2022–11782 Filed 6–1–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2022–0063]

Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Earth Movement and Other Geological Hazards

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; issuance of updated advisory bulletin.

SUMMARY: PHMSA is issuing this updated advisory bulletin to remind owners and operators of gas and hazardous liquid pipelines, including supercritical carbon dioxide pipelines, of the potential for damage to those pipeline facilities caused by earth movement in variable, steep, and rugged terrain and terrain with varied or changing subsurface geological conditions. Additionally, changing weather patterns due to climate change, including increased rainfall and higher temperatures, may impact soil stability in areas that have historically been stable. These phenomena can pose a threat to the integrity of pipeline facilities if those threats are not identified and mitigated. Owners and operators should consider monitoring geological and environmental conditions, including changing weather patterns, in proximity to their facilities.

FOR FURTHER INFORMATION CONTACT: Mary McDaniel at 202–366–4595 or *Mary.McDaniel@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this updated advisory bulletin is to remind owners and operators of gas and hazardous liquid pipelines, particularly those with facilities located onshore or in inland waters, about the serious safety-related issues that can result from earth movement and other geological hazards. Additionally, changing weather patterns due to climate change may result in heavier than normal rainfall and increased temperatures causing soil saturation and flooding or soil erosion. Either phenomenon may adversely impact the stability of soil surrounding or supporting nearby pipeline facilities. The United States Geological Survey (USGS) is a resource for pipeline owners and operators in evaluating earth movement vulnerabilities of pipeline facilities.

Gas and hazardous liquid pipelines are required to be designed to withstand external loads including those that may be imposed by geological forces. Specifically, gas pipelines must be designed in accordance with 49 CFR 192.103 and hazardous liquid pipelines must be designed in accordance with 49 CFR 195.110. To comply with these regulations, the design of new pipelines, including repairs or replacement, must consider the load that may be imposed by geological forces.

Once operational, § 192.317(a) states that for gas transmission and part 192-regulated gathering pipelines ''[t]he operator must take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads. In addition, the operator must take all practicable steps to protect offshore pipelines from damage by mudslides, water currents, hurricanes, ship anchors, and fishing operations.'' This advisory bulletin addresses those protective requirements associated with damage caused by geological factors.

In addition, § 192.705 requires operators of gas transmission lines, and applicable gas gathering lines, to have a patrol program to observe surface conditions on and adjacent to the pipeline right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation. The frequency of these patrols must be based upon the size of the line, operating pressures, class locations, terrain, seasonal weather conditions, and other relevant factors. One of the primary reasons for this patrol requirement is to monitor geological movement, both slowly occurring and acute changes, which may affect the current or future safe operation of the pipeline.

Furthermore, for applicable gas pipelines § 192.613(a) states that ''each operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.'' Section 192.613(b) further states that ''[i]f a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with § 192.619(a) and (b).''

For hazardous liquid pipelines, § 195.401(b)(1) states that ''[w]henever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.'' Section 195.401(b)(2) further states that ''[w]hen an operator discovers a condition on a pipeline covered under [the integrity management requirements in] § 195.452, the operator must correct the condition as prescribed in § 195.452(h).'' Land movement, soil instability due to saturation, severe flooding, river scour, and river channel migration are the types of conditions that can adversely affect the safe operation of a pipeline and require corrective action under §§ 192.613(a) and 195.401(b). Additional guidance for identifying risk factors and mitigating natural force

hazards on pipeline segments that could affect high consequence areas, are outlined in Appendix C, section I, subsection B, to part 195.

PHMSA integrity management regulations require operators to take additional preventative and mitigative measures to prevent, and to mitigate the consequences of, failures on gas transmission lines in high consequence areas (§ 192.935) and hazardous liquid pipelines that are in or which could affect a high consequence area (§ 195.452(i)). An operator must base the additional measures on the threats the operator has identified for each pipeline segment. If an operator determines there is a threat to the pipeline, such as outside force damage (*e.g.,* earth movement or floods), the operator must take steps to prevent a failure and to minimize the consequences of a failure under these regulations.

