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

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Statement on Competition and Innovation

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Statement.

SUMMARY: The Paperwork Reduction Act (PRA) authorization regarding the revised Policy on No-Action Letters and the Policy on the Compliance Assistance Sandbox (Policies) expires, and accordingly those Policies are no longer effective, as of September 30, 2022.

DATES: This statement is applicable on September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Colete Fontenot, Acting Docket Manager, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

On September 10, 2019, the Consumer Financial Protection Bureau (Bureau or CFPB) issued the ''Policy on No-Action Letters'' and the ''Policy on the Compliance Assistance Sandbox'' (Policies).[1] The CFPB issued the original version of its Policy on No-Action Letters in February 2016.[2] The Policy on No-Action Letters set forth how companies should submit No-Action Letter applications and how the CFPB would assess and issue No-Action Letters. Under the policy, the CFPB would grant No-Action Letters to individual companies, advising recipients that the agency would not make supervisory findings or bring a supervisory or enforcement action against the company with respect to certain matters.

The Policy on the Compliance Assistance Sandbox set forth how the CFPB would grant a company immunity from liability under one or more of three safe harbor provisions and provide an approval concluding that the offering or providing of certain aspects of an individual company's product or service complies with the relevant Federal consumer financial law.

Under the Paperwork Reduction Act of 1995 (PRA),[3] Federal agencies are required to assess the paperwork burdens of their information collection activities. The PRA authorization concerning the Policies expires September 30, 2022. The CFPB determined that the Policies do not advance their stated objective of facilitating consumer-beneficial innovation. The CFPB also determined that the existing Policies failed to meet appropriate standards for transparency and stakeholder participation. The CFPB is developing new approaches to facilitate the development of new products and services.

To preserve resources and reduce inefficiency and burden, the CFPB is not requesting to renew the Policies' PRA authorizations, and the Policies are rescinded, effective September 30, 2022. Consistent with the PRA, as of September 30, 2022, the CFPB will no longer accept No-Action Letter or Compliance Assistance Sandbox applications submitted on a form using OMB Control No. 3170–0059.[4] The CFPB will continue to accept and process requests under the Trial Disclosure Policy.[5] Entities that have made submissions under the No Action Letter or Compliance Assistance Sandbox Policies will be notified if the CFPB intends to take additional steps on such submissions.

II. Regulatory Matters

This statement rescinds certain general statements of policy and/or rules of agency procedure or practice. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[6]

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2022–20896 Filed 9–26–22; 8:45 am]

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[1] 84 FR 48229 (Sept. 13, 2019); 84 FR 48246 (Sept. 13, 2019).

[2] 81 FR 8686 (Feb. 22, 2016).

[3] 44 U.S.C 3501 *et seq.*

[4] No-Action Letter Application, Consumer Financial Protection Bureau, OMB No. 3170–0059, *https://files.consumerfinance.gov/f/documents/cfpb_no-action-letter-application-form.pdf;* Compliance Assistance Sandbox Application, Consumer Financial Protection Bureau, OMB No. 3170–0059, *https://files.consumerfinance.gov/f/documents/cfpb_sandbox-application.pdf.*

[5] 84 FR 48260 (Sept. 13, 2019).

[6] 5 U.S.C. 603(a), 604(a).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0287; Project Identifier MCAI–2020–01602–T; Amendment 39–22142; AD 2022–17–04]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. This AD was prompted by reports of broken P-clamps on the pressure relief line and the motive flow line in the fuel tanks, and a subsequent determination that certain service information lacked instructions for maintaining appropriate clearance between certain fuel tubes and their support brackets, and may also have led to incorrect installation of certain Teflon™ sleeves. This AD was also prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires inspecting the motive flow line, vent line, and related parts, and adding support or additional clearance if necessary. This AD also requires inspection, and replacement or relocation if necessary, of affected Teflon™ sleeves on the vent line, and installation of Teflon™ sleeves on the vent line at additional wing stations. This AD also requires revising the existing maintenance or inspection

program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 1, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 1, 2022.

ADDRESSES: For service information identified in this final rule, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone 855–310–1013 or 647–277–5820; email *thd@dehavilland.com;* internet *dehavilland.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0287.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0287; 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 Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2017–05R2, dated September 20, 2019 (CF–2017–05R2) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–400, –401, and –402 airplanes. You may examine the MCAI in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0287.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on March 24, 2022 (87 FR 16661). The NPRM was prompted by reports of broken P-clamps on the pressure relief line and the motive flow line in the fuel tanks, and a subsequent determination that certain service information lacked instructions for maintaining appropriate clearance between fuel tubes and their support brackets at wing stations –371.019 and –209.109 in the left-hand fuel tank and wing stations 371.019 and 209.019 in the right-hand fuel tank. This may also have led to incorrect installation of certain Teflon™ sleeves. The NPRM was also prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require inspecting the motive flow line, vent line, and related parts, and adding support or additional clearance if necessary. The NPRM also proposed to require inspection, and replacement or relocation if necessary, of affected Teflon™ sleeves on the vent line, and installation of Teflon™ sleeves on the vent line at additional wing stations. The NPRM further proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitation. The FAA is issuing this AD to address adverse impacts on the integrity of the electrical bonding paths throughout the fuel line, which could lead to arcing between the vent line and airplane structure, and could result in possible fuel tank ignition in the event of a lightning strike. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association, International, (ALPA), who supported the NPRM without change.

The FAA received additional comments from Horizon Air. The following presents the comments received on the NPRM and the FAA's response.

Request To Specify the Latest Revision of the Maintenance Manual

Horizon Air asked that paragraph (j) of the proposed AD be revised to require Bombardier Q400 Dash 8 Maintenance Requirements Manual (MRM), PSM 1–84–7, Revision 9, dated July 10, 2018. Horizon Air stated that paragraph (j) of the proposed AD mandates incorporation of the information specified in (Bombardier) Q400 Dash 8 Temporary Revision (TR) ALI–0192 and TR ALI–0193, both dated April 24, 2018, into Section 4–28 Fuel System Limitation, or Section 5–00 Critical Design Configuration Control Limitations, as applicable, of Part 2, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. Horizon Air added that the TRs have been incorporated and the maintenance manual is currently at Revision 9.

The FAA agrees to clarify. Paragraph (j) of this AD requires operators to incorporate ''the information specified in'' (Bombardier) Q400 Dash 8 TR ALI–0192 and TR ALI–0193, both dated April 24, 2018. The information is the same in both Bombardier Q400 Dash 8 Maintenance Requirements Manual (MRM), PSM 1–84–7, Revision 9, dated July 10, 2018, and TR ALI–0192 and TR ALI–0193. Therefore, if operators incorporate Bombardier Q400 Dash 8 Maintenance Requirements Manual (MRM), PSM 1–84–7, Revision 9, dated July 10, 2018, into the maintenance or inspection program, as applicable, they are in compliance with paragraph (j) of this AD (*i.e.,* since the information specified in Bombardier Q400 Dash 8 Maintenance Requirements Manual (MRM), PSM 1–84–7, Revision 9, dated July 10, 2018, contains the same information as TR ALI–0192 and TR ALI–0193, both dated April 24, 2018, the operator is complying with the requirement to incorporate the information specified in the TRs). The FAA has not changed this AD in this regard.

Changes Made to This AD

The FAA has revised paragraph (h)(4) of this AD to more accurately identify the actions specified in that paragraph as a method of compliance for the actions required by paragraph (h)(2) of this AD.

The FAA has also revised paragraphs (h)(7) and (9) of this AD to update the language providing credit for the actions required by those paragraphs.

These changes have not changed the intent of these paragraphs.

Conclusion

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

Related Service Information Under 1 CFR Part 51

De Havilland Aircraft of Canada Limited has issued the following Bombardier service information.

- Bombardier Service Bulletin 84–28–18, Revision B, dated April 20, 2017, which describes procedures for increasing the hole size in the collector tank partition wall, inspecting the motive flow line for damage, and replacing the associated grommet and motive flow line.
- Bombardier Service Bulletin 84–28–19, Revision D, dated February 16, 2018, which describes procedures for replacing the affected single nut plate brackets and standoffs at the affected left-hand (LH) and right-hand (RH) wing stations on the motive flow line and pressure relief line; inspecting the motive flow line and vent line at certain wing stations in the fuel tanks to ensure that these fuel tubes are adequately supported; and inspecting the fuel tubes to verify that an appropriate clearance has been maintained between the fuel tubes and their support brackets.
- Bombardier Service Bulletin 84–28–24, dated November 27, 2017, which describes procedures for installing Teflon™ sleeves on the vent line at the specified wing stations in the LH and RH fuel tanks, inspecting the Teflon™ sleeve installation on the vent line at those wing stations in the LH and RH fuel tanks, and repositioning the Teflon™ sleeves.
- Bombardier Service Bulletin 84–28–25, dated November 27, 2017, which describes procedures for inspecting the Teflon™ sleeve installation on the vent line in the LH and RH fuel tanks for correct installation and damage, and replacing and repositioning the Teflon™ sleeves.

De Havilland Aircraft of Canada Limited has also issued the following Bombardier service information, which describes procedures for replacing the affected single nut plate brackets and standoffs on the motive flow line and vent line at LH and RH wing stations. These documents are distinct since they apply to different airplane configurations.

- Bombardier Repair Drawing 8/4–28–018, Issue 1, dated October 30, 2017.
- Bombardier Repair Drawing 8/4–28–018, Issue 2, dated June 12, 2018.
- Bombardier Repair Drawing 8/4–28–018, Issue 3, dated June 21, 2018.
- Bombardier Repair Drawing 8/4–28–018, Issue 4, dated July 27, 2018.

De Havilland Aircraft of Canada Limited has also issued the following Bombardier service information, which describes fuel systems limitations. These documents are distinct because they apply to different airplane configurations.

- Q400 Dash 8 Maintenance Requirements Manual (MRM) TR ALI–0192, dated April 24, 2018.
- Q400 Dash 8 MRM TR ALI–0193, dated April 24, 2018.

De Havilland Aircraft of Canada Limited has also issued the following Bombardier service information, which describes new or more restrictive airworthiness limitations for fuel tank systems. These documents are distinct because they apply to different airplane configurations.

- Q400 Dash 8 Airplane Maintenance Manual (AMM) TR 28–145, dated November 21, 2017.
- Q400 Dash 8 AMM TR 28–146, dated November 21, 2017.
- Q400 Dash 8 AMM TR 28–147, dated November 21, 2017.
- Q400 Dash 8 AMM TR 28–148, dated November 24, 2017.
- Q400 Dash 8 AMM TR 28–149, dated November 27, 2017.
- Q400 Dash 8 Maintenance Task Card Manual (MTCM), Maintenance Task Card 000–28–520–704 (Config A01), Revision 42, Amendment 0002, dated November 21, 2017.
- Q400 Dash 8 MTCM, Maintenance Task Card 000–28–620–704 (Config A01), Revision 42, Amendment 0002, dated November 21, 2017.

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.

Costs of Compliance

The FAA estimates that this AD affects 52 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 93 work-hours × $85 per hour = Up to $7,905	Up to $7,862	Up to $15,767	Up to $819,884.

* Table does not include estimated costs for revising the maintenance or inspection program.

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. 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 total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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

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:

2022–17–04 De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–22142; Docket No. FAA–2022–0287; Project Identifier MCAI–2020–01602–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 1, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited (type certificate previously held by Bombardier, Inc.) Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers (S/Ns) 4001, 4003, and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel System; and 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by reports of broken P-clamps on the pressure relief line and the motive flow line in the fuel tanks, and a subsequent determination that certain service information lacked instructions for maintaining appropriate clearance between certain fuel tubes and their support brackets, and may also have led to incorrect installation of certain Teflon™ sleeves. The FAA is issuing this AD to address adverse impacts on the integrity of the electrical bonding paths throughout the fuel line, which could lead to arcing between the vent line and airplane structure, and could result in possible fuel tank ignition in the event of a lightning strike.

(f) Compliance

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

(g) Definition

For the purposes of this AD, ''prohibited tasks'' are defined as any task identified in paragraph (l) of this AD and any procedure or task that specifies fuel tank access using non-manufacturer-approved procedures.

(h) Modifications

(1) For airplanes having S/N 4001 and 4003 through 4525 inclusive: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, increase the hole size in the collector tank partition wall, inspect the motive flow line for damage, and replace the associated grommet and motive flow line, in accordance with paragraph 3.B. of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–18, Revision B, dated April 20, 2017.

(2) For airplanes having S/N 4001 and 4003 through 4533 inclusive, on which Bombardier Service Bulletin 84–28–19, dated August 16, 2016; or Revision A, dated November 4, 2016; has not been done: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, replace the affected single nut plate brackets and standoffs at the affected left-hand (LH) and right-hand (RH) wing stations on the motive flow line and pressure relief line, in accordance with paragraphs 3.B. and 3.C. of Bombardier Service Bulletin 84–28–19, Revision D, dated February 16, 2018.

(3) Accomplishing Bombardier Repair Drawing 8/4–28–018, Issue 1, dated October 30, 2017; Issue 2, dated June 12, 2018; Issue 3, dated June 21, 2018; or Issue 4, dated July 27, 2018; is a method of compliance (MOC) only for the replacement of the affected single nut plate brackets and standoffs on the motive flow line and vent line at LH and RH wing stations Yw ± 209.019 and Yw ± 317.019 required by paragraph (h)(2) of this AD.

(4) Accomplishing Bombardier Repair Drawing 8/4–28–018, Issue 1, dated October 30, 2017; Issue 2, dated June 12, 2018; Issue 3, dated June 21, 2018; or Issue 4, dated July 27, 2018; prior to the effective date of this AD, along with the replacement of the affected single nut plate brackets and standoffs on the motive flow line, vent line, pressure relief line, and scavenge line at LH and RH wing stations Yw ± 209.019, Yw ± 317.019, and Yw ± 371.019, is acceptable for compliance for the actions required by paragraph (h)(2) of this AD.

(5) For airplanes having S/N 4001 and 4003 through 4533 inclusive, on which Bombardier Service Bulletin 84–28–19, dated August 16, 2016; or Revision A, dated November 4, 2016; has been done: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, inspect the motive flow line and vent line at wing stations –371.019 and 371.019 in the LH and RH fuel tanks, respectively, to ensure that these fuel tubes are adequately supported, and inspect the fuel tubes to verify that an appropriate clearance has been maintained between the fuel tubes and their support brackets, in accordance with paragraph 3.B., step (13), and paragraph 3.C., of Bombardier Service Bulletin 84–28–19, Revision D, dated February 16, 2018.

(6) For airplanes having S/N 4001 and 4003 through 4572 inclusive: Within 8,000 flight hours or 48 months after the effective date of this AD, whichever occurs first, install Teflon™ sleeves on the vent line at wing stations Yw ± 209.019 and Yw ± 371.019 in the LH and RH fuel tanks, inspect the Teflon™ sleeve installation on the vent line at wing stations Yw ± 317.019 in the LH and RH fuel tanks, and if any sleeve is incorrectly installed, reposition the Teflon™ sleeves before further flight, in accordance with paragraphs 3.B. and 3.C. of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–24, dated November 27, 2017.

(7) Prior to accomplishment of the actions required by paragraph (h)(6) of this AD, the applicable actions specified in paragraph (h)(2) or (5) of this AD must be done. For airplanes on which Bombardier Modification Summary (ModSum) 4Q113904 has been accomplished prior to accomplishment of the actions required by paragraph (h)(6) of this AD, no further action is required by this paragraph.

(8) For airplanes having S/N 4001 and 4003 through 4575 inclusive: Within 8,000 flight hours or 48 months after the effective date of this AD, whichever occurs first, inspect the Teflon™ sleeve installation on the vent line in the LH and RH fuel tanks for correct installation and damage, and if the sleeves are incorrectly installed or damage is found, before further flight, replace and reposition the Teflon™ sleeves, as applicable, in accordance with paragraphs 3.B. and 3.C. of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–25, dated November 27, 2017.

(9) Prior to accomplishment of the actions required by paragraph (h)(8) of this AD, the applicable actions specified in paragraph (h)(2) or (5) of this AD must be done. For airplanes on which Bombardier ModSum 4Q113904 has been accomplished prior to accomplishment of the actions required by paragraph (h)(8) of this AD, no further action is required by this paragraph.

(i) Verification and Rework for Existing Maintenance Program

(1) For airplanes having S/N 4001 and 4003 through 4575 inclusive, on which the actions

required by paragraph (h)(6) or (8) of this AD have been done before the effective date of this AD, or that have complied with paragraph (m)(4) of this AD: Within 60 days after the effective date of this AD, review the airplane maintenance records to confirm if any of the prohibited tasks (defined in paragraph (g) of this AD) were accomplished during or after compliance with paragraph (h)(6) or (8) of this AD or paragraph (m)(4) of this AD.

(i) If any of the prohibited tasks were accomplished during or after compliance with paragraph (h)(6) or (m)(4) of this AD, or if it cannot be conclusively confirmed that they were not accomplished during or after compliance with paragraph (h)(6) or paragraph (m)(4) of this AD: Within 8,000 flight hours or 48 months after the effective date of this AD, whichever occurs first, do the actions required by paragraph (h)(6) of this AD and, as applicable, comply with the requirements of paragraph (h)(7) of this AD.

(ii) If any of the prohibited tasks were accomplished during or after compliance with paragraph (h)(8) of this AD, or if it cannot be conclusively confirmed that they were not accomplished during or after compliance with paragraph (h)(8) of this AD: Within 8,000 flight hours or 48 months after the effective date of this AD, whichever occurs first, do the actions required by paragraph (h)(8) of this AD and, as applicable, comply with the requirements of paragraph (h)(9) of this AD.

(2) For airplanes having S/N 4573 and subsequent, with an airplane date of manufacture, as identified on the identification plate of the airplane, dated before the effective date of this AD: Within 60 days after the effective date of this AD, review the airplane maintenance records to confirm if any of the prohibited tasks (defined in paragraph (g) of this AD) were accomplished on or after the airplane date of manufacture. If any of the prohibited tasks were accomplished on or after the airplane date of manufacture, or if it cannot be conclusively confirmed that they were not accomplished on or after the airplane date of manufacture, within 8,000 flight hours or 48 months after the effective date of this AD, whichever occurs first, obtain and follow instructions for rework using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Maintenance or Inspection Program Revision

For all airplanes: Within 30 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in (Bombardier) Q400 Dash 8 Maintenance Requirements Manual (MRM) Temporary Revision (TR) ALI–0192 and TR ALI–0193, both dated April 24, 2018. The initial compliance time for doing the tasks in (Bombardier) Q400 Dash 8 MRM TR ALI–0192, dated April 24, 2018, is at the applicable time specified in paragraph (j)(1) or (2) of this AD, whichever occurs later:

(1) Prior to the accumulation of 18,000 total flight cycles or within 108 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, whichever occurs first.

(2) Within 90 days after the effective date of this AD.

(k) 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 (j) 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 AMOC in accordance with the procedures specified in paragraph (n)(1) of this AD.

(l) Maintenance Task Prohibitions

For all airplanes: As of the effective date of this AD, comply with the prohibitions specified in paragraphs (l)(1) and (2) of this AD.

(1) It is prohibited to use the Bombardier airplane maintenance manual (AMM) tasks identified in paragraphs (l)(1)(i) through (v) of this AD, which are specified in the Bombardier Q400 Dash 8 AMM, PSM 1–84–2, Revision 59 dated October 5, 2017, or earlier revisions of these tasks. TRs including these AMM tasks, dated November 27, 2017, or earlier, are also prohibited for use except as specified in paragraph (l)(1)(i) through (v) of this AD.

(i) Task 28–10–00–280–806, Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line, LH and RH (FSL#284000–406), with the exception of (Bombardier) Q400 Dash 8 AMM TR 28–145, dated November 21, 2017.

(ii) Task 28–12–06–000–801, Removal of the Outboard Vent Line, with the exception of (Bombardier) Q400 Dash 8 AMM TR 28–146, dated November 21, 2017.

(iii) Task 28–12–06–400–801, Installation of the Outboard Vent Line, with the exception of (Bombardier) Q400 Dash 8 AMM TR 28–147, dated November 21, 2017.

(iv) Task 28–12–01–000–801, Removal of the Inboard Vent Line, with the exception of (Bombardier) Q400 Dash 8 AMM TR 28–148, dated November 24, 2017.

(v) Task 28–12–01–400–801, Installation of the Inboard Vent Line, with the exception of (Bombardier) Q400 Dash 8 AMM TR 28–149, dated November 27, 2017.

(2) It is prohibited to use the Bombardier Q400 Dash 8 Maintenance Task Card Manual (MTCM) task cards identified in paragraphs (l)(2)(i) and (ii) of this AD that are specified in the Bombardier Q400 Dash 8 MTCM, PSM 1–84–7TC, Revision 42, dated November 5, 2017, or earlier revisions or amendments of these task cards. MTCM task card revisions or amendments dated November 21, 2017, or earlier, are also prohibited for use, except as specified in paragraphs (l)(2)(i) and (ii) of this AD.

(i) Bombardier Q400 Dash 8 MTCM, Maintenance Task Card 000–28–520–704 (Config A01), Revision 42, Amendment 0002, dated November 21, 2017.

(ii) Bombardier Q400 Dash 8 MTCM, Maintenance Task Card 000–28–620–704 (Config A01), Revision 42, Amendment 0002, dated November 21, 2017.

(m) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–28–18, dated April 20, 2016; or Revision A, dated November 14, 2016.

(2) This paragraph provides credit for actions required by paragraph (h)(2) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–28–19, Revision B, dated July 28, 2017; or Revision C, dated September 1, 2017.

(3) This paragraph provides credit for actions required by paragraph (h)(5) of this AD, if those actions were performed before the effective date of this AD using paragraphs 3.A. and 3.C and paragraph 3.B., step (13) of Bombardier Service Bulletin 84–28–19, Revision B, dated July 28, 2017; or Revision C, dated September 1, 2017.

(4) This paragraph provides credit for actions required by paragraph (h)(6) of this AD, if, before the effective date of this AD, the modsums identified in paragraph (m)(4)(i), (ii), or (iii) of this AD were incorporated, and provided the conditions identified in figure 1 to paragraph (m)(4) of this AD have been met.

Figure 1 to paragraph (m)(4) – *Conditions for ModSum Credit*

Condition 1	It can be conclusively confirmed that none of the prohibited tasks (defined in paragraph (g) of this AD) were performed during or after the incorporation of any of the applicable modsums identified in paragraphs (m)(4)(i) through (iii) of this AD.
Condition 2	It can be conclusively confirmed that Bombardier Service Bulletin 84-28-19 or Bombardier ModSum 4Q113904 (any revision) was incorporated prior to the incorporation of any of the applicable modsums identified in paragraphs (m)(4)(i) through (iii) of this AD.
Condition 3	It can be conclusively confirmed that Bombardier ModSum IS4Q2800023 (Revisions A, B, C, D, E, F, G, H, and J), Bombardier ModSum IS4Q2800030 (Revisions A and B), Bombardier ModSum IS4Q2800025 (Revisions A, B, C, D, and E), and Bombardier ModSum IS4Q2800027 (Revisions A and B) were not incorporated during or after the actions required by paragraph (h)(8) of this AD.

(i) Incorporation of both a modsum identified in paragraph (m)(4)(i)(A) of this AD and a modsum identified in paragraph (m)(4)(i)(B) of this AD.

(A) One of the modsums identified in paragraphs (m)(4)(i)(A)(*1*) through (*9*) of this AD.

(*1*) Bombardier ModSum IS4Q2800023, Revision A, dated February 7, 2017.

(*2*) Bombardier ModSum IS4Q2800023, Revision B, dated April 11, 2017.

(*3*) Bombardier ModSum IS4Q2800023, Revision C, dated August 30, 2017.

(*4*) Bombardier ModSum IS4Q2800023, Revision D, dated October 11, 2017.

(*5*) Bombardier ModSum IS4Q2800023, Revision E, dated October 19, 2017.

(*6*) Bombardier ModSum IS4Q2800023, Revision F, dated October 20, 2017.

(*7*) Bombardier ModSum IS4Q2800023, Revision G, dated November 24, 2017.

(*8*) Bombardier ModSum IS4Q2800023, Revision H, dated November 29, 2017.

(*9*) Bombardier ModSum IS4Q2800023, Revision J, dated December 12, 2017.

(B) One of the modsums identified in paragraphs (m)(4)(i)(B)(*1*) through (*5*) of this AD.

(*1*) Bombardier ModSum IS4Q2800025, Revision A, dated October 20, 2017.

(*2*) Bombardier ModSum IS4Q2800025, Revision B, dated November 3, 2017.

(*3*) Bombardier ModSum IS4Q2800025, Revision C, dated November 21, 2017.

(*4*) Bombardier ModSum IS4Q2800025, Revision D, dated November 23, 2017.

(*5*) Bombardier ModSum IS4Q2800025, Revision E, dated November 29, 2017.

(ii) Incorporation of both a modsum identified in paragraph (m)(4)(ii)(A) of this AD and a modsum identified in paragraph (m)(4)(ii)(B) of this AD.

(A) Bombardier ModSum IS4Q2800030, Revision A, dated November 3, 2017; or Bombardier ModSum IS4Q2800030, Revision B, dated November 21, 2017.

(B) One of the modsums identified in paragraphs (m)(4)(ii)(B)(*1*) through (*5*) of this AD.

(*1*) Bombardier ModSum IS4Q2800025, Revision A, dated October 20, 2017.

(*2*) Bombardier ModSum IS4Q2800025, Revision B, dated November 3, 2017.

(*3*) Bombardier ModSum IS4Q2800025, Revision C, dated November 21, 2017.

(*4*) Bombardier ModSum IS4Q2800025, Revision D, dated November 23, 2017,

(*5*) Bombardier ModSum IS4Q2800025, Revision E, dated November 29, 2017.

(iii) Incorporation of a modsum identified in paragraphs (m)(4)(iii)(A) through (C) of this AD.

(A) Bombardier ModSum IS4Q2800027, Revision A, dated October 27, 2017.

(B) Bombardier ModSum IS4Q2800027, Revision B, dated November 9, 2017.

(C) Bombardier ModSum IS4Q2800027, Revision C, dated November 15, 2017.

(n) 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 TCCA; or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2017–05R2, dated September 20, 2019, for related information. This MCAI may be found in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0287.

(2) For more information about this AD, contact Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(3) and (4) of this AD.

(p) Material Incorporated by Reference

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

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

(i) Bombardier Repair Drawing 8/4–28–018, Issue 1, dated October 30, 2017.

(ii) Bombardier Repair Drawing 8/4–28–018, Issue 2, dated June 12, 2018.

(iii) Bombardier Repair Drawing 8/4–28–018, Issue 3, dated June 21, 2018.

(iv) Bombardier Repair Drawing 8/4–28–018, Issue 4, dated July 27, 2018.

(v) Bombardier Service Bulletin 84–28–18, Revision B, dated April 20, 2017.

(vi) Bombardier Service Bulletin 84–28–19, Revision D, dated February 16, 2018.

(vii) Bombardier Service Bulletin 84–28–24, dated November 27, 2017.

(viii) Bombardier Service Bulletin 84–28–25, dated November 27, 2017.

(ix) Q400 Dash 8 Airplane Maintenance Manual (AMM) TR 28–145, dated November 21, 2017.

Note 1 to paragraph (p)(2)(ix): The documents identified in paragraphs (p)(2)(ix) through (xvii) of this AD do not specify a publisher name; these documents were published by Bombardier.

(x) Q400 Dash 8 AMM TR 28–146, dated November 21, 2017.

(xi) Q400 Dash 8 AMM TR 28–147, dated November 21, 2017.

(xii) Q400 Dash 8 AMM TR 28–148, dated November 24, 2017.

(xiii) Q400 Dash 8 AMM TR 28–149, dated November 27, 2017.

(xiv) Q400 Dash 8 Maintenance Task Card Manual (MTCM), Maintenance Task Card 000–28–520–704 (Config A01), Revision 42, Amendment 0002, dated November 21, 2017.

(xv) Q400 Dash 8 MTCM, Maintenance Task Card 000–28–620–704 (Config A01), Revision 42, Amendment 0002, dated November 21, 2017.

(xvi) Q400 Dash 8 Maintenance Requirements Manual (MRM) TR ALI–0192, dated April 24, 2018.

(xvii) Q400 Dash 8 MRM TR ALI–0193, dated April 24, 2018.

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone 855–310–1013 or 647–277–5820; email *thd@dehavilland.com;* internet *dehavilland.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, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on August 4, 2022.

Christina Underwood,

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

[FR Doc. 2022–20805 Filed 9–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2017–C–6238]

Listing of Color Additives Exempt From Certification; Calcium Carbonate

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the color additive regulations to provide for the safe use of calcium carbonate in dietary supplement tablets and capsules. We are taking this action in response to a color additive petition (CAP) submitted by Colorcon, Inc. (Colorcon or petitioner).

DATES: This rule is effective October 28, 2022. Submit either electronic or written objections and requests for a hearing on the final rule by October 27, 2022. See section XI for further information on the filing of objections. The incorporation of reference of certain material listed in this rule is approved by the Director of the Federal Register as of October 27, 2022.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 27, 2022. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic objections in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your objection, that information will be posted on *https://www.regulations.gov.*

• If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper objections submitted to the Dockets Management Staff, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–C–6238 for ''Listing of Color Additives Exempt from Certification; Calcium Carbonate.'' Received objections, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit an objection with confidential information that you do not wish to be made publicly available, submit your objections only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20

and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT:

Christopher Kampmeyer, Office of Food Additive Safety (HFS–255), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740–3835, 240–402–1255; or Alexandra Jurewitz, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notification published in the **Federal Register** on November 20, 2020 (85 FR 74304), we announced that we filed a color additive petition (CAP 0C0318) submitted by Colorcon, Inc., 275 Ruth Rd., Harleysville, PA 19438. The petition proposed to amend the color additive regulations in § 73.70 ''Calcium Carbonate,'' by expanding the permitted uses of calcium carbonate to include use in dietary supplement tablets and capsules, including coatings and printing inks, in amounts consistent with good manufacturing practice.

II. Background

Calcium carbonate (CAS 471–34–1) is a fine, white powder prepared either by grinding naturally occurring limestone or produced synthetically through a precipitation process using heat, water, and carbon dioxide. Calcium carbonate is slightly soluble in water and dissociates into calcium and carbonate ions in an aqueous environment. Calcium is abundant in the human body and is an integral component of bones, teeth, and other biological structures. Carbonate is also present in the human body, *e.g.,* as a critical component of the pH buffering system.

Calcium carbonate is authorized under § 73.70 for use as a color additive in soft and hard candies, mints, and in inks used on the surface of chewing gum, in amounts consistent with good manufacturing practice, except that it may not be used to color chocolate or the chocolate portion of candy, as the standards of identity for chocolate do not provide for the use of color additives. Calcium carbonate is also authorized under § 73.1070 for use as a color additive in drugs; generally, in amounts consistent with good manufacturing practice. Additionally, food grade calcium carbonate and ground limestone (consisting of not less than 94 percent calcium carbonate) are affirmed as generally recognized as safe in 21 CFR 184.1191 and 184.1409, respectively. These two regulations do not include limitations for use in food other than current good manufacturing practice, which our regulations define at § 184.1(b).

The petitioner stated that calcium carbonate complies with the specifications in the 10th edition of the Food Chemicals Codex (FCC 10), which was incorporated by reference into § 73.70 (82 FR 51554, November 7, 2017). Since this regulation became effective, the 13th edition of the FCC (FCC 13) has published. The specifications for calcium carbonate and ground limestone are the same in both FCC 10 and FCC 13. Therefore, we are updating our incorporation by reference to FCC 13. In an email dated May 26, 2022, the petitioner concurred with updating the FCC reference from FCC 10 to FCC 13.

The petitioner concluded that the amount of calcium carbonate petitioned for use in dietary supplement tablets and capsules is self-limiting because the addition of the color additive above a certain level would be uneconomical and/or have adverse consequences on the quality of the dietary supplements. Because the petitioner concluded that the amount of calcium carbonate used as a color additive in dietary supplement tablets and capsules would be self-limiting, they did not propose any tolerances or other limitations. We determined there is no need for a specific upper limit for this use of calcium carbonate (Ref. 1).

III. Safety Evaluation

Under section 721(b)(4) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379e(b)(4)), a color additive may not be listed for a particular use unless the data and information available to FDA establish that the color additive is safe for that use. Our color additive regulations at 21 CFR 70.3(i) define ''safe'' to mean that there is convincing evidence establishing with reasonable certainty that no harm will result from the intended use of the color additive.

To establish with reasonable certainty that a color additive intended for use in foods is not harmful under its intended conditions of use, we consider the projected human dietary exposure to the color additive; the additive's toxicological data; and other relevant information (such as published literature) available to us. We compare the estimated dietary exposure, or estimated daily intake (EDI), of the color additive from all dietary sources to an acceptable daily intake (ADI) level established by toxicological data. The EDI is determined by projections based on the amount of the color additive proposed for use in particular foods and on data regarding the amount consumed from all sources of the color additive. We commonly use the EDI for the 90th percentile consumer of a color additive as a measure of high chronic exposure.

IV. Safety of the Petitioned Use of the Color Additive

A. Dietary Exposure Estimate

The petitioner estimates that the amount of calcium carbonate as a color additive in dietary supplements would not exceed 24 milligrams (mg) per dietary supplement (Ref. 2). The petitioner used data for dietary supplements from the 2011–2014 National Health and Nutrition Examination Survey (NHANES) to estimate dietary exposure to calcium carbonate and elemental calcium from the proposed use. From the NHANES data, the petitioner determined that the U.S. population aged 2 years and older consumes two dietary supplements in a 24-hour period at the mean and five at the 90th percentile. We note that these values could represent two or five of the same or different dietary supplements. In estimating dietary exposure, the petitioner assumed that all dietary supplements consumed would contain calcium carbonate as a color additive and that each dietary supplement consumed contains 24 mg calcium carbonate. This results in a dietary exposure estimate to calcium carbonate of 48 milligrams/person/day (mg/p/d) at the mean and 120 mg/p/d at the 90th percentile. Because calcium carbonate is comprised of 40 percent calcium, the petitioner noted that the maximum dietary exposure to calcium from this use of calcium carbonate is estimated to be 19 mg/p/d at the mean and 48 mg/p/d at the 90th percentile.

The petitioner stated that the maximum amount of calcium carbonate deposited as a printing ink on the surface of the dietary supplement would

be 0.009 mg, which corresponds to approximately 0.004 mg of calcium per dietary supplement. The petitioner concluded that the contribution to the dietary exposure from use in printing ink on the surface of dietary supplements is accounted for in the dietary exposure estimate for the use of calcium carbonate as a color additive at the maximum proposed use level in dietary supplements. FDA concurred with this approach regarding the dietary exposure estimate for calcium and calcium carbonate from the petitioned uses of calcium carbonate (Ref. 2).

FDA previously determined the cumulative estimated dietary intake (CEDI) for calcium from all sources to be 1,150 mg/p/d at the mean and 1,925 mg/p/d at the 90th percentile for the U.S. population aged 2 years and older (Ref. 3). The petitioner summed FDA's mean cumulative dietary exposure to calcium (1,150 mg/p/d) (Ref. 3) with the mean dietary exposure to calcium from the petitioned uses (19 mg/p/d) (Ref. 2) to estimate a revised mean CEDI for elemental calcium from the existing uses as well as the petitioned use of calcium carbonate as a color additive in dietary supplement tablets and capsules, including coatings and printing inks. This resulted in a mean CEDI for calcium of 1,169 mg/p/d for the U.S. population aged 2 years and older. Using an analogous approach, the 90th percentile CEDI for calcium, determined previously (1,925 mg/p/d; Ref. 3), was summed with the 90th percentile value (48 mg/p/d) from the petitioned uses to derive an upper bound 90th percentile CEDI for calcium of <2,000 mg/p/d for the U.S. population aged 2 years and older (Ref. 2).

B. Toxicological Considerations

To support the safety of the petitioned use of calcium carbonate, the petitioner noted that calcium carbonate and ground limestone are affirmed as generally recognized as safe under §§ 184.1191 and 184.1409, respectively. The petition referenced FDA's safety review of calcium carbonate in CAP 6C0307 (Ref. 4), which resulted in FDA's listing of calcium carbonate in § 73.70. Calcium carbonate can dissociate into calcium and carbonate ions in aqueous environments, making those two ions relevant to a safety evaluation of ingested calcium carbonate. Based on carbonate's chemical structure and physiological functions, no further safety analysis of carbonate exposure was necessary (Ref. 4). FDA also considered safety evaluations by the Institute of Medicine (IOM) and safety information resulting from a search of the published literature (Ref. 4). In the IOM's 2011 report on dietary reference intakes for calcium and vitamin D, the IOM updated recommended tolerable upper limits (ULs) for calcium ranging from 2,000 to 3,000 mg/p/d for the U.S. population aged 1 year and older, based on a comprehensive literature review (Ref. 5). The IOM considered the UL as the highest average daily exposure that is likely to pose no risk of adverse effects to almost all individuals in the general population (Ref. 5).

We conducted a search of the literature from January 2016 until December 2021 to identify publications germane to our safety evaluation using several different databases (*i.e.,* PubMed, Web of Science and ToxNet). We reviewed the articles found in this search and other relevant studies available to FDA on the safety of calcium and calcium carbonate (Ref. 6). We also noted that in our previous safety review (Ref. 4) we determined that no further safety analysis of carbonate was necessary, based on its chemical structure and physiological functions (Ref. 6).

Based on our review, we considered the UL established by IOM for calcium (2,000 mg/p/d) to remain an appropriate benchmark for assessing the safety of dietary exposure to calcium from the petitioned use of calcium carbonate (Ref. 6). For the U.S. population aged 2 years and older, the dietary exposure estimate at the 90th percentile is below the IOM's UL of 2,000 mg/p/d. Additionally, the body of literature on calcium carbonate and calcium does not present evidence of safety concerns at the expected dietary exposure (Ref. 6). Based on our review of the recently published literature, and because the 90th percentile dietary exposure to calcium from all dietary sources, including the petitioned uses of calcium carbonate, is less than the UL determined by IOM, the dietary exposure to calcium from the proposed use of calcium carbonate as a color additive in dietary supplement tablets and capsules, including coatings and printing inks, does not raise safety concerns (Ref. 6). Therefore, we conclude that there is a reasonable certainty of no harm from this proposed use as a color additive.

V. Incorporation by Reference

FDA is incorporating by reference the monographs for calcium carbonate and limestone, ground from the Food Chemicals Codex, 13th ed., 2022, which was approved by the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may purchase a copy of the material from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852, 1–800–227–8772, *https://www.usp.org.* You may inspect a copy at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, between 9 a.m. and 4 p.m., Monday through Friday. Because materials incorporated by reference will no longer be available at FDA's main library, we are revising § 73.70 to update the location where referenced materials cited in FDA regulations can be found; the new location will be at the Dockets Management Staff.

The FCC monographs establish a standard for purity and identity for calcium carbonate. The monographs provide specifications and analytical methodologies used to identify the substance and establish acceptable purity criteria. The current color additive regulation for the use of calcium carbonate (§ 73.70) indicates that the additive must meet the specifications in the FCC 10. The most current version of the FCC is the FCC 13, and the specifications for calcium carbonate in FCC 13 are identical to those in FCC 10. Therefore, we are amending § 73.70 by adopting, and incorporating by reference, the specifications for calcium carbonate and ground limestone in FCC 13 in place of FCC 10.

VI. Conclusion

Based on the data and information in the petition and other available relevant information, we conclude that the petitioned use of calcium carbonate for use as a color additive in dietary supplement tablets and capsules, including coatings and printing inks, is safe. We further conclude that the color additive will achieve its intended technical effect and is suitable for the petitioned use. Therefore, we are amending the color additive regulations in part 73 to provide for the safe use of this color additive as set forth in this document. In addition, based on the factors in 21 CFR 71.20(b), we conclude that batch certification of calcium carbonate, proposed for use as a color additive in dietary supplement tablets and capsules, including coatings and printing inks, is not necessary for the protection of public health (Ref. 1).

VII. Public Disclosure

In accordance with § 71.15, the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure

(see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, we will delete from the documents any materials that are not available for public disclosure.

VIII. Analysis of Environmental Impact

As stated in the November 20, 2020, **Federal Register** notification of filing, the petitioner claimed that this action is categorically excluded under § 25.32(k) because the substance is intended to remain in food through ingestion by consumers and is not intended to replace macronutrients in food. We further stated that if FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. We did not receive any new information or comments regarding this claim of categorical exclusion. We considered the petitioner's claim of categorical exclusion and determined that this action is categorically excluded under § 25.32(k). Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Section 301(ll) of the FD&C Act

Our review of this petition was limited to section 721 of the FD&C Act. This final rule is not a statement regarding compliance with other sections of the FD&C Act. For example, section 301(ll) of the FD&C Act (21 U.S.C. 331(ll)) prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exemptions in section 301(ll)(1) to (4) of the FD&C Act applies. In our review of this petition, we did not consider whether section 301(ll) of the FD&C Act or any of its exemptions apply to food containing this color additive. Accordingly, this final rule should not be construed to be a statement that a food containing this color additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(ll) of the FD&C Act. Furthermore, this language is included in all color additive final rules that pertain to food and therefore should not be construed to be a statement of the likelihood that section 301(ll) of the FD&C Act applies.

XI. Objections

This rule is effective as shown in the **DATES** section, except as to any provisions that may be stayed by the filing of proper objections. If you will be adversely affected by one or more provisions of this regulation, you may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

Any objections received in response to the regulation may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov.* We will publish notice of the objections that we have received or lack thereof in the **Federal Register**.

XII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

*1. Memorandum from N. Hepp, Color Technology Branch, Office of Cosmetics and Colors, Center for Food Safety and Applied Nutrition (CFSAN), FDA to C. Kampmeyer, Division of Food Ingredients (DFI), Office of Food Additive Safety (OFAS), CFSAN, FDA, May 11, 2022.

*2. Memorandum from D. Doell, Chemistry Review Team, DFI, OFAS, CFSAN, FDA to C. Kampmeyer, DFI, OFAS, CFSAN, FDA, May 11, 2022.

*3. Memorandum from D. Doell, Division of Petition Review (DPR), OFAS, CFSAN, FDA to J. Kidwell, DPR, OFAS, CFSAN, FDA, February 16, 2017.

*4. Memorandum from T.S. Thurmond, DPR, OFAS, CFSAN, FDA to J. Kidwell, DPR, OFAS, CFSAN, FDA, February 17, 2017.

5. Committee to Review Dietary Reference Intakes for Vitamin D and Calcium, Food and Nutrition Board, Institute of Medicine, "Dietary Reference Intakes for Calcium and Vitamin D," National Academies Press, Washington, DC 2011. Available at *https://www.nap.edu/read/13050/chapter/1* (accessed July 27, 2021).

*6. Memorandum from R. Chanderbhan, Toxicology Review Team, DFI, OFAS, CFSAN, FDA to C. Kampmeyer, DFI, OFAS, CFSAN, FDA, May 11, 2022.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Incorporation by reference, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

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

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Amend § 73.70 by revising paragraphs (b) and (c) and adding paragraph (f) to read as follows:

§ 73.70 Calcium carbonate.

* * * * *

(b) *Specifications.* Calcium carbonate must meet the specifications given in calcium carbonate (FCC 13) and limestone, ground (FCC 13).

(c) *Uses and restrictions.* Calcium carbonate may be safely used in amounts consistent with good manufacturing practice to color dietary supplement tablets and capsules (including coatings and printing inks), soft and hard candies and mints, and in inks used on the surface of chewing gum, except that it may not be used to color chocolate for which standards of identity have been promulgated under section 401 of the Federal Food, Drug,

and Cosmetic Act unless added color is authorized by such standards.

* * * * *

(f) *Incorporation by reference.* Material listed in this paragraph (f) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Food and Drug Administration and at the National Archives and Records Administration (NARA). Contact the Food and Drug Administration between 9 a.m. and 4 p.m., Monday through Friday at: Dockets Management Staff, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500. For information on the availability of this material at NARA, email: *fr.inspection@nara.gov;* website: *www.archives.gov/federal-register/cfr/ibr-locations.html.* You may obtain the material from the U.S. Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852; website: *www.usp.org.*

(1) Limestone, Ground, *Food Chemicals Codex,* 13th edition, effective June 1, 2022 (FCC 13).