PHMSA is aware of recent earth movement and other geological-related incidents and accidents and safety-related conditions throughout the country. Some of the more notable events, including those discussed in a prior advisory bulletin (ADB–2019–02; 84 FR 18919, 05/02/2019) are briefly described below:

- On March 11, 2022, a 22-inch hazardous liquid pipeline spilled 3,900 barrels of crude oil adjacent to the Cahokia Creek approximately 15 miles east of St. Louis, Missouri. Preliminary information indicates land movement may have contributed to this failure. The National Transportation Safety Board (NTSB) investigation into the cause continues as of the date of this notice.
- On May 30, 2021, a hazardous liquid pipeline spilled 640 barrels of gasoline in Greens Bayou affecting high consequence areas near Houston, Texas. The operator's reported cause indicated earth movement/progressive ground movement over time on a bayou bank.
- On February 19, 2021, 22,318 one thousand cubic feet [1] (Mcf) of natural gas was released from a Type A gathering pipeline system in Belmont, Ohio. A third-party subject matter expert determined the proximate cause of this incident was land movement, or slip, that exerted force on the pipe causing a circumferential crack in an area where evidence of stress corrosion cracking and general corrosion were found.
- On December 23, 2020, 4,450 Mcf natural gas was released from a gas distribution main line in the City of Newport News, Virginia. The operator report indicated that the apparent cause was pipe stress created by ground settlement which caused misalignment of a flange resulting in a pinhole leak on gasket.
- On November 19, 2020, a pipeline spilled 17.50 barrels of crude oil east of I–5 in Kern, California during routine start-up. A metallurgical analysis determined the root cause to be related to external factors (*i.e.,* historical land movement, terrain, and cyclic weather patterns around this pipeline segment). There is a history of land movement in the area, all of which contributed to unintentional bending of the pipeline causing the circumferential cracking found at the leak site.
- On October 4, 2020, an intrastate gas transmission pipeline in Goodrich, Texas released 118,724 Mcf of natural gas below the Trinity River. While no definitive root cause was determined, the operator used the geological, meteorological, site-gathered information and historical data in its computer modeling and identified earth movement of the soil surrounding the pipe as the most plausible cause of the rupture. Circumferential stress corrosion cracking may have been a contributing factor to the failure.
- On May 19, 2020, 447 Mcf was released from a gas distribution main pipeline in Edenville Township, Michigan due to heavy rain fall. An investigation confirmed a 4-inch steel pipeline was severed when significant flooding in the area caused a road washout/scouring.
- On May 4, 2020, a 30-inch natural gas pipeline ruptured and ignited near Hillsboro, Kentucky. Preliminary information indicates land movement may have contributed to this failure. The NTSB investigation into the cause continues as of the date of this notice.
- On February 22, 2020, a carbon dioxide pipeline failed approximately one mile southeast of Satartia, Mississippi, releasing approximately 30,000 barrels of liquid carbon dioxide that immediately began to vaporize at atmospheric conditions. The pipeline failed on a steep embankment which had subsided adjacent to a local highway. Heavy rains are believed to have triggered a landslide, which created axial strain on the pipeline and resulted in a full circumferential girth weld failure.
- On January 29, 2019, a pipeline ruptured near the town of Lumberport in Harrison County, West Virginia. The rupture was located at a girth weld of an elbow on the 12-inch interstate pipeline. The root cause investigation concluded that a landslide about 150 yards from the rupture moved the pipeline approximately 10 feet from its original location causing excessive stress on the pipe resulting in the rupture.
- On January 21, 2019, a 30-inch natural gas pipeline ruptured and ignited near Summerfield, Ohio. A metallurgical analysis indicates a girth weld failed due to ductile overload from a longitudinal tensile or bending force, likely from land movement.
- On June 7, 2018, a 36-inch pipeline ruptured in a rural, mountainous area near Moundsville, West Virginia, resulting in the release of approximately 165,000 Mcf of natural gas. According to a metallurgical analysis, the rupture was caused by earth movement on the right-of-way due to a single overload event. Overloading of the pipeline likely resulted from a series of lateral displacements with accompanying bending.
- On April 30, 2018, an 8-inch intrastate pipeline failed in a remote mountainous region of Marshall County, West Virginia resulting in the release of 2,658 barrels of propane. The failure was caused by lateral movement of the pipeline due to earth movement along the right-of-way.
- On January 31, 2018, a 24-inch interstate pipeline ruptured near the city of Summerfield, Ohio releasing approximately 23,500 Mcf of natural gas in a rural forested area. A root cause analysis concluded that the girth weld failure was caused by axial stress due to movement of the pipe that exceeded the cross-sectional tensile strength of the net section weld zone surrounding the crack initiation location.
- On January 9, 2018, a 22-inch transmission pipeline failed in Montecito, California. The incident resulted in a fire and explosion and the release of an estimated 12,000 Mcf of natural gas. Heavy rains and localized flooding contributed to the pipe failure.
- On December 5, 2016, approximately 14,400 barrels of crude oil were spilled into an unnamed tributary to Ash Coulee Creek, Ash Coulee Creek itself, the Little Missouri River, and their adjoining shorelines in Billings County, North Dakota. The metallurgical and root cause failure analysis indicated the failure was caused by compressive and bending forces due to a landslide impacting the pipeline. The landslide was the result of excessive moisture within the hillside creating unstable soil conditions.
- On October 21, 2016, a pipeline release of over 1,238 barrels of gasoline spilled into the Loyalsock Creek in Lycoming County, Pennsylvania. The release was caused by extreme localized flooding and soil erosion.