(2) Calcium Carbonate, *Food Chemicals Codex,* 13th edition, effective June 1, 2022 (FCC 13).

Dated: September 20, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–20819 Filed 9–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Publication of Iranian Transactions and Sanctions Regulations Web General License M and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing three general licenses (GLs) issued in the Iranian Transactions and Sanctions program: GLs M, M–1, and M–2, each of which was previously made available on OFAC's website.

DATES: GL M–2 was issued on August 25, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On October 29, 2020, OFAC issued GL M to authorize certain transactions otherwise prohibited by the Iranian Transaction and Sanctions Regulations, 31 CFR part 560. GL M had an expiration date of September 1, 2021. On August 24, 2021, OFAC issued GL M–1, which replaced and superseded GL M and had an expiration date of September 1, 2022. On August 25, 2022, OFAC issued GL M–2, which replaced and superseded GL M–1 and has an expiration date of September 1, 2023. All three GLs were made available on OFAC's website (*www.treas.gov/ofac*) at the time of publication. The text of GLs M, M–1, and M–2 is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Iranian Transactions and Sanctions Regulations

31 CFR Part 560

GENERAL LICENSE M

Authorizing the Exportation of Certain Graduate Level Educational Services and Software

(a) Except as provided in paragraph (c) of this general license, accredited graduate and undergraduate degree-granting academic institutions located in the United States (collectively, ''U.S. academic institutions''), including their contractors, are authorized through 12:01 a.m. eastern daylight time, September 1, 2021, to engage in the following activities with respect to Iranian students described in paragraph (b):

(1) *Online Educational Services.* The provision of online educational services related to graduate educational courses, provided that the courses are the equivalent of courses ordinarily required for the completion of graduate degree programs in the humanities, social sciences, law, or business, or are introductory science, technology, engineering, or mathematics courses ordinarily required for the completion of graduate degree programs in the humanities, social sciences, law, or business, and participation in all activities related to the provision of such online educational services to Iranian students described in paragraph (b).

(2) *Exportation of Software.* The exportation of software to Iranian students described in paragraph (b) in order to facilitate participation in the activities authorized in (i) paragraph (a) of this general license or (ii) paragraph (b)(1)(iii) of Iran General License G, provided such software is designated as EAR99 under the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR), or constitutes information or software not subject to the EAR pursuant to 15 CFR 734.3(b)(3).

(b) Iranian students referred to in paragraph (a) are individuals located in Iran, or located outside Iran but who are ordinarily resident in Iran, who are eligible for non-immigrant classification under categories F (students) or M (non-academic students), and have been granted a non-immigrant visa by the U.S. State Department, but are not physically present in the United States due to the COVID–19 pandemic.

(c) This general license does not authorize the exportation or reexportation of any services or software to the Government of Iran or any other person whose property and interests in property are blocked pursuant to 31 CFR chapter V.

Note 1 to General License M: The importation from Iran and the exportation to Iran of information or informational materials, as defined in 31 CFR 560.315, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of 31 CFR part 560. *See* 31 CFR 560.210(c).

Note 2 to General License M: U.S. persons are authorized to engage in the exportation of certain educational services under Iran General License G, which was issued pursuant to 31 CFR part 560, and to export, reexport, and provide certain services, software, and hardware incident to personal communications under Iran General License D–1, which was issued pursuant to 31 CFR part 560.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: October 29, 2020.

OFFICE OF FOREIGN ASSETS CONTROL

Iranian Transactions and Sanctions Regulations

31 CFR Part 560

GENERAL LICENSE M–1

Authorizing the Exportation of Certain Graduate Level Educational Services and Software

(a) Except as provided in paragraph (c) of this general license, accredited graduate and undergraduate degree-granting academic institutions located in the United States (collectively, ''U.S. academic institutions''), including their contractors, are authorized through 12:01 a.m. eastern daylight time, September 1, 2022, to engage in the following activities with respect to Iranian students described in paragraph (b):

(1) *Online Educational Services.* The provision of online educational services related to graduate educational courses, provided that the courses are the equivalent of courses ordinarily required for the completion of graduate degree programs in the humanities, social sciences, law, or

business, or are introductory science, technology, engineering, or mathematics courses ordinarily required for the completion of graduate degree programs in the humanities, social sciences, law, or business, and participation in all activities related to the provision of such online educational services to Iranian students described in paragraph (b).

(2) *Exportation of Software.* The exportation of software to Iranian students described in paragraph (b) in order to facilitate participation in the activities authorized in (i) paragraph (a) of this general license or (ii) paragraph (b)(1)(iii) of Iran General License G, provided such software is designated as EAR99 under the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR), or constitutes information or software not subject to the EAR pursuant to 15 CFR 734.3(b)(3).

(b) Iranian students referred to in paragraph (a) are individuals located in Iran, or located outside Iran but who are ordinarily resident in Iran, who are eligible for non-immigrant classification under categories F (students) or M (non-academic students), and have been granted a non-immigrant visa by the U.S. State Department, but are not physically present in the United States due to the COVID–19 pandemic.

(c) This general license does not authorize the exportation or reexportation of any services or software to the Government of Iran or any other person whose property and interests in property are blocked pursuant to 31 CFR chapter V.

(d) Effective August 24, 2021, General License M, dated October 29, 2020, is replaced and superseded in its entirety by this General License M–1.

Note 1 to General License M–1. The importation from Iran and the exportation to Iran of information or informational materials, as defined in 31 CFR 560.315, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of 31 CFR part 560. *See* 31 CFR 560.210(c).

Note 2 to General License M–1. U.S. persons are authorized to engage in the exportation of certain educational services under Iran General License G, which was issued pursuant to 31 CFR part 560, and to export, reexport, and provide certain services, software, and hardware incident to personal communications under Iran General License D–1, which was issued pursuant to 31 CFR part 560.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: August 24, 2021.

OFFICE OF FOREIGN ASSETS CONTROL

Iranian Transactions and Sanctions Regulations

31 CFR Part 560

GENERAL LICENSE M–2

Authorizing the Exportation of Certain Graduate Level Educational Services and Software

(a) Except as provided in paragraph (c) of this general license, accredited graduate and undergraduate degree-granting academic institutions located in the United States (collectively, ''U.S. academic institutions''), including their contractors, are authorized through 12:01 a.m. eastern daylight time, September 1, 2023, to engage in the following activities with respect to Iranian students described in paragraph (b):

(1) *Online Educational Services.* The provision of online educational services related to graduate educational courses, provided that the courses are the equivalent of courses ordinarily required for the completion of graduate degree programs in the humanities, social sciences, law, or business, or are introductory science, technology, engineering, or mathematics courses ordinarily required for the completion of graduate degree programs in the humanities, social sciences, law, or business, and participation in all activities related to the provision of such online educational services to Iranian students described in paragraph (b).

(2) *Exportation of Software.* The exportation of software to Iranian students described in paragraph (b) in order to facilitate participation in the activities authorized in (i) paragraph (a) of this general license or (ii) paragraph (b)(1)(iii) of Iran General License G, provided such software is designated as EAR99 under the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR), or constitutes information or software not subject to the EAR pursuant to 15 CFR 734.3(b)(3).

(b) Iranian students referred to in paragraph (a) are individuals located in Iran, or located outside Iran but who are ordinarily resident in Iran, who are eligible for non-immigrant classification under categories F (students) or M (non-academic students), and have been granted a non-immigrant visa by the U.S. State Department, but are not physically present in the United States due to the COVID–19 pandemic.

(c) This general license does not authorize the exportation or reexportation of any services or software to the Government of Iran or any other person whose property and interests in property are blocked pursuant to 31 CFR chapter V.

(d) Effective August 25, 2022, General License M–1, dated August 24, 2021, is replaced and superseded in its entirety by this General License M–2.

Note 1 to General License M–2. The importation from Iran and the exportation to Iran of information or informational materials, as defined in 31 CFR 560.315, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of 31 CFR part 560. *See* 31 CFR 560.210(c).

Note 2 to General License M–2. U.S. persons are authorized to engage in the exportation of certain educational services under Iran General License G, which was issued pursuant to 31 CFR part 560, and to export, reexport, and provide certain services, software, and hardware incident to personal communications under Iran General License D–1, which was issued pursuant to 31 CFR part 560.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: August 25, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–20418 Filed 9–26–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 560 and 594

Publication of Iranian Transactions and Sanctions Regulations and Global Terrorism Sanctions Regulations Web General Licenses 8 and 8A

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing two general licenses (GLs) issued pursuant to the Iranian Transactions and Sanctions Regulations and Global Terrorism Sanctions Regulations: GLs 8 and 8A, each of which previously was made available on OFAC's website.

DATES: GL 8 was issued on February 27, 2020. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On February 27, 2020, OFAC issued GL 8 to authorize certain transactions otherwise prohibited by the Iranian Transactions and Sanctions Regulations, 31 CFR part 560, and the Global

Terrorism Sanctions Regulations, 31 CFR part 594. At the time of issuance, OFAC made GL 8 available on its website. On October 26, 2020, OFAC issued GL 8A, which replaced and superseded GL 8, and made GL 8A available on its website. The text of GLs 8 and 8A is provided below:

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

Iranian Transactions and Sanctions Regulations

31 CFR Part 560

GENERAL LICENSE NO. 8

Authorizing Certain Humanitarian Trade Transactions Involving the Central Bank of Iran

(a) Except as provided in paragraph (b) of this general license, the following transactions and activities involving the Central Bank of Iran (CBI) that are prohibited under the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), or the Iranian Transactions and Sanctions Regulations, 31 CFR part 560 (ITSR), are authorized:

(i) transactions and activities described in the general licenses set forth at §§ 560.530(a) and (b), 560.532, and 560.533 of the ITSR;

(ii) transactions and activities ordinarily incident and necessary to transactions described in paragraph (a)(i) of this general license that are authorized under § 560.516 of the ITSR or consistent with § 560.405 of the ITSR; and

(iii) transactions and activities authorized under any specific license issued pursuant to §§ 560.530, 560.532, or 560.533 of the ITSR.

Note 1 to paragraph (a): Paragraph (a) of this general license does not authorize the exportation or reexportation of goods set forth in 31 CFR 560.530(a)(1)(ii) to the CBI, as set forth in § 560.530(a)(1) of the ITSR.

Note 2 to paragraph (a): Section 560.530(d)(5) of the ITSR excludes from the scope of § 560.530 any transaction or dealing with a person whose property and interests in property are blocked pursuant to 31 CFR part 594, among other authorities. Paragraph (a) of this general license authorizes certain transactions involving the CBI that, due to the exclusion at § 560.530(d)(5), are otherwise prohibited by the ITSR. Any transactions otherwise prohibited by the ITSR must be separately licensed pursuant to the ITSR.

(b) This general license does not authorize any transactions or activities that are otherwise prohibited by the GTSR, Executive Order 13224 of September 23, 2001, as amended by Executive Order 13886 of September 9, 2019, or by any other part of 31 CFR chapter V.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: February 27, 2020.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

Iranian Transactions and Sanctions Regulations

31 CFR Part 560

GENERAL LICENSE NO. 8A

Authorizing Certain Humanitarian Trade Transactions Involving the Central Bank of Iran or the National Iranian Oil Company

(a) Except as provided in paragraph (b) of this general license, the following transactions and activities involving the Central Bank of Iran (CBI), the National Iranian Oil Company (NIOC), or any entity in which NIOC owns, directly or indirectly, a 50 percent or greater interest, that are prohibited under the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), or the Iranian Transactions and Sanctions Regulations, 31 CFR part 560 (ITSR), are authorized:

(i) transactions and activities described in the general licenses set forth at §§ 560.530(a) and (b), 560.532, and 560.533 of the ITSR;

(ii) transactions and activities ordinarily incident and necessary to transactions described in paragraph (a)(i) of this general license that are authorized under § 560.516 of the ITSR or consistent with § 560.405 of the ITSR; and

(iii) transactions and activities authorized under any specific license issued pursuant to §§ 560.530, 560.532, or 560.533 of the ITSR.

Note to paragraph (a): Section 560.530(d)(5) of the ITSR excludes from the scope of § 560.530 any transaction or dealing with a person whose property and interests in property are blocked pursuant to the GTSR, among other authorities. Paragraph (a) of this general license authorizes certain transactions involving the CBI, NIOC, or any entity in which NIOC owns, directly or indirectly, a 50 percent or greater interest, that, due to the exclusion at § 560.530(d)(5), would otherwise be prohibited by the ITSR. Any transactions still prohibited by the ITSR, notwithstanding this general license, must be separately licensed pursuant to the ITSR.

(b) This general license does not authorize:

(i) the exportation or reexportation of goods set forth in 560.530(a)(1)(ii) of the ITSR to the CBI, NIOC, or any entity in which NIOC owns, directly or indirectly, a 50 percent or greater interest, as set forth in § 560.530(a)(1) of the ITSR; or

(ii) any transactions or activities that are otherwise prohibited by the ITSR, the GTSR, Executive Order 13224 of September 23, 2001, as amended by Executive Order 13886 of September 9, 2019, or any other part of 31 CFR chapter V.

(c) Effective October 26, 2020, General License No. 8, dated February 27, 2020, is replaced and superseded in its entirety by this General License No. 8A.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: October 26, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–20417 Filed 9–26–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0755]

Safety Zone; Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for fireworks at The Wharf DC on October 4, 2022, to provide for the safety of life on navigable waterways during this event. Our regulation for Fireworks Displays within the Fifth Coast Guard District identifies the safety zone for this event in Washington, DC. During the enforcement period, the operator of any vessel in the safety zone must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation in 33 CFR 165.506 will be enforced for the location identified as item (1) of table 2 to paragraph (h)(2) from 8 p.m. until 10 p.m. on October 4, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST2 Courtney Perry, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2596, email *Courtney.E.Perry@uscg.mil.* C

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone regulation 33 CFR 165.506 for fireworks at The Wharf DC from 8 p.m. to 10 p.m. on October 4, 2022. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for Fireworks Displays within the Fifth Coast Guard District, § 165.506, specifies the location of the safety zone for the fireworks show in item (1) of table 2 to paragraph (h)(2). The safety zone encompasses portions of the Washington Channel in the Upper Potomac River. As reflected in § 165.506(d), during the enforcement period, if you are the operator of a vessel in the safety zone you must

comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: September 21, 2022.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2022–20904 Filed 9–26–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE–2021–0006]

Eagle River From Bravo Bridge to Eagle Bay in Knik Arm, Richardson Training Area on Joint Base Elmendorf-Richardson, Alaska; Restricted Area

AGENCY: U.S. Army Corps of Engineers, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending its restricted area regulations to establish a restricted area within the Richardson Training Area on Joint Base Elmendorf-Richardson (JBER), at Eagle River. The restricted area is located in the area of navigable waters extending from the span of Bravo Bridge across Eagle River to the mouth of Eagle River at Knik Arm (Eagle River channel). Establishment of the restricted area will prevent all vessels, watercraft, and individuals from entering an active military range munitions impact area at all times, except for authorized vessels, watercraft, and individuals engaged in support of military training and management activities. The restricted area will avoid inadvertent entry into the impact area during live-fire weapons training, exposure to hazardous noise, and inadvertent encounters with unexploded ordnance.

DATES: *Effective date:* October 27, 2022.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (David Olson), 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Division, at *david.b.olson@usace.army.mil* or 202–761–4922.

SUPPLEMENTARY INFORMATION: In response to a request by the United States Army Alaska (USARAK) G3/5/7 Training and Support Activity-Alaska (TSA–AK), and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending its restricted area regulations to establish a permanent restricted area in the Eagle River on JBER, Alaska. The restricted area will allow the USARAK Commander to prevent all vessels, watercraft, and individuals from entering the munitions impact area of an active military range (*i.e.,* Richardson Training Area, JBER) at all times, except for authorized vessels, watercraft, and individuals engaged in support of military training and management activities. This restricted area is established as a precautionary measure to protect the public from inadvertently entering the impact area during live-fire weapons training, encountering hazardous noise in the vicinity of the impact area, and encountering unexploded ordnance.

The proposed rule was published in the **Federal Register** on January 21, 2022 (87 FR 3257). The regulations.gov docket number was COE–2021–0006. Concurrently, the Alaska District issued a local public notice for the proposed restricted area. No comments were received in response to the proposed rule or the local public notice.

Procedural Requirements

a. *Regulatory Planning and Review.* This final rule is not a ''significant regulatory action'' under Executive Order 12866 (58 FR 51735, October 4, 1993) and it was not submitted to the Office of Management and Budget for review.

b. *Review Under the Regulatory Flexibility Act.* This final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments).

The Corps certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. The restricted area is necessary to protect public safety. The restricted area will prevent all vessels, watercraft, and individuals from entering the munitions impact area of an activity military range at all times, except for authorized vessels, watercraft, and individuals engaged in support of military training and management activities. Small entities can continue to utilize navigable waters outside of the restricted area. The Corps has determined that the restricted area would have practically no economic impact on the public, any anticipated navigational hazard, or interference with existing waterway traffic. After considering the economic impacts of this restricted area regulation on small entities, I certify that this final rule would not have a significant impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* An environmental assessment (EA) has been prepared for the establishment of this restricted area. The Corps has concluded that the establishment of the restricted area will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. The final EA and Finding of No Significant Impact may be reviewed at the Alaska District Office, 2204 3rd Street, JBER, Alaska 99506.

d. *Unfunded Mandates Act.* This final rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. The Corps has also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this final rule.

e. *Congressional Review Act.* The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. The Corps will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons discussed in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.1305 to read as follows:

§ 334.1305 Eagle River from Bravo Bridge to its mouth at Eagle Bay in Knik Arm, Richardson Training Area on Joint Base Elmendorf-Richardson, Alaska; restricted area.

(a) *Restricted area.* The restricted area consists of navigable waters within an area defined as beginning a point on shore at latitude 61°19′40.1″ N, longitude 149°44′20.336″ W; thence easterly to latitude 61°19′41.59″ N, longitude 149°44′6.825″ W; 3.06 nautical miles southerly along the river to latitude 61°18′40.13″ N, longitude 149°41′16.12″ W; thence southerly to latitude 61°18′38.404″ N, to longitude 149°41′14.73″ W. The datum for these coordinates is North American Datum of 1983 (NAD–83).

(b) *The regulation.* The restricted area is permanently closed for public use at all times. No persons, watercraft, or vessels shall enter or remain in the area except for those authorized by the enforcing agency.

(c) *Enforcement.* The regulations in this section will be enforced by the Commander, United States Army-Alaska.

Thomas P. Smith,

Chief, Operations and Regulatory Division.

[FR Doc. 2022–20856 Filed 9–26–22; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0295; FRL–10162–02–R5]

Air Plan Approval; Michigan; Revisions to Part 1 and 2 Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to Michigan Air Pollution Control Rules Part 1 Definitions, and Part 2 Air Use Approval for inclusion in the Michigan State Implementation Plan (SIP). Additionally, EPA is removing rules from the SIP that are part of Michigan's title V Renewable Operating Permit program, and rules that have been moved to other sections of the Michigan Administrative Code and approved into the Michigan SIP.

DATES: This direct final rule is effective November 28, 2022, unless EPA receives adverse comments by October 27, 2022. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0295 at *https://www.regulations.gov* or via email to *Damico.genevieve@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Environmental Engineer, Air Permits Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671, *Blathras.constantine@epa.gov*. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

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

I. Background

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires that the SIP include a program to provide for the ''regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved.'' This includes a program for permitting construction and modification of both major and minor sources that the state deems necessary to protect air quality. The State of Michigan's minor source permit to install rules are contained in Part 2, Air Use Approval, R. 336.1201 to R. 336.1299 of the Michigan Administrative Code. Changes to the Part 2 rules were submitted on November 12, 1993, May 16, 1996, April 3, 1998, September 2, 2003, March 24, 2009, and February 28, 2017. EPA approved changes to the Part 2 rules most recently in a final approval dated August 31, 2018 (83 FR 44485). The Michigan Administrative Code at Part 1, General Provisions, R. 336.1101 to R. 336.1128, contains the definitions of terms used in the Michigan code.

EPA is approving revisions to Michigan's Part 1. Definitions, and Part 2. Air Use Approval for inclusion in the Michigan SIP. The following Michigan Air Pollution Control Rules are being added or revised: R 336.1101(q), R 336.1103(aa), R 336.1201a, R 336.1202–1203, R 336.1206–1207, R 336.1209, R 336.1214a, R 336.1219(1), R 336.1240–1241, R 336.1278, R 336.1285, and R 336.1291.

The Part 1 definition revisions include new or revised definitions for the following, R 336.1101(q) ''Aqueous based parts washer'', and R 336.1103(aa) ''cold cleaner''.

The Part 2 modifications consist of wording changes made to help clarify the air use approval rules, and to update references and terminology. Other changes include new and modified definitions of phrases, new timeframes for processing air use permits, and two new exemptions from the permitting program for small sources.

EPA is removing the Michigan Air Pollution Control Rules R 336.1212 ''Administratively complete applications; insignificant activities; streamlining applicable requirements; emissions reporting and fee calculations'', R 336.1216 ''Modifications to renewable operating permits'', R 336.1219(2) ''Amendments for change of ownership or operational

control'', R 336.1220 (rescinded), and R 336.1299 (rescinded) from the Michigan SIP.

The rescinded rules have been moved to other sections in the Michigan Administrative Code where they have already been approved into the Michigan SIP and rescinded from the original Part 2 location. This action completes the transition process for these rescinded rules.

The other Part 2 rules removed from the Michigan SIP by this action do not address the requirements related to attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) under Section 110 of the CAA. EPA has determined that these rules were erroneously incorporated into the SIP. These rules instead address the requirements under title V of the CAA for operating permit programs. EPA fully approved Michigan's title V Renewable Operating Permit Program on November 10, 2003 (68 FR 63735) to implement its program. Since these rules do not address the requirements related to attainment and maintenance of the NAAQS under Section 110 of the CAA and have been approved as part of the title V program approval, EPA will remove them from this section of the Michigan SIP.

EPA proposed to rescind rule R 336.1220 in a February 6, 2013 (78 FR 8485), action (in addition to approval of revisions to Michigan rules in Parts 1 and 19). EPA did not receive any comments on that proposal and published a final action on December 16, 2013 (78 FR 76064).

As part of the SIP revision request, Michigan submitted a 110(l) demonstration for each of the proposed revisions to the SIP. Section 110(l) of the CAA governs the submittal of SIP revisions as part of Attachment E of its submittal. It states, ''Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning the attainment and reasonable further progress (as defined by 7501 of this title), or any other applicable requirement of this chapter.'' The 110(l) demonstration in the SIP revision request adequately addresses this requirement for each rule revision, and the revisions should cause minimal to no impact on the emissions of any source, will have no effect on Michigan's National Ambient Air Quality Standards attainment status, or any backsliding on achieved improvements. The revision for the removed and rescinded rules pertain to the Michigan Title V renewable operating permit program which has already been approved.

II. What action is EPA taking?

EPA is approving revisions to Michigan's Part 1 and Part 2 regulations. Specifically, EPA is approving revisions to Michigan Air Pollution Control Rules R 336.1101, R 336.1103, R 336.1201a, R 336.1202, R 336.1203, R 336.1206, R 336.1207, R 336.1209, R 336.1214a, R 336.1219, R 336.1240, R 336.1241, R 336.1278, and R 336.1291, effective December 20, 2016, and R 336.1285, effective January 2, 2019. EPA is also removing Michigan Air Pollution Control Rules R336.1212, R 336.1216, and R 336.1299 from the SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective November 28, 2022, without further notice unless we receive relevant adverse written comments by October 27, 2022. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective November 28, 2022.

III. Incorporation by Reference

In this rule, 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 the Michigan Regulations described in Section I of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 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 the SIP, have been incorporated by reference by EPA into that plan, 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.[1]

Also in this document, as described in Section I of this preamble and the amendments to 40 CFR part 52 set forth below, EPA is removing provisions of the EPA-Approved Michigan Regulations from the Michigan SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

IV. 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 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);

[1] 62 FR 27968 (May 22, 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 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).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 19, 2022.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated 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.*

■ 2. In § 52.1170, the table in paragraph (c) is amended:

■ a. Under ''Part 1. General Provisions'' by revising the entries for R 336.1101 and R 336.1103; and

■ b. Under ''Part 2. Air Use Approval'' by:

■ i. Revising the entries for R 336.1201a, R 336.1202, R 336.1203, R 336.1206, R 336.1207, and R 336.1209;

■ ii. Removing the entry for R 336.1212;

■ iii. Adding the entry for R 336.1214a in numerical order;

■ iv. Removing the entry for R 336.1216;

■ v. Revising the entries for R 336.1219, R 336.1240, R 336.1241, R 336.1278, and R 336.1285;

■ vi. Adding the entry for R 336.1291 in numerical order; and

■ vii. Removing the entry for R 336.1299.

The revisions and additions read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*
		Part 1. General Provisions		
R 336.1101	Definitions; A	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	All except for (a) Act and (h) Air pollution.
*	*	*	*	*
R 336.1103	Definitions; C	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	
*	*	*	*	*
		Part 2. Air Use Approval		
*	*	*	*	*
R 336.1201a	General permits to install	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	
R 336.1202	Waivers of approval	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	
R 336.1203	Information required	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*
R 336.1206	Processing of applications for permits to install.	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	
R 336.1207	Denial of permits to install	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	
R 336.1209	Use of old permits to limit potential to emit.	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	
R 336.1214a	Consolidation of permits to install within renewable operating. permit	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	
R 336.1219	Amendments for change of ownership or operational control.	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	
R 336.1240	Required air quality models	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	
R 336.1241	Air quality modeling demonstration requirements.	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	
R 336.1278	Exclusion from exemption	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	
*	*	*	*	*
R 336.1285	Permit to install exemptions; miscellaneous.	1/2/2019	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	
*	*	*	*	*
R 336.1291	Permit to install exemptions; emission units with "de minimis" emissions.	12/20/2016	9/27/2022, [INSERT **FEDERAL REGISTER** CITATION].	All except for R 336.1291(2)(a) through (d) and non-criteria pollutants listed in Table 23.
*	*	*	*	*

* * * * *

[FR Doc. 2022–20621 Filed 9–26–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 433

[CMS–9912–N]

RIN 0938–AU35

Medicaid Program; Temporary Increase in Federal Medical Assistance Percentage (FMAP) in Response to the COVID–19 Public Health Emergency (PHE); Reopening of Public Comment Period

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Interim final rule; reopening of public comment period.

SUMMARY: On November 6, 2020, CMS published an interim final rule with request for comments (IFR) entitled ''Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency.'' The IFR set forth certain requirements in CMS regulations that States must follow in order to claim a temporary increase in Federal matching funds for their Medicaid programs under the Families First Coronavirus Response Act (FFCRA). In light of the possibility of changed circumstances since publication of the IFR and other policy considerations, CMS is considering modifying those requirements. CMS is soliciting additional information from the public on any issues that may be pertinent to these potential modifications by reopening the public comment period for an additional 30 days.

DATES: The comment period for the amendments to 42 CFR 433.400 in the interim final rule published at 85 FR 71142 on November 6, 2020, is reopened. To be assured consideration, comments must be received at one of the addresses provided below, by October 27, 2022. (See the **SUPPLEMENTARY INFORMATION** section of this document for a list of the provisions open for comment.)

ADDRESSES: In commenting, refer to file code CMS–9912–N.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9912–N, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9912–N, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Stephanie Bell, (410) 786–0617.

SUPPLEMENTARY INFORMATION:

Provisions open for comment: We will consider comments that are submitted as indicated above in the **DATES** and **ADDRESSES** sections on 42 CFR 433.400.

Inspection of Public Comments: All comments received before the close of

the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

The Families First Coronavirus Response Act (FFCRA) was enacted on March 18, 2020 (Pub. L. 116–127). Included among its provisions is section 6008, which provides a temporary 6.2 percentage point increase to each qualifying State and territory's Federal Medical Assistance Percentage (FMAP) (''temporary FMAP increase'') under section 1905(b) of the Social Security Act (the Act). States must meet certain conditions in order to receive the temporary FMAP increase. Specifically, as relevant to this notice, under section 6008(b)(3) of the FFCRA, States must provide that an individual who is enrolled for benefits under the Medicaid State plan (or waiver of that plan) as of March 18, 2020, or enrolls for benefits under such plan (or waiver) during the period beginning March 18, 2020, and ending the last day of the month in which the COVID–19 public health emergency (PHE) period ends, shall be treated as eligible for such benefits through the end of the month in which such emergency period ends unless the individual requests a voluntary termination of eligibility or the individual ceases to be a resident of the State.

Initially, CMS issued guidance informing States how to comply with section 6008(b)(3) of the FFCRA through Frequently Asked Questions (FAQs) documents posted on *Medicaid.gov* on April 13, 2020; May 5, 2020; and June 30, 2020.[1] As described more fully in those FAQs, under CMS' initial interpretation of section 6008(b)(3) of the FFCRA, to receive the temporary FMAP increase, a State was required to keep beneficiaries enrolled in Medicaid, if they were enrolled on or after March 18, 2020, with the same amount, duration, and scope of benefits, through the end of the month in which the COVID–19 PHE ends. Additionally, States could not subject these beneficiaries to any increase in cost sharing or beneficiary liability for institutional services or other long-term services and supports during this time period.

On November 6, 2020, CMS issued an interim final rule with a request for comments entitled, ''Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency,'' that, among other things, added to 42 CFR part 433 a new subpart G, Temporary FMAP Increase During the Public Health Emergency for COVID–19, which included a newly established § 433.400 (85 FR 71142, 71144, 71160 through 71167, 71197 and 71198). In § 433.400, CMS set forth a different approach to implementing section 6008(b)(3) of the FFCRA (85 FR 71144). In the preamble, CMS explained that section 6008(b)(3) of the FFCRA is ambiguous and that States had expressed concern that CMS' interpretation of section 6008(b)(3) of the FFCRA in the FAQs made it challenging for them to manage their Medicaid programs effectively (85 FR 71161). Specifically, the States noted that CMS' initial interpretation severely limited State flexibility to control program costs in the face of growing budgetary constraints and developing fiscal challenges during the COVID–19 PHE. States argued that this frustrated one purpose of section 6008 of the FFCRA—to provide additional support to State Medicaid programs in their response to the COVID–19 pandemic. Under the IFR's approach to implementing section 6008(b)(3) of the FFCRA, States were still required, as a condition for receiving their temporary FMAP increases, to maintain beneficiary enrollment in Medicaid, but they were also permitted to make certain changes to the amount, duration, and scope of benefits and to beneficiary cost-sharing, subject to certain beneficiary protections set forth in the IFR (85 FR 71144, 71162 through 71167). The approach taken in the IFR represented an attempt by CMS, based on the information before the agency at the time the IFR was issued, to balance the interests of States, health care providers, and beneficiaries.

II. Changed Circumstances

Since issuing the IFR, CMS has become aware that the IFR's implementation of section 6008(b)(3) of the FFCRA has negatively affected some Medicaid beneficiaries. During the IFR's comment period, CMS received a number of comments opposing the approach taken in the IFR and requesting that CMS instead choose to adopt its original interpretation of section 6008(b)(3) of the FFCRA. Some commenters expressed specific concern about the potential loss of Medicaid benefits that could be experienced by beneficiaries transitioned from an eligibility group providing full coverage to a Medicare Savings Program eligibility group, which provides coverage for Medicare premiums and cost sharing alone. Most recently, Medicaid beneficiaries who claim they were harmed when their States changed their Medicaid coverage following the issuance of § 433.400 have sued CMS, seeking to invalidate the IFR. As CMS explained in the IFR, CMS' original interpretation provided the strongest protections for beneficiaries and their access to medically necessary services during the COVID–19 pandemic. CMS is also cognizant that the COVID–19 PHE remains ongoing.

Additionally, CMS understands that the fiscal situations of many States may have changed since the IFR was issued in November 2020. *See, for example,* American Rescue Plan Act of 2021 section 9901, 42 U.S.C. 802 (appropriating hundreds of billions of dollars to ''mak[e] payments to States, territories, and Tribal governments to mitigate the fiscal effects stemming from the [COVID–19 PHE]''). This funding may have mitigated the concerns that States had raised with CMS and that CMS had considered in issuing the IFR. Accordingly, some of the reasons underlying the approach taken in the IFR may no longer apply.

Given these potentially changed circumstances, CMS is now considering a different approach in its final rule. Specifically, CMS is considering returning to its original interpretation of section 6008(b)(3) of the FFCRA described in the FAQs from April 13, 2020, May 5, 2020, and June 30, 2020. Under this proposed interpretation, to be eligible for the temporary FMAP increase, a State would be required to keep its beneficiaries enrolled in Medicaid, if they were enrolled as of, on, or after March 18, 2020, and would not be permitted to reduce the amount, duration, or scope of their benefits or modify their cost sharing after the effective date of the final rule. We

[1] The April 13, 2020 and June 30, 2020 FAQs were incorporated into one comprehensive FAQs document on May 5, 2020, and last updated on January 6, 2021. Available at *https://www.medicaid.gov/state-resource-center/Downloads/covid-19-faqs.pdf.*

believe this interpretation and the approach taken in the IFR are both reasonable approaches to implementing section 6008(b)(3) of the FFCRA. However, CMS plans to review the IFR to determine if consideration of the comments we received and changed circumstances warrant adopting the original interpretation of section 6008(b)(3) of the FFCRA in its final rulemaking.

Consequently, CMS is considering whether (1) § 433.400 should be rescinded, and (2) CMS should replace that provision with a final rule that implements its original interpretation of section 6008(b)(3) of the FFCRA. Additionally, if CMS chooses to take these steps, it may require States to offer Medicaid beneficiaries whose coverage was changed in a manner consistent with § 433.400 an opportunity to re-enroll in, or to have their enrollment changed back to, their prior coverage. Any re-enrollment in or change back to prior coverage would become effective beginning on the final rule's effective date. CMS is re-opening the comment period on the IFR entitled, ''Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency,'' to give the public an opportunity to comment on any issues that may be pertinent to these considerations.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on September 22, 2022.

Dated: September 23, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–20973 Filed 9–23–22; 4:15 pm]

BILLING CODE 4120–01–P

Proposed Rules

Federal Register
Vol. 87, No. 186
Tuesday, September 27, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2014–0161 and NRC–2019–0062]

RIN 3150–AJ43

Financial Qualifications Requirements for Reactor Licensing

AGENCY: Nuclear Regulatory Commission.

ACTION: Discontinuation of rulemaking activity.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is discontinuing a rulemaking activity that would have revised the current financial qualification requirements of ''reasonable assurance'' to the review standard of ''appears to be financially qualified.'' The purpose of this document is to inform members of the public that the NRC is discontinuing this rulemaking activity. The staff will address financial qualifications during the development of an ongoing rulemaking activity to establish a risk-informed, technology inclusive regulatory framework for advanced reactors.

DATES: As of September 27, 2022, the rulemaking activity discussed in this document is discontinued.

ADDRESSES: Please refer to Docket ID NRC–2014–0161 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2014–0161. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyler Hammock, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1381, email: *Tyler.Hammock@nrc.gov.*

SUPPLEMENTARY INFORMATION: On June 17, 2015, the NRC published a draft regulatory basis for public comment in the **Federal Register** (80 FR 34559). In the draft regulatory basis, the staff recommended revising the current financial qualification requirements of ''reasonable assurance'' to the review standard of ''appears to be financially qualified,'' and rescinding appendix C to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''A Guide for Financial Data and Related Information Required to Establish Financial Qualifications for Construction Permits and Combined Licenses.'' Comments were requested by August 3, 2015. During the comment period, the NRC conducted two public meetings.

The NRC received four public comment submissions on the draft regulatory basis. Comments were received from the University of Florida, The George Washington University Regulatory Studies Center, the Nuclear Energy Institute, and Coqui Radio Pharmaceuticals Corporation. The comments are available at *www.regulations.gov* by searching on Docket ID NRC–2014–0161.

On February 26, 2018, the NRC staff submitted to the Commission for approval a draft proposed rule (ADAMS Accession No. ML17172A536) to amend the NRC's financial qualifications requirements in 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' to conform to the standards in 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material.'' In Staff Requirements Memorandum SRM–SECY–18–0026, ''Proposed Rule: Financial Qualifications Requirements for Reactor Licensing,'' dated July 14, 2022 (ADAMS Accession No. ML22195A097), the Commission disapproved the draft proposed rule. The Commission directed the staff to address financial qualifications during the development of part 53, ''Risk-Informed, Technology Inclusive Regulatory Framework for Advanced Reactors'' (Docket ID NRC–2019–0062), and to solicit stakeholder feedback on financial qualifications. Thus, the NRC is discontinuing this rulemaking activity.

In the next edition of the Unified Agenda, the NRC will update the entry for this rulemaking activity and reference this document to indicate that the rulemaking activity is no longer being pursued. This rulemaking activity will appear in the completed actions section of that edition of the Unified Agenda but will not appear in future editions. You can access information regarding the ongoing rulemaking that will consider aspects of the NRC's financial assurance requirements, ''Risk-Informed, Technology Inclusive Regulatory Framework for Advanced Reactors'' on *www.regulations.gov;* search for Docket ID NRC–2019–0062. The NRC tracks the status of all planned rulemaking activities on its public website, *https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/ruleindex.html.*

Dated: September 21, 2022.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

[FR Doc. 2022–20859 Filed 9–26–22; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1235; Project Identifier MCAI–2022–00475–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022–07–10, which applies to all Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–07–10 requires revising the operator's existing FAA-approved minimum equipment list (MEL) to include dispatch restrictions. AD 2022–07–10 also allows operators to inspect affected parts for discrepancies, and do applicable replacements, in order to terminate the revision of the operator's existing MEL. AD 2022–07–10 also prohibits the installation of affected parts. Since the FAA issued AD 2022–07–10, a determination was made that the optional inspection and applicable replacements should be required. This proposed AD continues to require the actions in AD 2022–07–10, and would mandate the inspection of affected parts and applicable replacements, as specified in a European Union Aviation Safety Agency (EASA) AD, which was incorporated 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 November 14, 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 *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1235; 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.

Material Incorporated by Reference:

- For EASA AD 2022–0031, dated February 25, 2022, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1235.
- For Kidde Aerospace & Defense service information, contact Kidde Aerospace & Defense, 4200 Airport Drive NW, Building B, Wilson, NC 27896; telephone: 319–295–5000; website: *kiddetechnologies.com/aviation.com.*
- 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.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1235; Project Identifier MCAI–2022–00475–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022–07–10, Amendment 39–21998 (87 FR 19622, April 5, 2022) (AD 2022–07–10), for all Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–07–10 was prompted by MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2022–0031, dated February 25, 2022 (EASA AD 2022–0031) (also referred to as the MCAI), to correct an unsafe condition identified as undetected thermal bleed leak events that might not be isolated during flight, possibly resulting in localized areas of the wing structure being exposed to high temperatures and consequent reduced structural integrity of the airplane.

AD 2022–07–10 requires revising the operator's existing FAA-approved MEL to include dispatch restrictions. AD 2022–07–10 also allows operators to inspect affected parts for discrepancies, and do applicable replacements, in order to terminate the revision of the operator's existing MEL. AD 2022–07–10 also prohibits the installation of affected parts. The FAA issued AD 2022–07–10 to address undetected thermal bleed leak events that might not be isolated during flight, possibly resulting in localized areas of the wing

structure being exposed to high temperatures and consequent reduced structural integrity of the airplane.

Actions Since AD 2022–07–10 Was Issued

Since the FAA issued AD 2022–07–10, the FAA has determined that further rulemaking is necessary to mandate the detailed inspection of affected parts, and replacement, if applicable, that were optional actions in AD 2022–07–10.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1235.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2022–07–10, this proposed AD would retain all of the requirements of AD 2022–07–10. Those requirements are referenced in EASA AD 2022–0031, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

This AD requires EASA AD 2022–0031, which the Director of the Federal Register approved for incorporation by reference as of April 20, 2022 (87 FR 19622, April 5, 2022).

This AD also requires Kidde Aerospace & Defense Service Bulletin CFD–26–3, dated January 13, 2022, which the Director of the Federal Register approved for incorporation by reference as of April 20, 2022 (87 FR 19622, April 5, 2022).

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2022–07–10. This proposed AD would require accomplishing the actions specified in EASA AD 2022–0031 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD would also prohibit the installation of affected parts.

EASA AD 2022–0031 requires operators to ''inform all flight crews'' of revisions to the MEL, and thereafter to ''operate the aeroplane accordingly.'' However, this proposed AD would not specifically require those actions as they are already required by FAA regulations. FAA regulations (14 CFR 121.628(a)(2)) require operators to provide pilots with access to all of the information contained in the operator's MEL. Furthermore, 14 CFR 121.628(a)(5) requires airplanes to be operated under all applicable conditions and limitations contained in the operator's MEL. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised MEL would be redundant and unnecessary.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the incorporation by reference of EASA AD 2022–0031 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0031 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 2022–0031 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 2022–0031. Service information required by EASA AD 2022–0031 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1235 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 29 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 2022–07–10	1 work-hour × $85 per hour = $85	$0	$85	$2,465
New proposed actions	13 work-hours × $85 per hour = $1,105	0	1,105	32,045

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$795	$880

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

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) 2022–07–10, Amendment 39–21998 (87 FR 19622, April 5, 2022); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2022–1235; Project Identifier MCAI–2022–00475–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 14, 2022.

(b) Affected ADs

This AD replaces AD 2022–07–10, Amendment 39–21998 (87 FR 19622, April 5, 2022) (AD 2022–07–10).

(c) Applicability

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

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that certain overheat detection system (OHDS) sensing elements may not properly detect thermal bleed leak events due to a quality escape during the manufacturing process, and by a determination that an optional inspection and applicable replacements should be required. The FAA is issuing this AD to address undetected thermal bleed leak events that might not be isolated during flight, possibly resulting in localized areas of the wing structure being exposed to high temperatures and consequent reduced 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, European Union Aviation Safety Agency (EASA) AD 2022–0031, dated February 25, 2022 (EASA AD 2022–0031).

(h) Exceptions to EASA AD 2022–0031

(1) Where paragraphs (1) and (4) of EASA AD 2022–0031 refer to its effective date, this AD requires using April 20, 2022 (the effective date of AD 2022–07–10).

(2) Where paragraph (2) of EASA AD 2022–0031 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where EASA AD 2022–0031 has a definition for ''Affected part'' and refers to ''the VSB [vendor service bulletin]'' for the part numbers and date codes, for this AD, use Kidde Aerospace & Defense Service Bulletin CFD–26–3, dated January 13, 2022, as ''the VSB'' for the part numbers and date codes.

(4) Where EASA AD 2022–0031 has a definition for ''Groups'' and identifies certain airplanes as Group 2 airplanes, replace the text, ''An aeroplane having an MSN [manufacturer serial number] not listed in the Section 1.A of the SB is Group 2, provided it is determined that no affected part has been installed on any affected position of that aeroplane since Airbus date of manufacture'' with ''An aeroplane having an MSN not listed in the Section 1.A of Airbus Service Bulletin A350–36–P032, dated December 3, 2021, is Group 2, provided it is determined that no affected part has been installed on any affected position of that aeroplane since Airbus date of manufacture.''

(5) Where paragraph (1) of EASA 2022–0031 specifies to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations (see 14 CFR 121.628(a)(2) and 14 CFR 121.628(a)(5)).

(6) Where paragraph (3) of EASA 2022–0031 specifies action if ''any discrepancy as defined in the SB is detected,'' for this AD a discrepancy is when the related electronic centralized aircraft monitoring (ECAM) warning is not displayed after a heat gun test is done.

(7) The ''Remarks'' section of EASA AD 2022–0031 does not apply to this AD.

(i) No Reporting Requirement and No Return of Parts

(1) Although the service information referenced in EASA AD 2022–0031 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(2) Although the service information referenced in EASA AD 2022–0031 specifies to return certain parts 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, 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 International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

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

(k) Additional Information

(1) For EASA AD 2022–0031, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *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 regulations.gov by searching for and locating Docket No. FAA–2022–1235.