[1] Mcf stands for one thousand cubic feet. The ''M'' is representative of the roman numeral for one thousand.

Within its rulemaking entitled ''Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments'' (RIN 2137–AF39), PHMSA notes that it is considering adopting revisions to § 192.613 that would oblige operators of gas transmission pipelines to conduct inspections on their facilities following an extreme weather event to ensure timely identification and remediation of damage to those facilities. In addition, the Council on Environmental Quality (CEQ) recently issued interim guidance underscoring the importance of the evaluation of, and emergency planning for, geohazards for safe operation of carbon dioxide and other pipeline facilities.[2]

II. Advisory Bulletin (ADB–2022–01)

Advisory: All owners and operators of gas and hazardous liquid pipelines, including supercritical carbon dioxide pipelines, are reminded that earth movement, particularly in variable, steep, and rugged terrain and terrain with varied or changing subsurface geological conditions, can pose a threat to the integrity of a pipeline if those threats are not identified and mitigated. Additionally, changing weather patterns due to climate change may result in heavier than normal rainfall and higher temperatures, resulting in soil saturation and flooding or soil erosion, each of which may adversely impact soil stability surrounding or supporting nearby pipeline facilities.

Pipeline operators should consider taking the following actions to ensure pipeline safety:

1. Identify areas surrounding the pipeline that may be prone to large earth movement, including but not limited to slope instability, subsidence, frost heave, soil settlement, erosion, earthquakes, and other dynamic geologic conditions that may pose a safety risk.

2. Use geotechnical engineers during the design, construction, and ongoing operation of a pipeline system to ensure that sufficient information is available to avoid or minimize the impact of earth movement on the integrity of the pipeline system. At a minimum, operators should consider soil strength characteristics, ground and surface water conditions, propensity for erosion or scour of underlying soils, and the propensity of earthquakes or frost heave.

3. Develop design, construction, and monitoring plans and procedures for each identified location, based on the site-specific hazards identified. When constructing new pipelines, develop and implement procedures for pipe and girth weld designs to increase their effectiveness for taking loads, either stresses or strains, exerted from pipe movement in areas where geological subsurface conditions and movement are a hazard to pipeline integrity.

4. Monitoring plans may include provisions related to the following:

- Ensuring during construction of new pipelines that excavators do not steepen, load (including changing the groundwater levels) or undercut slopes which may cause excessive ground movement during construction or after operations commence.
- Conducting periodic visits and site inspections. Increased patrolling may be necessary due to potential hazards identified and existing/pending weather conditions. Right-of-way patrol staff must be trained on how to detect and report conditions that may lead to or exhibit ground movement to appropriate staff.
- Identifying geodetic monitoring points (*i.e.,* survey benchmarks) to track potential ground movement.
- Installing slope inclinometers to track ground movement at depth which may otherwise not be detectable during right-of-way patrols.
- Installing standpipe piezometers to track changes in groundwater conditions that may affect slope stability.
- Evaluating the accumulation of strain on the pipeline by installing strain gauges.
- Conducting stress/strain analysis utilizing in-line inspection tools equipped with inertia mapping unit technology and high resolution deformation in-line inspection for pipe bending and denting from movement.
- Utilizing aerial mapping light detection and ranging or other technology to track changes in ground conditions.