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

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on April 20, 2022 (87 FR 19622, April 5, 2022).

(i) European Union Aviation Safety Agency (EASA) AD 2022–0031, dated February 25, 2022.

(ii) Kidde Aerospace & Defense Service Bulletin CFD–26–3, dated January 13, 2022.

(4) For EASA AD 2022–0031, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(5) For Kidde Aerospace & Defense service information, contact Kidde Aerospace & Defense, 4200 Airport Drive NW, Building B, Wilson, NC 27896; telephone: 319–295–5000; website: *kiddetechnologies.com/aviation.com.*

(6) 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.

(7) 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, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on September 21, 2022.

Christina Underwood,

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

[FR Doc. 2022–20809 Filed 9–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1237; Project Identifier MCAI–2022–00434–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. This proposed AD was prompted by a report that a Model A319 airplane lost the right-hand front windshield in flight. Due to the design similarity, this condition can also exist or develop on Model A300, A300–600, and A310 series airplanes. This proposed AD would require repetitive inspections and electrical test measurements (ETMs) of the affected parts, and applicable corrective actions, and would prohibit the installation of affected parts under certain conditions; 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 November 14, 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 *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website *at 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 *regulations.gov* under Docket No. FAA–2022–1237.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1237; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1237; Project Identifier MCAI–2022–00434–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0058, dated March 28, 2022 (EASA AD 2022–0058) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; Model A300 C4–605R Variant F airplanes; Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; and A300–600ST airplanes. Model A300–600ST airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report that a Model A319 airplane lost the right-hand front windshield in flight, with consequent rapid flight deck depressurization, causing damage to flight deck items and systems, and significant increase of flightcrew workload. The investigations identified several contributing factors, including manufacturing variability, fretting between windshield components, water ingress, and electrical braids corrosion, which led to a thermal shock and overheat, damaging more than one windshield structural ply and impairing the structural integrity of the windshield. Due to the design similarity, this condition can also exist or develop on Model A300, A300–600, and A310 series airplanes. The FAA is proposing this AD to address possible windshield failure. This condition, if not addressed, could possibly result in injury to the flightcrew and in-flight depressurization of the airplane, and would significantly increase pilot workload. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0058 specifies procedures for repetitive detailed inspections and ETMs of the affected parts, and applicable corrective actions. The corrective actions include replacing any affected window with a serviceable window. EASA AD 2022–0058 also prohibits installing certain part numbers. 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 2022–0058 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 2022–0058 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0058 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 2022–0058 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 2022–0058. Service information required by EASA AD 2022–0058 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1237 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 120 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
4 work-hours × $85 per hour = $340	$0	$340 per inspection cycle	$40,800 per inspection cycle.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
20 work-hours × $85 per hour = $1,700	$11,393	$13,093

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2022–1237; Project Identifier MCAI–2022–00434–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 14, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (6) of this AD, certificated in any category.

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Model A300 B4–605R and B4–622R airplanes.

(4) Model A300 C4–605R Variant F airplanes.

(5) Model A300 F4–605R and F4–622R airplanes.

(6) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 56, Windows.

(e) Unsafe Condition

This AD was prompted by a report that a Model A319 airplane lost the right-hand front windshield in flight. Due to the design similarity, this condition can also exist or develop on Model A300, A300–600, and A310 series airplanes. The FAA is issuing this AD to address possible windshield failure. This condition, if not addressed, could possibly result in injury to the flightcrew and in-flight depressurization of the airplane, and would significantly increase pilot workload.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0058, dated March 28, 2022 (EASA AD 2022–0058).

(h) Exceptions to EASA AD 2022–0058

(1) Where EASA AD 2022–0058 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Note 2 to paragraph (3) of EASA AD 2022–0058 specifies that, ''operators may refer to the SB'' when a lack of data impairs the determination of the windshield age or utilization, for this AD replace those words with ''operators must refer to the SB''.

(3) Where paragraph (6) of EASA AD 2022–0058 refers to a ''defect, as identified in the SB,'' for purposes of this AD, defects include manufacturing variability, fretting between windshield components, water ingress, and electrical braids corrosion.

(4) The ''Remarks'' section of EASA AD 2022–0058 is not incorporated by reference in this AD.

(i) No Reporting Requirement

Although paragraphs (11) and (12) of EASA AD 2022–0058 and the service information referenced therein specify to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch,

send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

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

(k) Related Information

(1) For EASA AD 2022–0058, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu; website easa.europa.eu.* You may find this EASA AD on the EASA website *at 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 in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1237.

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

Issued on September 21, 2022.

Christina Underwood,

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

[FR Doc. 2022–20850 Filed 9–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1239; Project Identifier MCAI–2022–00301–E]

RIN 2120–AA64

Airworthiness Directives; GE Aviation Czech s.r.o. (Type Certificate Previously Held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Turboprop Engines

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 GE Aviation Czech s.r.o. (GEAC) M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, M601F, H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 model turboprop engines. This proposed AD was prompted by reports of cracks in dilution tube weld areas of the combustion chamber outer liner. This proposed AD would require initial and repetitive borescope inspections (BSIs) of the dilution tube weld areas of the combustion chamber outer liner and, depending on the results of the inspections, replacement of the combustion chamber outer liner with a part eligible for installation. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by November 14, 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 *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1239; 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.

Material Incorporated by Reference:

- For GEAC service information identified in this NPRM, contact GE Aviation Czech s.r.o., Beranových 65, 199 02 Praha 9, Letňany, Czech Republic; phone: +420 222 538 111.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@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–2022–1239; Project Identifier MCAI–2022–00301–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI

as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. 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 European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0034, dated March 4, 2022 (referred to after this as "the MCAI"), to correct an unsafe condition on M601D, M601D–1, M601D–2, M601D–11, M601D–11NZ, M601E, M601E–11, M601E–11A, M601E–11AS, M601E–11S, M601E–21, M601F, M601FS, M601Z, H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 engines, all serial numbers. The MCAI states that occurrences of cracks in dilution tube weld areas of the combustion chamber outer liner have been reported. These cracks can lead to crack propagation, possibly resulting in part separation, loss of engine power, and reduced control of the aircraft.

As a result of this unsafe condition, the MCAI specifies initial and repetitive BSIs of the dilution tube weld areas of the combustion chamber outer liner and, depending on the outcome of the inspections, corrective action in accordance with the service information.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2022–1239.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GEAC Alert Service Bulletin (ASB) ASB–H75–72–40–00–0056 [01], ASB–M601E–72–40–00–0113 [01], ASB–H80–72–40–00–0099 [01], ASB–M601D–72–40–00–0081[01], ASB–M601F–72–40–00–0064[01], ASB–M601Z–72–40–00–0063 [01], and ASB–H85–72–40–00–0045 [01], (single document; formatted as service bulletin identifier [revision number]), dated February 16, 2022. This service information specifies procedures for BSIs of the dilution tube weld areas of the combustion chamber outer liner and replacement of the combustion chamber outer liner.

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

FAA's Determination

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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require initial and repetitive BSIs of the dilution tube weld areas of the combustion chamber outer liner and, depending on the results of the inspections, corrective action in accordance with the service information.

Differences Between This Proposed AD and the MCAI

EASA AD 2022–0034 applies to GEAC M601D, M601D–1, M601D–2, M601D–11, M601D–11NZ, M601E, M601E–11, M601E–11A, M601E–11AS, M601E–11S, M601E–21, M601F, M601FS, M601Z, H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 model turboprop engines, all serial numbers. GEAC M601D, M601D–1, M601D–2, M601D–11NZ, M601E, M601E–21, M601FS, and M601Z model turboprop engines are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those engines in the applicability.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 33 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
BSI of combustion chamber outer liner	2.5 work-hours × $85 per hour = $212.50	$0	$212.50	$7,012.50

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
On-wing replacement of combustion chamber outer liner.	64 work-hours × $85 per hour = $5,440	*$74,909	$80,349
In-shop replacement of combustion chamber outer liner.	56 work-hours × $85 per hour = $4,760	74,909	79,669

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

GE Aviation Czech s.r.o (Type Certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.): Docket No. FAA–2022–1239; Project Identifier MCAI–2022–00301–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 14, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GE Aviation Czech s.r.o. (GEAC) M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, M601F, H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 model turboprop engines installed on single-engine airplanes, with an installed combustion chamber outer liner having part numbers (P/Ns) M601–229.3, M601–229.3A, M601–229.3B, M601–229.31A, or M601–229.31B.

(d) Subject

Joint Aircraft System Component (JASC) Code 7240, Turbine Engine Combustion Section.

(e) Unsafe Condition

This AD was prompted by reports of cracks in dilution tube weld areas of the combustion chamber outer liner. The FAA is issuing this AD to prevent failure of the combustion chamber outer liner. The unsafe condition, if not addressed, could result in uncontained release of the combustion chamber outer liner, loss of engine power, and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) At the next 300-hour (Type 3) engine inspection, or within 25 flight hours (FHs) after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 300 FHs, perform a borescope inspection (BSI) of the dilution tube weld areas of the combustion chamber outer liner in accordance with the Accomplishment Instructions, paragraph 2.1 of GEAC Alert Service Bulletin (ASB) ASB–H75–72–40–00–0056 [01], ASB–M601E–72–40–00–0113 [01], ASB–H80–72–40–00–0099 [01], ASB–M601D–72–40–00–0081[01], ASB–M601F–72–40–00–0064[01], ASB–M601Z–72–40–00–0063 [01], and ASB–H85–72–40–00–0045 [01] (single document; formatted as service bulletin identifier [revision number]), dated February 16, 2022 (the ASB).

(2) If a crack is detected during any BSI required by paragraph (g)(1) of this AD, before further flight, perform the applicable corrective actions in accordance with the Accomplishment Instructions, paragraph 2.1, Table 1 of the ASB.

(h) Terminating Action

Replacing the affected combustion chamber outer liner with a combustion chamber outer liner that does not have P/N M601–229.3, M601–229.3A, M601 229.3B, M601–229.31A, or M601–229.31B, constitutes a terminating action for the repetitive inspections required by paragraph (g)(1) of this AD.

(i) Conditional Part Installation

(1) After the effective date of this AD, it is permissible to install an engine having an affected combustion chamber outer liner installed on a single-engine airplane, provided that prior to operation, the BSI required by paragraph (g)(1) of this AD is performed and, depending on the findings, the applicable corrective actions are performed as required by paragraph (g)(2) of this AD.

(2) After the effective date of this AD, it is permissible to install an affected combustion chamber outer liner on the engine of a single-engine airplane, provided that it is a part eligible for installation, as defined in paragraph (j) of this AD, and provided that prior to operation, the BSI required by paragraph (g)(1) of this AD is performed and, depending on the findings, the applicable corrective actions are performed as required by paragraph (g)(2) of this AD.

(j) Definitions

For the purpose of this AD, a ''part eligible for installation'' is an affected combustion chamber outer liner, which was not previously installed on an engine, or an affected combustion chamber outer liner that, before installation, has passed an inspection (no defects found) in accordance with the Accomplishment Instructions, paragraphs 2.2 and 2.3 of the ASB, or a combustion chamber outer liner that does not have P/Ns M601–229.3, M601–229.3A, M601–229.3B, M601–229.31A, or M601–229.31B.

(k) Alternative Methods of Compliance (AMOCs)

The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 39.19, send your request to your principal inspector or local Flight Standards District 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 (l)(2) of this AD or email to: *ANE-AD-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Additional Information

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2022–0034, dated March 4, 2022, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1239.

(2) For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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) GE Aviation Czech s.r.o. (GEAC) Alert Service Bulletin (ASB) ASB–H75–72–40–00–0056 [01], ASB–M601E–72–40–00–0113 [01], ASB–H80–72–40–00–0099 [01], ASB–M601D–72–40–00–0081[01], ASB–M601F–72–40–00–0064[01], ASB–M601Z–72–40–00–0063 [01], and ASB–H85–72–40–00–0045 [01] (single document; formatted as service bulletin identifier [revision number]), dated February 16, 2022.

(ii) [Reserved]

(3) For GEAC service information identified in this AD, contact GE Aviation Czech s.r.o., Beranových 65, 199 02 Praha 9, Letňany, Czech Republic; phone: +420 222 538 111.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(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, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on September 21, 2022.

Christina Underwood,

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

[FR Doc. 2022–20857 Filed 9–26–22; 8:45 am]

BILLING CODE 4910–13–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046–AB23

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is proposing revisions to its federal sector complaint processing regulations explicitly to provide for the digital transmission of EEO hearing and appellate documents, and to address the use of the Commission's Electronic Public Portal.

DATES: Comments on the Notice of Proposed Rulemaking (hereinafter ''NPRM'') must be received on or before November 28, 2022.

ADDRESSES: You may submit comments, identified by RIN Number 3046–AB23, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 663–4114. Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 921–2815 (voice), 1–800–669–6820 (TTY), or 1–844–234–5122 (ASL video phone).
- *Mail:* Shelley E. Kahn, Acting Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.
- *Hand Delivery/Courier:* Shelley E. Kahn, Acting Executive Officer, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. All comment submissions must include the Regulatory Information Number (RIN) for this rulemaking. Comments need be submitted in only one of the above-listed formats. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information you provide.

Docket: For access to comments received, go to *https://www.regulations.gov.* Copies of the received comments also will be available for review at the Commission's library, 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 4:30 p.m., from November 28, 2022 until the Commission publishes the rule in final form. Members of the public may schedule a library appointment by sending an email to *OEDA@eeoc.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, at (202) 921–2665 or *kathleen.oram@eeoc.gov,* or Gary J. Hozempa, Senior Staff Attorney, at (202) 921–2672 or *gary.hozempa@eeoc.gov,* Office of Legal Counsel, U.S. Equal Employment Opportunity Commission. Requests for this document in an alternative format should be made to the EEOC's Office of Communications and Legislative Affairs at (202) 921–3191 (voice), 1–800–669–6820 (TTY), or 1–844–234–5122 (ASL video phone).

SUPPLEMENTARY INFORMATION:

Introduction

The Commission is issuing this notice of proposed rulemaking to amend its federal sector complaint processing regulations explicitly to authorize the Commission to transmit its hearing and appellate decisions and other documents to registered complainants through the EEOC Electronic Public Portal (hereinafter ''Public Portal'' or ''Portal'') in most cases as a matter of course. The proposed rule also requires agencies to notify complainants that they may use the Public Portal to file hearing requests and appeals and communicate with the Commission.

When the Commission revised 29 CFR part 1614 in 2012, it added paragraph (g) to § 1614.403. That paragraph generally requires agencies to submit complaint files and appeals to the EEOC's Office of Federal Operations (''OFO'') in an acceptable digital format. Paragraph (g) also encourages appellants to submit digital appeals and supporting documents to OFO. The Federal Sector EEO Portal (FedSEP), an electronic portal available only to Federal agencies, was developed after § 1614.403(g) was promulgated. Its use by agencies has resulted in ease of access and communication, increased efficiency, and the elimination of paper.

The EEOC's Public Portal was created after FedSEP and has been in existence for a number of years. Initially, the Public Portal was used by private sector respondents (employers, etc.) to submit certain documents to, and communicate with, the Commission. The Public Portal gradually acquired additional functionality, and private sector charging parties and respondents now use the Portal to communicate with the Commission and submit a wide variety of documents. Similarly, some federal sector complainants accepted the EEOC's invitation set forth in § 1614.403(g) and use the Public Portal to request hearings, file appeals, and communicate with the EEOC's Administrative Judges (''AJ'') and Office of Federal Operations (''OFO'').

Moreover, when a federal sector complainant mails a request for a hearing or an appeal, the AJ or OFO sends a letter acknowledging receipt and encourages the complainant to create a Public Portal account, explaining that documents can be uploaded and accessed using the Portal. In addition, when OFO issues an appellate decision, the decision's ''Statement of Rights'' informs the complainant that the complainant may file a request for reconsideration and that the ''[c]omplainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal . . . .'' (the complainant also is informed that, in lieu of using the

portal, the complainant may send the request by regular or certified mail).

The revisions proposed herein recognize the increased use of technology by the Commission, federal sector complainants, and agencies, by explicitly providing for digital transmission of complaint files, hearing requests, and associated hearing documents, appeals, briefs, and Commission decisions. In addition, the proposed revisions represent the Commission's commitment to expanding its use of technology and improving its service to the public. If implemented, these revisions would update the regulations to reflect the EEOC's current practices regarding the digital exchange of documents with agencies and some federal sector complainants. They also would make clear that receipt by digital means of hearing requests, appeals, and Commission hearing and appellate decisions, as well as other related documents, is equivalent to receipt by first class mail.

Currently, 29 CFR 1614.109(i) provides that an Administrative Judge ''shall send copies of the hearing . . . decision to the parties.'' Additionally, 29 CFR 1614.405(a) provides that a Commission appellate decision will be ''transmitted to the complainant and the agency by first class mail.'' In order to authorize the use of FedSEP and the Portal to issue decisions, the NPRM proposes specifying in § 1614.109(i) that hearing decisions may be transmitted through the Portal or by first class mail, and clarifying in § 1614.405(a) that, for complainants who are registered with the Portal, service through the Portal will be the preferred method of service. The NPRM also proposes that the Commission confirm it will provide decisions by first class mail to complainants not registered with the Portal or who prefer receipt by first class mail.

Regarding the issuance of appellate decisions, the Commission concludes that, under section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16, it may use the Public Portal to transmit federal sector final Commission decisions to complainants. Section 717(c), 42 U.S.C. 2000e–16(c), states: ''[w]ithin 90 days of receipt of notice of final action taken . . . by the Equal Employment Opportunity Commission . . . an employee or applicant for employment . . . may file a civil action . . . .'' *See also* 29 CFR 1614.407(c) (a complainant may file a civil action ''within 90 days of receipt of the Commission's final decision on an appeal.''). Thus, while section 717 directs the Commission to provide the complainant notice of its final decision, it does not prescribe how the Commission must provide that notice.

To encourage use of the Portal, the NPRM proposes revising § 1614.108(f) to provide that an agency must inform a federal sector complainant that a hearing request can be transmitted through the Portal. The NPRM also proposes revising § 1614.108(h) to clarify that a hearing request can be filed using the Portal and adding a paragraph to § 1614.110 specifying that an agency must inform a complainant that an appeal can be filed with OFO through the Portal. In addition, the NPRM proposes amending § 1614.204(e) to allow agencies to use digital methods (*e.g.,* email), in addition to the non-digital methods listed therein, to notify class members that an Administrative Judge has accepted a class complaint.

The NPRM further proposes adding new paragraph (d) to § 1614.604 to make clear that parties, AJs, and OFO may use digital methods in addition to, or in lieu of, those listed in the designated rules, to communicate and transmit documents during the hearing or appeal stages. With respect to complainants who have not registered through the Public Portal or who, having registered, inform OFO that they prefer receipt via first class mail, OFO will continue to use first class mail to communicate and send documents, even while transmitting the same document to the agency via FedSEP.

Finally, the Commission especially seeks comments regarding whether its final rule should add a new subsection addressing when receipt of a Commission decision transmitted through the Portal is deemed to occur. For example, the U.S. Merit Systems Protection Board's rule pertaining to electronic filing states that ''MSPB documents served electronically on registered e-filers are deemed received on the date of electronic submission.'' 5 CFR 1201.14(m)(2). Receipt of a Commission decision could be deemed to occur instead when a complainant accesses the decision for the first time. Or a rule could state that a Commission decision is deemed to be received when the complainant accesses the decision, or within 5 days of when the decision is uploaded to the Portal, whichever occurs first (such a rule would be modeled on the Commission's rule about mailed documents, 29 CFR 1614.604(b), which states that ''in the absence of a legible postmark, [a document is deemed timely filed] if it is received by mail within five days of the expiration of the applicable filing period.''). If commenters think that the final rule should not address a receipt date, the Commission is interested in hearing that opinion as well.

Currently, regardless of whether a complainant is registered with the Portal, OFO uploads all appellate records (*e.g.,* briefs, other relevant documents, decisions) to the Portal. If OFO has a complainant's or representative's email address, the Commission transmits a notification that a document has been added to the Portal. Should the Commission implement this proposed rule, OFO will continue this practice. Upon receiving an email notice, registered complainants and representatives can log onto their Portal accounts and click a link to review and download the uploaded document.

Additionally, should this proposed rule become final, the Commission will notify complainants with registered Portal accounts that they will be able to access documents, orders, and decisions from the Commission only via the Portal. If, in response, a registered complainant informs the Commission that the complainant would prefer receipt through first class mail, the Commission will communicate with the complainant using first class mail.

Finally, the Commission recognizes that not all complainants will have access to the technology necessary to avail themselves of the Public Portal. For these reasons, as set forth in the NPRM, the Commission is not making use of the Public Portal mandatory and will issue decisions via first-class mail to complainants who do not have registered Portal accounts. Complainants who do not register with the Portal will be able to file hearing requests, appeals, and related documents through the current methods available (first class and registered mail, facsimile, personal delivery, and email).

Regulatory Procedures

Executive Order 12866

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review. This NPRM is not a ''significant regulatory action'' under section 3(f) of the order and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. This final rule contains no new

information collection requirements on the public, and therefore, will create no new paperwork burdens or modifications to existing burdens that are subject to review by the Office of Management and Budget under the PRA.

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this NPRM will not have a significant economic impact on a substantial number of small entities because it applies exclusively to employees, applicants for employment, and agencies of the Federal Government and does not impose a burden on any business entities. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This NPRM will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This NPRM does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Part 1614

Administrative practice and procedure, Age discrimination, Color discrimination, Equal employment opportunity, Equal pay, Genetic information discrimination, Government employees, Individuals with disabilities, National origin discrimination, Race discrimination, Religious discrimination, Sex discrimination.

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission proposes to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY [AMENDED]

■ 1. The authority citation for 29 CFR part 1614 continues to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16 and 2000ff–6(e); E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

■ 2. Amend § 1614.108 by:

■ a. Adding a sentence at the end of paragraph (f); and ''

■ b. Adding at the end of the first sentence in paragraph (h) the words ''or by filing a request for a hearing through the EEOC Public Portal.''

The additions read as follows:

§ 1614.108 Investigation of complaints.

* * * * *

(f) * * * The notice that the complainant has the right to request a hearing and decision from an administrative judge shall inform the complainant that the hearing request may be filed using the EEOC Public Portal, available at *https://publicportal.eeoc.gov.*

* * * * *

(h) * * * or by filing a request for a hearing through the EEOC Public Portal. * * *

§ 1614.109 [Amended]

■ 3. In § 1614.109 paragraph (i) in the second sentence removing the word ''send'' and adding in its place the word ''transmit''.

■ 4. In § 1614.110 add paragraph (c) to read as follows:

§ 1614.110 Final action by agencies.

* * * * *

(c) When an agency takes final action by issuing a final order or decision that requires the agency to include a notice that the complainant has the right to file an appeal with the EEOC, the notice shall inform the complainant that the appeal may be filed using the EEOC Public Portal, available at *https://publicportal.eeoc.gov.*

§ 1614.204 [Amended]

■ 5. Amend § 1614.204 paragraph (e)(1) by removing the word ''or'' after ''address'' and adding in its place '','', and adding after the word ''distribution'' the words '', or digital transmission,''.

§ 1614.403 [Amended]

■ 6. Amend § 1614.403 paragraph (a) by adding the words ''through FedSEP or the EEOC's Public Portal, as applicable,'' after the word ''electronically''.

■ 7. Amend § 1614.405 by:

■ a. Removing in the last sentence of paragraph (a), the second appearance of the words ''or her'', and removing the words ''by first class mail'', and

■ b. Adding a new sentence at the end of paragraph (a).

The additions read as follows:

§ 1614.405 Decisions on appeals.

(a) * * * For complainants who are not registered with the EEOC Public Portal, or who are registered but inform the Commission they prefer receipt by first class mail, the decision will be transmitted by first class mail. For all other complainants who are registered with the Public Portal, the decision will be transmitted via the Portal. The Commission will transmit the decision to the agency via FedSEP

* * * * *

■ 8. Amend § 1614.604 by:

■ a. Redesignating paragraphs (c) and (d) as paragraphs (e) and (f).

■ b. Adding new paragraph (c) and (d).

The additions read as follows:

§ 1614.604 Filing and computation of time.

* * * * *

(c) An appeal, brief, or other document filed by an agency using FedSEP, or filed by a complainant using the EEOC Public Portal, shall be deemed filed on the date the document is uploaded to FedSEP or the Public Portal.

(d) For the purposes of §§ 1614.108 and 1614.109, and §§ 1614.401 through 1614.405, the terms *accept, file, filed, filing, issue, issuance, issuing, notify, notified, receive, receipt, send, serve, served, service, submit, submission, submitted, transmit,* and *transmitted,* shall include digital transmissions made through FedSEP or the EEOC Public Portal.

Dated: September 8, 2022.

Charlotte A. Burrows,

Chair.

[FR Doc. 2022–19868 Filed 9–26–22; 8:45 am]

BILLING CODE 6570–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0295; FRL–10162–01–R5]

Air Plan Approval; Michigan; Revisions to Part 1 and 2 Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to Michigan Air Pollution Control Rules Part 1 Definitions, and Part 2 Air Use Approval for inclusion in

the Michigan State Implementation Plan (SIP). Additionally, EPA is rescinding rules from the SIP that are part of Michigan's title V Renewable Operating Permit program and rules that have been moved to other sections of the Michigan rulebook and approved into the Michigan SIP.

DATES: Comments must be received on or before October 27, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0295 at *https://www.regulations.gov* or via email to *damico.genevieve@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671, *blathras.constantine@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives such comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 19, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022–20620 Filed 9–26–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 87, No. 186

Tuesday, September 27, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 27, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: Form RD 410–8, Application Reference Letter (A Request for Credit Reference).

OMB Control Number: 0575–0091.

Summary of Collection: The Rural Housing Service (RHS), under section 502 of Title V of the Housing Act of 1949, as amended, provides financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, which will provide modest, decent, safe, and sanitary housing to eligible individuals in rural areas. To receive a loan or grant, applicants must provide the Agency with a standard housing application (used by government and private lenders), and provide documentation, including their credit history, to support the same.

Need and Use of the Information: Form RD 410–8, ''Applicant Reference Letter'' is used by the Agency to obtain information about an applicant's credit history that does not appear on a credit report. The form can be used to document the applicant's ability to handle credit effectively in cases where an applicant has used nontraditional sources of credit which do not appear on a credit report. It also provides a mechanism for verifying repayment history for debts reported by the applicant on the loan application that do not appear on the credit report. This form asks only for specific, relevant information to determine the applicant's creditworthiness and to establish the applicant's history of prompt payments on debts. This information enables RHS to make better creditworthiness decisions.

Description of Respondents: Individuals or Households.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1.

Rural Housing Service

Title: 7CFR 1956–C, Debt Settlement—Community and Business Programs.

OMB Control Number: 0575–0124.

Summary of Collection: The Community Facilities loan program of RHS is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926). The purpose of the Community Facilities loan program is to make loans to public entities, nonprofit corporations, and Indian tribes for the development of essential community facilities for public use in rural areas.

The Business and Industry program is authorized by Section 310 B 7 (U.S.C. 1932) (Pub. L. 92–419, August 30, 1972) of the Consolidated Farm and Rural Development Act to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities.

Need and Use of the Information: The information collected is similar to that required by a commercial lender in similar circumstances. Information will be collected by the field offices from borrowers, consultants, lenders, and attorneys. Failure to collect information could result in improper servicing of these loans.

Description of Respondents: Not for profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 97.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,265.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–20885 Filed 9–26–22; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 27, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function

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Rural Housing Service

Title: 7 CFR 1924–F, Complaints and Compensation Defects.

OMB Control Number: 0575–0082.

Summary of Collection: Section 509 of Title V of the Housing Act of 1949, as amended, authorizes the Rural Housing Service (RHS) to pay the costs for correcting defects or compensate borrowers of Section 502 Direct loan funds for expenses arising out of defects with respect to newly constructed dwellings and new manufactured housing units with funds authorized under this title. This is a reactionary-type procedure implemented to fulfill a need to inform field offices on how to deal with complaints generated by the public. The objective of this procedure is to be responsive to the public served by the Agency; and to minimize claims and civil actions against the Government by instituting a procedure for the resolution of complaints.

All Rural Housing Service personnel are to implement a procedure to accept and process complaints from the borrowers/owners against builders and dealers/contractors to resolve the complaint. When the complaint involves structural defects which cannot be resolved by the cooperation of the builders or dealers/contractors, the program authorizes expenditure to resolve the defects with grant funds, such resolution could involve expenditure for (1) repairing defects; (2) reimbursing for emergency repairs; (3) pay temporary living expenses or (4) convey dwelling to RHS with release of liability for the RHS loan.

Need and Use of the Information: The information is collected from agency borrowers and the local agency office serving the county in which the dwelling is located. This information is used by Rural Housing Staff to evaluate the request and assist the borrower in identifying possible causes and corrective actions. The information is collected on a case-by-case basis when initiated by the borrower. Without this information, RHS would be unable to assure that eligible borrowers would receive compensation to repair defects to their newly constructed dwellings.

Description of Respondents: Business or for-profit.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40.

Rural Housing Service

Title: 7 CFR 1944–N—Housing Preservation Grants.

OMB Control Number: 0575–0115.

Summary of Collection: Section 533 of Title V of the Housing Act of 1949, as amended, authorizes the Rural Housing Service (RHS) to make grants to eligible applicants to conduct housing preservation programs benefiting very low- and low-income rural residents. Program funds can cover part of the grantee's cost in providing loans, grants, interest reduction payments or other assistance to eligible homeowners, owners of single or multiple unit rental properties or for the benefit of owners (as occupants) of consumer cooperative housing projects. Such assistance will be used to reduce the cost of repair and rehabilitation, to remove or correct health or safety hazards, to comply with applicable development standards or codes, or to make needed repairs to improve the general living conditions of the resident(s), including improved accessibility by handicapped persons. Individual housing that is owner occupied may qualify for replacement housing when it is determined by the grantee that the housing is not economically feasible for repair or rehabilitation. These grants were established by the Rural Housing Amendments of 1983 which amended the Housing Act of 1949 by adding Section 533 (12 U.S.C. 1490m). The program is implemented at 7 CFR part 1944, subpart N.

Section 533(d) is prescriptive to the information applicants are to submit to RHS as part of their application as well as in the assessments and criteria RHS will use in selecting grantees. An applicant submits a ''statement of activity'' describing its proposed program, including a detailed description of specific activities, and production schedule. RHS is required to evaluate the proposals on a set of prescribed criteria, for which the applicant will also have to provide information, such as: (1) very low- and low-income persons proposed to be served by the repair and rehabilitation activities; (2) participation by other public and private organizations to leverage funds and lower the cost to the HPG program; (3) the area to be served in terms of population and need: (4) cost data to assure greatest degree of assistance at lowest cost; (5) administrative capacity of the applicant to carry out the program. The information collected will be the minimum required by law and needed by RHS to assure that it funds responsible grantees proposing feasible projects in areas of greatest need. Most data is taken from a localized area; although some data are derived from census reports of city, county and Federal governments showing population and housing characteristics.

Need and Use of the Information: Information is compiled initially by the applicant for consideration by RHS to determine eligibility for a grant and to justify selection of the applicant for funding. After funding, grantees collect information to report program accomplishments and to support expenditure of grant funds. RHS uses the information to determine if the grantee is complying with the grant agreement and to make decisions regarding continuing, modifying, or terminating grant assistance. If the information were not collected and presented to RHS, the Agency could not monitor the program or justify disbursement of grant funds. The information has been used to provide data to Congress.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 2,083.

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

Total Burden Hours: 10,997.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–20893 Filed 9–26–22; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 27, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function

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Food Safety and Inspection Service

Title: Industry Response to Noncompliance Records.

OMB Control Number: 0583–0146.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U. S.C. 601 et. seq.), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, et. seq.), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031). These statues mandate that FSIS protect the public by verifying that meat and, poultry products are safe, wholesome, not adulterated, and properly labeled and packaged. If FSIS in-plant personnel discover noncompliance with regulatory requirements they issue Noncompliance Records (NRs). The Noncompliance Record, FSIS Form 5400–4 and FSIS 5400–4 FISH, serves as FSIS' official record of noncompliance with one or more regulatory requirements.

Need and Use of the Information: FSIS will use the form 5400–4 and 5400–4 FISH to document their findings and provided written notification of the establishment's failure to comply with regulatory requirement(s). The establishment management receives a copy of the form and has the opportunity to respond in writing using the Noncompliance Record form.

Description of Respondents: Business or other for-profit.

Number of Respondents: 7,057.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 119,969.

Food Safety and Inspection Service

Title: Certificate of Medical Examination.

OMB Control Number: 0583–0167.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg products Inspection Act (EPIA) (21 U.S.C. 1031 *et. seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS will use form FSIS 4339–1, Certificate of Medical Examination (with report of medical History), and FSIS form 4306–5, Medical Documentation for Employee's Reasonable Accommodation Request to collect information from applicant.

Need and Use of the Information: FSIS will use the information from FSIS 4339–1 form to determine whether an applicant for an FSIS Food Inspector, Consumer Safety Inspector, or Veterinary Medical Officer in-plant position meets the Office of Personnel Management-approved medical qualification standards for the position. FSIS will use FSIS form 4306–5 to help determine whether the Agency will provide reasonable accommodation to qualified individuals. These forms will ensure accurate collection of the required data.

Description of Respondents: Individuals or households.

Number of Respondents: 1,250.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,542.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–20862 Filed 9–26–22; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by October 27, 2022. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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National Agricultural Statistics Service

Title: Organic Survey.

OMB Control Number: 0535–0249.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture. Originally, the Organic Survey was designed to be conducted once every five years as a mandatory, follow-on-survey to the 2007 Census of Agriculture and then every five years after that. In 2011, the docket was renewed to include that the survey was changed to accommodate a cooperative agreement between NASS and the USDA Risk Management Agency (RMA). Specifically, the survey was changed to a voluntary survey that was to be conducted annually if funding permitted, and it would allow for a rotation of target crops each year. With the completion of the 2012 Census of Agriculture, NASS renewed the Organic Survey again and returned it to its' original scope of questions and the mandatory reporting requirement. After the completion of the 2014 Organic Survey, NASS renewed its' cooperative agreement with RMA to conduct the shorter questionnaire on an annual basis.

Need and Use of the Information: This collection of data will support requirements within the Agricultural Act of 2014. Under Section 11023 some of the duties of the Federal Crop Insurance Corporation (FCIC) are defined as ''(i) IN GENERAL—As soon as possible, but not later than the 2015 reinsurance year, the Corporation shall offer producers of organic crops price elections for all organic crops produced in compliance with standards issued by the Department of Agriculture under the national organic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*) that reflect the actual retail or wholesale prices, as appropriate, received by producers for organic crops, as determined by the Secretary using all relevant sources of information. ''(ii) ANNUAL REPORT.—The Corporation shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an annual report on progress made in developing and improving Federal crop insurance for organic crops, including—''(I) the numbers and varieties of organic crops insured; ''(II) the progress of implementing the price elections required under this subparagraph, including the rate at which additional price elections are adopted for organic crops; ''(III) the development of new insurance approaches relevant to organic producers; and ''(IV) any recommendations the Corporation considers appropriate to improve Federal crop insurance coverage for organic crops''.

Description of Respondents: Farmers and Ranchers.

Number of Respondents: 27,550.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 18,684.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–20880 Filed 9–26–22; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 27, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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Food and Nutrition Service

Title: FNS Generic Clearance for the FNS Fast Track Clearance for the Collection of Routine.

OMB Control Number: 0584–0611.

Summary of Collection: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. Executive Order 14058 (12/13/21) discusses that government must work to deliver services more equitably and effectively, especially for those who have been historically underserved. It addresses transforming federal customer experience and service delivery to rebuild trust in government. In order to work continuously to ensure that our programs are effective and meet our customers' needs, Food and Nutrition Service (FNS) (hereafter ''the Agency'') seeks to obtain OMB approval for the extension of a generic clearance to collect qualitative feedback on our service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

Need and Use of the Information: This feedback will continue to: (1) provide insights into customer or stakeholder perceptions, experiences and expectations, (2) provide an early warning of issues with service and, (3) focus attention on areas where communication, training or changes in operations might improve delivery of products or services. This collection allows for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It also allows feedback to contribute directly to the improvement of program management.

The solicitation of feedback targets areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses are assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and

stakeholders on the Agency's services will be unavailable.

Description of Respondents: Individuals and Households, Businesses and Organizations, State, Local and/or Tribal Government.

Number of Respondents: 335,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 670,000.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–20812 Filed 9–26–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0034]

Notice of Decision To Authorize the Importation of Fresh Turmeric (Curcuma longa) Rhizome From Samoa Into the United States (Including Territories)

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation into the United States (including territories) of fresh turmeric (*Curcuma longa*) rhizome from Samoa. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh turmeric (*Curcuma longa*) rhizome from Samoa.

DATES: Imports may be authorized beginning September 27, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Phillips, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2114; email: *Marc.Phillips@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart L-Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS proposes to authorize the importation of a fruit or vegetable into the United States if, based on findings of a PRA, we determine that the measures can mitigate the plant pest risk associated with the importation of that fruit or vegetable. APHIS then publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS will issue a subsequent **Federal Register** notice announcing whether or not we will authorize the importation of the fruit or vegetable subject to the phytosanitary measures specified in the notice.

In accordance with that process, we published a notice [1] in the **Federal Register** on October 27, 2021 (86 FR 59360–59361, Docket No. APHIS–2021–0034), in which we announced the availability, for review and comment, of a PRA that evaluated the risks associated with the importation of fresh turmeric (*Curcuma longa*) rhizome from Samoa into the United States (including territories). The PRA consisted of a risk assessment identifying pests of quarantine significance that could follow the pathway of importation of fresh turmeric (*Curcuma longa*) rhizome from Samoa into the United States (including territories) and a risk management document (RMD) identifying phytosanitary measures to be applied to that commodity to mitigate the pest risk.

We solicited comments on the notice for 60 days ending on December 27, 2021. We received no comments by that date.

Therefore, in accordance with the regulations in § 319.56–4(c)(3)(iii), we are announcing our decision to authorize the importation into the United States (including territories) of fresh turmeric (*Curcuma longa*) rhizome from Samoa subject to the phytosanitary measures identified in the RMD that accompanied the initial notice.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (FAVIR) (*https://epermits.aphis.usda.gov/manual*).[2] In addition to these specific measures, each shipment must be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the recordkeeping and burden requirements associated with this action are included under the Office of Management and Budget control number 0579–0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E- Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 22nd day of September 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–20875 Filed 9–26–22; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice and the supporting documents, go to *www.regulations.gov.* Enter APHIS–2021–0034 in the Search field.

[2] On September 30, 2022, the FAVIR database will be replaced by the APHIS Agricultural Commodity Import Requirements (ACIR) database. The database can be accessed at *https://acir.aphis.usda.gov/s/.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0063]

Notice of Decision To Revise Import Requirements for the Importation of Fresh Sand Pears From the Republic of Korea Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are notifying the public of our decision to revise requirements for the importation into the United States of sand pear (*Pyrus pyrifolia* var. *culta*) fruit from the Republic of Korea. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh, non-precleared sand pear fruit from the Republic of Korea into all ports of the United States as an alternative to the preclearance program. All non-precleared sand pear fruit intended for importation into the United States from the Republic of Korea will be subject to the systems approach required for precleared fruit.

DATES: Imports may be authorized at all U.S. ports beginning September 27, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Imports, Regulations, and Manuals, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart L-Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations provides requirements for authorizing the importation of fruits and vegetables into the United States and revising existing requirements for the importation of fruits and vegetables. Paragraph (c) of that section provides that the name and origin of all fruits and vegetables authorized for importation into the United States, as well as the requirements for their importation, be listed on the internet in APHIS' Fruits and Vegetables Import Requirements database, or FAVIR [1] (*https://epermits.aphis.usda.gov/manual*). It also provides that, if the Administrator of APHIS determines that any of the phytosanitary measures required for the importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant pest risk posed by the fruit or vegetable, APHIS will publish a notice in the **Federal Register** making its pest risk documentation and determination available for public comment.

In accordance with that process, we published a notice [2] in the **Federal Register** on March 15, 2021 (86 FR 14301–14302, Docket No. APHIS–2020–0063), in which we announced the availability, for review and comment, of a pest list and a commodity import evaluation document that evaluated the risks associated with allowing importation into all ports of the United States of non-precleared fresh sand pear fruit from the Republic of Korea.

We solicited comments on the notice for 60 days ending May 14, 2021. We received one comment by that date, from a trade organization opposed to our proposal. The commenter stated that APHIS should not revise requirements for imports into all ports of the United States of fresh sand pear from the Republic of Korea because that country has not followed through on a pledge to open its markets to imports of U.S. pome fruit.

We are making no changes in response to the commenter. Import prohibitions based on trade reciprocity are beyond the scope of APHIS' statutory authority under the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*). Under the PPA, APHIS will prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. APHIS and trade offices within USDA continue to pursue new or expanded export markets for U.S. agriculture, including the export of pome fruit to the Republic of Korea.

Therefore, in accordance with the regulations in § 319.56–4(c)(3)(iii), we are announcing our decision to authorize the importation of fresh, non-precleared sand pear from the Republic of Korea into all ports of the United States subject to the following phytosanitary measures: [3]

- Sand pears must be imported as commercial consignments only.
- Sand pears must be grown in places of production and packed in packinghouses registered with the Republic of Korea national plant protection organization (NPPO).
- Places of production must be inspected for symptoms of quarantine pests and diseases. If such pests and diseases are found, adequate mitigations measures should be implemented.
- Sand pears must be bagged when the fruit is between 2.5 and 3.5 centimeters in diameter. All fruit must be bagged by June 30. Bagging is required to prevent all arthropod pests from infesting the fruits.
- Each sand pear consignment must be labeled to allow trace back.
- Each sand pear consignment must be accompanied by a phytosanitary certificate issued by the Republic of Korea NPPO stating that the consignment has been inspected and found free of quarantine pests.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *https://epermits.aphis.usda.gov/manual*). In addition to these specific measures, fresh sand pear from the Republic of Korea will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the recordkeeping and burden requirements associated with this action are included under the Office of Management and Budget control number 0579–0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government

[1] On September 30, 2022, the FAVIR database will be replaced by the APHIS Agricultural Commodity Import Requirements (ACIR) database. The database can be accessed at *https://acir.aphis.usda.gov/s/*.

[2] To view the notice, supporting documents, and the comment we received, go to *www.regulations.gov* and enter APHIS–2020–0063 in the Search field.

[3] Preclearance program exports of sand pear fruit from the Republic of Korea will still require a completed PPQ Form 203, which indicates the commodity has been inspected by APHIS at origin.

information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 21st day of September 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–20810 Filed 9–26–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: State Administrative Expense Funds

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a currently approved collection for State administrative expense funds expended in the operation of the Child Nutrition Programs administered under the Child Nutrition Act of 1966.

DATES: Written comments must be received on or before November 28, 2022.

ADDRESSES: Comments may be sent to Penny Burke, Chief, Operational Support Branch, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Penny Burke at (703) 305–3223, *penny.burke@usda.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments are also invited on the revised form FNS–525 included as part of this notice.

Title: 7 CFR part 235—State Administrative Expense Funds.

Form Number: FNS–525.

OMB Number: 0584–0067.

Expiration Date: December 31, 2022.

Type of Request: Revision of a currently approved collection.

Abstract: Section 7 of the Child Nutrition Act of 1966 (Pub. L. 89–642), 42 U.S.C. 1776, authorizes the Department to provide Federal funds to State agencies (SAs) for administering the Child Nutrition Programs (7 CFR parts 210, 215, 220, 226 and 250). State Administrative Expense (SAE) Funds, 7 CFR part 235, sets forth procedures and recordkeeping requirements for use by SAs in reporting and maintaining records of their need and use of SAE funds. A summary of the reporting and recordkeeping burden associated with this revision is presented in the table below.

In addition to FNS–525 Financial Status Report, which is used by the State agencies to report information related to the SAE funds, this collection has another form, FNS–777 Financial Status Report, associated with it. FNS–777 and its associated burden is approved under OMB# 0584–0594 Food Programs Reporting System (FPRS) (expiration date July 31, 2023) and therefore is not included in this collection. The recordkeeping requirements associated with FNS–777 and the burden for maintaining those records is included in this information collection.

For this revision, 245 hours of reporting burden is being reduced due to FNS–525 form revisions. The FNS–525 has been completely revised to eliminate duplication of effort. The information collected in the previous version is already available to FNS because it is collected in the FNS–777. The revised form was created to reflect the updated process for State Administrative Expense reallocation funding. It is included with this notice to allow for public comment. With these revisions, FNS estimates that the time to complete this form will decrease from 12 hours and 30 minutes to 2 hours and 15 minutes. The revised FNS–525 form is included with this Notice.

Affected Public: State, Local and Tribal Government. State Agencies are the respondents.

Estimated Number of Respondents: 83.

Estimated Number of Responses per Respondent: 39.651 across the entire collection. State agencies provide information on an annual basis.

Estimated Total Annual Responses: 3,291.

Estimated Hours per Response: 1.916 across the entire collection. The estimated time of response varies from 15 minutes to 8 hours.

Estimated Total Hours Annual Reporting Burden: 357.

Estimated Total Hours Annual Recordkeeping Burden: 5,949.

Estimated Total Annual Burden: 6,306.

Current OMB Inventory: 6,551.

Difference (requested with this renewal): −245.

Refer to the following table for estimated annual burden for each type of respondent:

Affected public	Estimated number of respondents	Number of responses per respondent	Estimated total annual responses	Estimated hours per response	Estimated total annual burden
Reporting					
State Agencies	83	2.036	169	2.112	357
Total Estimated Reporting Burden	83		169		357

Affected public	Estimated number of respondents	Number of responses per respondent	Estimated total annual responses	Estimated hours per response	Estimated total annual burden
Recordkeeping					
State Agencies	83	37.614	3,122	1.906	5,949
Total Estimated Recordkeeping Burden	83		3,122		5,949
Total of Reporting and Recordkeeping					
Reporting	83	2.036	169	2.112	357
Recordkeeping	83	37.614	3,122	1.906	5,949
Total	83	39.651	3,291	1.916	6,306

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2022–20808 Filed 9–26–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Northeast Oregon Forests Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Malheur, Umatilla, and Wallowa-Whitman National Forests, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website:

Malheur National Forest: *https://www.fs.usda.gov/main/malheur/workingtogether/advisorycommittees*

Umatilla National Forest: *https://www.fs.usda.gov/main/umatilla/workingtogether/advisorycommittees*

Wallowa-Whitman National Forest: *https://www.fs.usda.gov/main/wallowa-whitman/workingtogether/advisorycommittees*

DATES: The meeting will be held on October 13, 2022, 10:00 a.m.–04:30 p.m., Pacific Daylight Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will also be held at OSU Extension Office, located in Baker City, Oregon at 2600 East St., Baker City, OR 97814. This location is dependant on County COVID–19 status at the time of the meeting. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Doug McKay, Designated Federal Officer (DFO), by phone at 541–576–7501 or via email at *Douglas.Mckay@usda.gov* or Darcy Wesmen, RAC Coordinator at 541–278–3722 or via email at *darcy.weseman@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review and recommendations of Title II proposal submitted to the Malheur, Umattilla and Wallowa-Whitman National Forestest on or before August 15, 2022.
2. Schedule the next meeting; and
3. Other new or old business.

Meetings are open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing by October 3, 2022, to be scheduled on the agenda for the meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Doug McKay, P.O. Box 7, 117 S Main St., Heppner, OR; or by email to *Douglas.Mckay@usda.gov.*

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 1–800–877–8339. Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is

an equal opportunity provider, employer, and lender.

Dated: September 21, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–20846 Filed 9–26–22; 8:45 am]

BILLING CODE 3411–15–P

CIVIL RIGHTS COMMISSION

Notice of Public Meetings of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Ohio Advisory Committee (Committee) will hold a virtual meeting on Wednesday October 26, 2022, at 12:00 p.m. Eastern Time. The purpose of the meeting is to discuss various civil rights topics submitted for consideration for the Committee's first project.

DATES: The meeting will take place on Wednesday, October 26, 2022, at 12:00 p.m. ET.

Link to Join: https://tinyurl.com/2dyxrc4k.

Join by Phone: (833) 435–1820 USA Toll Free; Meeting ID: 160 102 5612.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1 (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *mwojnaroski@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to *mwojnaroski@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Administration
III. Proposed Civil Rights Topics
IV. Next Steps
V. Public Comments
VI. Adjournment

Dated: September 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–20910 Filed 9–26–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Puerto Rico Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Puerto Rico Advisory Committee to the Commission will convene by virtual web conference on Wednesday, October 26, 2022, at 1:00 p.m. (AT). The purpose is for project planning.

DATES: *October 26, 2022, Wednesday, at 1:00 p.m. (AT):*

- To join by web conference, use Zoom link: *https://tinyurl.com/yckbytpm;* password, if needed: USCCR–PR
- To join by phone only, dial 1–551–285–1373; Meeting ID: 160 560 2881#

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting will be held in Spanish with English interpretation available. This meeting is available to the public through the link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, October 26, 2022; 1:00 p.m. (AT)

1. Welcome & Roll Call
2. Committee Discussion and Project Planning
3. Next Steps
4. Public Comment
5. Other Business
6. Adjourn

Dated: September 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–20901 Filed 9–26–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Guam Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Guam Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 9:00 a.m. ChST on Tuesday, October 18, 2022, (7:00 p.m. ET on Monday, October 17, 2022) to discuss their project regarding housing discrimination.

DATES: The meeting will take place on Tuesday, October 18, 2022, from 9:00 a.m.–10:30 a.m. ChST (Monday, October 17, 2022, from 7:00 p.m.–8:30 p.m. ET).

Link To Join (Audio/Visual): https://tinyurl.com/bdefhd6n.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Access Code: 160 400 6634.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the Zoom link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *kfajota@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Guam Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Announcements and Updates
III. Approval of Meeting Minutes
IV. Public Comment
V. Discussion: Housing Discrimination
VI. Next Steps
VII. Adjournment

Dated: September 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–20909 Filed 9–26–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Ohio Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; Cancellation of virtual business meeting.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a virtual business meeting of the Ohio Advisory Committee. The meeting scheduled for Wednesday, October 5, 2022, at 12:00 p.m. (ET) is cancelled. The notice is in the **Federal Register** of Tuesday, September 13, 2022, in FR Doc. 2022–19698 in the first column of page 55990.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, *mwojnaroski@usccr.gov.*

Dated: September 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–20907 Filed 9–26–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Tennessee Advisory Committee to the Commission will convene by Zoom on Friday, September 30, 2022, at 1:00 p.m. (CT). The purpose of the meeting is to discuss and provide suggestions on the draft interim memo.

DATES: The meeting will be held on Friday, September 30, 2022, 1:00 p.m. CT.

Join ZoomGov Meeting: https://www.zoomgov.com/j/1614651978?pwd=cVdidEowSTdJNGR6b01EVVRBQmNQQT09.

Join via phone: 833–435–1820 USA Toll Free; Access Code: 161 465 1978 #.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the Zoom link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Friday, September 30, 2022; 1:00 p.m. (CT)

1. Welcome & Roll Call
2. Chair's Comments
3. Discussion of Draft Interim Memo
4. Next Steps
5. Public Comment
6. Adjourn

Dated: September 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–20908 Filed 9–26–22; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; International Import Certificate

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 8, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Industry and Security, Department of Commerce.

Title: International Import Certificate.

OMB Control Number: 0694–0017.

Form Number(s): BIS–645P.

Type of Request: Regular submission, revision, and extension of a current information collection.

Number of Respondents: 195.

Average Hours per Response: 16 minutes.

Burden Hours: 52.

Needs and Uses: The United States and several other countries have increased the effectiveness of their respective controls over international trade in strategic commodities by means of an Import Certificate procedure. For the U.S. importer, this procedure provides that, where required by the exporting country, the importer submits an international import certificate to the U.S. Government to certify that he/she will import commodities into the United States and will not reexport such commodities, except in accordance with the export control regulations of the United States. The U.S. Government, in turn, certifies that such representations have been made.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Public Law 95–223 Sec 203. International Emergency Economic Powers Act (IEEPA).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0694–0017.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–20890 Filed 9–26–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) received scope ruling applications, requesting that scope inquiries be conducted to determine whether identified products are covered by the scope of antidumping duty (AD) and/or countervailing duty (CVD) orders and that Commerce issue scope rulings pursuant to those inquiries. In accordance with Commerce's regulations, we are notifying the public of the filing of the scope ruling applications listed below in the month of August 2022.

DATES: Applicable September 27, 2022.

FOR FURTHER INFORMATION CONTACT: Terri Monroe, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–1384.

Notice of Scope Ruling Applications: In accordance with 19 CFR 351.225(d)(3), we are notifying the public of the following scope ruling applications related to AD and CVD orders and findings filed in or around the month of August 2022. This notification includes, for each scope application: (1) identification of the AD and/or CVD orders at issue (19 CFR 351.225(c)(1)); (2) concise public descriptions of the products at issue, including the physical characteristics (including chemical, dimensional and technical characteristics) of the products (19 CFR 351.225(c)(2)(ii)); (3) the countries where the products are produced and the countries from where the products are exported (19 CFR 351.225(c)(2)(i)(B)); (4) the full names of the applicants; and (5) the dates that the scope applications were filed with Commerce and the name of the ACCESS scope segment where the scope applications can be found.[1] This notice does not include applications which have been rejected and not properly resubmitted. The scope ruling applications listed below are available on Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), at *https://access.trade.gov.*

Scope Ruling Applications

Certain Vertical Shaft Engines Between 99cc and 225c, and Parts Thereof from the People's Republic of China (China) (A–570–124/C–570–125); modified vertical shaft engines;[2] produced in and exported from China; submitted by Briggs & Stratton, LLC

[1] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300, 52316 (September 20, 2021) (*Final Rule*) (''It is our expectation that the **Federal Register** list will include, where appropriate, for each scope application the following data: (1) identification of the AD and/or CVD orders at issue; (2) a concise public summary of the product's description, including the physical characteristics (including chemical, dimensional and technical characteristics) of the product; (3) the country(ies) where the product is produced and the country from where the product is exported; (4) the full name of the applicant; and (5) the date that the scope application was filed with Commerce.'')

[2] A spark-ignited, single-cylinder engine with a displacement of 209 cubic centimeters, with a maximum power output of 4.3 kW, and with a modified vertical shaft. The specific engine that is the subject of this application is model number R210–S manufactured in China by Chongqing Rato Technology Co., Ltd. (''Rato''), but with a significant modification. The R210–S has a horizontal crankshaft, but the engine has been modified to include a right angle gearbox that redirects power from a horizontal to a vertical orientation. Put simply, the horizontal crankshaft turns a gear, and that gear then turns a vertical take off shaft. As modified with the gearbox, the shaft comes out of the bottom (rather than from the side) of the engine. The complete engine (including the gearbox) may be referred to as a ''modified R210–S'' or simply as a modified vertical shaft engine (''MVSE''). Prior to entering the United States, the MVSEs at issue are mounted onto a PowerSmart brand lawn mower, model number DB2321SM, by the Chinese mower producer Zhejiang Dobest Power Tools Co., Ltd. (''Dobest''). The petitioner hypothesizes that if mounted, the MVSEs would enter under HTSUS number 8433.11.0060. If unmounted, the MVSEs would enter within HTSUS item number 8407.90.1010 because they generate under 4.476 kW of power. As stated above, these engines are produced in and exported from China.

(Briggs & Stratton); August 8, 2022; ACCESS scope segment ''Modified Vertical Engines.''

Hand Trucks and Certain Parts Thereof from China (A–570–891); L1 Cassette Cart; [3] produced in and exported from China; submitted by Carbon, Inc. (Carbon); August 8, 2022; ACCESS scope segment ''Carbon, Inc. L1 Cassette Cart.''

Notification to Interested Parties

This list of scope ruling applications is not an identification of scope inquiries that have been initiated. In accordance with 19 CFR 351.225(d)(1), if Commerce has not rejected a scope ruling application nor initiated the scope inquiry within 30 days after the filing of the application, the application will be deemed accepted and a scope inquiry will be deemed initiated the following day—day 31.[4] Commerce's practice generally dictates that where a deadline falls on a weekend, Federal holiday, or other non-business day, the appropriate deadline is the next business day.[5] Accordingly, if the 30th day after the filing of the application falls on a non-business day, the next business day will be considered the ''updated'' 30th day, and if the application is not rejected or a scope inquiry initiated by or on that particular business day, the application will be deemed accepted and a scope inquiry will be deemed initiated on the next business day which follows the ''updated'' 30th day.[6]

In accordance with 19 CFR 351.225(m)(2), if there are companion AD and CVD orders covering the same merchandise from the same country of origin, the scope inquiry will be conducted on the record of the AD proceeding. Further, please note that pursuant to 19 CFR 351.225(m)(1), Commerce may either apply a scope ruling to all products from the same country with the same relevant physical characteristics, (including chemical, dimensional, and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter, or importer of those products, or on a company-specific basis.

For further information on procedures for filing information with Commerce through ACCESS and participating in scope inquiries, please refer to the Filing Instructions section of the Scope Ruling Application Guide, at *https://access.trade.gov/help/Scope_Ruling_Guidance.pdf.* Interested parties, apart from the scope ruling applicant, who wish to participate in a scope inquiry and be added to the public service list for that segment of the proceeding must file an entry of appearance in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.225(n)(4). Interested parties are advised to refer to the case segment in ACCESS as well as 19 CFR 351.225(f) for further information on the scope inquiry procedures, including the timelines for the submission of comments.

Please note that this notice of scope ruling applications filed in AD and CVD proceedings may be published before any potential initiation, or after the initiation, of a given scope inquiry based on a scope ruling application identified in this notice. Therefore, please refer to the case segment on ACCESS to determine whether a scope ruling application has been accepted or rejected and whether a scope inquiry has been initiated.

Interested parties who wish to be served scope ruling applications for a particular AD or CVD order may file a request to be included on the annual inquiry service list during the anniversary month of the publication of the AD or CVD order in accordance with 19 CFR 351.225(n) and Commerce's procedures.[7]

Interested parties are invited to comment on the completeness of this monthly list of scope ruling applications received by Commerce. Any comments should be submitted to James Maeder, Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to *CommerceCLU@trade.gov.*

This notice of scope ruling applications filed in AD and CVD proceedings is published in accordance with 19 CFR 351.225(d)(3).

Dated: September 21, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–20888 Filed 9–26–22; 8:45 am]

BILLING CODE 3510–DS–P

[3] The L1 Cassette Cart, which is predominately made of steel, has a handle and two horizontal lift forks at the top of a vertical frame. At the base of the frame is a horizontal projecting edge on four wheels (two in the front and two in the rear) that sits 1.22 inches above the ground. The projecting edge does not have a toe plate and is not capable of sliding under a load for purposes of moving the load. The L1 Cassette Cart weighs 137 lbs. It uses mechanical foot pedals assisted by gas springs to lift or lower the upper lift forks, and is rated to lift loads up to 70 lbs. The dimensions of the cart are 29.6 in X 36.7 in X 43.0 in the lowered position and 29.6 in X 36.7 in X 44.8 in the raised position. Produced in and exported from China. Classified under HTSUS 8427.90.0090.

[4] In accordance with 19 CFR 351.225(d)(2), within 30 days after the filing of a scope ruling application, if Commerce determines that it intends to address the scope issue raised in the application in another segment of the proceeding (such as a circumvention inquiry under 19 CFR 351.226 or a covered merchandise inquiry under 19 CFR 351.227), it will notify the applicant that it will not initiate a scope inquiry, but will instead determine if the product is covered by the scope at issue in that alternative segment.

[5] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[6] This structure maintains the intent of the applicable regulation, 19 CFR 351.225(d)(1), to allow day 30 and day 31 to be separate business days.

[7] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–068]

Forged Steel Fittings From the People's Republic of China: Notice of Court Decision Not in Harmony With the Results of Countervailing Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 13, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Bothwell (Taizhou) Steel Fittings, Co., Ltd.* v. *United States,* Consol. Court no. 21–00166, sustaining the U.S. Department of Commerce's (Commerce) remand results pertaining to the administrative review of the countervailing duty (CVD) order on forged steel fittings (FSF) from the People's Republic of China (China) covering the period March 14, 2018, through December 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the countervailable subsidy rate assigned to Both-Well (Taizhou) Steel Fittings, Co., Ltd. (Both-Well).

DATES: Applicable September 23, 2022.

FOR FURTHER INFORMATION CONTACT: William Horn and Zachariah Hall, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4868 or (202) 482–6261, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 2021, Commerce published its *Final Results* in the 2018 CVD administrative review of FSF from China.[1] In the *Final Results,* Commerce determined that the use of adverse facts available (AFA) under sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), was warranted in determining the countervailability of the Export Buyer's Credit (EBC) program, because the Government of China (GOC) had failed to provide the necessary information Commerce required to analyze the program.[2] Commerce also determined that it could not rely on statements of non-use provided by Both-Well and its customers because of the GOC's failure to provide the necessary information with respect to the operation of the program.[3] Consistent with Commerce's CVD AFA hierarchy, Commerce selected the highest calculated rate for the same or similar program as the AFA rate for this program, 10.54 percent, in accordance with section 776(d) of the Act and Commerce's established practice.[4] Commerce calculated a total net subsidy rate of 25.90 percent for Both-Well.[5]

Both-Well appealed Commerce's *Final Results.* On February 8, 2022, the CIT remanded the *Final Results* to Commerce and ordered either: (1) that Commerce must attempt to verify the EBC program non-use certifications provided by Both-Well's U.S. customers or; (2) that if, after attempting verification, Commerce determines verification is not possible without the missing information from the GOC, then Commerce must explain, in detail, the specific ways in which Commerce attempted verification of the non-use certifications.[6]

In its final remand redetermination, issued in July 2022, Commerce found, after issuing supplemental questionnaires to Both-Well, that there was no use of the EBC program with respect to Both-Well in this review and removed the subsidy rate for the EBC program from Both-Well's final CVD subsidy rate, resulting in a 15.36 percent rate for Both-Well.[7] On September 13, 2022, the CIT sustained Commerce's final redetermination.[8]

Timken Notice

In its decision in *Timken,*[9] as clarified by *Diamond Sawblades,*[10] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's September 13, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Both-Well as follows:

Exporter	Subsidy rate (percent *ad valorem*)
Both-Well (Taizhou) Steel Fittings, Co., Ltd	15.36

Cash Deposit Requirements

Because Both-Well has a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and/or exported by Both-Well, and were entered, or withdrawn from warehouse, for consumption during the period March 14, 2018, through December 31, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess countervailing duties on unliquidated entries of subject merchandise produced and/or exported by Both-Well in accordance with 19 CFR 351.212(b). We will instruct CBP to assess countervailing duties on all appropriate entries covered by this review when the *ad valorem* rate is not zero or *de minimis.* Where an *ad valorem* subsidy rate is zero or *de minimis,*[11] we will instruct CBP to liquidate the appropriate entries without regard to countervailing duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: September 22, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–20979 Filed 9–23–22; 11:15 am]

BILLING CODE 3510–DS–P

[1] *See Forged Steel Fittings from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2018,* 86 FR 14722 (March 18, 2021) (*Final Results*), and accompanying Issues and Decisions Memorandum.

[2] *Id.* at Comment 1.

[3] *Id.*

[4] *Id.* at Comment 2.

[5] *See Final Results,* 86 FR at 14723.

[6] *See Bothwell (Taizhou) Steel Fittings, Co., Ltd.* v. *United States,* Consol. Court No. 21–00166 (CIT February 8, 2022), at 20–21.

[7] *See Final Results of Remand Redetermination Pursuant to Court Remand, Bothwell (Taizhou) Steel Fittings, Co., Ltd.* v. *United States,* Consol. Court No. 21–00166, dated July 7, 2022, available at *https://access.trade.gov/resources/remands/22-10.pdf,* at 7–8.

[8] *See Both-Well (Taizhou) Steel Fittings, Co., Ltd.,* v. *United States, Court No. 21–00166,* Slip Op. 22–105 (CIT September 13, 2022).

[9] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[10] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[11] *See* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC402]

Advisory Committee Special Meeting on Management Strategy Evaluation for Atlantic Bluefin Tuna

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

ACTION: Notice of meeting.

SUMMARY: In preparation for an intersessional meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT) on management strategy evaluation (MSE) for Atlantic bluefin tuna, the Advisory Committee to the U.S. Section to ICCAT is announcing the convening of a special fall meeting.

DATES: The meeting will be held on October 5, 2022. There will be an open session from 1 p.m. to no later than 3 p.m. EDT. The remainder of the meeting will be closed to the public and will end by 5 p.m. EDT. Interested members of the public may present their views during the public comment period of the open session. The public comment period will begin at approximately 2 p.m. and conclude no later than 3 p.m.

ADDRESSES: Please register to attend the meeting at: *https://forms.gle/*

zypwb7eDiti6PXcU6. Registration will close on October 3, 2022, at 5 p.m. EDT. Instructions for accessing the webinar session will be emailed to registered participants. Written comments may be submitted, but must be received by October 4, 2022. Written comments may be sent via email to *bryan.keller@noaa.gov,* or via mail to Bryan Keller at NMFS, Office of International Affairs, Trade, and Commerce, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Bryan Keller, Office of International Affairs, Trade, and Commerce, (202) 897–9208 or at *bryan.keller@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet on October 5, 2022, first in open session to receive an update on the development of MSE for Atlantic bluefin tuna. It will then meet in closed session to discuss sensitive matters in preparation for an ICCAT intersessional meeting on bluefin tuna MSE to be held on October 14, 2022. MSE is a scientific tool that allows fishery managers, scientists, and stakeholders (*e.g.,* industry, non-governmental organizations) to simulate the workings of a fishery system to test how well different harvest strategies (a.k.a. management procedures) achieve agreed management objectives for that fishery. After several years of work, ICCAT anticipates finalizing the bluefin tuna MSE and adopting a management procedure applicable to both the western and eastern Atlantic and Mediterranean stocks of bluefin tuna at its November 2022 Annual Meeting. If adopted by ICCAT, the management procedure will be applied in order to set Total Allowable Catches (TACs) for 2023 and future years for both stocks. The United States has been participating actively in this MSE development process and have been engaging stakeholders and considering their input throughout the process through various means, including consultation with the Advisory Committee to the U.S. Section to ICCAT. The United States also participates in the development of the bluefin tuna MSE through active engagement by U.S. scientists in ICCAT's Standing Committee on Research and Statistics (SCRS).

The most up-to-date information on bluefin tuna MSE will be provided during the open session of the October 5 meeting. This session, which will take place from 1 p.m. to no later than 3 p.m. EDT, will include an opportunity for interested stakeholders to ask questions and time will also be set aside for members of the public to provide formal input on this important issue. Specifically, a public comment period will begin at approximately 2 p.m. and conclude no later than 3 p.m. Comments may also be submitted in writing for the Advisory Committee's consideration. Interested members of the public can submit comments by mail or email. Use of email is encouraged. All written comments must be received by October 4, 2022 (see **ADDRESSES**).

A key area where stakeholders may wish to provide input relates to the remaining candidate management procedures (CMPs) and the management tradeoffs associated with them as identified through MSE. Tradeoffs among the four management objectives, which are applicable to both stocks, will be clearly indicated in the scientific output provided by SCRS. Management objectives relate to stock status, stock safety, yield in the short, medium, and longer terms, and stability of the TAC across management periods, which could be established for 2 or 3 years.

After the open session, the Advisory Committee will go into closed session no later than 3 p.m. and will conclude its meeting at 5 p.m. EDT. During its closed session, the Advisory Committee will provide its advice on possible positions and strategies to be taken by the United States concerning bluefin tuna MSE at an October 14 intersessional meeting of ICCAT's Panel 2, the last meeting of this body before the November 2022 ICCAT Annual Meeting, at which ICCAT is expected to adopt and apply a bluefin tuna management procedure.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: September 21, 2022.

Alexa Cole,

Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.

[FR Doc. 2022–20879 Filed 9–26–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC368]

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of membership of the 2022 NOAA Performance Review Board.

SUMMARY: NOAA announces the appointment of members who will serve on the 2022 NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES), Senior Level (SL), and Scientific and Professional (ST) members and making written recommendations to the appointing authority on retention and compensation matters, including performance-based pay adjustments, awarding of bonuses, and reviewing recommendations for potential Presidential Rank Award nominees. The appointment of members to the NOAA PRB will be for a period of 2 years.

DATES: The effective date of service of the ten appointees to the NOAA Performance Review Board is October 25–28, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. McLeod, Human Resources Specialist, Executive Resources Division, Office of Human Capital Services, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 628–1883.

SUPPLEMENTARY INFORMATION: The names and positions of the members for the 2022 NOAA PRB are set forth below:

- David Michaud, Chair: Director, Office of Central Processing, National Weather Service, NOAA
- Kelly Mabe, Co-Chair: Deputy Director, Acquisition and Grants Office, NOAA
- Carrie Robinson: Director, Habitat Conservation, National Marine Fisheries Service, NOAA
- Michelle Mainelli-McInerney: Director, Office of Dissemination, National Weather Service, NOAA
- Makeda Okolo: Director, Office of Legislative & Intergovernmental Affairs, NOAA
- James Donnellon: Chief Financial Officer-Chief Administrative Officer, National Environmental Satellite, Data, and Information Service, NOAA
- Kevin Kimball: Chief of Staff, National Institute of Standards and Technology
- Juliana Blackwell: Director, Office of National Geodetic Survey, National Ocean Service, NOAA
- Deirdre Jones: Chief Administrative Officer, NOAA
- John Cortinas: Director, Atlantic Oceanographic and Meteorological Laboratory, NOAA
- Jonathan Hare, Director, Science and Research, NE Region, NOAA
- Wayne Higgins, Director, Climate Program Office, NOAA
- Karen Hyun, Chief of Staff, NOAA
- James St. Pierre, Acting Director, Information Technology Laboratory, National Institute of Standards and Technology

Dated: September 20, 2022.

Richard W. Spinrad,

Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator.

[FR Doc. 2022–20882 Filed 9–26–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[0648–XC410]

Council Coordination Committee Meeting

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

ACTION: Notice of a public meeting; information regarding the agenda.

SUMMARY: The National Marine Fisheries Service, Office of Sustainable Fisheries will host a hybrid meeting of the Council Coordination Committee, also known as the CCC, consisting of the Regional Fishery Management Council chairs, vice chairs, and executive directors from October 18 to October 20, 2022. This meeting will be chaired by the Mid-Atlantic Fishery Management Council. The intent of this meeting is to discuss issues of relevance to the Councils and NMFS, including issues related to the implementation of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act.

DATES: The meeting will begin at 1 p.m., on Tuesday, October 18, 2022, and recess at 5:30 p.m., or when business is complete. The meeting will reconvene at 9 a.m., on Wednesday, October 19, 2022, and recess at 5 p.m., or when business is complete. The meeting will reconvene on the final day at 9 a.m., on Thursday, October 20, 2022, and adjourn by 12:30 p.m., or when business is complete.

ADDRESSES: *Meeting address:* The meeting will be held at the Holiday Inn Washington Capitol, 550 C Street SW, Washington, DC 20024; telephone: (202) 479–4000.

The meeting will also be broadcast via webinar. Connection details and public comment instructions will be available at *https://www.fisheries.noaa.gov/event/2022-october-council-coordination-committee-meeting*

FOR FURTHER INFORMATION CONTACT: Sean Lawler by email at *Sean.Lawler@noaa.gov* or at (301) 427–8561.

SUPPLEMENTARY INFORMATION: The 2007 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act established the CCC. The CCC consists of the chairs, vice chairs, and executive directors of each of the eight Regional Fishery Management Councils, or their respective proxies. All sessions are open to the public and time will be set aside for public comments at the end of each day and after specific sessions at the discretion of the meeting Chair. The meeting Chair will announce public comment times and instructions to provide comment at the start of each meeting day. There will be opportunities for public comments to be provided in-person and remotely via webinar. Updates to this meeting, briefing materials, public comment instructions and additional information will be posted on *https://www.fisheries.noaa.gov/event/2022-october-council-coordination-committee-meeting* and *http://www.fisherycouncils.org/* when available.

Proposed Agenda

Tuesday, October 18, 2022—1 p.m.—5:30 p.m. EDT

1. Opening of Meeting
2. Approval of Agenda and Minutes
3. NMFS Update and Upcoming Priorities
4. NMFS Budget Update
5. NMFS Science Update
6. Legislative Outlook
7. Climate Governance and Scenario Planning Updates
8. Public Comment

Adjourn Day 1

Wednesday, October 19, 2022—9 a.m.—5 p.m. EDT

1. Best Practices for Hybrid Meeting Operations
2. Preventing Harassment in Councils
3. International Issues
4. Equity and Environmental Justice
5. America the Beautiful Initiative
6. Northeast Regional Marine Fisheries Habitat Assessment Presentation
7. CCC Committee Updates
8. Public Comment

Adjourn Day 2

Thursday, October 20, 2022—9 a.m.—12:30 p.m. EDT

1. National Standard 1 (Technical Guidance)
2. FishWatch Update
3. Endangered Species Act—Magnuson-Stevens Act Integration
4. Public Comment
5. Wrap-up and Other Business

Adjourn Day 3

The order in which the agenda items are addressed may be adjusted by the meeting Chair to stay on time. The CCC will meet as late as necessary to complete scheduled business.

Special Accommodations

If you have particular access needs please contact Sean Lawler at *sean.lawler@noaa.gov* prior to the meeting for accommodation.

Dated: September 22, 2022.

Kelly Denit,

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

[FR Doc. 2022–20892 Filed 9–26–22; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0059]

Request for Information Regarding Mortgage Refinances and Forbearances

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Request for information.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) is seeking comment from the public about (1) ways to facilitate mortgage refinances for consumers who would benefit from refinancing, especially consumers with smaller loan balances; and (2) ways to reduce risks for consumers who experience disruptions in their financial situation that could interfere with their ability to remain current on their mortgage payments.

DATES: Comments must be received by November 28, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2022–0059, by any of the following methods:

- *Electronic:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Mortgage_Refinances_And_Forbearances@cfpb.gov.* Include Docket No. CFPB–2022–0059 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake Mortgage Refinances and Forbearances RFI, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics). Because paper mail in the Washington, DC area and at the Bureau may be subject to delay, commenters are

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FOR FURTHER INFORMATION CONTACT: Daniel Tingley, Counsel, or Mark Morelli, Ruth Van Veldhuizen, or Priscilla Walton-Fein, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

America's housing finance system provides important opportunities for consumers to access credit for housing and strengthen their financial standing. When broader macroeconomic forces result in declining interest rates, transparent and competitive markets should allow borrowers to benefit from lower rates, including through refinancing opportunities.[1] These lower interest rates may allow borrowers to improve their financial condition by reducing their monthly payments, allowing borrowers to save more or pay down their mortgages more rapidly, making it easier for them to build wealth and equity. In addition, when that equity is threatened by temporary disruptions in the economy or in consumers' lives, products and policies that offer repayment flexibility may help mitigate those risks. In this Request for Information (RFI), the Bureau is seeking information about ways to help ensure that consumers have access to these opportunities. In particular, the Bureau is requesting information about (1) ways to facilitate residential mortgage loan refinances for borrowers who would benefit from refinances, especially borrowers with smaller loan balances;[2] and (2) ways to reduce risks for borrowers who experience disruptions that could interfere with their ability to remain current on their mortgage payments.

A. Facilitating Beneficial Refinances

Most borrowers seeking to lower their interest rate must refinance their mortgage. But recent research has shown that many consumers do not take advantage of falling market interest rates by refinancing. Some borrowers may find it challenging to determine whether they are likely to benefit from refinancing. In general, for refinancing to be beneficial for consumers, the costs of refinancing must be offset by the benefits of lower interest rates. While these benefits are greater for borrowers with large loan balances and those who stay in their homes longer, other borrowers may also benefit from refinancing to a lower interest rate. If these consumers do not refinance, they can experience adverse long-term financial consequences. In particular, they are likely to continue paying higher interest rates, leading them to accumulate less wealth over time and potentially face a higher risk of default than they would have if they had refinanced.[3]

One particular area of concern is the availability of refinance opportunities for consumers with smaller loan balances. Larger mortgages make up a growing share of the mortgage market, with smaller mortgages comprising a steady or declining share.[4] If the market provides limited opportunities for consumers to refinance smaller mortgages, Black and Hispanic consumers and consumers with low to moderate incomes would be disproportionately affected, as they are more likely to own homes with lower market values.[5] These patterns may have contributed to the much lower rate of refinancing by Black and Hispanic consumers during recent periods of low interest rates.[6] The Bureau is also concerned about the relative availability of refinance opportunities for consumers in rural areas, whose property might similarly have lower market values than in higher-priced geographic regions.

Several factors may help explain the differences in rates of refinancing. The large fixed costs of mortgage origination may limit the availability of mortgages for consumers with smaller loan balances, including beneficial refinances. The benefits of refinancing a smaller loan may be insufficient to offset the costs of refinancing. In addition, creditor capacity constraints and lower profitability on refinances of smaller loan balances may limit access to beneficial refinances for some borrowers. Research has shown that some—but not all—of the differences in refinancing rates across the population can be explained by common risk-based underwriting factors like credit scores and loan-to-value ratios.[7] In addition, for consumers who primarily shop for credit in their local neighborhoods, a geographic concentration of higher cost lenders may lead to higher costs or reduced availability of refinancing

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[1] Although mortgage interest rates are higher than they were one year ago, they have fluctuated in recent months and remain sensitive to monetary policy changes and market forces. *See https://www.freddiemac.com/pmms* (last visited Sept. 15, 2022). Accordingly, even with higher current interest rates, short-term fluctuations or market developments may provide some consumers with opportunities to refinance.

[2] Smaller loan balances are generally defined as balances substantially lower than the national average. Policymakers and researchers have used a range of specific dollar thresholds for defining smaller loan balances, including mortgages below $114,847 (current General QM threshold), below $150,000 (Kenneth P. Brevoort, *Do Low Mortgage Balances Limit Refinancing Opportunities?* (July 14, 2022), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4163151,* Pew Charitable Trusts Home Fin. Project, *https://www.pewtrusts.org/en/projects/home-financing* (last visited Sept. 15, 2022)), or below $70,000 (Bing Bai *et al., Small-Dollar Mortgages for Single-Family Residential Properties,* Policy Discussion Paper Series 93558, Fed. Reserve Bank of Chic. (2018), *https://ideas.repec.org/p/fip/fedhpd/93558.html*). *See* Bureau of Consumer Fin. Prot., *Truth in Lending (Regulation Z) Annual Threshold Adjustments (Credit Cards, HOEPA, and Qualified Mortgages)* (Nov. 2, 2021) *https://www.consumerfinance.gov/rules-policy/final-rules/truth-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa/;* Brevoort, *supra;* Pew Charitable Trusts Home Fin. Project, *supra;* Bai *et al., supra.*

[3] Several studies have leveraged policy-induced variation in the availability of refinances to estimate causal declines in mortgage default for borrowers who refinance. *See* Joshua Abel & Andreas Fuster (2021), *How Do Mortgage Refinances Affect Debt, Default, and Spending? Evidence from HARP,* Am. Econ. Journal: Macroeconomics, *https://www.aeaweb.org/articles?id=10.1257/mac.20180116;* Kadiri Karamon, Douglas McManus & Jun Zhu (2017), *Refinance and Mortgage Default: A Regression Discontinuity Analysis of HARP's Impact on Default Rates,* Journal of Real Estate Fin. & Econ., *https://ideas.repec.org/a/kap/jrefec/v55y2017i4d10.1007_s11146-016-9566-z.html.*

[4] Bai *et al., supra.*

[5] *Id.*

[6] Kristopher Gerardi, Laurie Lambie-Hanson & Paul Willen (2021), *Racial Differences in Mortgage Refinancing, Distress, and Housing Wealth Accumulation during COVID–19,* Fed. Reserve Bank of Boston Current Policy Perspectives, *https://www.bostonfed.org/publications/current-policy-perspectives/2021/racial-differences-in-mortgage-refinancing-distress-and-housing-wealth-accumulation-during-covid-19.aspx.*

[7] Kristopher Gerardi, Paul Willen & David Hao Zhang (2020), *Mortgage Prepayment, Race, and Monetary Policy,* Fed. Reserve Bank of Atl. Working Paper Series, *https://www.bostonfed.org/publications/research-department-working-paper/2020/mortgage-prepayment-race-and-monetary-policy.aspx* (Gerardi *et al.*).

options.[8] Finally, researchers have noted more difficult-to-quantify potential barriers, including consumers' shopping behavior,[9] trust of financial institutions,[10] or the complexity and documentation involved in the refinancing process.[11]

The Bureau is requesting information to better understand what barriers may prevent consumers from accessing falling interest rates and what interventions could lower those barriers, particularly for borrowers with smaller loan balances. Several potential policies and mortgage products are discussed below, and the Bureau requests information on the benefits and limitations of these ideas, as well as on alternative options to help consumers access lower interest rates.

1. Targeted and Streamlined Refinances

As described above, mortgage refinancing has the potential to provide important benefits to consumers through reductions in interest rates and monthly payments. During periods of falling interest rates, widely available refinancing allows homeowners to benefit from lower borrowing costs. In some circumstances, refinances can help borrowers at risk of delinquency and default. Targeted and ''streamlined'' refinance programs have been used to facilitate refinancing through reduced underwriting and documentation requirements, typically with lower transaction costs than traditional refinances. These programs, which may have specific eligibility requirements, are largely aimed at lowering interest rates and monthly payments for consumers who may otherwise be unlikely or unable to refinance.

Despite its potential benefits, refinancing also can pose risks to consumers. Serial refinancing [12] can be costly and reduce borrowers' equity in their property. Many targeted and streamlined refinance programs include protections against potential harms associated with refinances, such as requirements that the new loan reduce the consumer's monthly payment and interest rate by certain threshold amounts and seasoning requirements. Some programs either prohibit or limit cash-out payments from the refinance.

Targeted and streamlined refinance programs played a significant role in facilitating beneficial refinances during the period that followed the financial crisis, particularly for borrowers who were otherwise unable to refinance due to declines in their home value. During this period, the Federal Housing Administration (FHA), U.S. Department of Veterans Affairs (VA), and U.S. Department of Agriculture (USDA), which have historically offered streamlined refinance programs with reduced underwriting requirements, expanded their programs to facilitate refinancing for consumers at risk of delinquency and default.[13] Similarly, after the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the GSEs) were placed into Federal conservatorship in late 2008, the Federal Housing Finance Agency (FHFA) created new refinance programs with the aim of mitigating foreclosures for consumers with existing GSE loans. FHFA announced the Home Affordable Refinance Program (HARP) in March 2009, which allowed consumers with high loan-to-value (LTV) ratios to refinance into lower interest rates with reduced documentation and underwriting requirements and relatively few eligibility criteria.[14] HARP was expanded and renewed multiple times before expiring on December 31, 2018.[15] FHFA and the GSEs implemented other high LTV refinance programs and provided some refinance options to borrowers with existing GSE loans who were not eligible for HARP.[16] More recently, FHFA and the GSEs implemented targeted programs aimed at encouraging refinances for low- and moderate-income consumers, who have been less likely than higher-income consumers to take advantage of a low interest rate environment.

As part of the Bureau's monitoring of the mortgage market, some stakeholders suggested that changes to the Bureau's ability-to-repay/qualified mortgage rule (ATR–QM rule) could play a role in facilitating beneficial refinances through targeted and streamlined programs, citing the current rule as contributing to some existing frictions to refinancing. While refinances originated pursuant to Federal agency programs are not subject to the Bureau's ATR–QM rule,[17] most other refinance transactions are subject to the rule.[18] Under the ATR–QM rule,

[8] Gerardi *et al., supra,* find a role for neighborhood in disparities, but Bhutta & Hizmo (2021) find no price disparities within creditor: Combining these two findings suggests that the composition of creditors serving different neighborhoods may play a role. Frame, Huang, Mayer & Sunderam (2022) also find that minority underrepresentation among mortgage loan officers has adverse effects on credit access for minority consumers. *See* Neil Bhutta & Aurel Hizmo, *Do Minorities Pay More for Mortgages?,* Review of Fin. Studies, Vol. 34, Issue 2 (Feb. 2021), *https://doi.org/10.1093/rfs/hhaa047;* and W. Scott Frame, Ruidi Huang, Erik J. Mayer & Adi Sunderam (2022), *The Impact of Minority Representation at Mortgage Lenders,* NBER Working Paper No. 30125, *https://www.nber.org/papers/w30125.*

[9] Alexei Alexandrov & Sergei Koulayev (2017), *No Shopping in the U.S. Mortgage Market: Direct and Strategic Effects of Providing Information,* Consumer Fin. Prot. Bureau Office of Research Working Paper No. 2017–01, *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2948491;* Neil Bhutta, Andreas Fuster & Aurel Hizmo (2020), *Paying Too Much? Price Dispersion in the U.S. Mortgage Market,* FEDS Working Paper, Bd. of Governors of the Fed. Reserve Sys., *https://www.federalreserve.gov/econres/feds/paying-too-much-price-dispersion-in-the-us-mortgage-market.htm.*

[10] Eric J. Johnson, Stephan Meier & Olivier Toubia (Feb. 2019), *What's the Catch? Suspicion of Bank Motives and Sluggish Refinancing,* Rev. of Fin. Studies, Vol. 32, Issue 2, *https://doi.org/10.1093/rfs/hhy061.*

[11] Anthony A. DeFusco & John Mondragon (2020), *No Job, No Money, No Refi: Frictions to Refinancing in a Recession, Journal of Fin., https://onlinelibrary.wiley.com/doi/10.1111/jofi.12952;* Thomas Piskorski & Amit Seru (2018), *Mortgage Market Design: Lessons from the Great Recession,* Brookings Papers on Econ. Activity, *https://www.brookings.edu/wp-content/uploads/2018/03/PiskorskiSeru_Text.pdf.*

[12] Serial refinancing is used herein to mean repeat refinances over a short period of time. In some cases, serial refinancing, which was a common practice in the period leading up to the 2008 financial crisis, is the result of lenders engaging in loan churning to extract fees from a consumer.

[13] For a discussion of these programs, see 78 FR 35430, 35436 (June 12, 2013).

[14] *See* Press Release, U.S. Dep't of Treas., *Relief for Responsible Homeowners* (Mar. 4, 2009), *http://www.treasury.gov/press-center/press-releases/Pages/200934145912322.aspx.*

[15] *See* Press Release, Fed. Hous. Fin. Agency (Aug. 17, 2017), *https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Modifications-to-High-LTV-Streamlined-Refi-Program-and-Extension-of-HARP-Thru-12-2018.aspx.* The HARP program was originally set to expire in June 2010 and was limited to consumers with an LTV ratio that did not exceed 105 percent. However, HARP was modified over time and the GSEs and FHFA eventually removed the LTV ratio cap, facilitating refinances for all underwater consumers who otherwise fit HARP's criteria. *See* Fed. Hous. Fin. Agency Refinance Report (June 2012).

[16] For example, Fannie Mae's Refi Plus program and Freddie Mac's Relief Refinance program provided streamline refinancing opportunities to consumers with LTV ratios of less than 80 percent.

[17] TILA section 129C(a)(5) gave authority to FHA, VA, and USDA to exempt from the income verification requirement of the ATR–QM rule certain streamlined refinances made, guaranteed, or insured by those agencies if certain conditions are met. In addition, TILA section 129C(b)(3)(B)(ii) requires those Federal agencies to prescribe rules related to the definition of qualified mortgage (QM) for their loan programs. Those agencies have defined categories of loans made pursuant to streamlined refinance programs that are QMs and therefore presumed to comply with the ability to repay requirement. *See* 78 FR 75215 (Dec. 11, 2013) (providing the QM definition for FHA loans); 79 FR 26620 (May 9, 2014) (providing the ability to repay standards and QM definition for VA loans); 81 FR 26461 (May 3, 2016) (providing the QM definition for RHS loans).