5. Develop mitigation measures to remediate the identified locations.

6. Monitor environmental conditions and changing weather patterns in proximity to their facilities and evaluate soil stability that may have been adversely impacted.

- The National Oceanic and Atmospheric Administration's National Centers for Environmental Information has excellent information publicly available. For example, see the National Temperature and Precipitation Maps at the National Centers for Environmental Information (*https://www.ncdc.noaa.gov/temp-and-precip/us-maps/*).

7. Use available data and information resources to assess pipeline facility vulnerability relative to landslides and other types of earth movement.

- The USGS has excellent information publicly available regarding land movement. For example, see the Landslide Hazards Maps at the USGS website (*https://www.usgs.gov/programs/landslide-hazards/maps*).

8. Consider the findings and recommendations of pertinent research projects, studies, and reports on the impact of changing weather patterns on soil stability.[3] PHMSA also notes that industry and academic materials could be informative regarding relevant considerations and strategies for ensuring pipeline integrity in areas of land movement or soil subsidence.

9. Mitigation measures should be based on site-specific conditions and may include:

- Re-routing the pipeline right-of-way prior to construction to avoid areas prone to large ground movement such as unstable slope areas, earthquake fault zones, permafrost movement, or scour.
- Utilize properly designed horizontal directional drilling to go below areas of potential land movement.
- Installation of drainage measures in the trench to mitigate subsurface flows and enhance surface water draining at the site including streams, creeks, runs, gullies, or other sources of surface run-off that may be contributing surface water to the site or changing groundwater levels that may exacerbate earth movement.
- Reducing the steepness of potentially unstable slopes, including installing retaining walls, soldier piles, sheet piles, wire mesh systems, mechanically stabilized earth systems and other mechanical structures.
- Installing trench breakers and slope breakers to mitigate trench seepage and divert trench flows along the surface to safe discharge points off the site or right-of-way.
- Building retaining walls and/or installing steel piling or concrete caissons to stabilize steep slope areas as

[2] CEQ, ''Carbon Capture, Utilization, and Sequestration Guidance,'' 87 FR 8808, 8810 (Feb. 16, 2022).

[3] For example, PHMSA has funded the following research and development projects on the impact of soil movement and pipeline monitoring: *Pipeline Integrity Management for Ground Movement Hazards* (*https://primis.phmsa.dot.gov/matrix/PrjHome.rdm?prj=202); Combined Vibration, Ground Movement, and Pipe Current Detector* (*https://primis.phmsa.dot.gov/matrix/PrjHome.rdm?prj=655); Definition of Geotechnical and Operational Load Effects on Pipeline Anomalies* (*https://primis.phmsa.dot.gov/matrix/PrjHome.rdm?prj=561*); and *Fiber Optic Sensors for Direct Pipeline Monitoring Under Geohazard Conditions* (*https://primis.phmsa.dot.gov/matrix/PrjHome.rdm?prj=889).*

long as the corrosion control systems are not compromised.

- Reducing the loading on the site by removing and/or reducing the excess backfill materials to off-site locations. Soil placement should be carefully planned to avoid triggering earth movement in other locations.
- Compacting backfill materials at the site to increase strength, reduce water infiltration, and achieve optimal moisture content.
- Drying the soil using special additives such as lime-kiln dust or cement-kiln to allow the materials to be re-used and worked at the site. Over-saturated materials may require an extensive amount of time and space to dry.
- Regrading the pipeline right-of-way to minimize scour and erosion.
- Bringing the pipeline above ground and placing it on supports that can accommodate large ground movements (*e.g.,* transitions across earthquake fault zones or unstable slopes, without putting excessive stress or strain on the pipeline).
- Reducing the operating pressure temporarily or shutting-in the affected pipeline segment completely.
- Re-routing the pipeline when other appropriate mitigation measures cannot be effectively implemented to maintain safety.