[18] 12 CFR 1026.43(a) and comment 43(a)-1. Regulation Z provides a special rule for creditors refinancing a non-standard mortgage—defined as an adjustable-rate mortgage with an introductory fixed interest rate for a period of one year or longer, an

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a creditor is prohibited from originating a covered mortgage without making a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan.[19] To satisfy the ability-to-repay provisions of the rule, the creditor must, at a minimum, consider and verify eight underwriting factors, including the consumer's current or reasonably expected income or assets and current employment status. Loans that satisfy the requirements to be a QM are presumed to comply with the ability-to-repay requirement.[20] The ATR–QM rule defines several categories of QMs, all of which require the creditor to consider and verify the consumer's income or assets relied on in making the loan.[21]

Research has suggested that frictions in the refinance process, including potentially documentation requirements under the ATR–QM rule, may limit some refinancing opportunities that could benefit consumers. In the course of the Bureau's market monitoring, some stakeholders have asserted that it may be appropriate to address those frictions in some circumstances in which borrowers would receive a demonstrated benefit from refinancing, such as lower interest rates or lower monthly payments, and where other protections are in place, such as protections against serial refinances.

Consistent with the Bureau's overall goal of ensuring that consumers have access to the financial opportunities presented by the housing finance system, the Bureau is requesting information about whether and how the Bureau can facilitate beneficial refinances through targeted and streamlined refinance programs. The Bureau is also requesting information about whether and how the Bureau's existing rules, including the ATR–QM rule, could be amended to facilitate beneficial refinances while preserving important protections for consumers.

2. New Products To Facilitate Beneficial Refinances

Some creditors have introduced mortgage products designed generally to promote beneficial refinances by, for example, offering reduced closing costs for future refinances with that same creditor.[22] Another potential option that could allow more consumers to take advantage of lower interest rates is through the introduction of other new mortgage products that would further facilitate refinances or allow more borrowers to obtain the benefits of lower interest rates without refinancing. Examples of these products include loans that would automatically trigger an offer to refinance or would reduce the loan's interest rate in certain circumstances, which might benefit homeowners by allowing them to make lower monthly payments or pay less total interest over the duration of the loan. The Bureau is seeking information about the risks and benefits if creditors were to develop and offer new mortgage products with these or similar features.

In particular, some researchers and stakeholders have proposed that creditors should offer an ''auto-refi'' mortgage.[23] An ''auto-refi'' mortgage is a mortgage loan that provides for automatic or streamlined refinancing in the future when certain market conditions are met, with little or no affirmative action by the consumer. This product might decrease borrowing costs for consumers who would otherwise not refinance their loans for a variety of reasons, including the complexity of the refinancing process, documentation requirements, lack of knowledge or time, or creditor marketing practices. It might also simplify the refinancing process for consumers who anticipate mortgage interest rates are likely to decrease over the life of the loan. On the other hand, the Bureau notes that there may be impediments or risks associated with the auto-refi mortgage if consumers lack comfort with the concept or creditors find it difficult to price, competitively market, and sell these products on the secondary market. In addition, depending on how the product is structured, an auto-refi mortgage that repeatedly refinances might result in extended indebtedness for some borrowers.

An alternative product that might provide benefits similar to an auto-refi is a ''one-way adjustable rate'' mortgage (or one-way ARM). A one-way ARM loan, which involves only a rate change, not a refinancing, could have an adjustable interest rate that automatically decreases with market rates but never increases. A variation of this product could have an interest rate that automatically fluctuates with the market but never rises above its original rate. Like the auto-refi mortgage, a one-way ARM might allow more consumers to obtain the benefits of lower interest rates without undergoing the full, traditional refinancing process. Similarly, however, this product might be difficult for consumers to understand or challenging for creditors to competitively market, price, and sell on the secondary market.

B. Forbearances and Other Loss Mitigation

In the early months of the COVID–19 pandemic, economic activity contracted, and millions of workers lost their jobs. In response, Congress passed, and the President signed into law, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).[24] One key provision of the CARES Act required servicers of federally backed mortgages to grant a borrower's request for up to 180 days of forbearance if the consumer attested to a COVID–19-related financial hardship, with the option to extend the forbearance period for an additional 180 days at the request of the borrower. Guidance from Fannie Mae and Freddie Mac, the FHA, the VA, and the USDA extended the length of their COVID–19 forbearance programs an additional six months for a maximum forbearance

interest-only loan, or a negative amortization loan—into a standard mortgage. Under this option, a creditor refinancing a non-standard mortgage into a standard mortgage does not have to consider the specific underwriting criteria required by the ATR–QM rule, if certain conditions are met. These conditions include a requirement that the monthly payment for the standard mortgage be ''materially lower'' than the monthly payment for the non-standard mortgage and payment history requirements. This option is available only for refinances where the creditor for the standard mortgage is the current holder or servicer of the non-standard mortgage. 12 CFR 1026.43(d).

[19] 12 CFR 1026.43(c).

[20] 12 CFR 1026.43(e).

[21] Until recently, loans made pursuant to GSE refinance programs were generally eligible for QM status under the Temporary GSE QM loan definition. Under that definition, loans were presumed to comply with the ATR–QM rule as long as the loans (1) met the rule's prohibitions on certain loan features and limits points and fees; and (2) were eligible to be purchased or guaranteed by the GSEs while under FHFA conservatorship. Under this definition, GSE-backed refinances could obtain QM status even if the loan did not meet the requirements applicable under other QM definitions (for example, verification of income and employment). In 2013, the Bureau proposed to temporarily exempt from the ATR–QM rule certain streamlined refinances made pursuant to GSE refinance programs because of concerns that the ATR requirements could restrict credit access for consumers seeking to refinance through HARP and other GSE programs aimed at assisting at-risk consumers. *See* 78 FR 6621, 6650–51 (Jan. 30, 2013). However, the Bureau later withdrew that proposal. In withdrawing the proposal, the Bureau noted that loans that would have been eligible for the proposed exemption were eligible for QM status under the Temporary GSE QM loan definition, which the Bureau determined struck the appropriate balance between preserving consumers' rights to seek redress for violations of TILA and ensuring access to responsible, affordable credit. *See* 78 FR 35430, 35473–74 (June 12, 2013).

[22] *See, e.g.,* Brandon Ivey, *Lenders Getting Innovative as Refi Business Dwindles,* Inside Mortg. Fin. (Aug. 4, 2022), *https://www.insidemortgagefinance.com/articles/225298-lenders-getting-innovative-as-refi-business-dwindles.*

[23] *See, e.g.,* Kanav Bhagat, *Extending the Benefits of Mortgage Refinancing: The Case for the Auto-Refi Mortgage* (Oct. 6, 2021), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3927174.*

[24] Public Law 116–136, 134 Stat. 281 (2020).

period of 18 months.[25] Privately owned mortgages were not covered by the CARES Act, but many servicers and investors offered similar forbearance programs for those borrowers.

These forbearance programs are an example of streamlined short-term loss mitigation solutions that have helped maintain the stability of the mortgage market during the pandemic, providing benefits to consumers, as well as investors. Over the course of the pandemic, 8.2 million borrowers have entered a forbearance program, and as of July 2022, 93 percent have exited.[26] Most forbearance exits have been successful—52 percent of consumers who took forbearance have resumed making regular mortgage payments and 32 percent have paid off their mortgage in full. As of July 2022, just 4 percent are delinquent on their mortgage and 1 percent are in active foreclosure.[27] Of the post-forbearance consumers who are in active foreclosure, about 65 percent were behind on their mortgage payments going into the pandemic.[28] As of July 2022, mortgage delinquency and foreclosure levels were below pre-pandemic levels.[29]

Given the apparent overall success of forbearance programs and other streamlined loss mitigation solutions in connection with the COVID–19 pandemic, the Bureau is requesting comment on the actions it or others can take or should consider taking to spur automatic and streamlined short and long-term loss mitigation offers for borrowers with mortgages impacted by temporary financial hardship more generally (*i.e.,* not just as a result of the financial impacts of the pandemic). The Bureau is particularly interested in receiving information about what features of these COVID-era short and long-term loss mitigation programs should be made more generally available to borrowers, and in particular, if there are ways to automate and streamline the offering of short and long-term loss mitigation solutions. The Bureau is interested in ensuring that homeowners who are economically affected by events such as natural disasters are able to receive timely payment relief that could help them avoid foreclosure.

II. Request for Comment

This request seeks information from the public on: (1) ways to facilitate refinances for consumers that would benefit from refinances, especially consumers with smaller loan balances; and (2) ways to reduce risks for consumers that experience disruptions that could interfere with their ability to remain current on their mortgage payments. The CFPB welcomes comments from consumers, creditors, and other stakeholders, including the submission of descriptive information about experiences of people participating in the mortgage market, as well as research and other evidence. Commenters need not answer all or any of the specific questions posed. These questions are not meant to be exhaustive; the Bureau welcomes additional relevant comments on these important topics. For answers to specific questions, please note the number associated with any question to which you are responding at the top of each response.

Barriers to Refinancing

1. What barriers may prevent consumers from accessing falling interest rates through refinancing and what solutions could lower those barriers, particularly for consumers with smaller loan balances? Are there particular issues in obtaining refinances or would any particular approaches be more effective for certain types of homeowners, such as servicemembers, older adults, and first-time homeowners?

2. To what extent do large fixed costs of refinancing and limited profitability for smaller loan balances limit beneficial refinances? What potential policies could lower costs for beneficial refinances?

3. How much do common risk-based underwriting factors like credit scores and loan-to-value ratios account for the differences in refinancing rates across the population?

4. To what extent do the types of creditors offering refinance products in particular geographic areas affect refinancing rates in some areas and for some consumers?

5. To what extent are refinancing rates affected by potential barriers that may be more difficult to quantify, including borrowers' shopping behavior, trust of financial institutions, or the complexity and documentation involved in the refinancing process?

6. To what extent do consumers in rural areas face limited opportunities for refinances and what are the factors, including smaller loan balances, that may limit refinance opportunities for those consumers?

Targeted and Streamlined Refinances

1. How can the Bureau support industry efforts to facilitate beneficial refinances through targeted and streamlined refinance programs?

2. What are the current barriers to widespread use or promotion of existing refinance programs and, relatedly, what features of refinance programs are important to promoting widespread use?

3. What protections should be included in refinance programs to ensure consumer benefit, such as requirements for a lower interest rate and monthly payments, loan term limits, limits on serial refinancing, and requirements to refinance the consumer into a more stable mortgage product?

4. Should the Bureau's rules, including the ATR–QM rule, be amended to encourage beneficial refinances while preserving important protections for consumers? If so, how? What are the risks and benefits of doing so?

5. What are the risks and benefits of removing or modifying the current ATR–QM requirement that a creditor must consider and verify a consumer's income or assets relied on in making the loan in the context of a refinance program?

Potential New Products To Facilitate Refinances

1. What products or programs have lenders introduced to attempt to facilitate refinances for borrowers who would benefit from refinancing? What are the advantages and disadvantages of these products and programs?

2. What are the potential benefits and drawbacks of auto-refi mortgages and one-way ARMs?

3. Could creditors feasibly market and price auto-refi mortgages and one-way ARMs?

4. How could creditors most effectively structure auto-refi mortgages?

5. How could creditors most effectively structure one-way ARMs?

6. How could these products be designed to minimize risks to consumers?

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[25] *See, e.g.,* Fed. Hous. Fin. Agency, *FHFA Extends COVID–19 Forbearance Period and Foreclosure and REO Eviction Moratoriums* (Feb. 25, 2021), *https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-COVID-19-Forbearance-Period-and-Foreclosure-and-REO-Eviction-Moratoriums.aspx;* Press Release, The White House, *Fact Sheet: Biden Administration Announces Extension of COVID–19 Forbearance and Foreclosure Protections for Homeowners* (Feb. 16, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/.* Insurers and guarantors of mortgages typically provide detailed servicing guidelines, including guidelines related to loss mitigation, that servicers must follow.

[26] Black Knight Mortg. Monitor, July 2022 Report at 24 (July 2022), *https://www.blackknightinc.com/wp-content/uploads/2022/09/BKI_MM_July2022_Report.pdf* (Black Knight July 2022 Report).

[27] *Id.*

[28] Black Knight Mortg. Monitor, April 2022 Report at 7 (Apr. 2022), *https://www.blackknightinc.com/wp-content/uploads/2022/06/BKI_MM_Apr2022_Report.pdf.*

[29] Black Knight July 2022 Report at 4.

7. Under what market conditions should an auto-refi mortgage automatically refinance? [30]

8. Under what market conditions should the rate of a one-way ARM change?

9. Should these conditions be regulated or left to market forces?

10. Do any market factors or practical difficulties, including secondary market liquidity and mortgage-backed securities (MBS) investor interest, preclude the development of auto-refi mortgages or one-way ARMs? How would these or similar products impact the MBS market?

11. Should the Bureau amend the ATR–QM rule or other regulations to permit or encourage creditors to offer auto-refi mortgages or one-way ARMs? If so, how?

12. Are there any other new products that creditors could feasibly develop that would allow more borrowers to receive the benefits of reduced mortgage interest rates?

13. Would these products be prohibited or discouraged by existing regulations promulgated by the Bureau?

14. Should the Bureau (or other Federal regulators) amend regulations to permit or encourage the development of these products?

15. Are there other legal impediments or policies that may deter the introduction of auto-refi mortgages, one-way ARMs, or other new products that could facilitate beneficial refinances?

Forbearances and Other Loss Mitigation

1. What are the benefits and drawbacks of automating and streamlining short and long-term loss mitigation offers?

2. If such automation and streamlining of loss mitigation offers is incorporated within new mortgage products:

a. How should such products be structured?

b. How and where should such features be established (*e.g.,* the note, contracts between investors and servicers, or regulations created or amended by the Bureau or other Federal regulators)?

3. Under what circumstances should short or long term loss mitigation solutions be offered automatically? For example, should forbearance be offered automatically upon the declaration of a national emergency or presidentially declared disaster, when unemployment rates in the consumer's locality reach a certain level, when a borrower loses their job, when a co-borrower on the loan dies, or under other circumstances? What factors should be considered regarding these circumstances? Should any documentation from the consumer be required in any of these circumstances?

4. For short-term loss mitigation solutions, such as forbearance, to what extent is there tension between the goal of offering meaningful immediate payment relief and the goal of ensuring that the balance owed does not grow so large as to make long-term loss mitigation solutions difficult to achieve? Should there be a maximum length of a short-term loss mitigation solution and, if so, what is the appropriate maximum length?

5. What impact would the Bureau's mortgage servicing regulations, such as those relating to communications with delinquent borrowers, the Bureau's regulatory definition of delinquency, and the loss mitigation process in general, have on automating and streamlining short and long-term loss mitigation offers?

6. What changes, if any, should be considered relating to the impact that forbearances and other short-term loss mitigation solutions would have on a consumer's credit reporting?

7. Should standards be set to ensure affordability of long-term loss mitigation solutions? If so, what features of a long-term loss mitigation solution would best help ensure long-term affordability? For example, would term extension, limits on monthly payment increases, or principal forgiveness assist with the goal of long-term affordability?

8. When considering the potential automation and streamlining of short and long-term loss mitigation offers, would there be advantages or drawbacks if more creditors retained servicing of the mortgage loans they originate? Do payment relief advantages exist when an original creditor retains servicing of a mortgage loan? If so, should the Bureau consider ways to encourage originators to retain the servicing of mortgage loans?

9. When considering the potential automation and streamlining of short and long-term loss mitigation offers, are there particular issues or would any particular approaches be more effective for certain types of homeowners, such as servicemembers, older adults, and first-time homeowners?

10. Other than the mortgage products already mentioned in this RFI, are there other mortgage products or features of mortgage products that could help borrowers weather various financial shocks? What are the advantages or drawbacks of these mortgage products or features of mortgage products?

11. Are there other options not mentioned in this RFI that could help achieve the goal of reducing risk for homeowners who are facing financial hardship? If so, what are those options?

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2022–20898 Filed 9–26–22; 8:45 am]

BILLING CODE 4810–AM–P

[30] For example, one researcher's proposed auto-refi mortgage product would automatically refinance when a 0.50 percent interest rate reduction and 7.5 percent payment reduction can be achieved. *See* Bhagat, *supra,* at 14.

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0119]

Agency Information Collection Activities; Comment Request; 2023–24 National Postsecondary Student Aid Study (NPSAS:24) Field Test—Student Data Collection and Student Records

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before November 28, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0119. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection

activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2023–24 National Postsecondary Student Aid Study (NPSAS:24) Field Test—Student Data Collection and Student Records.

OMB Control Number: 1850–0666.

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 6,240.

Total Estimated Number of Annual Burden Hours: 8,550.

Abstract: This request is to conduct the 2023–24 National Postsecondary Student Aid Study Field Test (NPSAS:24 FT) student data collection, consisting of a student record data abstraction and a student survey, carrying over the approved NPSAS:24 FT Institution Collection (OMB #1859–0666 v. 33). This study is being conducted by the National Center for Education Statistics (NCES), within the Institute of Education Sciences (IES), part of the U.S. Department of Education.

This submission covers materials and procedures related to the NPSAS:24 student data collection, which includes abstraction of student data from institutions and a student survey, administered primarily as a web survey, and carries over respondent burden, procedures, and materials related to the NPSAS:24 FT institution sampling, enrollment list collection, and matching to administrative data files as approved by OMB in September 2022 (OMB #1859–0666 v. 33). The materials and procedures are based on those developed for previous institution-based data collections, including the 2019–20 National Postsecondary Student Aid Study (NPSAS:20) [OMB #1850–0666 v. 25].

The first NPSAS was implemented by NCES during the 1986–87 academic year to meet the need for national data about significant financial aid issues. Since 1987, NPSAS has been fielded every 2 to 4 years, most recently during the 2019–20 academic year (NPSAS:20). NPSAS:24 will be nationally-representative. The NPSAS:24 field test sample size will be 6,000 students, and the full-scale sample will include 137,000 nationally representative undergraduate and 25,000 nationally representative graduate students who will be asked to complete a survey and for whom we will collect student records and administrative data. If the full-scale budget allows, we will include state-representative sampling for the full-scale collection and provide the budget for a state-representative sampling plan in the 30-day full-scale package, planned for 2023. Also, if exercised, NPSAS:24 will serve as the base year for the 2024 cohort of the Baccalaureate and Beyond (B&B) Longitudinal Study and will include a nationally representative sample of students who will complete requirements for the bachelor's degree during the NPSAS year (*i.e.,* completed at some point between July 1, 2022, and June 30, 2023 for the field test and July 1, 2023 to June 30, 2024 for the full-scale). Subsets of questions in the student survey will focus on describing aspects of the experience of students in their last year of postsecondary education, including student debt and education experiences. This submission is designed to adequately justify the need for and overall practical utility of the full study, presenting the overarching plan for all phases of the student data collection and providing as much detail about the measures to be used as is available at the time of this submission.

As part of this submission, NCES is publishing a notice in the **Federal Register** allowing first a 60- and then a 30-day public comment period. Field test materials, procedures, and results will inform the full-scale study. After completion of this field test, NCES will publish a notice in the **Federal Register** allowing additional 30-day public comment period on the final details of the NPSAS:24 full-scale student records and student survey data collections.

Dated: September 21, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–20839 Filed 9–26–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0120]

Agency Information Collection Activities; Comment Request; Common Core of Data (CCD) School-Level Finance Survey (SLFS) 2022–2024

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before November 28, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0120. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of Strategic Collections and Clearance, Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW,

LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Common Core of Data (CCD) School-Level Finance Survey (SLFS) 2022–2024.

OMB Control Number: 1850–0930.

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 306.

Total Estimated Number of Annual Burden Hours: 4,938.

Abstract: NCES annually publishes comprehensive data on the finances of public elementary/secondary schools through the Common Core of Data (CCD). For numerous years, these data have been released at the state level through the National Public Education Financial Survey (NPEFS) (OMB#1850–0067) and at the school district level through the Local Education Agency (School District) Finance Survey (F–33). (OMB#0607–0700). There is a significant demand for finance data at the school level. Policymakers, researchers, and the public have long voiced concerns about the equitable distribution of school funding within and across school districts. School-level finance data addresses the need for reliable and unbiased measures that can be utilized to compare how resources are distributed among schools within local districts. Education expenditure data are now available at the school level through the School-Level Finance Survey (SLFS).

The School-Level Finance Survey (SLFS) data collection is conducted annually by the National Center for Education Statistics (NCES), within the U.S. Department of Education (ED). In November of 2018, the Office of Management and Budget (OMB) approved changes to the SLFS wherein variables have been added to make the SLFS directly analogous to the F–33 Survey and to the Every Student Succeeds Act (ESSA) provisions on reporting expenditures per-pupil at the local education agency (LEA) and school-level. A previous package cleared in October 2021 approved data collection for FY 2021, 2022, and 2023 (OMB#1850–0930 v.3). This request includes considerable modifications to the previous package and will allow NCES to conduct in 2023 through 2025 the SLFS for fiscal years 2022 through 2024 (corresponding to school years 2021/22 through 2023/24) and to continue the collection of data that is analogous to the current ESSA expenditures per pupil provision. As an important new addition that is part of this request, the Department's Office of Civil Rights (OCR) proposes to engage NCES to assist OCR with collecting school level finance data as part of the Civil Rights Data Collection (CRDC). Pursuant to its authority under the DEOA, as well as its regulations, OCR has determined that the CRDC is necessary to ascertain or ensure compliance with the civil rights laws within its jurisdiction, and therefore established it as a mandatory collection.

Parts A and B of this submission present the justification for the information collection and an explanation of the statistical methods employed. Part C describes the SLFS instrument, Appendix A provides the SEA communication materials that will be used to conduct the SLFS data collection, Appendix B provides the SLFS data collection form and instructions, and Appendix C provides the survey of SEA's school-level finances fiscal data plan.

Dated: September 21, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–20838 Filed 9–26–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Public Availability of the Department of Energy's FY 2020 Service Contract Inventory

AGENCY: Office of Acquisition Management, Department of Energy.

ACTION: Notice of public availability of FY 2020 service contract inventory.

SUMMARY: In accordance with Division C of the Consolidated Appropriations Act of 2010 and Office of Management and Budget (OMB) guidance, the Department of Energy (DOE) is publishing this notice to advise the public on the availability of the FY 2020 Service Contract Inventory Analysis Plan and FY 2019 Service Contract Inventory Analysis. This inventory provides information on service contract actions over $150,000 that DOE completed in FY 2020. The inventory has been developed in accordance with guidance issued by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). FY 2020 government-wide service contract inventory can be found at *https://www.acquisition.gov/service-contract-inventory.* The Department of Energy's service contract inventory data is included in the government-wide inventory posted on the above link and the government-wide inventory can be filtered to display the inventory data for the Department. DOE has posted its FY 2019 Service Contract Inventory Analysis and FY 2020 Service Contract Inventory Analysis Plan at: *https://energy.gov/management/downloads/service-contract-inventory.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Lance Nyman in the Strategic Programs Division at (240) 474–7960 or *Lance.Nyman@hq.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on September 20, 2022, by John R. Bashista, Director, Office of Acquisition Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative

purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 21, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–20818 Filed 9–26–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–9–000]

New England Winter Gas-Electric Forum; Notice of Request for Comments

On September 8, 2022, the Federal Energy Regulatory Commission (Commission) convened a forum in the above captioned proceeding to discuss the electricity and natural gas challenges facing the New England region. Topics discussed included the historical context of New England winter gas-electric challenges, concerns and considerations for upcoming winters such as reliability of gas and electric systems and fuel procurement issues, and whether additional information or modeling exercises are needed to inform the development of solutions to these challenges.

Any party wishing to submit comments regarding the topics discussed at the forum may do so on or before November 7, 2022.

Comments may be filed electronically via the internet.[1] Instructions are available on the Commission's website *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For more information about this Notice, please contact:

Ernesto Guzman (Technical Information), Office of Energy Market Regulation, (202) 502–6565, *Ernesto.Guzman@ferc.gov*

Eric Winterbauer (Legal Information), Office of the General Counsel, (202) 502–8329, *Eric.Winterbauer@ferc.gov*

Dated: September 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–20873 Filed 9–26–22; 8:45 am]

BILLING CODE 6717–01–P

[1] *See* 18 CFR 385.2001(a)(1)(iii) (2021).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–20–001, CP17–21–002, CP18–7–001]

Port Arthur LNG, LLC, Port Arthur Pipeline, LLC; Notice Granting Intervention

On August 2, 2022, the Commission issued notice of Port Arthur LNG, LLC and Port Arthur Pipeline, LLC's (jointly, Port Arthur) request for an extension of time to complete construction of and make available for service the Port Arthur LNG Terminal and the non-integrated Louisiana Connector Project and Texas Connector Project. The notice established August 17, 2022, as the deadline for filing motions to intervene.

On August 17, 2022, the Sierra Club filed a timely motion to intervene and protest the extension of time request. Port Arthur opposes this motion, stating that Sierra Club has not shown it will be directly affected by the outcome of the proceeding nor that its participation is in the public interest.[1] Pursuant to Rule 214(c)(2) of the Commission's Rules of Practice and Procedure, if an answer in opposition to a timely motion to intervene is filed within 15 days after the motion to intervene is filed, the movant becomes a party only when the motion is expressly granted.[2]

The Sierra Club's motion to intervene was timely filed on August 17, 2022, and it demonstrates that the Sierra Club has interests that may be directly affected by the outcome of the extension of time proceeding. Moreover, allowing the intervention will not cause any additional burden upon the existing parties and is thus in the public interest. The Sierra Club's motion to intervene is granted.

This notice constitutes final agency action. Requests for rehearing of this notice must be filed within 30 days of the date of issuance of this notice, pursuant to section 313(a) of the Federal Power Act, 16 U.S.C. 825*l*(a), and Rule 713 of the Commission's Rules of Practice and Procedure, 18 CFR 385.713.

Dated: September 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–20878 Filed 9–26–22; 8:45 am]

BILLING CODE 6717–01–P

[1] Port Arthur LNG, LLC et al. September 1, 2022 Answer Opposing Motion to Intervene in Docket No. CP17–20–001 et al.

[2] 18 CFR 385.214(c)(2) (2021).

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: RP22–1224–000.
Applicants: MP Gulf of Mexico, LLC, Deepwater Abandonment Alternatives, Inc.
Description: Joint Petition for Temporary and Limited Waivers of Capacity Release Regulations, et al. of MP Gulf of Mexico, LLC et al. under RP22–1224.
Filed Date: 9/19/22.
Accession Number: 20220919–5267.
Comment Date: 5 p.m. ET 9/26/22.

Docket Numbers: RP22–1225–000.
Applicants: Trunkline Gas Company, LLC.
Description: § 4(d) Rate Filing: Off-System Capacity Updates to be effective 10/20/2022.
Filed Date: 9/20/22.
Accession Number: 20220920–5109.
Comment Date: 5 p.m. ET 10/3/22.

Docket Numbers: RP22–1226–000.
Applicants: Flywheel Energy Production II, LLC, XTO Energy Inc.
Description: Joint Petition for Temporary Waivers of Capacity Release Regulations, et al. of Flywheel Energy Production II, LLC et al. under RP22–1226.
Filed Date: 9/20/22.
Accession Number: 20220920–5110.
Comment Date: 5 p.m. ET 9/27/22.

Docket Numbers: RP22–1227–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: KaMin Negotiated Rate to be effective 10/1/2022.

Filed Date: 9/21/22.
Accession Number: 20220921–5011.
Comment Date: 5 p.m. ET 10/3/22.

Docket Numbers: RP22–1228–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) Rate Filing: Removal of Expiring NextEra Agreement to be effective 11/1/2022.
Filed Date: 9/21/22.
Accession Number: 20220921–5014.
Comment Date: 5 p.m. ET 10/3/22.

Docket Numbers: RP22–1229–000.
Applicants: Honeoye Storage Corporation.
Description: Compliance filing: HSC 2022 Rate Compliance Filing to be effective N/A.
Filed Date: 9/21/22.
Accession Number: 20220921–5018.
Comment Date: 5 p.m. ET 10/3/22.

Docket Numbers: RP22–1230–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2022–09–21 Negotiated Rate Agreement Termination to be effective 9/16/2022.
Filed Date: 9/21/22.
Accession Number: 20220921–5028.
Comment Date: 5 p.m. ET 10/3/22.

Docket Numbers: RP22–1231–000.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TIGT 2022–09–21 Non-Conforming Agreement Amendment to be effective 9/21/2022.
Filed Date: 9/21/22.
Accession Number: 20220921–5032.
Comment Date: 5 p.m. ET 10/3/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–20871 Filed 9–26–22; 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: EC22–63–000.
Applicants: Alliance Energy Group LLC.
Description: Amendment to May 9, 2022, Application for Authorization Under Section 203 of the Federal Power Act of Greeley Energy Facility, LLC.
Filed Date: 9/15/22.
Accession Number: 20220915–5314.
Comment Date: 5 p.m. ET 10/6/22.

Docket Numbers: EC22–122–000.
Applicants: BP Energy Retail LLC, EDF Energy Services, LLC, EDF Industrial Power Services (CA) LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of BP Energy Retail LLC, et al.
Filed Date: 9/21/22.
Accession Number: 20220921–5083.
Comment Date: 5 p.m. ET 10/12/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–2013–001.
Applicants: Collegiate Clean Energy, LLC.
Description: Compliance filing: Collegiate MBR Change in Category to be effective 9/22/2022.
Filed Date: 9/21/22.
Accession Number: 20220921–5087.
Comment Date: 5 p.m. ET 10/12/22.

Docket Numbers: ER17–2014–001.
Applicants: Ingenco Wholesale Power, L.L.C.
Description: Compliance filing: Ingenco MBR Change in Category to be effective 9/22/2022.
Filed Date: 9/21/22.
Accession Number: 20220921–5088.
Comment Date: 5 p.m. ET 10/12/22.

Docket Numbers: ER20–2197–002.
Applicants: Atlantic City Electric Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Atlantic City Electric Company submits tariff filing per 35: ACE and Delmarva Compliance Filing in ER20–2197 & ER20–2198 (Consolidated) to be effective 9/1/2020.
Filed Date: 9/21/22.
Accession Number: 20220921–5095.
Comment Date: 5 p.m. ET 10/12/22.

Docket Numbers: ER21–385–003.
Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.
Description: Compliance filing: Compliance Filing (ER21–385) to be effective 7/1/2022.
Filed Date: 9/21/22.
Accession Number: 20220921–5086.
Comment Date: 5 p.m. ET 10/12/22.

Docket Numbers: ER22–2125–000; EL21–9–000.
Applicants: Duke Energy Progress, LLC.
Description: ALJ Settlement: DEP–NCEMC Offer of Settlement and Settlement Agreement to be effective N/A.
Filed Date: 6/16/22.
Accession Number: 20220616–5061.
Comment Date: 5 p.m. ET 10/3/22.

Docket Numbers: ER22–2616–001.
Applicants: Southern California Edison Company.
Description: Tariff Amendment: Errata to Add Clean Tariff to eTariff Record, re Desert Sunlight 2nd Amend to be effective 10/5/2022.
Filed Date: 9/21/22.
Accession Number: 20220921–5034.
Comment Date: 5 p.m. ET 10/12/22.

Docket Numbers: ER22–2885–000.
Applicants: 1000 Mile Solar, LLC.
Description: Request for Limited Waiver, et al. of 1000 Mile Solar, LLC.
Filed Date: 9/19/22.
Accession Number: 20220919–5261.
Comment Date: 5 p.m. ET 10/4/22.

Docket Numbers: ER22–2897–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: CCSF Revisions to 2–19–2020 Filing (SA 275) to be effective 11/21/2022.
Filed Date: 9/21/22.
Accession Number: 20220921–5031.
Comment Date: 5 p.m. ET 10/12/22.

Docket Numbers: ER22–2898–000.
Applicants: Huck Finn Solar, LLC.
Description: Baseline eTariff Filing: Initial Market-Based Rate Petition of Huck Finn Solar to be effective 11/21/2022.
Filed Date: 9/21/22.
Accession Number: 20220921–5072.
Comment Date: 5 p.m. ET 10/12/22.

Docket Numbers: ER22–2899–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 402, EP&C between APS and DCR Transmission to be effective 8/22/2022.
Filed Date: 9/21/22.
Accession Number: 20220921–5085.
Comment Date: 5 p.m. ET 10/12/22.

Docket Numbers: ER22–2900–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 309, Morgan-Pinnacle Peak Interconnection Agreement to be effective 11/21/2022.
Filed Date: 9/21/22.

Accession Number: 20220921–5092.
Comment Date: 5 p.m. ET 10/12/22.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF22–442–000.
Applicants: Turnbull Hydro LLC.
Description: Refund Report of Turnbull Hydro LLC [Lower Turnbull].
Filed Date: 9/20/22.
Accession Number: 20220920–5132.
Comment Date: 5 p.m. ET 10/11/22.

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: September 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–20872 Filed 9–26–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0025; FRL–10236–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emission Guidelines for Existing Commercial and Industrial Solid Waste Incineration Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Emission Guidelines for Existing Commercial and Industrial Solid Waste Incineration Units (EPA ICR Number1927.09, OMB Control Number 2060–0451), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2022. Public comments were previously requested, via the **Federal Register**, on April 8, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 27, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0025, online using *https://www.regulations.gov/* (our preferred method), or by email to *docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The 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.

Submit written comments and recommendations to OMB for the proposed information collection 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: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@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 *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, 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.*

Abstract: The Emission Guidelines for Existing Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart DDDD) fulfill the requirements of sections 111 and 129 of the Clean Air Act (CAA) and affect the administrator of an air quality program in a state or United States protectorate with one or more existing commercial and industrial solid waste incineration (CISWI) units. These regulations apply to sources commencing construction on or before June 4, 2010, or to sources commencing modification or reconstruction between June 1, 2001, and August 7, 2013. The guidelines do not apply directly to CISWI unit owners and operators, since they are implemented through state implementation plans (SIP). If a state does not develop, adopt, and submit an approved state plan, or if a state's plan is not approved, the EPA must promulgate a Federal implementation plan to implement the emission guidelines in a state without its own SIP. This information is being collected to assure compliance with 40 CFR part 60, subpart DDDD. In general, all emission guideline standards require initial notification reports, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to the emission guidelines.

Form Numbers: None.

Respondents/affected entities: Commercial and Industrial Solid Waste Incineration (CISWI) units commencing construction either on or before June 4, 2010, or to sources commencing either modification or reconstruction between June 1, 2001 and August 7, 2013.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart DDDD).

Estimated number of respondents: 74 (total).

Frequency of response: Semiannually and annually.

Total estimated burden: 16,100 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $3,110,000 (per year), which includes $1,170,000 in

annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) the regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden.

There is a slight increase in the capital and O&M costs due to an adjustment to the estimated cost per respondent to reflect 2020 dollars using the Chemical Engineering Plant Cost Index (CEPCI), Equipment Cost Index, and the use of updated labor rates for continuous parameter monitoring from the most-recent Bureau of Labor Statistics report (September 2021).

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–20876 Filed 9–26–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0568; FR ID 106371]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before October 27, 2022.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0568.

Title: Sections 76.970, 76.971, and 76.975, Commercial Leased Access Rates, Terms and Conditions, and Dispute Resolution.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 2,677 respondents; 6,879 responses.

Estimated Time per Response: 0.5 hours to 40 hours.

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

Obligation to Respond: Mandatory; Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 4(i), 303, and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 532.

Total Annual Burden: 17,131 hours.

Total Annual Cost: $118,000.

Needs and Uses: The information collection requirements for this collection are contained in the following rule sections:

47 CFR 76.970(h) requires cable operators to provide prospective leased access programmers with the following information within 30 calendar days of the date on which a bona fide request for leased access information is made, provided that the programmer has remitted any application fee that the cable system operator requires up to a maximum of $100 per system-specific bona fide request (for systems subject to small system relief, cable operators are required to provide the following information within 45 calendar days of a bona fide request):

(a) How much of the cable operator's leased access set-aside capacity is available;

(b) a complete schedule of the operator's full-time leased access rates;

(c) rates associated with technical and studio costs; and

(d) if specifically requested, a sample leased access contract.

Bona fide requests, as used in this section, are defined as requests from

potential leased access programmers that have provided the following information:

(a) The desired length of a contract term;

(b) the anticipated commencement date for carriage; and

(c) the nature of the programming.

All requests for leased access must be made in writing and must specify the date on which the request was sent to the operator. Operators must maintain supporting documentation to justify scheduled rates, including supporting contracts, calculations of the implicit fees, and justifications for all adjustments.

Cable system operators must disclose on their own websites, or through alternate means if they do not have their own websites, a contact name or title, telephone number, and email address for the person responsible for responding to requests for information about leased access channels.

47 CFR 76.971 requires cable operators to provide billing and collection services to leased access programmers unless they can demonstrate the existence of third-party billing and collection services which, in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers.

47 CFR 76.975(b) allows any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the relevant provisions of the statute or the implementing regulations to file a petition for relief with the Commission. Persons alleging that a cable operator's leased access rate is unreasonable must receive a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a petition. If parties cannot agree on a mutually acceptable accountant within five business days of the programmer's request for a review, they must each select an independent accountant on the sixth business day. These two accountants will then have five business days to select a third independent accountant to perform the review. To account for their more limited resources, operators of systems entitled to small system relief have 14 business days to select an independent accountant when no agreement can be reached.

47 CFR 76.975(c) requires that petitioners attach a copy of the final accountant's report to their petition where the petition is based on allegations that a cable operator's leased access rates are unreasonable.

47 CFR 76.975(e) provides that the cable operator or other respondent will have 30 days from service of the petition to file an answer. If a leased access rate is disputed, the answer must show that the rate charged is not higher than the maximum permitted rate for such leased access, and must be supported by the affidavit of a responsible company official. If, after an answer is submitted, the staff finds a prima facie violation of our rules, the staff may require a respondent to produce additional information, or specify other procedures necessary for resolution of the proceeding. Replies to answers must be filed within fifteen (15) days after submission of the answer.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2022–20894 Filed 9–26–22; 8:45 am]

BILLING CODE 6712–01–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 October 12, 2022.

A. Federal Reserve Bank of Cleveland (Bryan S. Huddleston, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *The Rebecca A. Moorman Revocable Living Trust, Rebecca A. Moorman, as trustee, Keith W. Moorman and Pamela L. Suever, all of Ottoville, Ohio; Neil R. Moorman, Saline, Michigan; and Karen S. Andrew, Brighton, Michigan;* to join the Rebecca Moorman Family Control Group, a group acting in concert, to retain voting shares of The Ottoville Bank Company, Ottoville, Ohio.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–20897 Filed 9–26–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Privacy Act of 1974; System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is given that the Board of Governors of the Federal Reserve System (Board) proposes to modify an existing system of records, entitled BGFRS–3, ''FRB—Medical Records.'' BGFRS–3 includes information relating to medical examinations and drug testing of current and prospective employees, and any other medical-related information that may be submitted by employees, contractors, candidates for Board employment, and members of the public.

DATES: Comments must be received on or before October 27, 2022. This new system of records will become effective October 27, 2022, without further notice, unless comments dictate otherwise.

The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 30-day period prior to publication in the **Federal Register** in which to review the system and to provide any comments to the agency. The public is then given a 30-day period in which to comment, in accordance with 5 U.S.C. 552a(e)(4) and (11).

ADDRESSES: You may submit comments, identified by *BGFRS–3, ''FRB—Medical Records,''* by any of the following methods:

• *Agency website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

• *Email: regs.comments@federalreserve.gov.* Include SORN name and number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically and in-person in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during federal business weekdays.

FOR FURTHER INFORMATION CONTACT: David B. Husband, Senior Counsel, (202) 530–6270, or *david.b.husband@frb.gov,* Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunication relay services.

SUPPLEMENTARY INFORMATION: The Board is modifying this system of records to reflect that the Board has eliminated its in-house health unit and to further clarify the scope of the records included in the system. Specifically, the Board is updating the ''Categories of Records in the System'' section as follows: (a) to remove the outdated references to the collection of information by the Board's Health Unit, which is now defunct; (b) to clarify that the system includes any medical records that an employee, contractor, applicant, or other individual may provide directly to the Board, including medical records relating to certain sick leave and other leave requests and reasonable accommodation requests; (c) to remove the reference to records relating to employees' workers' compensation claims, as those records are maintained by the Department of Labor's Office of Workers' Compensation Programs; (d) to remove the reference to records regarding employees' use of the Board's exercise facilities as the Board does not collect such medical information; and (e) to remove the unclear and redundant reference to records regarding employees' participation in an occupational health services program. In light of these changes, the Board has made corresponding revisions to system's purpose, categories of individuals covered by the system, and the policies and practices for retention and disposal of records section.

The Board is also making general updates to the system. Specifically, the Board is updating the system location, the system manager, the authority for maintenance of the system, the record source categories, and the policies and practices for storage of records. The Board is also taking the opportunity to update the ''Routine Uses'' section to incorporate a link to the Board's general routine uses. The Board is not amending or establishing any new routine uses.

The Board is also making technical changes to BGFRS–3 consistent with the template laid out in OMB Circular No. A–108. Accordingly, the Board is making technical corrections and non-substantive language revisions to the following categories: ''Policies and Practices for Storage of Records,''Policies and Practices for Retrieval of Records,'' ''Policies and Practices for Retention and Disposal of Records,'' ''Administrative, Technical and Physical Safeguards,'' ''Record Access Procedures,'' ''Contesting Record Procedures,'' and ''Notification Procedures.'' The Board is also adding the following new fields: ''Security Classification'' and ''History.''

SYSTEM NAME AND NUMBER:

BGFRS–3 ''FRB—Medical Records''.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Human Resources, Management Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Certain records are also maintained on the Board's behalf by Medical Advisory Services, 1140 19th Street NW, Suite 700, Washington, DC 20036 and Workpartners, 600 Grant Street, 8th Floor, Pittsburgh, PA 15219.

SYSTEM MANAGER:

John Forbes, Program Manager—Employee Life, Human Resources, Management Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551, (202) 974–7052, or *john.b.forbes@frb.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10 and 11 of the Federal Reserve Act (12 U.S.C. 244 and 248).

PURPOSE(S) OF THE SYSTEM:

These records are collected and maintained to assist the Board in determining an employee's fitness for duty and eligibility for benefits based on medical information, to respond to reasonable accommodation requests, to assist the Board in providing a safe and healthy working environment, and to comply with Executive Order 12564, Drug-Free Federal Workplace.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present Board employees, contractors, candidates for Board employment, and members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

The majority of records are maintained by the Board's vendor on behalf of the Board and relate to occupational medical examinations of current and prospective employees, including employees subject to fit-for-duty requirements, and the drug testing of current and prospective employees under the Board's Drug-Free Workplace Plan. The Board's vendor also maintains historical records relating to the preventive health screenings that the Board previously offered employees through its now-defunct in-house health unit. The Board's Management Division maintains medical records that an employee, contractor, applicant, or other individual may provide directly to the Board, including records relating to certain sick leave and other leave requests and reasonable accommodation requests. The Management Division also maintains information regarding any failed drug testing administered by the Board's vendor and information regarding whether an employee or applicant has passed or failed the medical examinations administered by the Board's vendor.

RECORD SOURCE CATEGORIES:

Information may be provided by the individual to whom the record pertains, medical professionals, and diagnostic laboratories.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

General routine uses A, B, C, D, F, G, H, I, and J apply to this system. These general routine uses are located at *https://www.federalreserve.gov/files/SORN-page-general-routine-uses-of-board-systems-of-records.pdf* and are published in the **Federal Register** at 83

FR 43872 at 43873–74 (August 28, 2018). Employee medical information that is obtained under the Rehabilitation Act may be used only in accordance with the confidentiality provisions of the Rehabilitation Act. Records may also be used:

1. To disclose information to the Board's Thrift Plan, the Board's Group Life Insurance administrators, the Department of Labor, Department of Veterans Affairs, Social Security Administration, Federal Retirement Thrift Investment Board, or a national, state, or local Social Security-type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program;

2. To disclose information to a federal, state, or local agency to the extent necessary to comply with laws governing reporting of communicable disease or when it is reasonably believed that an individual might have contracted an illness or been exposed to or suffered from a health hazard while employed in the federal workforce;

3. To disclose to health insurance carriers that provide a health benefits plan under the Federal Employees Health Benefits Program information that is necessary to verify eligibility for payment of a claim for health benefits; and

4. To disclose information to the executor of an individual's estate, the government entity probating a will, a designated beneficiary, or to any person who is responsible for the care of an individual to the extent necessary when the individual to whom a record pertains is deceased, mentally incompetent, or under other legal disability, and to disclose information to an individual's emergency contact, or, if the emergency contact is unavailable, to any person who the Board believes is assisting the individual, when necessary to assist that individual in obtaining any employment benefit or any working condition, such as an accommodation under the Rehabilitation Act of 1973.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records in this system are stored in locked file cabinets with access limited to staff with a need to know. Electronic records are stored on secure servers with access limited to staff with a need to know.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records can be retrieved by name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records pertaining to occupational medical examination of employees are retained for 30 years after the employee's separation or when the Official Personnel Folder (OPF) is destroyed, whichever is longer. All medical records of applicants who do not become Board employees are destroyed 3 years after the end of the year in which the position is filled or the vacancy announcement is closed, whichever is later, unless longer retention is authorized for business use. Medical records relating to reasonable accommodation requests are retained 3 years after employee separation from the Board or when all appeals are concluded whichever is later, but longer retention is authorized if required for business use. Records of positive drug test results in connection with drug testing of employees are destroyed when the employee leaves the Board or when 3 years old, whichever is later. Other medical records are generally destroyed when 3 years old in accordance with applicable records schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic files are stored on secure servers. The system has the ability to track individual user actions within the system. The audit and accountability controls are based on NIST and Board standards which, in turn, are based on applicable laws and regulations. The controls assist in detecting security violations and performance or other issues in the system. Access to the system is restricted to authorized users within the Board who require access for official business purposes. Users are classified into different roles and common access and usage rights are established for each role. User roles are used to delineate between the different types of access requirements such that users are restricted to data that is required in the performance of their duties. Periodic assessments and reviews are conducted to determine whether users still require access, have the appropriate role, and whether there have been any unauthorized changes.

RECORD ACCESS PROCEDURES:

The Privacy Act allows individuals the right to access records maintained about them in a Board system of records. Your request for access must: (1) contain a statement that the request is made pursuant to the Privacy Act of 1974; (2) provide either the name of the Board system of records expected to contain the record requested or a concise description of the system of records; (3) provide the information necessary to verify your identity; and (4) provide any other information that may assist in the rapid identification of the record you seek.

Current or former Board employees may make a request for access by contacting the Board office that maintains the record. The Board handles all Privacy Act requests as both a Privacy Act request and as a Freedom of Information Act request. The Board does not charge fees to a requestor seeking to access or amend his/her Privacy Act records.

You may submit your Privacy Act request to the—

Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551

You may also submit your Privacy Act request electronically by using the Board's request portal at: *https://foia.federalreserve.gov/.*

CONTESTING RECORD PROCEDURES:

The Privacy Act allows individuals to seek amendment of information that is erroneous, irrelevant, untimely, or incomplete and is maintained in a system of records that pertains to them. To request an amendment to your record, you should clearly mark the request as a ''Privacy Act Amendment Request.'' You have the burden of proof for demonstrating the appropriateness of the requested amendment and you must provide relevant and convincing evidence in support of your request.

Your request for amendment must: (1) provide the name of the specific Board system of records containing the record you seek to amend; (2) identify the specific portion of the record you seek to amend; (3) describe the nature of and reasons for each requested amendment; (4) explain why you believe the record is not accurate, relevant, timely, or complete; and (5) unless you have already done so in a related Privacy Act request for access or amendment, provide the necessary information to verify your identity.

NOTIFICATION PROCEDURES:

Same as ''Access procedures'' above. You may also follow this procedure in order to request an accounting of previous disclosures of records pertaining to you as provided for by 5 U.S.C. 552a(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This SORN was previously published in the **Federal Register** at 73 FR 24984

at 24988 (May 6, 2008). The SORN was also amended to incorporate two new routine uses required by OMB at 83 FR 43872 (August 28, 2018).

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–20887 Filed 9–26–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0136; Docket No. 2022–0053; Sequence No. 18]

Submission for OMB Review; Commercial Acquisitions

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding commercial acquisitions.

DATES: Submit comments on or before October 27, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0136, Commercial Acquisitions. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0136, Commercial Acquisitions.

B. Need and Uses

This clearance covers the information that offerors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

FAR 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services. Paragraph (b)(2) requires offerors to identify the applicable paragraphs at (c) through (v) of this provision that the offeror has completed for the purposes of the relevant solicitation only, if any. The provision stipulates that any changes provided by the offeror under paragraph (b)(2) are applicable to that specific solicitation only, and do not result in an update to the representations and certifications posted electronically in the System for Award Management. The contracting officer will use the information to determine a contractor's eligibility for award, and to incorporate appropriate terms and conditions into the contract award.

C. Annual Burden

Respondents: 140,055.

Total Annual Responses: 414,909.

Total Burden Hours: 207,455.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 87 FR 43039, on July 19, 2022. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0136, Commercial Acquisitions.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–20811 Filed 9–26–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0571]

Ortho-phthalates for Food Contact Use; Reopening of Comment Period; Request for Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period; request for information.

SUMMARY: The Food and Drug Administration (FDA or we) is reopening the comment period for the notice titled ''*Ortho*-phthalates for Food Contact Use; Request for Information,'' which published in the **Federal Register** of May 20, 2022. We are taking this action in response to a request from stakeholders to extend the comment period to allow additional time for interested parties to develop and submit data, other information, and comments for this request for information.

DATES: FDA is reopening the comment period on the notice ''*Ortho*-phthalates for Food Contact Use; Request for Information,'' which published in the **Federal Register** on May 20, 2022 (87 FR 31090). Submit either electronic or written comments by December 27, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 27, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note

that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–0571 for ''*Ortho*-phthalates for Food Contact Use; Reopening of the Comment Period; Request for Information.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jessica Urbelis, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–5187; or Meadow Platt, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 20, 2022 (87 FR 31090), FDA published a notice with a 60-day comment period to request data and information on the current food contact uses, use levels, dietary exposure, and safety data on any *ortho*-phthalates currently used in food contact applications. We originally gave interested persons until July 19, 2022, to provide data and information.

Following publication of the notice, FDA received a request to allow interested parties additional time to comment. The request asserted that 60 days was insufficient to respond fully to FDA's specific requests for comments and to allow potential respondents to thoroughly evaluate and address pertinent issues and requested that FDA extend the comment period by an additional 6 months. We have considered this request and, because the request came too late for us to extend the comment period before it expired, we are reopening the comment period for 90 days. FDA believes that this additional 90 days will allow time for interested parties to submit data and other information to support our review of the current use levels and safe use of certain *ortho*-phthalates in food contact applications.

Dated: September 20, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–20832 Filed 9–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3263]

Request for Nominations for Voting Members on the Tobacco Products Scientific Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Tobacco Products Scientific Advisory Committee, in the Center for Tobacco Products. Nominations will be accepted for upcoming vacancies effective January 31, 2023, with this notice. FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before November 28, 2022, will be given first consideration for membership on the Tobacco Products Scientific Advisory Committee. Nominations received after November 28, 2022, will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All nominations for membership should be sent electronically by logging into the FDA Advisory Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm.*

FOR FURTHER INFORMATION CONTACT: *Regarding all nomination questions for membership, the primary contact is:* Serina Hunter-Thomas, Office of Science, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1373 (choose Option 5), email: *TPSAC@fda.hhs.gov.*

Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's website at: *https://www.fda.gov/AdvisoryCommittees/default.htm.*

SUPPLEMENTARY INFORMATION: FDA is requesting nomination for voting members on the Tobacco Products Scientific Advisory Committee.

I. General Description of the Committee Duties

The Tobacco Products Scientific Advisory Committee advises the Commissioner of Food and Drugs (the Commissioner) or designee in discharging responsibilities related to the regulation of tobacco products. The Committee reviews and evaluates safety, dependence, and health issues, among others, relating to tobacco products and provides appropriate advice, information, and recommendations to the Commissioner.

II. Criteria for Voting Members

The Committee shall consist of 12 members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among individuals knowledgeable in the fields of medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products. Almost all non-Federal members of this Committee serve as Special Government Employees. The Committee shall include nine technically qualified voting members, selected by the Commissioner or designee. The nine voting members shall be physicians, dentists, scientists, or healthcare professionals practicing in the areas of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, epidemiology, behavioral health, or any other relevant specialty. One member shall be an officer or employee of a State or local government or of the Federal Government. The final voting member shall be a representative of the general public. Members will be invited to serve for terms of up to 4 years.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the advisory committee. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address and/or home address, telephone number, and email address if available and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**). Nominations must also specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: September 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–20866 Filed 9–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: October 12–13, 2022.

Time: October 12, 2022, 12:15 p.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892.

Time: October 13, 2022, 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Jennifer E. Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20840 Filed 9–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute.

Date: November 7–8, 2022.

Time: 11:00 a.m. to 3:10 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Cancer Institute, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Brian E. Wojcik, Ph.D., Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W414, Rockville, MD 20850, 240–276–5660, *wojcikb@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *https://deainfo.nci.nih.gov/advisory/bsc/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction;

93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20843 Filed 9–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis And Musculoskeletal And Skin 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: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group: Arthritis and Musculoskeletal and Skin Diseases; Special Grants Study Section (AMS).

Date: October 27–28, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Blvd., Suite 800 Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20824 Filed 9–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases; Special Emphasis Panel: NIAMS Mechanistic Ancillary Studies Review Meeting.

Date: November 3, 2022.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yasuko Furumoto, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Suite 820, Bethesda, MD 20892, 301–827–7835, *yasuko.furumoto@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20823 Filed 9–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel; NIGMS Review of Applications to the Modules for Enhancing Biomedical Research Workforce Training (R25) Program.

Date: November 21, 2022.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Isaah S. Vincent, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12L, Bethesda, MD 20892, (301) 594–2948, *isaah.vincent@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20845 Filed 9–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; 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 Institute of Arthritis and Musculoskeletal and Skin Diseases; Special Emphasis Panel: NIAMS Member Conflict.

Date: October 17, 2022.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yasuko Furumoto, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Suite 820, Bethesda, MD 20892, 301–827–7835, *yasuko.furumoto@nih.gov.*

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group: Arthritis and Musculoskeletal and Skin Diseases; Clinical Trials Study Section.

Date: October 20–21, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bernard Joseph Dardzinski, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Room 824, Plaza One, Bethesda, MD 20817, 301–435–1146, *bernard.dardzinski@nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases; Special Emphasis Panel: NIAMS T32 Review Meeting.

Date: October 25, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 814, Bethesda, MD 20892, 301–451–4838, *mak2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20825 Filed 9–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 Cancer Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: October 18, 2022.

Time: 11:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W542, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Biman Chandra Paria, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive, Room 7W542, Rockville, Maryland 20850, 240–858–3814, *pariab@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Business Transition Grants for Early Career Scientists.

Date: November 9, 2022.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W254, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Susan Lynn Spence, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Rockville, Maryland 20850, 240–620–0819, *susan.spence@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review.

Date: November 17, 2022.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850, 240–276–6611, *mukesh.kumar3@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20842 Filed 9–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Cystic Fibrosis Center Applications.
Date: November 14–15, 2022.
Time: 10:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Suite 7017, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7015, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–4721, *ryan.morris@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20844 Filed 9–26–22; 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: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.
Date: October 20–21, 2022.
Time: 8:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Tysons Corner Marriott Hotel, 8028 Leesburg Pike, Vienna, VA 22182.
Contact Person: Yanming Bi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 451–0996, *ybi@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Addiction Risks and Mechanisms Study Section.
Date: October 24–25, 2022.
Time: 10:00 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: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–22–132: Implementation Research to Reduce Noncommunicable Disease Burden in Low- and Middle-Income Countries and Tribal Nations During Critical Life Stages and Key Transition Periods.
Date: October 26, 2022.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building II, 6701 Rockledge Drive, Bethesda, MD 20879 (Virtual Meeting).
Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Eukaryotic Pathogen and Viral Drug Discovery and Resistance.
Date: October 26–27, 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: Shinako Takada, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–5997, *shinako.takada@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes and Genetics.
Date: October 26–27, 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; Neuroscience AREA Grant Applications.
Date: October 26, 2022.
Time: 10:00 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: Ali Sharma, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1009J, Bethesda, MD 20892, (301) 402–3248, *sharmaa15@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Sensory and Motor Neurosciences, Cognition and Perception.
Date: October 26–27, 2022.
Time: 10:00 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: John N. Stabley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0566, *stableyjn@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.
Date: October 27–28, 2022.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Bethesdan Hotel, Tapestry Collection by Hilton, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Shivani Sharma, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 507–7661, *shivani.sharma@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: September 21, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20865 Filed 9–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: November 9, 2022.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Cancer Institute, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Sheila A. Prindiville, M.D., M.P.H., Director, Coordinating Center for Clinical Trials, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20841 Filed 9–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0012; OMB No. 1660–0008]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Elevation Certificate/Floodproofing Certificate

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice. 30 Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA). In accordance with the PRA, this notice seeks comments concerning the Elevation Certificate and the Floodproofing Certificate for Non-Residential Structures.

DATES: Comments must be submitted on or before October 27, 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472–3100, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Joycelyn Collins, Program Analyst, Federal Insurance and Mitigation Administration, Flood Insurance Directorate, at 202–701–3383 or *Joycelyn.Collins@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Communities participating in the National Flood Insurance Program (NFIP) are required to adopt a floodplain management ordinance that meets or exceeds the minimum floodplain management requirements of the NFIP. In accordance with FEMA's minimum floodplain management criteria, communities must require that all new construction and substantial improvement of residential structures and non-residential structures have the lowest floor (including basement) elevated to above the base flood elevation subject to 44 CFR 60.3(c)(2) and (3), unless, for residential structures, the community is granted an exception by FEMA for the allowance of basements under 44 CFR 60.6(b) or (c). New construction and substantial improvement of non-residential structures can also be floodproofed. This means that, together with attendant utility and sanitation facilities, they are designed such that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability to resist hydrostatic and hydrodynamic loads and effects of buoyancy. 44 CFR 60.3(c)(3)(ii). Use of the Elevation Certificate and Floodproofing Certificate is one convenient way for a community to document building compliance. Title 44 CFR 61.7 and 61.8 require proper investigation to estimate the risk premium rates necessary to provide flood insurance.

This proposed information collection previously published in the **Federal Register** on March 10, 2022, at 87 FR 13743, with a 60-day public comment period. FEMA received 17 public comments related to the Elevation Certificate and Floodproofing Certificate. Two of the comments were not relevant to this information collection. Two other comments only expressed approval of the changes made and provided no suggestions. Several comments provided suggestions that had already been addressed in the proposed revisions. Some comments will be considered for future iterations as improved technology capabilities allow. FEMA accepted many of the other suggestions that better clarified the information being requested and improved the instructions for use of the collection instruments. None of the comments received addressed cost and hour burden.

The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Elevation Certificate/Floodproofing Certificate.

Type of information collection: Revision of a currently approved collection.

OMB Number: 1660–0008.

Form Titles and Numbers: FEMA Form FF–206–FY–22–152 (formerly 086–0–33), Elevation Certificate and

FEMA Form FF–206–FY–22–153 (formerly 086–0–34), Floodproofing Certificate for Non-Residential Structures.

Abstract: The Elevation Certificate and Floodproofing Certificate are used in conjunction with the Flood Insurance Application to determine a building's compliance with local floodplain management provisions and to document elevations in support of flood insurance premiums or discounts that align with the building's risk of damage from flooding. Respondents are primarily surveyors, architects, or engineers; individual property owners may opt to complete specified portions of the Elevation Certificate.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 3,517.

Estimated Number of Responses: 3,517.

Estimated Total Annual Burden Hours: 12,734.

Estimated Total Annual Respondent Cost: $610,424.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $32,248.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–20884 Filed 9–26–22; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[Docket No. ICEB–2022–0011]

RIN 1653–ZA31

Employment Authorization for Burmese F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Burma (Myanmar)

AGENCY: U.S. Immigration and Customs Enforcement; Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) is suspending certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is Burma, regardless of country of birth (or individuals having no nationality who last habitually resided in Burma), and who are experiencing severe economic hardship as a direct result of the current crisis in Burma. The Secretary is taking action to provide relief to these Burmese students who are lawful F–1 nonimmigrant students so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 nonimmigrant student status. The U.S. Department of Homeland Security (DHS) will deem an F–1 nonimmigrant student granted employment authorization by means of this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

DATES: This notice is effective November 26, 2022, through May 25, 2024.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *https://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary is exercising authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Burma regardless of country of birth (or individuals having no nationality who last habitually resided in Burma), who are present in the United States in lawful F–1 nonimmigrant student status on the date of publication of this notice, and who are experiencing severe economic hardship as a direct result of current crisis in Burma. Effective with this publication, suspension of the employment limitations is available through May 25, 2024, for those who are in lawful F–1 nonimmigrant status on the date of publication of this notice. DHS will deem an F–1 nonimmigrant student granted employment authorization through this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.[1] *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered by this notice?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

(1) Are a citizen of Burma regardless of country of birth (or an individual having no nationality who last habitually resided in Burma);

(2) Were lawfully present in the United States in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i), on the date of publication of this notice;

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for

[1] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of May 25, 2024, provided the student satisfies the minimum course load requirements in this notice. DHS also considers students who engage in online coursework pursuant to U.S. Immigration and Customs Enforcement (ICE) coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *https://www.ice.gov/coronavirus* (last visited Aug. 5, 2022).

enrollment for F–1 nonimmigrant students;

(4) Are currently maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Burma.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

Why is DHS taking this action?

DHS is taking action to provide relief to Burmese F–1 nonimmigrant students experiencing severe economic hardship due to exigent circumstances in Burma caused by the February 2021 military coup, which has led to continuing violence, arbitrary detentions, use of lethal violence against peaceful protesters, and the worsening of humanitarian conditions. Based on its review of country conditions in Burma and input received from the U.S. Department of State (DOS), DHS is taking action to allow eligible F–1 nonimmigrant students from Burma to request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

Since the military coup d'etat on February 1, 2021, the Burma military regime has widely committed human rights violations and abuses, including arbitrary detentions and the unwarranted use of deadly force against unarmed individuals. As a result of the crisis, nearly one million people are currently internally displaced throughout the country, bringing the total number of IDPs to nearly 1.3 million with pre-coup displacements, while more than 45,500 additional persons have sought refuge outside Burma since the coup.[2] Internally displaced persons and other vulnerable populations throughout the country now lack adequate and secure access to shelter, food, water and sanitation, health care, and education. Inflation and a shrinking economy are compounding this crisis and straining already under-resourced relief efforts.[3]

In the period following the coup, fighting between the Burmese military and groups (many of them newly formed) resisting the military's seizure of power have expanded to most parts of the country, even regions that had previously seen little fighting.'' [4] The report noted that the military has escalated [5] [6] The crisis in Burma has caused over a million people to flee the country as refugees or to be displaced internally. Furthermore, though estimates are difficult to verify, about 12,700 ''houses, churches, monasteries, and schools'' appear to have been destroyed since the start of the violence, a level of destruction that ''will make internally displaced persons returns more difficult even if the situation improves.'' [7]

The coup has also exacerbated the precarious human rights situation of members of the ethnic minority Rohingya, a group against whom the Secretary of State determined that members of the Burmese military had committed genocide and crimes against humanity.[8] Rohingya are forbidden by law from relocating within Burma and have been arrested since the 2021 coup when they have attempted to do so.[9] Rohingya attempting to flee Burma by boat have also perished at sea, as happened in May 2022, when 14 people died when their boat capsized as they were attempting to make the journey from Rakhine state to Malaysia.[10]

As of May 31, 2022, 13.2 million persons [in Burma?] were estimated to face moderate to severe food insecurity with the greatest needs in areas affected by fighting.[11] Access to adequate food and nutrition is a major unmet need. Severe acute malnutrition is a threat to life, with only 2 percent of the 39,477 children aged 6–59 months old targeted for assistance having received treatment.[12] In some places, relief agencies are only recently beginning to be able to provide assistance to those rendered vulnerable by the destruction of property. Lack of resources, strong storms and heavy rain, and access and movement restrictions limit the United Nations (U.N.) and its partners from providing assistance to all of those in need. As of September 2022, only 50 percent (3.1 million people) of those targeted for relief in the U.N.'s 2022 Humanitarian Response Plan (6.2 million people) had been reached with humanitarian assistance.[13]

The ongoing violence and the resulting displacement in Burma have caused major vulnerabilities related to (1) shelter, (2) food security and nutrition, (3) water, sanitation and hygiene (WASH), (4) health and (5) education for persons in Burma.[14] Lack of personnel, facilities and supplies is contributing to a ''worsening of maternal and child health outcomes,'' as well as ''poor emergency care'' for pregnant women, victims of fighting, and persons with other related and unrelated injuries, all of which is anticipated to result in increased numbers of avoidable deaths.[15]

The coup and the instability it has created (within and outside of Burma) have deteriorated Burma's economic conditions, worsening the crisis. The Burmese currency, the kyat, has experienced extreme volatility since the coup, as Burma's economy shrank by 18% in the year leading up to September 2021, critical services such as banking, telecommunications, health, and education were disrupted, and economic sanctions that had been lifted as Burma had transitioned toward democracy were reimposed.[16] Increasing commodity prices, particularly for food and fuel, are causing distress for thousands of people across the country. In addition to affecting Burmese people's purchasing power for essential items such as food,

[2] *Myanmar Humanitarian Update No. 18,* U.N. Office for the Coordination of Humanitarian Affairs (OCHA), May 31, 2022, pp. 2, 7–8, 14, available at: *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-18-31-may-2022* (last visited June 8, 2022).

[3] *Id.*

[4] *Myanmar's Coup Shakes Up Its Ethnic Conflicts,* International Crisis Group, Jan. 12, 2022, available at: *https://www.crisisgroup.org/asia/south-east-asia/myanmar/319-myanmars-coup-shakes-its-ethnic-conflicts* (last accessed May 27, 2022).

[5] *Report of the Special Rapporteur on the situation of human rights in Myanmar,* Thomas H. Andrews, U.N. Human Rights Council, Mar. 16, 2022, available at: *https://www.ohchr.org/en/documents/country-reports/ahrc4976-report-special-rapporteur-situation-human-rights-myanmar-thomas* (last accessed May 27, 2022).

[6] *Id.*

[7] Myanmar Humanitarian Update No. 18, *supra,* p. 2.

[8] *Genocide, Ethnic Cleansing, and Crimes Against Humanity in Burma,* U.S. Department of State, undated, available at: *https://www.state.gov/burma-genocide/* (last visited May 25, 2022).

[9] *Myanmar's military coup prolongs misery for Rohingya in Rakhine,* Al-Jazeera, Jan. 6, 2022, available at: *https://www.aljazeera.com/news/2022/1/6/rohingya-myanmar-restrictions-on-freedom-of-movement* (last visited May 31, 2022).

[10] *At Least 17 Perish as Refugee Boat Capsizes Off Myanmar Coast,* The Diplomat, May 24, 2022, available at: *https://thediplomat.com/2022/05/at-least-17-perish-as-refugee-boat-capsizes-off-myanmar-coast/* (last visited May 31, 2022).

[11] Myanmar Humanitarian Update No. 18, *supra,* p. 8.

[12] *Id.,* p. 9.

[13] *Id.,* p.2.

[14] *Id.*

[15] *Id.,* pp. 8–9.

[16] *Myanmar Central Bank Orders Government Agencies to Stop Using Foreign Currencies,* The Diplomat, May 27, 2022, available at: *https://thediplomat.com/2022/05/myanmar-central-bank-orders-government-agencies-to-stop-using-foreign-currencies/* (last visited May 31, 2022).

rising prices are beginning to affect the work of relief agencies, particularly those supplying food and shelter.[17]

In summary, more than a year after the Burmese military perpetrated a coup, human rights violations and abuses, including sexual violence, disappearances, excessive use of force, and killings, are occurring in most parts of the country. As a result, more than one million people are currently internally displaced throughout the country, while more than 45,500 additional persons have sought refuge in neighboring countries giving rise to major vulnerabilities related to shelter, food security, and the country's economy.

As of July 27, 2022, approximately 2,140 F–1 nonimmigrant students from Burma are enrolled at SEVP-certified academic institutions in the United States. Given the extent of the current crisis in Burma, affected students whose primary means of financial support comes from Burma may need to be exempt from the normal student employment requirements to continue their studies in the United States. The current crisis has made it unfeasible for many students to safely return to Burma for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term. Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). A graduate-level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless their course of study is in an English language study program.[18] *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain ''class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. An F–1 nonimmigrant student who is a Burmese citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in Burma), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that their designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record, which the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].[19]

Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her ''full course of study''?

No. DHS will deem an F–1 nonimmigrant student who receives and comports with the employment authorization permitted under this notice to be engaged in a ''full course of study'' [20] for the duration of the student's employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible for employment authorization?

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 nonimmigrant status, consistent with 8 CFR 214.2(f)(15)(i).

[17] Myanmar Humanitarian Update No. 18, *supra*, pp. 2, 7–8, 14.

[18] DHS considers students who are compliant with ICE coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such COVID–19 guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, *https://www.ice.gov/coronavirus* (last visited Aug. 5, 2022).

[19] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of May 25, 2024, provided the student satisfies the minimum course load requirements in this notice.

[20] *See* 8 CFR 214.2(f)(6).

Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry into the United States after the effective date of this notice in the Federal Register?

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F–1 nonimmigrant students who meet the following conditions:

(1) Are a citizen of Burma regardless of country of birth (or an individual having no nationality who last habitually resided in Burma);

(2) Were lawfully present in the United States in F–1 nonimmigrant status, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i) on the date of publication of this notice;

(3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Burma.

An F–1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the current crisis in Burma).

Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Register and who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?

Yes. This notice applies to such an F–1 nonimmigrant student, but only if the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa to continue an educational program in the United States.

Does this notice apply to elementary school, middle school, and high school students in F–1 status?

Yes. However, this notice does not by itself reduce the required course load for F–1 nonimmigrant students from Burma enrolled in kindergarten through grade 12 at a private school, or grades 9 through 12 at a public high school. Such students must maintain the minimum number of hours of class attendance per week prescribed by the academic institution for normal progress toward graduation, as required under 8 CFR 214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students from Burma enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session.

On-Campus Employment Authorization

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For an F–1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F–1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session if the DSO has entered the following statement in the remarks field of the student's SEVIS record, which will be reflected on the student's Form I–20:

Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].[21]

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the current crisis in Burma. An F–1 nonimmigrant student authorized by the DSO to engage in on-campus employment by means of this notice does not need to file any applications with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting full-time employment on-campus when school is not in session or during school vacations apply, as described in 8 CFR 214.2(f)(9)(i).

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain his or her F–1 nonimmigrant student status?

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a "full course of study"[22] for the purpose of maintaining their F–1 nonimmigrant student status for the duration of the on-campus employment, if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the academic institution's minimum course load requirement for continued enrollment.[23]

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For an F–1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant student status for one full academic year to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours

[21] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a "full course of study," *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of May 25, 2024, provided the student satisfies the minimum course load requirements in this notice.

[22] *See* 8 CFR 214.2(f)(6).

[23] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

per week of off-campus employment while the school is in session; and

(d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a ''full course of study'' [24] for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization for a reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.[25]

How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the current crisis in Burma.[26] Filing instructions are located at *https://www.uscis.gov/i-765.*

Fee considerations. Submission of a Form I–765 currently requires payment of a $410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. *See www.uscis.gov/feewaiver.* The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). *See* 8 CFR 103.7(c).

Supporting documentation. An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to their DSO:

(1) This employment is necessary to avoid severe economic hardship; and

(2) The hardship is a direct result of the current crisis in Burma.

If the DSO agrees that the F–1 nonimmigrant student is entitled to receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on that student's Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].[27]

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765 according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

DSO recommendation. In making a recommendation that an F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a ''full course of study'' [28] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a citizen of Burma, regardless of country of birth (or an individual having no nationality who last habitually resided in Burma), and is experiencing severe economic hardship as a direct result of the current crisis in Burma, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of this notice and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level; [29] and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the current crisis in Burma.

Processing. To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes the following documents:

(1) A completed Form I–765 with all applicable supporting evidence;

(2) The required fee or properly documented fee waiver request as defined in 8 CFR 103.7(c); and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.'' Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

Temporary Protected Status (TPS) Considerations

Can an F–1 nonimmigrant student apply for TPS and for benefits under this notice at the same time?

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or for other relief that reduces the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,[30] under this notice has two options.

Under the first option, the nonimmigrant student may apply for TPS according to the instructions in the USCIS notice designating Burma for TPS elsewhere in this issue of the

[24] *See* 8 CFR 214.2(f)(6).

[25] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[26] *See* 8 CFR 274a.12(c)(3)(iii).

[27] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of May 25, 2024, provided the student satisfies the minimum course load requirements in this notice.

[28] *See* 8 CFR 214.2(f)(6).

[29] 29 8 CFR 214.2(f)(5)(v).

[30] *See* DHS Study in the States, Special Student Relief, *https://studyinthestates.dhs.gov/students/special-student-relief* (last visited Aug. 5, 2022).

Federal Register. All TPS applicants must file a Form I–821, Application for Temporary Protected Status with the appropriate fee (or request a fee waiver). Although not required to do so, if F–1 nonimmigrant students want to obtain a new TPS-related EAD that is valid through May 25, 2024, they must file Form I–765 and pay the Form I–765 fee (or request a Fee Waiver). An F–1 student who already has a TPS-related EAD will benefit from an automatic extension of the EAD through November 25, 2023, through the **Federal Register** notice extending the designation of Burma for TPS. A Burma TPS-related EAD can also be automatically extended for up to 540 days [31] if an F–1 nonimmigrant student who is a TPS beneficiary properly files a renewal Form I–765 application and pays the Form I–765 fee (or requests a Fee Waiver) during the filing period described in the **Federal Register** notice extending the designation of Burma for TPS, but no later than October 26, 2023. After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that their DSO make the required entry in SEVIS, issue an updated Form I–20, as described in this notice, and notate that the nonimmigrant student has been authorized to carry a reduced course load and is working pursuant to a TPS-related EAD. So long as the nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate their nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains TPS, then the student maintains F–1 status and TPS concurrently.

Under the second option, the nonimmigrant student may apply for an EAD under Special Student Relief by filing Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application but must submit the Form I–821 according to the instructions provided in the **Federal Register** notice designating Burma for TPS. If the F–1 nonimmigrant student has already applied for employment authorization under Special Student Relief, they are not required to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS EAD in light of certain extensions that may be available to EADs with an A–12 or C–19 category code that are not available to the C–3 category under which Special Student Relief falls. The nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether a TPS-related EAD is being requested. Again, so long as the nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, included as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status while having TPS.

[31] 8 CFR 274a.13(d)(5).

When a student applies simultaneously for TPS and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The F–1 nonimmigrant student must maintain normal course load requirements for a ''full course of study'' [32] unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (*e.g.,* clock hours for non-traditional academic programs). Once approved for Special Student Relief employment authorization, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if at the graduate level). *See* 8 CFR 214.2(f)(5)(v), (f)(6), and (f)(9)(i) and (ii).

How does a student who has received a TPS-related EAD then apply for authorization to take a reduced course load under this notice?

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the current crisis in Burma. The DSO will then verify and update the student's record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

[32] *See* 8 CFR 214.2(f)(6).

Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?

Yes. Regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision might apply to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations.

How long will this notice remain in effect?

This notice grants temporary relief until May 25, 2024,[33] to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Burma. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act (PRA)

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the current crisis in Burma must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request

[33] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of May 25, 2024, provided the student satisfies the minimum course load requirement in this notice. DHS also considers students who engage in online coursework pursuant to ICE coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *https://www.ice.gov/coronavirus* (last visited Aug. 5, 2022).

employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control No. 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

Alejandro Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2022–20758 Filed 9–26–22; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[OMB Control Number 1653–0022]

Agency Information Collection Activities; Reinstatement With Change of a Previously Approved Collection: Immigration Bond

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: In accordance with the Paperwork Reductions Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance. This information collection was previously published in the **Federal Register** on June 24, 2022, allowing for a 60-day comment period. ICE received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 27, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of the 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: For specific questions related to collection activities, please contact or email Carl Albritton, ERO Bond Management Unit, (202–732–5918), *carl.a.albritton@ice.dhs.gov.* (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement with Change of a Previously Approved Collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–352; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households; Business or other for-profit. The data collected on this collection instrument is used by ICE to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The collection instrument serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of the bond. Sureties have the capability of accessing, completing, and submitting delivery, voluntary departure, and order of supervision bonds electronically through ICE's eBonds system which encompasses the I–352, while individuals are still required to complete the bond form manually and sureties will be required to submit maintenance of status and departure bonds manually.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 59,897 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden is 30,500 hours.

Dated: September 21, 2022.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2022–20826 Filed 9–26–22; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2686–21; DHS Docket No. USCIS–2021–0005]

RIN 1615–ZB88

Extension and Redesignation of Burma (Myanmar) for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of Temporary Protected Status (TPS) extension and redesignation.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Burma for Temporary Protected Status (TPS) for 18 months, effective from November 26, 2022, through May 25, 2024. This extension allows existing TPS beneficiaries to retain TPS through May 25, 2024, so long as they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish to extend their status through May 25, 2024, must re-register during the 60-day re-registration period described in this notice. The

Secretary is also redesignating Burma for TPS. The redesignation of Burma allows additional Burmese nationals (and individuals having no nationality who last habitually resided in Burma) who have been continuously residing in the United States since September 25, 2022 to apply for TPS for the first time during the initial registration period described under the redesignation information in this notice. In addition to demonstrating continuous residence in the United States since September 25, 2022 and meeting other eligibility criteria, initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since November 26, 2022, the effective date of this redesignation of Burma for TPS.

DATES:

Extension of Designation of Burma for TPS: The 18-month extension of Burma's designation for TPS is effective on November 26, 2022, and will remain in effect for 18 months, through May 25, 2024. The extension impacts existing beneficiaries of TPS.

Re-registration: The 60-day re-registration period for existing beneficiaries runs from September 27, 2022 through November 26, 2022. (Note: It is important for re-registrants to timely re-register during the registration period and not to wait until their Employment Authorization Documents (EADs) expire, as delaying re-registration could result in gaps in their employment authorization documentation.)

Redesignation of Burma for TPS: The 18-month redesignation of Burma for TPS is effective on November 26, 2022, and will remain in effect for 18 months, through May 25, 2024. The redesignation impacts potential first-time applicants and others who do not currently have TPS.

First-time Registration: The initial registration period for new applicants under the Burma TPS redesignation begins on September 27, 2022 and will remain in effect through May 25, 2024.

FOR FURTHER INFORMATION CONTACT: You may contact Rená Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800–375–5283.

For further information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *uscis.gov/tps.* You can find specific information about Burma's TPS designation by selecting ''Burma'' from the menu on the left side of the TPS web page.

If you have additional questions about TPS, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov*, or visit the USCIS Contact Center at *uscis.gov/contactcenter.*

Further information will also be available at local USCIS offices upon publication of this notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action (Approval Notice)
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Purpose of This Action (TPS)

Through this notice, DHS sets forth procedures necessary for nationals of Burma (or individuals having no nationality who last habitually resided in Burma) to (1) re-register for TPS and to apply for renewal of their EADs with USCIS or (2) submit an initial registration application under the redesignation and apply for an EAD.

Re-registration is limited to individuals who have previously registered for TPS under the prior designation of Burma and whose applications have been granted. Failure to re-register properly during the 60-day re-registration period may result in the withdrawal of your TPS following appropriate procedures. *See* 8 CFR 244.14.

For individuals who have already been granted TPS under Burma's designation, the 60-day re-registration period runs from September 27, 2022 through November 26, 2022. USCIS will issue new EADs with a May 25, 2024 expiration date to eligible Burmese TPS beneficiaries who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive new EADs before their current EADs expire. Accordingly, through this **Federal Register** notice, DHS automatically extends the validity of EADs previously issued under the TPS designation of Burma through November 25, 2023. Therefore, as proof of continued employment authorization through November 25, 2023, TPS beneficiaries can show their EADs that have the notation A–12 or C–19 under Category and a ''Card Expires'' date of November 25, 2022. This notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have a Burma TPS application (Form I–821) and/or Application for Employment Authorization (Form I–765) that was still pending as of September 27, 2022 do not need to file either application again. If USCIS approves an individual's Form I–821, USCIS will grant the individual TPS through May 25, 2024. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through the same date.

Under the redesignation, individuals who currently do not have TPS may submit an initial application during the initial registration period that runs from September 27, 2022 and runs through the full length of the redesignation period ending May 25, 2024.[1] In

[1] In general, individuals must be given an initial registration period of no less than 180 days to register for TPS, but the Secretary has discretion to provide for a longer registration period. *See* 8 U.S.C. 1254a(c)(1)(A)(iv). In keeping with the humanitarian purpose of TPS and advancing the goal of ensuring ''the Federal Government eliminates . . . barriers that prevent immigrants from accessing government services available to them'' under Executive Order 14012, Restoring Faith in Our Legal Immigration Systems and

addition to demonstrating continuous residence in the United States since September 25, 2022 and meeting other eligibility criteria, initial applicants for TPS under this redesignation must demonstrate that they have been continuously physically present in the United States since November 26, 2022,[2] the effective date of this redesignation of Burma, before USCIS may grant them TPS. DHS estimates that approximately 2,290 individuals may become newly eligible for TPS under the redesignation of Burma.

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work so long as they continue to meet the requirements of TPS. They may apply for and receive EADs as evidence of employment authorization.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
  - The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or
  - Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid beyond the date TPS terminates.

When was Burma designated for TPS?

Secretary of Homeland Security, Alejandro N. Mayorkas, initially designated Burma for TPS on May 25, 2021, on the basis of extraordinary and temporary conditions that prevented nationals of Burma from returning in safety. *See Designation of Burma Temporary Protected Status,* 86 FR 28132 (May 25, 2021).

What authority does the Secretary have to extend the designation of Burma for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[3] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, termination, or extension of a designation. *See* INA section 244(b)(5)(A); 8 U.S.C. 1254a(b)(5)(A).[4] The Secretary, in his or her discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state continues to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

What is the Secretary's authority to redesignate Burma for TPS?

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS if conditions support such a designation. *See* section 244(b)(1) of the Act, 8 U.S.C. 1254a(b)(1); *see also* section 244(c)(1)(A)(i) of the Act, 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that ''the alien has been continuously physically present since the effective date of *the most recent designation of the state*'') (emphasis added).[5]

When the Secretary designates or redesignates a country for TPS, the Secretary also has the discretion to establish the date from which TPS applicants must demonstrate that they have been ''continuously resid[ing]'' in the United States. *See* section 244(c)(1)(A)(ii) of the Act, 8 U.S.C. 1254a(c)(1)(A)(ii). The Secretary has determined that the ''continuous residence'' date for applicants for TPS under the redesignation of Burma will be September 25, 2022. Initial applicants for TPS under this redesignation must also show they have been ''continuously physically present''

Strengthening Integration and Inclusion Efforts for New Americans, 86 FR 8277 (Feb. 5, 2021), the Secretary has recently exercised his discretion to provide for TPS initial registration periods that coincide with the full period of a TPS country's initial designation or redesignation. *See, e.g.,* Designation of Haiti for Temporary Protected Status, 86 FR 41863 (Aug. 3, 2021) (providing 18-mos. registration period under new TPS designation of Haiti); Extension of Initial Registration Periods for New Temporary Protected Status Applicants Under the Designations for Venezuela, Syria and Burma; Correction to the Notice on the Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure, 86 FR 41986 (Aug. 4, 2021) (extending initial registration periods from 180 days to 18 months for the three applicable countries)). For the same reasons, the Secretary is similarly exercising his discretion to provide applicants under this TPS designation of Burma with an 18-month initial registration period.

[2] The ''continuous physical presence date'' (CPP) is the effective date of the most recent TPS designation of the country, which is either the publication date of the designation announcement in the **Federal Register** or such later date as the Secretary may establish. The ''continuous residence date'' (CR) is any date established by the Secretary when a country is designated (or sometimes redesignated) for TPS. *See* INA § 244(b)(2)(A) (effective date of designation); 244(c)(1)(A)(i–ii) (discussing CR and CPP date requirements).

[3] INA § 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. *Id.,* at § 244(b)(1).

[4] This issue of judicial review is the subject of litigation. *See, e.g., Ramos* v. *Wolf,* 975 F.3d 872 (9th Cir. 2020), *petition for en banc rehearing* filed Nov. 30, 2020 (No. 18–16981); *Saget* v. *Trump,* 375 F. Supp. 3d 280 (E.D.N.Y. 2019).

[5] The extension and redesignation of TPS for Burma is one of several instances in which the Secretary and, prior to the establishment of DHS, the Attorney General, have simultaneously extended a country's TPS designation and redesignated the country for TPS. *See, e.g.,* 76 FR 29000 (May 19, 2011) (extension and redesignation for Haiti); 69 FR 60168 (Oct. 7, 2004) (extension and redesignation for Sudan); 62 FR 16608 (Apr. 7, 1997) (extension and redesignation for Liberia).

in the United States since November 26, 2022, which is the effective date of the Secretary's redesignation, of Burma. *See* section 244(c)(1)(A)(i) of the Act, 8 U.S.C. 1254a(c)(1)(A)(i). For each initial TPS application filed under the redesignation, the final determination of whether the applicant has met the ''continuous physical presence'' requirement cannot be made until November 26, 2022, the effective date of this redesignation for Burma. USCIS, however, will issue employment authorization documentation, as appropriate, during the registration period in accordance with 8 CFR 244.5(b).

Why is the Secretary extending the TPS designation for Burma and simultaneously redesignating Burma for TPS through May 25, 2024?

DHS has reviewed country conditions in Burma. Based on the review, including consultation with DOS and other U.S. Government agencies, the Secretary has determined that an 18-month TPS extension is warranted because the extraordinary and temporary conditions supporting Burma's TPS designation remain. The Secretary has further determined that redesignating Burma for TPS under section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C) of the Act is warranted and is changing the ''continuous residence'' and ''continuous physical presence'' dates that applicants must meet to be eligible for TPS.

DHS has conducted a thorough review of country conditions in Burma. Since the February 1, 2021 military coup d'état, the military regime has widely committed human rights violations and abuses, including arbitrary detentions and the unwarranted use of deadly force against unarmed individuals.[6] As a result, more than 974,000 people have been internally displaced since the coup, bringing the total number of IDPs to nearly 1.3 million people when including pre-coup displacements, and more than 45,500 additional persons have sought refuge outside Burma since the coup.[7] Internally displaced persons and other vulnerable populations throughout the country now lack adequate and secure access to shelter, food, water and sanitation, health care, and education and are therefore also increasingly vulnerable to trafficking.