Pipeline safety regulations require reporting of certain conditions that impair the serviceability of a pipeline, as noted in §§ 191.23 and 195.55.

PHMSA encourages pipeline operators to enhance their preparations and procedures beyond the minimum Federal standards and to address the unique threats, vulnerabilities, and challenges of each individual pipeline facility. Pipeline operators, Federal and state regulators, and the public have a common goal of no damage and no releases from pipeline infrastructure. Working together will better achieve our goal of zero incidents and releases.

Issued in Washington, DC, on May 26, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–11791 Filed 6–1–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST 2022–0014]

Agency Information Collection Activities: Notice of Request for New Information Collection

AGENCY: Office of the Secretary of Transportation (OST), DOT.

ACTION: Notice and request for comments.

SUMMARY: The OST invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to submit one information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 1, 2022.

ADDRESSES: You may submit comments identified by Docket ID OST 2022–0014 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tara Lanigan (*tara.lanigan@dot.gov*), Department of Transportation, Office of the Secretary of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Strengthening Mobility and Revolutionizing Transportation (SMART) Grant Program.

OMB Control Number: Not applicable; this is a new collection.

Summary: The Bipartisan Infrastructure Law (BIL, also known as the Infrastructure Investment and Jobs Act), enacted on November 15, 2021 provides for significant investments in America's transportation infrastructure. A key program of the legislation is the Strengthening and Revolutionizing Transportation (SMART) Grant Program ($100 million per year), under which ''the Secretary shall provide grants to eligible entities to conduct demonstration projects focused on advanced smart city or community technologies and systems in a variety of communities to improve transportation efficiency and safety'' (BIL § 25005; 23 U.S.C. 502(b)). More specifically, SMART Grants may be used to carry out a project that demonstrates at least one of the following:

- Coordinated Automation
- Connected Vehicles
- Systems Integration
- Commerce Delivery and Logistics
- Leveraging Use of Innovative Aviation Technology
- Smart Grid
- Smart Technology Traffic Signals

For this competitive grant program, the Office of the Secretary will issue a Notice of Funding Opportunity (NOFO) that describes the requirements of the SMART Grant program, including the criteria that will be used to evaluate applications. The NOFO will provide a description of the application requirements. All eligible entities must submit a completed application in order to be considered for a grant award.

The applicants who are selected for a grant (*i.e.,* the grantees) will have additional reporting requirements associated with their SMART grant, outlined below.

- *Annual Implementation Reports.* These annual reports document project progress in meeting its goals. The first report is submitted not later than 2 years after the date on which the SMART grant is received and annually thereafter until the date on which the SMART grant is expended.
  - The Final Implementation Report will demonstrate how the deployment and operational costs of the project compared to the benefits and savings; the means by which each project has met its original expectation, including data findings on the impacts of the project (*e.g.,* safety, mobility, access, system efficiency, etc.) and lessons learned.
- *Evaluation Plan.* The evaluation plan describes how the project will be evaluated, including the anticipated impacts of the project (*e.g.,* goals), the methods that will be used to measure those impacts, and the performance measures.
- *Data Management Plan.* The data management plan provides more detailed information on the types of data being collected by the grantee and

how that data will be managed and stored (*e.g.,* how privacy is protected, the entities that have access to the data, etc.).

• *Quarterly Progress Reports.* The Quarterly progress reports provide status updates, including activities accomplished during the quarter, financial and schedule reporting, and anticipated activities for the next quarter (among other updates, such as any project challenges).

Respondents: Eligible entities that may apply for the grant include States, political subdivisions of a State, Tribal governments, public transit agencies or authorities, public toll authorities, metropolitan planning organizations; and groups of 2 or more eligible entities applying through a single lead applicant.

Estimated Average Burden per Response: The estimated annual reporting burden per response is 100 hours for each entity that submits an application. For the subset of applicants who are selected to receive a grant, they have an additional estimated 62 hours of average annual burden associated with the grant award.

Estimated Total Annual Burden: The estimated total annual burden for the grant applicants (approximately 80 applicants per year) is 8,000 hours. The subset of applicants who receive an award (approximately 25 grantees per year) will have an additional total average annual burden of 1,550 hours. The table below illustrates how the estimated total annual burden was calculated.