In the period following the coup, fighting between the Burmese military and groups (many of them newly formed) resisting the military's seizure of power have expanded to most parts of the country, even regions where clashes had not been seen in decades.[8] For example, shortly after its inception, the group known as the ''National Unity Government'' (NUG), created an armed component to purportedly lead overall direction for resistance forces, which it refers to as the People's Defense Force (PDF).[9] However, the growing capacity of the PDF and other forces opposed to military rule has coincided with greater instability, with hundreds of civilians killed in clashes between the military and the PDF and hundreds of thousands displaced.[10] Additionally, ''nearly 26,000 civilian properties, including houses, churches, monasteries, and schools are estimated to have been destroyed during hostilities, although figures are difficult to verify.'' [11] Since the coup, an additional 1,835 persons were killed and 10,600 arrested due to activities unrelated to the ongoing fighting, mainly during the continuing anti-coup protests.[12] On October 21, 2021, the Armed Conflict Location and Event Database (ACLED) reported that over 60% of the world's demonstrators killed by state actors died in Burma, thus naming it ''the deadliest country for demonstrators.'' [13]

On March 15, 2022, the United Nations (U.N.) High Commissioner for Human Rights, Michelle Bachelet, asked the international community to take ''concerted, immediate measures to stem the spiral of violence [in Burma],'' [14] referencing a report from the Office of the High Commissioner for Human Rights (OHCHR) finding that the Burmese military forces target civilians and continue to use explosive weapons with wide-ranging effects in populated areas.[15] On March 16, 2022, the U.N. Human Rights Council Special Rapporteur on the situation of human rights in Myanmar issued a report detailing human rights abuses committed by the Burmese military since the February 2021 coup. The report noted that the military has escalated what it labeled ''indiscriminate attacks against civilians using jet fighters, attack helicopters and heavy artillery.'' [16] It added that ''soldiers have burned entire villages to the ground. Civilians and combatants have been tortured, raped, executed, and used as human shields.[17] The U.S. Institute of Peace observed that, one year after the coup, ''the violence has descended into full-scale civil war,'' with devastating effects on civilians as the Burmese military used ''heavy weapons and air assaults, wiping out entire villages in attempts to dislodge EAOs [ethnic armed organizations] and PDFs.'' [18]

The coup pushed Burma into a volatile political and security situation ''heavily impact[ing] [Burma's] emerging economy and the [country's] already fragile public service sector, further restricting people's access to essential services and children's access

[6] Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, U.N. Human Rights Council, Mar. 16, 2022, available at: *https://www.ohchr.org/en/documents/country-reports/ahrc4976-report-special-rapporteur-situation-human-rights-myanmar-thomas* (last accessed May 27, 2022).

[7] Myanmar Humanitarian Update No. 21, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), September 2, 2022, p. 2., available at: *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-21-2-september-2022* (last visited Sep. 13, 2022).

[8] Myanmar's Coup Shakes Up Its Ethnic Conflicts, International Crisis Group, Jan. 12, 2022, available at: *https://www.crisisgroup.org/asia/south-east-asia/myanmar/319-myanmars-coup-shakes-its-ethnic-conflicts* (last accessed May 27, 2022).

[9] Conflict seen escalating in Myanmar on anniversary of PDF, Radio Free Asia, May 11, 2022, available at: *https://www.rfa.org/english/news/myanmar/anniversary-05112022202816.html* (last visited May 24, 2022).

[10] Conflict seen escalating in Myanmar on anniversary of PDF, Radio Free Asia, May 11, 2022, available at: *https://www.rfa.org/english/news/myanmar/anniversary-05112022202816.html* (last visited May 24, 2022).

[11] Myanmar Humanitarian Update No. 21, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), September 2, 2022, p. 2., available at: *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-21-2-september-2022* (last visited Sep. 14, 2022).

[12] Conflict seen escalating in Myanmar on anniversary of PDF, Radio Free Asia, May 11, 2022, available at: *https://www.rfa.org/english/news/myanmar/anniversary-05112022202816.html* (last visited May 24, 2022).

[13] Deadly Demonstrations: Fatalities from State Engagement on the Rise, Armed Conflict Location and Event Database (ACLED), Oct. 21, 2022, available at: *https://acleddata.com/2021/10/21/deadly-demonstrations/* (last visited May 23, 2022).

[14] Myanmar: 'Appalling' violations demand 'unified and resolute international response', U.N. News, Mar. 15, 2022, available at: *https://news.un.org/en/story/2022/03/1113972* (last visited May 25, 2022).

[15] Myanmar: 'Appalling' violations demand 'unified and resolute international response', U.N. News, Mar. 15, 2022, available at: *https://news.un.org/en/story/2022/03/1113972* (last visited May 25, 2022).

[16] Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, U.N. Human Rights Council, Mar. 16, 2022, available at: *https://www.ohchr.org/en/documents/country-reports/ahrc4976-report-special-rapporteur-situation-human-rights-myanmar-thomas* (last accessed May 27, 2022).

[17] Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, U.N. Human Rights Council, Mar. 16, 2022, available at: *https://www.ohchr.org/en/documents/country-reports/ahrc4976-report-special-rapporteur-situation-human-rights-myanmar-thomas* (last accessed May 27, 2022).

[18] Myanmar Study Group: Final Report—Anatomy of the Military Coup and Recommendations for U.S. Response, U.S. Institute for Peace, Feb. 1, 2022, p.5, available at *https://www.usip.org/publications/2022/02/myanmar-study-group-final-report* (last accessed May 27, 2022).

to education.'' [19] ''This multi-dimensional humanitarian crisis [has] affect[ed] the whole country,'' [20] causing large numbers of persons to flee the country as refugees or to be displaced internally. Displacement has increased exponentially since February 2021.[21]

Furthermore, though estimates are difficult to verify, about ''26,000 civilian properties, including houses, churches, monasteries, and schools'' [22] appear to have been destroyed since the start of the violence, a level of destruction that ''will make IDP [internally displaced persons] returns more difficult even if the situation improves.'' [23]

The 2021 DOS Country Report on Human Rights Practices indicated there were reports that the military regime's security forces and some resistance organizations have engaged in ''killings, disappearances, excessive use of force, disregard for civilian life, sexual violence, and other abuses.'' [24] According to the Assistance Association for Political Prisoners, as of June 2, 2022, there were 10,870 people currently under detention in connection with the February 2021 coup.[25] As of June 2, 2022, 13,926 had been arrested in connection with the coup, 3,035 persons had been released from detention, and 1,883 persons had been killed in connection with the coup.[26]

The coup has also exacerbated the precarious human rights situation of members of the ethnic minority Rohingya. In March 2022, the U.S. Secretary of State determined that members of the Burmese military had committed genocide and crimes against humanity against Rohingya.[27] Rohingya are forbidden by law from relocating within Burma and have been arrested since the 2021 coup when they have attempted to do so.[28] Rohingya attempting to flee Burma by boat have also perished at sea, as happened in May 2022 when 14 people died when their boat capsized as they were attempting to make the journey from Rakhine state to Malaysia.[29]

As of May 31, 2022, 4.1 million persons were estimated to face moderate to severe food insecurity with the greatest needs in violence-affected rural areas.[30] Access to adequate food and nutrition is a major unmet need. Severe acute malnutrition is a threat to life, with only 2 percent of the 39,477 children aged 6–59 months old targeted for assistance having received treatment.[31] In some places, relief agencies are only recently beginning to be able to provide assistance to those rendered vulnerable by the destruction of civilian property. It was only in April 2022, for example, that UNHCR became the first U.N. agency to gain access to Kayah state, at which time they began to distribute relief supplies, including supplies related to shelter, food and sanitation, to persons in need, including internally displaced persons and returnees.[32] Lack of resources, strong storms and heavy rain, and access and movement restrictions limit the U.N. and its partners from providing assistance to all of those in need.[33] As of September 2022, only 50 percent (3.1 million people) of those targeted for relief in the U.N.'s 2022 Humanitarian Response Plan (6.2 million people) had been reached with humanitarian assistance.[34]

The ongoing violence and the resulting displacement in Burma have caused major vulnerabilities related to (1) shelter, (2) food security and nutrition, (3) water, sanitation and hygiene (WASH), (4) health, and (5) education.[35] Lack of personnel, facilities, and supplies is contributing to a ''worsening of maternal and child health outcomes,'' as well as to ''poor emergency care'' for pregnant women, victims of fighting, and persons with other related and unrelated injuries, all of which is anticipated to result in increased numbers of avoidable deaths.[36]

The coup and the ensuing protests repudiating it by the Burmese (within and outside of Burma) have deteriorated Burma's economic conditions, worsening the humanitarian crisis. The Burmese currency, the kyat, has experienced extreme volatility since the coup, as Burma's economy shrank by 18% in the year leading up to September 2021.[37] Critical services such as banking, telecommunications, health, and education were disrupted, and economic sanctions that had been lifted as Burma had transitioned toward democracy were reimposed.[38] Increasing commodity prices, particularly for food and fuel, are causing distress for thousands of people across the country. In addition to affecting Burmese people's purchasing power for essential items such as food, rising prices are beginning to affect the

[19] Myanmar Humanitarian Needs Overview 2022, December 31,2021, p. 6, available at *https://reliefweb.int/sites/reliefweb.int/files/resources/mmr_humanitarian_needs_overview_2022.pdf* (last visited Aug. 12, 2022).

[20] *Id.*

[21] Myanmar Emergency Overview Map, UNHCR, July 4, 2022, available at: *https://reporting.unhcr.org/document/2851* (last visited Aug. 3, 2022).

[22] Myanmar Humanitarian Update No. 18, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), May 31, 2022, p. 2., available at: *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-18-31-may-2022* (last visited Jun. 8, 2022).

[23] *Id.*

[24] 2021 Country Reports on Human Rights Practices: Burma, U.S. Department of State, Apr. 12, pg. 15, available at: *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/burma/* (last visited Jun. 2, 2022).

[25] Daily Briefing in Relation to the Military Coup, Assistance Association for Political Prisoners, Jun. 2, 2022, available at: *https://https://aappb.org/?p=21971* (last visited Jun. 2, 2022).

[26] *Id.*

[27] Genocide, Ethnic Cleansing, and Crimes Against Humanity in Burma, U.S. Department of State, undated, available at: *https://www.state.gov/burma-genocide/* (last visited May 25, 2022).

[28] Myanmar's military coup prolongs misery for Rohingya in Rakhine, Al-Jazeera, Jan. 6, 2022, available at: *https://www.aljazeera.com/news/2022/1/6/rohingya-myanmar-restrictions-on-freedom-of-movement* (last visited May 31, 2022).

[29] At Least 17 Perish as Refugee Boat Capsizes Off Myanmar Coast, The Diplomat, May 24, 2022, available at: *https://thediplomat.com/2022/05/at-least-17-perish-as-refugee-boat-capsizes-off-myanmar-coast/* (last visited May 31, 2022).

[30] Myanmar Humanitarian Update No. 18, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), May 31, 2022, p. 8, available at: *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-18-31-may-2022* (last visited Jun. 8, 2022).

[31] Myanmar Humanitarian Update No. 18, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), May 31, 2022, p. 9, available at: *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-18-31-may-2022* (last visited Jun. 8, 2022).

[32] Myanmar Humanitarian Update No. 18, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), May 31, 2022, p. 3, available at: *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-18-31-may-2022* (last visited Jun. 8, 2022).

[33] Myanmar Humanitarian Update No. 18, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), May 31, 2022, p. 2., available at: *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-18-31-may-2022* (last visited Jun. 8, 2022).

[34] Myanmar Humanitarian Update No. 21, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), September 2, 2022, available at: *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-21-2-september-2022* (last visited Sep. 14, 2022).

[35] Myanmar Humanitarian Update No. 18, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), May 31, 2022, available at: *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-18-31-may-2022* (last visited Jun. 8, 2022).

[36] Myanmar Humanitarian Update No. 18, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), May 31, 2022, p. 8–9, available at: *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-18-31-may-2022* (last visited Jun. 8, 2022).

[37] Myanmar Central Bank Orders Government Agencies to Stop Using Foreign Currencies, The Diplomat, May 27, 2022, available at: *https://thediplomat.com/2022/05/myanmar-central-bank-orders-government-agencies-to-stop-using-foreign-currencies/* (last visited May 31, 2022).

[38] Myanmar Central Bank Orders Government Agencies to Stop Using Foreign Currencies, The Diplomat, May 27, 2022, available at: *https://thediplomat.com/2022/05/myanmar-central-bank-orders-government-agencies-to-stop-using-foreign-currencies/* (last visited May 31, 2022).

work of relief agencies, particularly those supplying food and shelter.[39]

In summary, more than a year after the Burmese military perpetrated a coup, human rights violations and abuses including sexual violence, disappearances, excessive use of force, and killings are occurring in most parts of the country. As a result, more than 974,000 people are currently internally displaced throughout the country, while more than 45,500 remain in neighboring countries after fleeing since the coup. Burma was economically vulnerable when the coup took place, but has since ''suffered further economic decline, with mass job losses, business closures and the weakening of the [country's] currency, which has affected households across the country.'' [40] As a result, major vulnerabilities related to shelter, food security, human trafficking risks, and the country's economy have arisen as Burmese families have lost on average more than half of their income since the February 2021.

Based upon this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting Burma's designation for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continue to be extraordinary and temporary conditions in Burma that prevent Burmese nationals (or individuals having no nationality who last habitually resided in Burma) from returning to Burma in safety, and it is not contrary to the national interest of the United States to permit Burmese TPS beneficiaries to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Burma for TPS should be extended for an 18-month period, from November 26, 2022, through May 25, 2024. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- Due to the conditions described above, Burma should be simultaneously redesignated for TPS effective November 26, 2022, through May 25, 2024. *See* section 244(b)(1)(A) and (C) and (b)(2) of the Act, 8 U.S.C. 1254a(b)(1)(A) and (C) and (b)(2).

[39] Myanmar Humanitarian Update No. 18, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), May 31, 2022, p. 2, 7–8, 14, available at: *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-18-31-may-2022* (last visited Jun. 8, 2022).

[40] Families in Myanmar lose more than half their income in year of conflict, says Save the Children, Jul. 28, 2022, available at: *https://reliefweb.int/report/myanmar/families-myanmar-lose-more-half-their-income-year-conflict-says-save-children* (last visited Aug. 12, 2022).

- The Secretary has determined that TPS applicants must demonstrate that they have continuously resided in the United States since September 25, 2022.
- Initial TPS applicants under the redesignation must demonstrate that they have been continuously physically present in the United States since November 26, 2022, the effective date of the redesignation of Burma for TPS.
- It is estimated that approximately 2,290 additional individuals may be eligible for TPS under the redesignation of Burma. This population includes Burmese nationals who have entered the United States since March 11, 2021, who are in nonimmigrant status or without immigration status.

Notice of the Designation of Burma for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Burma's designation for TPS on the basis of extraordinary and temporary conditions are met. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C). On the basis of this determination, I am simultaneously extending the existing designation of TPS for Burma for 18 months, from November 26, 2022, through May 25, 2024, and redesignating Burma for TPS for the same 18-month period. *See* INA section 244(b)(1)(C) and (b)(2); 8 U.S.C. 1254a(b)(1)(C), and (b)(2).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Eligibility and Employment Authorization for TPS

Required Application Forms and Application Fees To Register for TPS

To register for TPS based on the designation of Burma, you must submit a Form I–821, Application for Temporary Protected Status, and pay the filing fee (or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver). You may be required to pay the biometric services fee. If you can demonstrate an inability to pay the biometric services fee, you may request to have the fee waived. Please see additional information under the ''Biometric Services Fee'' section of this notice.

TPS beneficiaries are authorized to work in the United States. You are not required to submit Form I–765 or have an EAD but see below for more information if you want to work in the United States.

Individuals who have a Burma TPS application (Form I–821) that was still pending as of September 27, 2022 do not need to file the application again. If USCIS approves an individual's Form I–821, USCIS will grant the individual TPS through May 25, 2024.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

How can TPS beneficiaries obtain an Employment Authorization Document (EAD)?

Every employee must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are eligible for an EAD, which proves their legal right to work. Those who want to obtain an EAD must file a Form I–765, Application for Employment Authorization, and pay the Form I–765 fee (or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver). TPS applicants may file this form along with their TPS application, or at a later date, provided their TPS application is still pending or has been approved. Beneficiaries with a Burmese TPS-related Form I–765 application that was still pending as of September 27, 2022 do not need to file the application again. If USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through May 25, 2024.

Refiling an Initial TPS Registration Application After Receiving a Denial of a Fee Waiver Request

If you receive a denial of a fee waiver request, you must refile your Form I–821 for TPS along with the required fees during the registration period, which extends until May 25, 2024. You may also file for your Form I–765 with payment of the fee along with your TPS application or at any later date you decide you want to request an EAD during the registration period.

Filing Information

USCIS offers the option to applicants for TPS under Burma's designation to file Form I–821 and related requests for EADs online or by mail. When filing a TPS application, applicants can also request an EAD by submitting a completed Form I–765, Request for Employment Authorization, with their Form I–821.

Online filing: Form I–821 and I–765 are available for concurrent filing

online.[41] To file these forms online, you must first create a USCIS online account.[42]

Mail filing: Mail your application for TPS to the proper address in Table 1.

Table 1—Mailing Addresses

Mail your completed Form I–821, Application for Temporary Protected Status; Form I–765, Application for Employment Authorization; Form I–912, Request for Fee Waiver (if applicable); and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are using the U.S. Postal Service (USPS)	USCIS, Attn: TPS Burma, P.O. Box 6943, Chicago, IL 60680–6943.
You are using FedEx, UPS, or DHL	USCIS, Attn: TPS Burma (Box 6943), 131 S Dearborn 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD, please mail your Form I–765 application to the appropriate mailing address in Table 1. When you are requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us verify your grant of TPS and process your application.

Supporting Documents

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying (that is, registering) for TPS on the USCIS website at *uscis.gov/tps* under ''Burma.''

Travel

TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States. If granted, travel authorization gives you permission to leave the United States and return during a specific period. To request travel authorization, you must file Form I–131, Application for Travel Document, available at *www.uscis.gov/i-131.* You may file Form I–131 together with your Form I–821 or separately. When filing the Form I–131, you must:

- Select Item Number 1.d. in Part 2 on the Form I–131; and
- Submit the fee for the Form I–131, or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797 for the approved or pending Form I–821.

TABLE 2—MAILING ADDRESSES

If you are . . .	Mail to . . .
Filing Form I–131 together with a Form I–821, Application for Temporary Protected Status.	The address provided in Table 1.
Filing Form I–131 based on a pending or approved Form I–821, and you are using the U.S. Postal Service (USPS): You must include a copy of the receipt notice (Form I–797C) showing we accepted or approved your Form I–821.	USCIS, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867.
Filing Form I–131 based on a pending or approved Form I–821, and you are using FedEx, UPS, or DHL: You must include a copy of the receipt notice (Form I–797C) showing we accepted or approved your Form I–821.	USCIS, Attn: I–131 TPS, 2501 S State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067.

Biometric Services Fee for TPS

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *uscis.gov/tps.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *dhs.gov/privacy.*

General Employment-Related Information for TPS Applicants and Their Employers

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at *uscis.gov,* or visit the USCIS Contact Center at *uscis.gov/contactcenter.* If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at *egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Am I eligible to receive an automatic extension of my current EAD through November 25, 2023, using this ***Federal Register*** *notice?*

Yes. Regardless of your country of birth, provided that you currently have

[41] Find information about online filing at ''Forms Available to File Online,'' *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[42] *https://myaccount.uscis.gov/users/sign_up.*

a Burma TPS-based EAD that has the notation A–12 or C–19 under Category and a ''Card Expires'' date of November 25, 2022, this **Federal Register** notice automatically extends your EAD through November 25, 2023. Although this **Federal Register** notice automatically extends your EAD through November 25, 2023, you must re-register timely for TPS in accordance with the procedures described in this **Federal Register** notice to maintain your TPS and employment authorization.

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?

You can find the Lists of Acceptable Documents on Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *uscis.gov/I-9Central.* An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' of this **Federal Register** notice for further information. If your EAD states A–12 or C–19 under Category and has a Card Expires date of November 25, 2022, it has been extended automatically by virtue of this **Federal Register** notice and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through November 25, 2023, unless your TPS has been withdrawn or your request for TPS has been denied. Your country of birth notated on the EAD does not have to reflect the TPS designated country of Burma for you to be eligible for this extension.

What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?

Even though we have automatically extended your EAD, your employer is required by law to ask you about your continued employment authorization. Your employer may need to re-inspect your automatically extended EAD to check the ''Card Expires'' date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the ''Card Expires'' date and Category code, your employer should update the EAD expiration date in Section 2 of Form I–9. See the section ''What updates should my current employer make to Form I–9 if my EAD has been automatically extended?'' of this **Federal Register** notice for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through November 25, 2023, but you are not required to do so. The last day of the automatic EAD extension is November 25, 2023. Before you start work on November 26, 2023, your employer is required by law to reverify your employment authorization on Form I–9. By that time, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 instructions to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, regardless of whether you have an EAD or work authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through May 25, 2024, then you must file Form I–765, Application for Employment Authorization, and pay the associated fee (unless USCIS grants your fee waiver request).

Can my employer require that I provide any other documentation such as evidence of my status or proof of my Burmese citizenship or a Form I–797C showing that I registered for TPS for Form I–9 completion?

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request proof of Burmese citizenship or proof of registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document so long as the EAD reasonably appears to be genuine and to relate to you. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job before November 26, 2023:

1. For Section 1, you should:

a. Check ''An alien authorized to work until'' and enter November 25, 2023, as the ''expiration date''; and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

2. For Section 2, employers should:

a. Determine if the EAD is auto-extended by ensuring it is in category A–12 or C–19 and has a ''Card Expires'' date of November 25, 2022;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write November 25, 2023, as the expiration date.

Before the start of work on November 26, 2023, employers must reverify the employee's employment authorization on Form I–9.

What updates should my current employer make to Form I–9 if my EAD has been automatically extended?

If you presented a PTS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-inspect your current EAD if they do not have a copy of the EAD on file. Your employer should determine if your EAD is automatically extended by ensuring that it contains Category A–12 or C–19 on the front of the card and has a ''Card Expires'' date of November 25, 2022. The employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension.

If your employer determines that USCIS has automatically extended your EAD, your employer should update Section 2 of your previously completed Form I–9 as follows:

1. Write EAD EXT and November 25, 2023, as the last day of the automatic extension in the Additional Information field; and
2. Initial and date the correction.

Note: This is not considered a reverification. Employers do not reverify the employee until either the one-year automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By November 26, 2023, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization on Form I–9.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the number from the Document Number field on Form I–9 into the document number field in E-Verify. Employers should enter Novemer 25, 2023, as the expiration date for an EAD that has been extended under this **Federal Register** notice.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

E-Verify automated the verification process for TPS-related EADs that are automatically extended. If you have employees who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on November 26, 2023, you must reverify their employment authorization on Form I–9. Employers may not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls in English, Spanish and many other languages. Employees or job applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a TNC while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *justice.gov/ierandtheUSCISandE-Verifywebsitesatuscis.gov/i-9-central* and *e-verify.gov.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, TPS beneficiaries presenting an automatically extended EAD referenced in this **Federal Register** notice do not need to show any other document, such as an I–797C Notice of Action or this **Federal Register** notice, to prove that they qualify for this extension. While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary, show you are authorized to work based on TPS or other status, or may be used by DHS to determine if you have TPS or another immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A–12 or C–19, even if your country of birth noted on the EAD does not reflect the TPS designated country of Burma;

• Your Form I–94, Arrival/Departure Record;

• Your Form I–797, Notice of Action, reflecting approval of your Form I–765; or

• Form I–797, Notice of Action, reflecting approval or receipt of a past or current Form I–821.

Check with the government agency regarding which document(s) the agency will accept. Some benefit-granting agencies use the SAVE program to confirm the current immigration status of applicants for public benefits.

While SAVE can verify when an individual has TPS, each agency's procedures govern whether they will accept an unexpired EAD, Form I–797, or Form I–94, Arrival/Departure Record. If an agency accepts the type of TPS-related document you are presenting, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. Regardless of the TPS-related document you present, it may assist the agency if you:

a. Present the agency with a copy of the relevant **Federal Register** notice listing the TPS-related document, including any applicable auto-extension of the document, along with your recent TPS-related document with your A-Number, or USCIS number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at *save.uscis.gov/casecheck/.* CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (A-Number, USCIS number, or Form I–94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, *www.uscis.gov/save,* has detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records.

[FR Doc. 2022–20784 Filed 9–26–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7051–N–03]

60 Day Notice of Proposed Information Collection: Standardization Form for "Race and Other Demographic Data Reporting Form—HUD 27061" OMB Control No.: 2535–0113

AGENCY: Office of Strategic Planning and Management, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 28, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed form. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Electronic Submission of Comments. Interested persons may also submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the methods specified above. Again, all submissions must refer to the docket number and title of the notice.

FOR FURTHER INFORMATION CONTACT: Dorthera Yorkshire, Office of the Chief Financial Officer, Grants Management and Oversight Division, Department of Housing and Urban Development, 451 Seventh St. SW, Room 10162, Washington, DC 20410 or by email *Dorthera.Yorkshire@hud.gov* or telephone 202–402–4336. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of the proposed data collection form may be requested from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department is soliciting comments prior to submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Proposal: Standardization form for ''Race and Other Demographic Data Reporting Form.''

Type of Request: Renewal of a currently approved collection.

OMB Control Number, if applicable: 2535–0113.

Form Numbers: HUD 27061.

Description of the need for the information and proposed use: All HUD program offices use this form when collecting information concerning the race, ethnicity, and other protected class data of the populations intended to benefit from HUD funding as required by Title VI of the Civil Rights Act of 1964; the Fair Housing Act; and HUD's regulations.

Members of affected public: Applicants for HUD's competitively funded financial assistance programs that are subject to Title VI of the Civil Rights Act of 1964 and the Fair Housing Act.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and

hours of response: The form is used by entities when they apply for grants. As HUD receives roughly 14,375 applications on an annual basis, we expect that there will be 14,375 respondents who may need to use this form. HUD estimates that it will take half an hour to complete the form, at $65.15 per hour.[1] The total estimated burden on respondents would thus reach $561,918 on an annual basis. This is shown in Table 1.

TABLE 1—ESTIMATED BURDEN TO RESPONDENTS

Form	Number of respondents	Frequency	Hours per Respondent	Total hours	Cost per hour	Total cost
27071	14,375	1.2	0.50	8,625	65.15	$561,918.75

Estimation of the Cost to the Federal government: The following Table 2 shows the estimated burden of Federal financial assistance review. HUD estimates the cost of the maximum burden on HUD staff would total at most $561,918.75. This estimate is based on the assumption that each form would be reviewed for one hour by a GS13 step 5 performing a review, and then by a GS 14 and a GS15 who will look at summary results on an annual basis.[2]

TABLE 2—ESTIMATED BURDEN TO GOVERNMENT

Estimated respondents	Frequency	Estimated number of responses	Estimated burden hours per review	Estimated burden hours per year	Total estimated burden [2]
14,375	1.2	17,250	0.50	8,625	$561,918.75

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In addition to the race and ethnicity data collected to comply with Title VI of the Civil Rights Act of 1964, HUD also intends to update this form to collect protected class data as required by the Fair Housing Act and HUD regulations at 24 CFR 121. HUD further solicits comments from members of the public and affecting agencies concerning the proposed collection of information on: (1) data sources available to support this collection; (2) particular data fields in HUD Form 27061 to appropriately collect this information; and (2) methods to minimize burden on grantees in collecting this information.

C. Authority

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

George Tomchick,

Deputy Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. 2022–20868 Filed 9–26–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7061–N–14]

60-Day Notice of Proposed Information Collection: Public Housing Mortgage Program and Section 30, OMB No.: 2577–0265

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 28, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Leea J. Thornton, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202–402–6455, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Thornton.

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[1] Estimated cost for respondents is calculated from the March 2022 Department of Labor Bureau of Labor Statistics report on Employer Costs for Employee Compensation determined that the hourly rate of management, professional and related wages and salaries averaged $44.28 per hour plus $20.87 per hour for fringe benefits for a total $65.15 per hour.

[2] Federal staff time is estimated for a GS–13 step 5 hourly rate at $58.01 per hour (from the Office of Personnel Management and the table with Washington-Baltimore-Arlington locality pay), plus 16% fringe benefit for a total of $67.29 per hour, as well as 15 minutes each for a GS–14 step 5 at $72.19/hr and a GS–15 step 5 at $84.91/hr, based on similar calculations bringing the blended total to $106.57/hr for each form submitted.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Mortgage Program and Section 30.

OMB Approval Number: 2577–0265.

Type of Request: Extension of an approved collection.

Form Number: N/A—Because federal regulations have not been adopted for this program, no specific forms are required.

Description of the need for the information and proposed use: Section 516 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA)(Pub. L. 105–276, October 21, 1998) added Section 30, Public Housing Mortgages and Security Interest, to the United States Housing Act of 1937 (1937 Act)(42 U.S.C. 1437z-2). Section 30 authorizes the Secretary of the Department of Housing and Urban Development (HUD) to approve a Housing Authority's (HA) request to mortgage public housing real property or grant a security interest in other tangible forms of personal property if the proceeds of the loan resulting from the mortgage or security interest are used for low-income housing uses. Public Housing Agencies (PHAs) must provide information to HUD for approval to allow PHAs to grant a mortgage in public housing real estate or a security interest in some tangible form of personal property owned by the PHA for the purposes of securing loans or other financing for modernization or development of low-income housing.

Respondents: Members of Affected Public: State, Local or Local Government and Non-profit organization.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
2577–0157	30	3	90	41.78	3,760	$157.65	$592,750
Total	....	....	....	....	....	....	....

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Laura Miller-Pittman,

Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2022–20869 Filed 9–26–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6350–N–01]

Green and Resilient Retrofit Program: Request for Information

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Request for information.

SUMMARY: In response to the passage of the Inflation Reduction Act of 2022, HUD is currently designing a new program, the Green and Resilient Retrofit Program (GRRP), and expects to make multiple rounds of funding available to support energy, and water efficiency retrofits and climate resilience of HUD-assisted multifamily properties. Through this Request for Information (RFI), HUD is seeking input on funding rounds as well as on utility benchmarking. Information provided in response to this RFI will inform prioritization of work, treatment of cost-benefit analyses, and key design elements that will help ensure program goals are met.

DATES: Comments are requested on or before October 27, 2022. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons are invited to submit comments responsive to this RFI. All submissions must refer to the docket number and title of the RFI. Commenters are encouraged to identify the number of the specific question or questions to which they are responding. Responses should include the name(s) of the person(s) or organization(s) filing the comment; however, because any responses received by HUD will be publicly available, responses should not include any personally identifiable information or confidential commercial information.

There are two methods for submitting public comments.

1. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *https://www.regulations.gov.*

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

HUD strongly encourages commenters to submit their feedback and recommendations electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a response, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *https://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

Public Inspection of Public Comments. All comments and communications properly submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals can dial 7–1–1 to access the Telecommunications Relay Service (TRS), which permits users to make text-based calls, including Text Telephone (TTY) and Speech to Speech (STS) calls. Individuals who require an alternative aid or service to communicate effectively with HUD should email *GRRP@hud.gov* and provide a brief description of their preferred method of communication. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:
Lauren Ross, Senior Adviser for Housing and Sustainability, Office of Multifamily Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 6106, Washington, DC 20410–0500; telephone number 202–402–5423 (this is not a toll-free number). Individuals can dial 7–1–1 to access the Telecommunications Relay Service (TRS), which permits users to make text-based calls, including Text Telephone (TTY) and Speech to Speech (STS) calls. Individuals who require an alternative aid or service to communicate effectively with HUD should email *GRRP@hud.gov* and provide a brief description of their preferred method of communication.

SUPPLEMENTARY INFORMATION:

I. Background

The Inflation Reduction Act of 2022 (Pub. L. 117–169) (the Act) makes $837.5 million available to HUD for the provision of loans and grants to fund projects that improve energy or water efficiency, enhance indoor air quality or sustainability, implement the use of zero-emission electricity generation, low-emission building materials or processes, energy storage, or building electrification strategies, and/or address climate resilience. Eligible HUD-assisted multifamily properties include, but are not limited to, Section 8 Project Based Rental Assistance (PBRA), Section 811 Housing for Persons with Disabilities, and Section 202 Housing for the Elderly. The Act also includes $42.5 million for energy and water benchmarking of the HUD-assisted multifamily portfolio along with associated data analysis and evaluation at the property- and portfolio-level, and the development of information technology systems necessary for the collection, evaluation, and analysis of such data.

In response to the passage of the Inflation Reduction Act of 2022, HUD is currently designing a new program, the Green and Resilient Retrofit Program (GRRP), and expects to make multiple rounds of funding available to support energy and water efficiency retrofits and climate resilience of HUD-assisted multifamily properties. HUD is seeking input on funding rounds as well as on benchmarking. Public input will inform prioritization of work, treatment of cost-benefit analyses, and key design elements that will help ensure program goals are met. Overall goals of the GRRP for the HUD-assisted multifamily portfolio include reducing energy consumption and carbon emissions, improving indoor air quality for residents, reducing residents' and properties' exposure to climate hazards, and protecting life, livability, and property when disaster strikes. Additionally, the GRRP will serve to further preserve the long-term affordability of the assisted properties.

II. Purpose of This Request for Information

The purpose of this RFI is to solicit information regarding the design and implementation of the GRRP to support the improvement of energy and water efficiency retrofits, and climate resilience of HUD-assisted multifamily properties.

III. Specific Information Requested

While HUD welcomes all comments relevant to the design and implementation of the GRRP, HUD is particularly interested in receiving input from interested parties on the questions outlined below.

1. HUD is seeking input on program design features, energy-saving measures, low-emission technology, and resilience design and measures that have proven effective in affordable multifamily buildings. How might this program help prioritize and scale best practices for reducing energy consumption and carbon emissions, improving indoor air quality for residents, and strengthening climate resilience among affordable multifamily buildings? How can these measures and practices be deployed in a way that preserves affordability of our properties? Eligible uses for project funding and/or financing include:

a. Improve energy and/or water efficiency.

b. Enhance indoor air quality and/or sustainability.

c. Implement the use of zero-emission electricity generation, low-emission building materials or processes, and/or energy storage, or building electrification strategies.

d. Address climate resilience.

2. This program offers owners of HUD-assisted multifamily properties an opportunity to plan comprehensively around energy efficiency and climate resilience. Often, these goals can be interrelated. Materials and technologies that enhance a building's energy efficiency can also make the building more durable and resilient to threats posed by extreme weather events. It is also possible that some energy efficiency and climate resilience improvements may be in tension. HUD would like recommendations for designing the program to meet energy and emissions reduction goals as well as climate resilience. HUD seeks information on how to balance multiple goals (*i.e.,* energy efficiency, decarbonization, and climate resilience). In addition, given the various eligible uses of funds, cost-effectiveness will vary greatly across projects. How might HUD factor in cost-effectiveness when evaluating applications for energy- and/or resilience-related projects?

3. States, localities, and utilities administer programs aimed at delivering energy efficiency and electrification to affordable multifamily properties. In addition, the Inflation Reduction Act makes significant funding available for home energy rebates for low- and moderate-income households through the U.S. Department of Energy and expands the renewable energy Investment Tax Credit. How might HUD encourage or require applicants to leverage other funding for projects—such as owner equity, other federal, state, local, and/or utility grants, loans, rebates, tax credits, and incentives?

4. HUD seeks to design this program to enable deep retrofits of multifamily properties—retrofits that would likely not be possible without this funding. Certain markets are more primed to deploy deep and resilient retrofits in the multifamily sector, while others may lack the state and local infrastructure and workforce for delivering retrofits in this sector. While HUD seeks to maximize impact, how can HUD best ensure that funding is distributed equitably?

5. HUD's ability to achieve its goal of benchmarking energy and water use for the majority of HUD-assisted multifamily portfolio rests on the availability and accessibility of whole-building aggregate energy data. What

role can HUD play to support greater access to this utility data? What opportunities exist for HUD to engage utilities and/or public utility commissions to make this data readily available to our multifamily building owners? What incentives, financial support, and/or technical support would encourage owners to participate and get their properties benchmarked?

6. What equity considerations should HUD consider when implementing property retrofits and benchmarking? HUD-assisted properties exist nationwide, and they disproportionately serve residents who are otherwise underserved by housing markets, including people with disabilities, older adults, and people from communities of color.

7. This will be the first HUD program to target multifamily properties nationwide with property-level resilience interventions at this scale. How can and should HUD evaluate resilience needs and the effectiveness of these interventions, considering the variety of natural hazards and that the effectiveness of many resilience strategies are truly tested only when a disaster event strikes? How should HUD balance geographic disparities in the needs for resilience interventions (*i.e.,* more frequent in coastal areas) and the availability of other funds, from HUD and other agencies, for recovering from disasters?

Jeffrey D. Little,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2022–20855 Filed 9–26–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[222D1114PT DS62100000 DPTA00000.000000; OMB Control Number 1093–0005]

Agency Information Collection Activities; Payments in Lieu of Taxes (PILT) Act, Statement of Federal Lands Payments

AGENCY: Office of the Secretary, Office of Budget, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of the Secretary, Office of Budget is proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before October 27, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the U.S. Department of the Interior, Office of the Secretary, Office of Budget, Attn: Dionna Kiernan, 1849 C Street NW, MS 4106 MIB, Washington, DC 20240 or by email to *doi_pilt@ios.doi.gov.* Please reference OMB Control Number 1093–0005 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Dionna Kiernan by email at *doi_pilt@ios.doi.gov,* or by telephone at 202–513–7783. Individuals in the United States who are deaf, blind, hard of hearing or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 12, 2022 (87 FR 29176), by the Office of the Secretary, Office of Budget, soliciting comments from the public and other interested parties. No public comments were received.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the Office of Budget; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Office of Budget enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Office of Budget minimize the burden of this collection on the respondents, including through the use of information technology.

Comments you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to the Office of Management and Budget (OMB) to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: ''Payments in Lieu of Taxes'' (PILT) are Federal payments to local governments that help offset losses in property taxes due to non-taxable Federal lands within their boundaries. The original law is Public Law 94–565, dated October 20, 1976. This law was rewritten and amended by Public Law 97–258 on September 13, 1982, and codified at chapter 69, Title 31 of the United States Code. The law recognizes the financial impact of the inability of local governments to collect property taxes on Federally owned land.

The PILT Act requires the Governor of each State to furnish the Department of the Interior with a listing of payments disbursed to local governments by the States on behalf of the Federal Government under 12 statutes described in 31 U.S.C. chapter 69, section 6903. The Department uses the amounts reported by States to determine if the payment received should be factored into the individual payment calculation for units of general local governments which they might otherwise receive. If such listings were not furnished by the Governor of each affected State, the Department would not be able to compute the PILT payments to units of general local government within the States in question.

In fiscal year 2004, administrative authority for the PILT program was transferred from the Bureau of Land Management to the Office of the Secretary within the Department of the Interior. Applicable DOI regulations pertaining to the PILT program to be administered by the Office of the Secretary were published as a final rule in the **Federal Register** on December 7, 2004 (69 FR 70557). The Office of the Secretary, Office of Budget, is now planning to extend the information collection approval authority to enable the Department of the Interior to continue to comply with the PILT Act.

In a revision of this ICR, States are directed to a secure, web-based portal (PILT Portal) to provide the required ''Statement of Federal Land Payments'' information versus using a spreadsheet. The data collected remains the same and provides details on payment amounts passed through to counties and/or units of local government during the prior Federal fiscal year.

Title of Collection: Payments in Lieu of Taxes (PILT) Act, Statement of Federal Lands Payments.

OMB Control Number: 1093–0005.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State governments.

Total Estimated Number of Annual Respondents: 46.

Total Estimated Number of Annual Responses: 46.

Estimated Completion Time per Response: 55 hours.

Total Estimated Number of Annual Burden Hours: 2,530 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Annually.

Total Estimated Annual Non-Hour Burden Cost: None.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–20813 Filed 9–26–22; 8:45 am]

BILLING CODE 4334–63–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1289]

Certain Knitted Footwear; Notice of a Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation in its Entirety Based Upon Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 17) granting a joint motion to terminate the investigation in its entirety based upon settlement.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On January 13, 2022, the Commission instituted this investigation based on a complaint filed by Nike, Inc. of Beaverton, Oregon. 87 FR 2176–77 (Jan. 13, 2022). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain knitted footwear by reason of infringement of one or more claims of U.S. Patent Nos. 9,918,511; 9,743,705; 8,266,749; 7,814,598; 9,060,562; and 8,898,932. *Id.* The Commission's notice of investigation named the following adidas entities as respondents: adidas AG of Herzogenaurach, Germany; adidas North America, Inc. of Portland Oregon; and adidas America, Inc. also of Portland, Oregon. The Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

On March 7, 2022, the ALJ granted an unopposed motion to amend the Complaint and Notice of Investigation to add an additional adidas respondent, adidas International Trading AG of Lucerne, Switzerland. Order No. 8 (Mar. 7, 2022), *unreviewed by* Comm'n Notice (Mar. 21, 2022); 87 FR 17100–101 (Mar. 25, 2022).

On August 18, 2022, the parties filed a joint motion to terminate the investigation in its entirety based upon a settlement agreement that ''resolves all disputed issues in this investigation.'' ID at 2.

On August 24, 2022, the ALJ issued the subject ID granting the motion. The ID observed that Commission Rule 210.21(a)(2) provides that ''[a]ny party may move at any time to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement . . . .'' 19 CFR 210.21(a)(2). The ID found that in compliance with 19 CFR 210.21(b)(1), ''the motion contains a statement that there are no other agreements, written or oral, express or implied, between the private parties concerning the subject matter of this investigation.'' ID at 2. The parties also submitted confidential and public versions of the settlement agreement. The ID further found that granting the motion would cause ''no adverse effect on the public interest.'' *Id.* No one petitioned for review of the subject ID.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

The Commission vote for this determination took place on September 21, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 22, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–20881 Filed 9–26–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[Docket No. OLP 173]

Request for Information Regarding the Use of Pentobarbital in Federal Executions

AGENCY: Office of Legal Policy, Department of Justice.

ACTION: Request for information.

SUMMARY: The Department of Justice is seeking comments from the public regarding the risk of pain and suffering associated with the use of pentobarbital sodium (''pentobarbital''), and any other relevant portion of the Bureau of Prisons' 2019 Addendum to the Federal Execution Protocol.

DATES: Electronic comments must be submitted, and written comments must be postmarked, on or before November 28, 2022.

ADDRESSES: You may submit comments, identified by Docket No. OLP 173, through the Federal eRulemaking Portal: *www.regulations.gov.* Follow the instructions for submitting comments.

- *Postal Mail or Commercial Delivery:* If you do not have internet access or

electronic submission is not possible, you may mail written comments to Docket Clerk, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Ave. NW, Washington, DC 20530. To ensure proper handling, please reference the agency name and Docket No. OLP 173 on your correspondence.

• *Please note that comments submitted by email or fax may not be reviewed by DOJ.*

Privacy Note: The Justice Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, (202) 514–8059 (this is not a toll-free number). If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), please call the toll-free Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to comment on this notice by submitting written data, views, or arguments.

II. Background

On July 1, 2021, Attorney General Merrick Garland issued a memorandum imposing a moratorium on all federal executions pending a review of certain policies and procedures. *See* Memorandum from the Attorney General, *Moratorium on Federal Executions Pending Review of Policies and Procedures* (July 1, 2021), *available at https://www.justice.gov/opa/page/file/1408636/download.* In the memorandum, the Attorney General stated that ''[s]erious concerns have been raised about the continued use of the death penalty across the country, including arbitrariness in its application, disparate impact on people of color, and the troubling number of exonerations in capital and other serious cases.'' *Id.*

In the two years preceding the issuance of the moratorium, the Justice Department made a series of changes to its policies and procedures governing capital sentences and carried out the first federal executions in nearly two decades between July 2020 and January 2021. *Id.* ''To ensure that the Department's policies and procedures are consistent with the principles articulated in [the] memorandum,'' Attorney General Garland directed the Deputy Attorney General to undertake and supervise reviews concerning both the method and manner of federal executions and the policies and procedures governing all federal cases in which a defendant is charged, or could be charged, with an offense subject to the death penalty. The subject of this Request for Information concerns the method of execution. *Id.*

A. State Lethal Injection Protocols

Almost all states that currently permit the death penalty allow for lethal injections as their primary method of execution (South Carolina is an exception, having established electrocution as the primary method of execution).[1] State protocols concerning the use of lethal injection vary; they consist of one-, two-, and three-drug methods. The three-drug protocol used by the states typically involves an anesthetic or sedative, followed by pancuronium bromide to stop breathing and paralyze the inmate, and finally potassium chloride to stop the inmate's heart. The one- or two-drug protocols typically use a lethal dose of an anesthetic or sedative.[2]

There has been much litigation regarding death penalty protocols. In *Baze* v. *Rees,* 553 U.S. 35 (2008), the Supreme Court upheld Kentucky's use of a three-drug combination, including sodium pentothal (also called sodium thiopental), which induces unconsciousness; pancuronium bromide; and potassium chloride. However, practical obstacles soon emerged as pharmaceutical companies began refusing to supply the drugs used to implement the death sentences. *See Glossip* v. *Gross,* 576 U.S. 863, 869–70 (2015). In particular, the sole American manufacturer of sodium pentothal stopped producing the drug because of its use in the death penalty.[3]

After the availability of sodium pentothal declined, several states developed an alternative drug combination that replaced sodium pentothal with pentobarbital. *Glossip,* 576 U.S. at 870. Georgia, Idaho, Missouri, South Dakota, and Texas administer a single-drug pentobarbital protocol as the primary method of execution.[4]

B. Federal Death Penalty Legal Framework and Practice

Implementation of the federal death penalty is governed by 18 U.S.C. 3596–3597. These provisions require the federal government to carry out death sentences ''in the manner prescribed by the law of the State in which the sentence is imposed.'' 18 U.S.C. 3596(a). Federal regulations further clarify that executions must be conducted by ''intravenous injection of a lethal substance or substances in a quantity sufficient to cause death, such substance or substances to be determined by the Director of the Federal Bureau of Prisons, or by any other manner prescribed by the law of the State in which the sentence was imposed or which has been designated by a court in accordance with 18 U.S.C. 3596(a).'' 28 CFR 26.3(a)(4).