	Calculation (annual # respondents × annual # hours)	Estimated total annual burden (hours)
Application Stage	80 respondents × 100 hours each	8, 000
Grant Stage	25 respondents × 62 hours each	1,550

Public Comments Invited

You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the OST's performance; (2) the accuracy of the estimated burdens; (3) ways for the OST to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of these information collections.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Ch. 35, as amended; and 49 CFR 1.48.

Issued on: May 27, 2022.

Michael Howell,

Information Collection Officer.

[FR Doc. 2022–11835 Filed 6–1–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2022–0019]

Renewal of Information Collection (OMB No. 2105–0520); Agency Requests for Reinstatement of a Previously Approved Information Collection(s): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and for Grants and Cooperative Agreements With Institutions of Higher Education, and Other Nonprofit Organizations

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a previously approved information collection. These forms include Application for Federal Assistance (SF–424), Federal Financial Report (SF–425), Request for Advance or Reimbursement (SF–270) and Outlay Report and Request for Reimbursement for Construction Programs (SF–271). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on March 30th, 2022, in the **Federal Register**. No comments were received.

DATES: Comments must be submitted on or before July 5, 2022.

ADDRESSES: Written comments and recommendations for the renewal of information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Audrey Clarke, Ph.D., Associate Director of the Financial Assistance Policy and Oversight Division, M–65, Office of the Senior Procurement Executive, Office of the Secretary, Room W83–313, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–4268.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0520.

Title: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Form Numbers: SF–424, SF–425, SF–270, and SF–271.

Type of Review: Revision of a previously approved collection.

Background: This is to request the Office of Management and Budget's (OMB) renewed three-year approved clearance for the information collection, entitled, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'' OMB Control No 2105–0520, which is currently due to expire on July 31, 2022. This information collection involves the use of various forms necessary because of management and oversight responsibilities of the agency imposed by OMB Circular 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The May 31, 2015, OMB Control Number is titled: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

(OMB 2 CFR 200). These guidelines cover the following data collection standard forms (SF): Application for Federal Assistance (SF–424); Federal Financial Report (SF–425); Request for Advance or Reimbursement (SF–270); and Outlay Report & Request for Reimbursement for Construction Programs (SF–271).

The following adjustments have been made to the burden estimates. In 2019, the Department estimated a combined total of 1,758 respondents and 123,060 burden hours. The updated burden estimates have changed due to the Coronavirus AID Relief and Economic Security Act, the American Rescue Plan Act as well as the Infrastructure Investment and Jobs Act.

Respondents: Grantees.

Number of Respondents: 2,936.

Number of Responses: 11,740.

Total Annual Burden: 205,520.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

Authority: The Paperwork Reduction Act of 1995, Public Law 104–13; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on May 27, 2022.

Audrey Clarke,

Associate Director, Financial Assistance Policy and Oversight, Office of the Senior Procurement Executive.

[FR Doc. 2022–11816 Filed 6–1–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Agency Information Collection Activity Under OMB Review: Application for Accrued Amounts Due a Deceased Beneficiary

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0216.

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. 2900–0216'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 5121. VA regulated the eligibility criteria 38 CFR 3.1000 through § 3.1010.

Title: VA Form 21P–601, Application for Accrued Amounts Due a Deceased Beneficiary.

OMB Control Number: 2900–0216.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21P–601 is used to gather the information necessary to determine a claimant's entitlement to accrued benefits. Accrued benefits are amounts of VA benefits due, but unpaid, to a beneficiary at the time of his or her death. Benefits are paid to eligible survivors based on the priority described in 38 U.S.C. 5121(a). When there are no eligible survivors entitled to accrued benefits based on their relationship to the deceased beneficiary, the person or persons who bore the expenses of the beneficiary's last illness and burial may claim reimbursement for these expenses from accrued amounts.

No changes have been made to this form. The respondent burden has decreased due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 17140 on March 25, 2022, page 17140.

Affected Public: Individuals or Households.

Estimated Annual Burden: 2,725 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,449 per year.

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. 2022–11808 Filed 6–1–22; 8:45 am]

BILLING CODE 8320–01–P

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