In 2004, the federal government issued a 50-page ''BOP Execution Protocol,'' which outlined the Bureau of Prisons' execution procedures. *See* BOP Execution Protocol Manual (2004). The protocol provided that execution would occur using lethal injection but did not specify the type of drugs to be used. *Id.* at pp. 7, 10. That being said, for the three federal executions conducted between 2001 and 2003, the Bureau of Prisons used a combination of sodium pentothal, pancuronium bromide, and potassium chloride. *See In re Federal Bureau of Prisons' Execution Protocol Cases,* 955 F.3d 106, 110 (D.C. Cir. 2020).

In 2007 and 2008, the government issued two three-page addenda to the 2004 BOP Execution Protocol. The 2008 Addendum memorialized the Bureau of Prisons' use of those three substances in federal executions. *See* Addendum to BOP Execution Protocol: Federal Death Sentence Implementation Procedures (Effective August 1, 2008). In 2011, the Department of Justice announced that the Bureau of Prisons did not have the drugs it needed to implement the 2008 Addendum. However, no executions had been conducted since 2003, in part because of the unavailability of sodium pentothal.[5]

[1] Death Penalty Information Center, *Methods of Execution, https://deathpenaltyinfo.org/executions/methods-of-execution.*

[2] Death Penalty Information Center, *State by State Lethal Injection, https://deathpenaltyinfo.org/state-lethal-injection.*

[3] Press Release, Hospira, STATEMENT FROM HOSPIRA Regarding its halt of production of Pentothal™ (sodium thiopental) (Jan. 21, 2011), *https://files.deathpenaltyinfo.org/legacy/documents/HospiraJan2011.pdf.*

[4] Death Penalty Information Center, *State by State Lethal Injection, https://deathpenaltyinfo.org/state-lethal-injection.*

[5] *See* Letter from Office of Attorney General to National Association of Attorneys General (Mar. 4, 2011), available at *http://cdn.ca9.uscourts.gov/datastore/general/2011/11/15/11-35940_EOR_VOL_5.pdf* (at 000678).

C. 2019 Addendum to the Federal Execution Protocol

In July 2019, the then-Attorney General directed the Bureau of Prisons to adopt an Addendum to the Federal Execution Protocol that provided for the use of a single drug, pentobarbital. *See* Press Release, Department of Justice, Federal Government to Resume Capital Punishment After Nearly Two Decade Lapse (July 25, 2019), *https://www.justice.gov/opa/pr/federal-government-resume-capital-punishment-after-nearly-two-decade-lapse;* Memorandum for the Attorney General, *The Federal Bureau of Prisons' Federal Execution Protocol Addendum* (July 24, 2019); Memorandum for the Attorney General, *Summary of the Federal Bureau of Prisons' Federal Execution Protocol Addendum* (July 24, 2019); *see also* Addendum to BOP Execution Protocol: Federal Death Sentence Implementation Procedures (Effective July 25, 2019), *available at https://www.supremecourt.gov/DocketPDF/19/19-1348/145068/20200605210117775_2020%2006%2005%20Appendix.pdf* (at 210a).

The Bureau of Prisons indicated in a memorandum to the then-Attorney General that it had a ''viable domestic source'' to obtain pentobarbital and that the manufacturer is properly registered as a bulk manufacturer of pentobarbital. *See* Memorandum for the Attorney General, *Summary of the Federal Bureau of Prisons' Federal Execution Protocol Addendum* (July 24, 2019). The Bureau of Prisons also ''secured a compounding pharmacy to store the [active pharmaceutical ingredient] and to convert the [active pharmaceutical ingredient] into injectable form as needed.'' *Id.*

The 2019 Addendum, like at least one previous addendum, asserts that the ''identities of personnel considered for and/or selected to perform death sentence related functions . . . shall be protected from disclosure to the fullest extent permitted by law.'' Addendum to BOP Execution Protocol: Federal Death Sentence Implementation Procedures (Effective July 25, 2019). The 2019 Addendum also specifies other details such as defining the ''qualified personnel'' who can serve as the executioner(s); the number of rehearsals that non-medically licensed or certified qualified personnel must participate in prior to participating in an actual execution; dosage; identification of appropriate injection sites; the number of backup syringes; and how and when the condemned individual should be escorted into the room, restrained, and monitored. *Id.*

From July 2020 to January 2021, the federal government executed thirteen death row inmates pursuant to the 2019 Addendum.

D. 2021 Moratorium on Federal Executions Pending Review of Policies and Procedures

As noted above, the Attorney General issued a moratorium on federal execution during the pendency of three reviews. The first, and the subject of this Request for Information, is a review to ''assess the risk of pain and suffering associated with the use of pentobarbital.'' The review may also ''address any other relevant portion'' of the 2019 Addendum. *See* Memorandum from the Attorney General, *Moratorium on Federal Executions Pending Review of Policies and Procedures* (July 1, 2021).

As noted in the Attorney General's memorandum, although some medical experts have concluded that the use of pentobarbital may risk inflicting painful pulmonary edema, the Supreme Court found that this risk was insufficient ''to justify last-minute intervention by a Federal Court'' shortly before an execution was scheduled to occur. *Barr* v. *Lee,* 140 S. Ct. 2590, 2591 (2020) (per curiam). However, ''[a] risk need not meet the Court's high threshold for such relief, or violate the Eighth Amendment, to raise important questions about our responsibility to treat individuals humanely and avoid unnecessary pain and suffering.'' Memorandum from the Attorney General, *Moratorium on Federal Executions Pending Review of Policies and Procedures* (July 1, 2021). To ensure that these considerations are taken into account, the Attorney General ordered this review.

III. Solicitation of Comments

The Department of Justice requests information from individuals or organizations regarding the risk of pain and suffering associated with the use of pentobarbital and any other relevant portion of the 2019 Addendum. To contribute effectively to this review, all commenters are encouraged to provide comments that are responsive specifically to the topics of this review.

Dated: September 21, 2022.

Hampton Y. Dellinger,

Assistant Attorney General, Office of Legal Policy.

[FR Doc. 2022–20886 Filed 9–26–22; 8:45 am]

BILLING CODE 4410–BB–P

DEPARTMENT OF JUSTICE

[Docket No. OLP 171]

Request for Information Regarding the Manner of Execution Regulations

AGENCY: Department of Justice.

ACTION: Request for information.

SUMMARY: The Department of Justice is requesting information in the form of written comments that may include information, research, and data regarding 28 CFR part 26, which governs the implementation of federal executions. On November 27, 2020, the Department amended these regulations to expand the permissible methods of execution beyond lethal injection to ''any other manner prescribed by the law of the State in which the sentence was imposed.'' The amendments also authorized the use of state facilities and personnel in federal executions and made a number of procedural changes, including granting the Attorney General authority to make exceptions to the regulations and to delegate duties within the Department.

DATES: Electronic comments must be submitted, and written comments must be postmarked, on or before November 28, 2022.

ADDRESSES: You may submit comments, identified by Docket No. 171, through the Federal eRulemaking Portal: *www.regulations.gov.* Follow the instructions for submitting comments.

- *Postal Mail or Commercial Delivery:* If you do not have internet access or electronic submission is not possible, you may mail written comments to Docket Clerk, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Ave. NW, Washington, DC 20530. To ensure proper handling, please reference the agency name and Docket No. OLP 171 on your correspondence.
- *Please note that comments submitted by email or fax may not be reviewed by DOJ.*

Privacy Note: The Justice Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, (202) 514–8059 (this is not a toll-free number). If you use a

telecommunications device for the deaf (TDD) or a text telephone (TTY), please call the toll free Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to comment on this notice by submitting written data, views, or arguments.

II. Background

On July 1, 2021, Attorney General Merrick Garland issued a moratorium on federal executions pending a review of certain policies and procedures. *See* Memorandum from the Attorney General, *Moratorium on Federal Executions Pending Review of Policies and Procedures* (July 1, 2021), *https://www.justice.gov/opa/page/file/1408636/download.* In issuing the moratorium, the Attorney General noted that ''[t]he Department of Justice must ensure that everyone in the federal criminal justice system is not only afforded the rights guaranteed by the Constitution and laws of the United States, but is also treated fairly and humanely. That obligation has special force in capital cases. Serious concerns have been raised about the continued use of the death penalty across the country, including arbitrariness in its application, disparate impact on people of color, and the troubling number of exonerations in capital and other serious cases.'' *Id.*

The Attorney General noted that, in the last two years preceding the issuance of the moratorium, the Department had made a series of changes to its policies and procedures governing capital sentences, which were accompanied by the first federal executions in nearly two decades. *Id.* ''To ensure that the Department's policies and procedures are consistent with the principles articulated in [the] memorandum,'' the Attorney General asked the Deputy Attorney General to supervise three reviews on this general subject.

The second of these reviews directs the Office of Legal Policy to consider whether and to what extent amendments made in November 2020 to federal regulations governing the manner of federal executions ''should be modified or rescinded'' and ''to consider any other changes that should be made to the regulations.'' *Id.* That review is the subject of this Request for Information.

A. Statutory and Regulatory Framework for Federal Executions

In 1993 (pursuant to 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002; and 28 U.S.C. 509, 510), the Department of Justice issued regulations providing for lethal injection as the method of execution for federal capital crimes ''except to the extent a court orders otherwise,'' 28 CFR 26.3, and governing various tasks related to scheduling and carrying out the federal death sentences, 58 FR 4898 (Jan. 19, 1993); 28 CFR part 26 (effective through Dec. 27, 2020). Among other things, the regulations provided that, except as otherwise ordered by a court, a federal sentence of death shall be executed ''[o]n a date and at a time designated by the Director of the Federal Bureau of Prisons,'' ''[a]t a federal penal or correctional institution designated by the Director of the Federal Bureau of Prisons,'' and ''[b]y a United States Marshal designated by the Director of the United States Marshals Service.'' 28 CFR 26.3(a)(1)–(3) (effective through Dec. 27, 2020).

A year later, Congress enacted the Federal Death Penalty Act (''FDPA''), Public Law 103–322, 60002, 108 Stat. 1796, 1959 (1994), which provides that a federal death sentence shall be carried out ''in the manner prescribed by the law of the State in which the sentence is imposed.'' 18 U.S.C. 3596(a). If the law of the state in which the sentence is imposed ''does not provide for implementation of a sentence of death,'' then the FDPA instructs that ''the court shall designate another state, the law of which does provide for the implementation of a sentence of death, and the sentence shall be implemented . . . in the manner prescribed by such law.'' *Id.*

B. November 2020 Amendments to the Manner of Execution Regulations

On November 27, 2020, the Department of Justice amended the regulations governing the manner of federal executions ''to provide the Federal Government with greater flexibility to conduct executions in any manner authorized by'' the FDPA. 85 FR 75846, 75847 (Nov. 27, 2020). The amendments, which became effective on December 28, 2020, made a number of changes, detailed below.

Before the amendments were promulgated, the Department published a notice of proposed rulemaking (''NPRM'') on August 5, 2020. *See* Manner of Federal Executions, 85 FR 47324 (Aug. 5, 2020). By the end of the 30-day comment period on September 4, 2020, the Department had received 23 comments that were responsive to the proposed rule. These comments were addressed in the final rule, published in the **Federal Register** on November 27, 2020. 85 FR 75846–75853.

1. Manner of Execution Amendments

The Department of Justice amended 28 CFR 26.3(a)(4) to provide that federal executions are to be carried out by lethal injection ''or by any other manner prescribed by the law of the State in which the sentence was imposed or which has been designated by a court in accordance with 18 U.S.C. 3596(a).'' In making this change, the Department noted that it ''would ensure that the Department would be authorized to use the widest range of manners of execution permitted by law.'' 85 FR at 75848.

The Department also amended section 26.4(a) so that the notice of the date of execution provided to a prisoner also stated the method of execution to be used. The amendments also added a new sentence at the end of the paragraph to read as follows: ''If applicable law provides that the prisoner may choose among multiple manners of execution, the Director or his designee shall notify the prisoner of that option.'' 28 CFR 26.4(a).

2. Use of State Facilities Amendments

The November 2020 amendments authorized the use of state facilities and personnel in federal executions by striking ''federal'' before ''penal or correctional institution'' in section 26.3(a)(2) and by replacing ''[b]y'' with ''[u]nder the supervision of'' a United States Marshal in section 26.3(a)(3).

3. Section 26.1

The amendments added a new provision, section 26.1(b), that authorized the Attorney General to vary from the regulations to the extent necessary to comply with applicable law. The provision reads: ''Where applicable law conflicts with any provision of this part, the Attorney General may vary from that provision to the extent necessary to comply with the applicable law.'' 28 CFR 26.1(b).

The November 2020 amendments also added a new provision, section 26.1(c), that stated that any task or duty assigned to any officer or employee of the Department of Justice under Part 26 may be delegated by the Attorney General to any other officer or employee of the Department of Justice.

4. Section 26.2

The amendments removed section 26.2, which had required prosecutors to submit a proposed Judgment and Order to the court in cases in which the defendant was sentenced to death. The content of the Judgment and Order had included four basic points: (1) The sentence was to be executed by a United States Marshal, (2) by injection of a

lethal substance, (3) on a date and at a place designated by BOP, and (4) the prisoner under sentence of death was to be committed to the custody of the Attorney General or his designee for detention pending execution of the sentence.

5. Section 26.3

In section 26.3(a)(3), the November 2020 amendments clarified that ''qualified'' personnel must carry out an execution, regardless of manner.

The amendments to section 26.3(a)(3) also provided that the sentence of death be executed under the supervision of a United States Marshal designated by the Director of the United States Marshals Service, assisted by additional qualified personnel who are selected by the Director of the United States Marshals Service and the Director of the Federal Bureau of Prisons, or their designees, and acting at the direction of the Marshal.

6. Section 26.4

Section 26.4(a) provides that a prisoner will receive notice of the date designated for execution ''at least 20 days in advance, except when the date follows a postponement of fewer than 20 days of a previously scheduled and noticed date of execution, in which case'' the prisoner shall be notified ''as soon as possible.'' The November 2020 amendments placed responsibility for such notification with the ''Director of the Federal Bureau of Prisons or his designee'' instead of with the ''Warden.''

Section 26.4(b) governs prisoner access to other persons in the week before the designated execution date, limiting such access to spiritual advisers, defense attorneys, family members, institution officials, and—upon the approval of the BOP Director or his designee—''such other proper persons as the prisoner may request.'' The amendments clarified that the BOP Director or his designee may approve prisoner requests for types of visitors not listed in the regulation, eliminating a reference to the ''Warden.''

Section 26.4(c) governs execution attendance, requiring certain official personnel to attend and imposing limits on the numbers and types of other persons whom the prisoner and officials may designate to attend. The amendments eliminated references to the ''Warden,'' thus eliminating the requirement that the Warden attend executions, while maintaining the requirement that the Marshal attend. The only other proposed change was to vest authority for selecting necessary personnel in the Marshal and the BOP Director or his designee, instead of in the Marshal and the Warden.

7. Section 26.5

The amendments to section 26.5 extended to non-Department of Justice employees (including contractors) existing protections that applied to Department of Justice employees, allowing them not to be in attendance at or to participate in any execution if such attendance or participation is contrary to the moral or religious convictions of the Department of Justice employee.

C. 2021 Moratorium on Federal Executions Pending Review of Policies and Procedures

As noted above, Attorney General Garland issued a moratorium on federal execution during the pendency of three reviews. The second, and the subject of this Request for Information, is a review ''to consider whether and to what extent [the November 2020] amendments should be modified or rescinded'' and ''to consider any other changes that should be made to the regulations.'' *See* Memorandum from the Attorney General, *Moratorium on Federal Executions Pending Review of Policies and Procedures* (July 1, 2021), *https://www.justice.gov/opa/page/file/1408636/download.*

III. Solicitation of Comments

The Department of Justice requests information from individuals or organizations regarding whether the November 2020 amendments should be modified or rescinded and whether any other changes should be made to the regulations in 28 CFR part 26. To contribute effectively to this review, all commenters are encouraged to provide comments that are responsive specifically to the topics of this review.

The Department is particularly interested in responses to the questions below, although the Department would welcome any comment within the scope of this inquiry.

Manner of Execution

1. If a State authorizes two or more manners of execution (*e.g.,* lethal injection and firing squad), what limitations or restrictions, if any, should be placed on the federal government's ability or authority to choose which of those manners of execution it would employ for federal executions, both in contexts where the State provides the inmate a choice among methods as well as in contexts where the State does not have a choice provision but authorizes two or more permissible manners?

2. If the manner of execution prescribed by the law of the State in which the sentence is imposed was unconstitutional for violation of the 8th Amendment's ''cruel and unusual punishment'' clause, how should the federal government implement the death sentence?

3. What obligation, if any, would the federal government have to independently analyze and assess the constitutional validity of state-law manners of execution before employing one?

4. If an inmate's medical conditions made it likely that use of a State's manner of execution would subject the inmate to unconstitutional pain and suffering, should the federal government be permitted to use an alternative form of execution? Who would determine and how would they determine that the inmate's medical conditions made it likely that use of a State's manner of execution would subject the inmate to unconstitutional pain and suffering?

5. Currently, the federal government only has the equipment and personnel to conduct executions by lethal injection. What logistical, practical, or legal steps would the federal government need to take to implement a State method of execution other than lethal injection?

Use of State Facilities

6. Are there logistical or practical concerns with allowing the federal government to make arrangements or agreements with the relevant State to use State equipment, facilities, and personnel for federal executions? Please explain.

Notice

7. When regulations, guidance, or policy regarding implementation of the death sentence is changed, what process should the federal government follow to ensure appropriate notice?

8. Should inmates and/or inmate's counsel be notified of any potential deviations from the regulations? If so, how and by whom?

9. What limitations or modifications should be made, if any, to the Attorney General's authority in 28 CFR 26.1(b) to vary from the regulations ''to the extent necessary to comply with the applicable law''?

10. Should the notice requirement in 28 CFR 26.4 include notice to counsel? If so, how and by whom?

11. Are the time periods for notice provided in the regulations sufficient, for example, to permit the filing of a clemency petition or to request a stay of execution? If not, how much time should be allotted for notice and why?

Delegation of Duties

12. When duties are reassigned between Department of Justice components, what types of processes or protocols should be implemented to ensure transparency, effective implementation of the law, and consistency?

Judgment and Order Filings

13. What was the practical function that a Judgment and Order filing had in litigation?

Definitions

14. Are there any undefined terms in the regulations or statute that would benefit from a definition? If yes, please explain why the term should be defined and what the definition should be. In particular, please consider whether the following terms should be defined and, if so, what the definitions should be:

- ''When a stay is lifted''
- ''Promptly''
- ''Qualified''

Visitors and Witnesses

15. What criteria should be applied regarding access to visitors in the week before the designated execution date?

16. What criteria should be applied to the selection of witnesses who are present during federal executions?

17. To what extent should the federal government limit the number of—or otherwise participate in the selection of—spiritual advisers, attorneys, friends, or relatives who may access a prisoner prior to a designated date of execution?

Generally

18. Are there particular provisions of the November 2020 amendments or the prior regulatory scheme that should be retained, modified, or rescinded and, if so, why?

19. Should any other changes be made to 28 CFR Ch. I, Pt. 26, Subpart A?

Dated: September 21, 2022.

Hampton Y. Dellinger,

Assistant Attorney General, Office of Legal Policy.

[FR Doc. 2022–20889 Filed 9–26–22; 8:45 am]

BILLING CODE 4410–BB–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

DATE AND TIME: Tuesday October 4, 2022, at 1 p.m.

PLACE: U.S. Parole Commission, 90 K Street NE, 3rd Floor, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of April 2022 Quarterly Meeting minutes.

2. Verbal Pandemic Updates since October Quarterly Meeting from the Acting Chairman, Commissioner, Acting Chief of Staff/Case Operations Administrator, Case Services Administrator, Executive Officer, and General Counsel.

3. Vote on final rule to modify 28 CFR 2.86, Release on Parole, Recission for Misconduct.

5. Vote on final rule to modify 28 CFR 2.34, Rescission of Parole.

6. Wrap-up on jurisdiction over military offenders.

7. Status of Transfer Treaty cases.

8. Update on status of treatment programs (RSAT and Reentry and Sanctions Center Treatment Program).

CONTACT PERSON FOR MORE INFORMATION: Jacquelyn Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE, 3rd Floor, Washington, DC 20530, (202) 346–7010.

Dated: September 23, 2022.

Patricia K. Cushwa,

Chairman (Acting), U.S. Parole Commission.

[FR Doc. 2022–20986 Filed 9–23–22; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Notice of Request Under the Freedom of Information Act for Federal Contractors' Type 2 Consolidated EEO–1 Report Data; Correction

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice; correction and extension of deadline to respond.

SUMMARY: The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) published a notice in the **Federal Register** on August 19, 2022, providing federal contractors instructions on how to object to the release of their Type 2 EEO–1 Report data, requested under the Freedom of Information Act (FOIA). The notice omitted a hyperlink and referenced a non-functional hyperlink for a collection that is not currently active. Additionally, this corrected notice extends the deadline for contractors to submit written objections to October 19, 2022.

FOR FURTHER INFORMATION CONTACT: Candice Spalding, Deputy Director, Division of Management and Administrative Programs, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: 1–855–680–0971 (voice) or 1–877–889–5627 (TTY).

SUPPLEMENTARY INFORMATION:

Corrections

OFCCP makes the following corrections to its August 19, 2022, **Federal Register** notice (87 FR 51145):

On page 51145, column 3, lines 36–42 are corrected to remove the phrase, ''*see also* EEO–1 Joint Reporting Committee, EEO–1 Instruction Booklet 1, *https://www.eeoc.gov/employers/eeo1survey/upload/instructions_form.pdf* (describing the EEO–1 Report as ''jointly developed by the EEOC and OFCCP'').''

On page 51145, column 3, the last full sentence, ''Although the EEOC and OFCCP jointly collect the EEO–1 data through the JRC, as a practical matter, because the JRC is housed at the EEOC, employers submit their data to the EEOC,'' is corrected so the sentence reads as: ''Employers submit their data to the EEOC.''

On page 51145, column 3, footnote 2 is removed in its entirety.

On page 51146, column 1, lines 11–12, the phrase ''compliance surveys'' is replaced with ''data collections'' so the sentence reads as: ''Section 709(e) of Title VII of the Civil Rights Act of 1964 imposes criminal penalties and makes it unlawful for any officer or employee of EEOC from making public the employment data derived from any of its data collections prior to the institution of any proceeding under EEOC's authority involving such information.''

On page 51146, column 2, line 6 is corrected to remove ''[INSERT LINK]'' and embed a hyperlink to the OFCCP website at *https://www.dol.gov/agencies/ofccp/submitter-notice-response-portal* and remove ''15,000'' and replace with ''24,000,'' to read, ''Given OFCCP's best estimate that the CIR FOIA request covers approximately 24,000 unique Covered Contractors, OFCCP is fulfilling its notification obligation through this **Federal Register** notice, a contemporaneous posting on the OFCCP website, and notification to all federal contractors and federal contractor representatives that have registered and provided electronic mail contact information through the agency's Contractor Portal and/or have subscribed to OFCCP's GovDelivery electronic mail listserv.''

Extension of Deadline

The August 19, 2022, **Federal Register** notice provided a deadline of September

19, 2022, for contractors to submit written objections to disclosure of the requested Type 2 EEO–1 Report data (87 FR 51145). OFCCP is extending this deadline to October 19, 2022, to ensure that Covered Contractors have time to ascertain whether they are covered and submit objections. There are multiple reasons for the extension, including the following. First, since publication of that notice, numerous contractors and contractor representatives have contacted the agency requesting an extension of time to submit objections. Additionally, since the publication of the original notice, some federal contractors have raised questions regarding their efforts to verify whether they are included in the universe of Covered Contractors during the requested timeframe. To address this second issue, OFCCP will also take the additional step of emailing contractors that OFCCP believes are covered by this FOIA request, using the email address provided by contractors that have registered in OFCCP's Contractor Portal and the email addresses provided as a contact for the EEO–1 report.

Kelley J. Smith,

Director of the Division of Management and Administrative Programs, Office of Federal Contract Compliance Programs.

[FR Doc. 2022–20848 Filed 9–26–22; 8:45 am]

BILLING CODE 4510–CM–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet virtually on October 4, 2022. The meeting will commence at 11:45 a.m. EDT, and will continue until the conclusion of the Committee's agenda.

PLACE: *Public Notice of Virtual Meetings.*

LSC will conduct the October 4, 2022 meeting via Zoom.

Public Observation: Unless otherwise noted herein, the Operations and Regulations Committee meeting will be open to public observation via Zoom. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

Directions for Open Session

October 4, 2022

- To join the Zoom meeting by computer, please use this link.
  - *https://lsc-gov.zoom.us/j/83702010102?pwd=Q1JvbkRYWXhwTHJyQlRCQXUyQ2VJQT09&from=addon*
  - *Meeting ID:* 837 0201 0102
  - *Passcode:* 711899
- To join the Zoom meeting with one tap from your mobile phone, please click dial:
  - +16468769923,,83702010102# US (New York)
  - +16469313860,,83702010102# US
- To join the Zoom meeting by telephone, please dial one of the following numbers:
  - +1 646 876 9923 US (New York)
  - +1 301 715 8592 US (Washington DC)
  - +1 312 626 6799 US (Chicago)
  - +1 408 638 0968 US (San Jose)
  - +1 253 215 8782 US (Tacoma)
  - +1 346 248 7799 US (Houston)
  - *Meeting ID:* 837 0201 0102
  - *Passcode:* 711899

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Operations and Regulations Committee Chair may solicit comments from the public. To participate in the meeting during public comment, use the 'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on June 30, 2022
3. Consider and Act on 2022–2023 Regulatory Agenda
   - *Ron Flagg, President*
   - *Stefanie Davis, Senior Associate General Counsel for Regulations and Ethics Officer, Office of Legal Affairs*
   - *Lora Rath, Director, Office of Compliance and Enforcement*
4. Public Comment
5. Consider and Act on Other Business
6. Consider and Act on Adjournment of Meeting

CONTACT PERSON FOR MORE INFORMATION: Kaitlin Brown, Executive and Board Project Coordinator, at (202) 295–1555. Questions may also be sent by electronic mail to *brownk@lsc.gov.*

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

Dated: September 23, 2022.

Kaitlin D. Brown,

Executive and Board Project Coordinator, Legal Services Corporation.

[FR Doc. 2022–21032 Filed 9–23–22; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22–074)]

NASA Astrophysics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Advisory Committee. This Committee reports to the Director, Astrophysics Division, Science Mission Directorate, NASA Headquarters. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, October 17, 2022, 9:00 a.m.–5:00 p.m., Tuesday, October 18, 2022, 9:00 a.m.–2:00 p.m., Eastern Time.

ADDRESSES: Due to current COVID–19 issues affecting NASA Headquarters occupancy, public attendance will be virtual only. See dial-in and Webex information below under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mrs. KarShelia Kinard, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, or *karshelia.kinard@nasa.gov.*

SUPPLEMENTARY INFORMATION: As noted above, this meeting is virtual and will take place telephonically and via Webex. Any interested person must use a touch-tone phone to participate in this meeting. The Webex connectivity information for each day is provided below. For audio, when you join the Webex event, you may use your computer or provide your phone number to receive a call back, otherwise, call the U.S. toll conference number listed for each day.

On Monday, October 17, the event address for attendees is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=mf79f5e8c2ce522a05c560caf505da802,* the meeting number is 2762 536 1104, and meeting password is Apac1017#

To join by telephone, the toll numbers are: 1–415–527–5035 or 1–929–251–9612. Access code: 2762 536 1104.

On Tuesday, October 18, the event address for attendees is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m4de95daff639b0f4a500e61234f9cacf,* the meeting number is 2760 445 9382, and meeting password is Apac1018#

To join by telephone, the toll numbers are: 1–415–527–5035 or1–929–251–9612. Access code: 2760 445 9382

The agenda for the meeting includes the following topics:

—Astrophysics Division Update
—Updates on Specific Astrophysics Missions
—Reports From the Program Analysis Groups

The agenda will be posted on the Astrophysics Advisory Committee web page: *https://science.nasa.gov/researchers/nac/science-advisory-committees/apac.*

The public may submit and upvote comments/questions ahead of the meeting through the website *https://forms.office.com/g/UYWeGpuawe* that will be opened for input on October 7, 2022.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Carol Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2022–20864 Filed 9–26–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–22–0021; NARA–2022–068]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by November 14, 2022.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-22-0021/document.* This is a direct link to the schedules posted in the docket for this notice on *regulations.gov.* You may submit comments by the following method:

• *Federal eRulemaking Portal: https://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

If you are unable to comment via *regulations.gov*, you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov* or by phone at 301–837–2902. For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the regulations.gov portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on regulations.gov a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules

authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Health and Human Services, Agency for Health Care Policy and Research, United States Health Information Knowledgebase (DAA–0510–2022–0001).

2. Department of Transportation, Federal Aviation Administration, iTRAK System Case Files (DAA–0237–2021–0013).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2022–20853 Filed 9–26–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collections, Production of Nonpublic Records and Testimony of Employees in Legal Proceedings (Touhy Request)

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before November 28, 2022 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; email at *PRAComments@NCUA.gov. Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.*

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Dawn Wolfgang at the address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0146.

Title: Production of Non-public Records and Testimony of Employees in Legal Proceedings (Touhy Request).

Type of Review: Extension of a currently approved collection.

Abstract: Title 12 CFR part 792, subpart C requires anyone requesting NCUA non-public records for use in legal proceedings, or similarly the testimony of NCUA personnel, to provide NCUA with information regarding the requester's grounds for the request. This process is also known as a ''Touhy Request''. The information collected will help NCUA decide whether to release non-public records or permit employees to testify in legal proceedings. NCUA regulations also require an entity or person in possession of NCUA records to notify the NCUA upon receipt of a subpoena for those records. The NCUA requires this notice to protect its records and, when necessary, intervene in litigation or file an objection to the disclosure of its confidential information in the appropriate court or tribunal.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated No. of Respondents: 20.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Responses: 20.

Estimated Burden Hours per Response: 5.

Estimated Total Annual Burden Hours: 100.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on September 21, 2022.

Dated: September 22, 2022.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2022–20860 Filed 9–26–22; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: This meeting was noticed on August 25, 2022, at 87 FR 52419.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Monday, September 26, 2022, from 5:00–5:30 p.m. EDT.

CHANGES IN THE MEETING: This meeting is cancelled.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–21035 Filed 9–23–22; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's (NSB) Committee on Oversight and Committee on Awards and Facilities hereby give notice of the scheduling of a videoconference joint meeting for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Wednesday, September 28, 2022, from 1:30—2:30 p.m. EDT.

PLACE: This meeting will be held by videoconference through the National Science Foundation.

STATUS: Open.

MATTERS TO BE CONSIDERED: The agenda of the meeting is: Committee Chairs' opening comments; Discussion of National Science Board Responses to the issues raised in Final Report on Sexual Assault/Harassment Prevention and Response (SAHPR); Discussion of National Science Foundation Director's Statement and Immediate Actions Responding to issues raised in the SAHPR; and Committee Chairs' closing comments.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: (Chris Blair, *cblair@nsf.gov*), 703/292–7000. Members of the public can observe this meeting through a You Tube livestream. Please consult the NSB website for the link.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–21012 Filed 9–23–22; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, October 18, 2022.

PLACE: Virtual.

STATUS: The one item may be viewed by the public through webcast only.

MATTER TO BE CONSIDERED:

68941 Marine Investigative Report—Capsizing of Liftboat SEACOR Power, Port Fourchon, Louisiana, April 13, 2021.

CONTACT PERSON FOR MORE INFORMATION: Candi Bing at (202) 590–8384 or by email at *bingc@ntsb.gov.*

Media Information Contact: Jennifer Gabris by email at *Jennifer.Gabris@ntsb.gov* or at (202) 314–6100.

This meeting will take place virtually. The public may view it through a live or archived webcast by accessing a link under ''Webcast of Events'' on the NTSB home page at *www.ntsb.gov.*

There may be changes to this event due to the evolving situation concerning the novel coronavirus (COVID–19). Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

The National Transportation Safety Board is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Dated: Friday, September 23, 2022.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2022–20970 Filed 9–23–22; 11:15 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0165]

Performance Review Boards for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointments.

SUMMARY: The Nuclear Regulatory Commission (NRC) has announced appointments to the NRC Performance Review Board (PRB) responsible for making recommendations on performance appraisal ratings and performance awards for NRC Senior Executives and Senior Level System employees and appointments to the NRC PRB Panel responsible for making recommendations to the appointing and awarding authorities for NRC PRB members.

DATES: September 27, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0165 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0165. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mary A. Lamary, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3300, email: *Mary.Lamary@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following individuals appointed as members of the NRC PRB are responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level System employees:

Daniel H. Dorman, Executive Director for Operations
Marian L. Zobler, General Counsel
Catherine Haney, Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs, Office of the Executive Director for Operations
Darrell J. Roberts, Deputy Executive Director for Reactor and Preparedness Programs, Office of the Executive Director for Operations
Brooke P. Clark, Secretary of the Commission, Office of the Secretary
John B. Giessner, Regional Administrator, Region-III
Jennifer M. Golder, Director, Office of Administration
Mirela Gavrilas, Director, Office of Nuclear Security and Incident Response
Cherish K. Johnson, Chief Financial Officer
John W. Lubinski, Director, Office of Nuclear Materials and Safety Safeguards
Andrea D. Veil, Director, Office of Nuclear Reactor Regulation

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Bernice C. Ammon, Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel
David J. Nelson, Office of the Chief Information Officer
Scott A. Morris, Regional Administrator, Region IV

All appointments are made pursuant to section 4314 of chapter 43 of Title 5 of the United States Code.

Dated: September 21, 2022.

For the Nuclear Regulatory Commission.

Mary A. Lamary,

Secretary, Executive Resources Board.

[FR Doc. 2022–20821 Filed 9–26–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0201]

Information Collection: Export and Import of Nuclear Equipment and Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Export and Import of Nuclear Equipment and Material.''

DATES: Submit comments by October 27, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0201 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0201.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement and NRC Forms 830, 830A, 831, 831A, are available in ADAMS under Accession Nos. ML22165A280, ML21340A017, ML21340A019, ML21340A020, and ML21340A103.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Export and Import of Nuclear Equipment and Material.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on March 15, 2022 (87 FR 14586).

1. *The title of the information collection:* ''Export and Import of Nuclear Equipment and Material.''

2. *OMB approval number:* 3150–0036.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Forms 830, 830A, 831, 831A.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* Any person in the U.S. who wishes to export or import (a) nuclear material and equipment subject to the requirements of a specific license; (b) amend a license; (c) renew a license; (d) obtain consent to export Category 1 quantities of materials listed in Appendix P to part 110 of title 10 of the *Code of Federal Regulations* (10 CFR); or (e) request an exemption from a licensing requirement under 10 CFR part 110.

7. *The estimated number of annual responses:* 3,092.

8. *The estimated number of annual respondents:* 90.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 1,514.

10. *Abstract:* Persons in the U.S. who export or import nuclear material or equipment under a general or specific authorization must comply with certain reporting and recordkeeping requirements under 10 CFR part 110.

Dated: September 21, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–20822 Filed 9–26–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of September 26, October 3, 10, 17, 24, 31, 2022. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of September 26, 2022

There are no meetings scheduled for the week of September 26, 2022.

Week of October 3, 2022—Tentative

There are no meetings scheduled for the week of October 3, 2022.

Week of October 10, 2022—Tentative

Tuesday, October 11, 2022

10 a.m. NRC All Employees Meeting (Public Meeting) (Contact: Anthony DeJesus: 301–287–9219)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Thursday, October 13, 2022

9 a.m. Strategic Programmatic Overview of the Operating Reactors and New Reactors Business Lines (Public Meeting) (Contact: Jennie Rankin, 301–415–1530)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of October 17, 2022—Tentative

There are no meetings scheduled for the week of October 17, 2022.

Week of October 24, 2022—Tentative

There are no meetings scheduled for the week of October 24, 2022.

Week of October 31, 2022—Tentative

There are no meetings scheduled for the week of October 31, 2022.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: September 22, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–20934 Filed 9–23–22; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–026; NRC–2008–0252]

Southern Nuclear Operating Company Inc., Vogtle Electric Generating Plant Unit 4

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment and exemption to Combined License (COL) NPF–92, issued to Southern Nuclear Operating Company, Inc. (SNC), and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively, SNC), for construction and operation of the Vogtle Electric Generating Plant (VEGP), Unit 4, located in Burke County, Georgia.

DATES: Submit comments by October 27, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date. A request for a hearing or petition for leave to intervene must be filed by November 28, 2022.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William ''Billy'' Gleaves, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2008–0252.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR)

reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The application for amendment, dated September 2, 2022 is available in ADAMS under Accession No. ML22245A122.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2008–0252 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License No. NPF–92, issued to SNC for operation of the VEGP Unit 4, located in Burke County, Georgia.

The proposed changes to the COL Appendix C (and plant-specific Tier 1) would, if approved, a) remove certain Inspection, Test, Analysis, and Acceptance Criteria (ITAAC) for which the closure activities duplicate activities needed to close other ITAAC, and b) consolidate a number of ITAAC to improve efficiency of the ITAAC completion and closure process.

Specifically, in the first category, for VEGP Unit 4 ITAAC said to be duplicative of other existing electrical ITAAC, SNC proposed those duplicative ITAAC to be deleted. ITAAC Nos. 26 (2.1.02.07b), 83 (2.1.03.09b), 103 (2.2.01.06b), 172 (2.2.03.07b), 233 (2.2.04.07b), 263 (2.2.05.06a), 296 (2.3.02.06b), 368 (2.3.06.07b), 399 (2.3.07.06a), 467 (2.3.13.06b), 527 (2.5.02.05a), 582 (2.6.01.03a), 687 (2.7.01.06a) and 878 (2.3.10.11a), are proposed to be deleted. For the second category, changes are proposed to consolidate multiple ITAAC into larger ITAAC to increase the efficiency in the ITAAC closure process. This consolidation is proposed for the VEGP Unit 4 ITAAC Nos. 789 (3.3.00.07aa), 792 (3.3.00.07ba), 803 (3.3.00.07d.iii.a), 806 (3.3.00.07d.iv.a), and 809 (3.3.00.07d.v.a) into existing ITAAC No. 800 (3.3.00.07d.ii.a); ITAAC Nos. 790 (3.3.00.07ab), 793 (3.3.00.07bb), 804 (3.3.00.07d.iii.b), 807 (3.3.00.07d.iv.b), and 810 (3.3.00.07d.v.b) into existing ITAAC No. 801 (3.3.00.07d.ii.b); and ITAAC Nos. 791 (3.3.00.07ac), 794 (3.3.00.07bc), 805 (3.3.00.07d.iii.c), 808 (3.3.00.07d.iv.c), and 811 (3.3.00.07d.v.c) into existing ITAAC No. 802 (3.3.00.07d.ii.c).

Pursuant to paragraph 52.103(g) of title 10 of the *Code of Federal Regulations* (10 CFR), all ITAAC must be completed prior to the authorization to load the initial core into the reactor.

Because these proposed changes require a departure from Tier 1 information in the Westinghouse AP1000 design control document, the licensee also requested an exemption from the requirements of the generic design control document Tier 1 in accordance with 10 CFR 52.63(b)(1).

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed non-technical change to Combined License (COL) Appendix C will consolidate, relocate and subsume redundant ITAAC in order to improve and create a more efficient process for the ITAAC Closure Notification submittals. No structure, system, or component (SSC) design or function is affected. No design or safety analysis is affected. The proposed changes do not affect any accident initiating event or component failure, thus the probabilities of the accidents previously evaluated are not affected. No function used to mitigate a radioactive material release and no radioactive material release source term is involved, thus the radiological releases in the accident analyses are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to COL Appendix C does not affect the design or function of any SSC, but will consolidate, relocate and subsume redundant ITAAC in order to improve efficiency of the ITAAC completion and closure process. The proposed changes would not introduce a new failure mode, fault or sequence of events that could result in a radioactive material release.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to COL Appendix C to consolidate, relocate and subsume redundant ITAAC in order to improve efficiency of the ITAAC completion and closure process is considered non-technical and would not affect any design parameter, function or analysis. There would be no change to an existing design basis, design function, regulatory criterion, or analysis. No safety analysis or design basis acceptance limit/criterion is involved.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after

the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, the Commission will publish a notice of issuance in the **Federal Register**. Should the Commission make a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d), the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires

participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 7:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated September 2, 2022.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Office Director: Victor E. Hall.

Dated: September 21, 2022.

For the Nuclear Regulatory Commission.

Victor E. Hall,

Director, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–20847 Filed 9–26–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–129 and CP2022–133; MC2022–130 and CP2022–134; MC2022–131 and CP2022–135; MC2022–132 and CP2022–136]

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:* September 29, 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:

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I. Introduction
II. Docketed Proceeding(s)

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).:* MC2022–129 and CP2022–133; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 79 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 21, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 29, 2022.

2. *Docket No(s).:* MC2022–130 and CP2022–134; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 42 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 21, 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:* September 29, 2022.

3. *Docket No(s).:* MC2022–131 and CP2022–135; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 43 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 21, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moller; *Comments Due:* September 29, 2022.

4. *Docket No(s).:* MC2022–132 and CP2022–136; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 44 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 21, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* September 29, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–20891 Filed 9–26–22; 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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95848; File No. S7–24–89]

Joint Industry Plan; Order Disapproving the Fifty-First Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

September 21, 2022.

I. Introduction

On November 5, 2021,[1] the Participants[2] in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'' or ''Plan'')[3] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[4] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[5] a proposal (the ''Proposed Amendment'') to amend the UTP Plan to implement the non-fee-related aspects of the Commission's Market Data Infrastructure Rules (''MDI Rules'').[6] The Proposed Amendment was published for comment in the **Federal Register** on November 26, 2021.[7]

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[8] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[9] On May 19, 2022, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[10] the Commission extended the period within which to conclude proceedings regarding the Proposed

[1] *See* Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[2] The ''Participants'' are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq ISE, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc.

[3] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (Apr. 19, 2007), 72 FR 20891 (Apr. 26, 2007).

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] The ''MDI Rules'' as used in this Order, and as relevant to the Proposed Amendment, are Rules 600, 603, and 614 of Regulation NMS. 17 CFR 242.600, 603, 614. *See also* Securities Exchange Act Release No. 90610 (Dec. 9, 2020), 86 FR 18596 (Apr. 9, 2021) (File No. S7–03–20) (''MDI Rules Release''); Securities Exchange Act Release No. 90610A (May 24, 2021), 86 FR 29195 (June 1, 2021) (File No. S7–03–20) (technical correction to MDI Rules Release). Several exchanges filed petitions for review challenging the MDI Rules Release in the U.S. Court of Appeals for the District of Columbia Circuit, which were denied on May 24, 2022. *See The Nasdaq Stock Market LLC, et al.* v. *SEC,* No. 21–1100 (D.C. Cir. May 24, 2022).

[7] *See* Securities Exchange Act Release No. 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021) (''Notice''). Comments received in response to the Notice are available at *https://www.sec.gov/comments/s7-24-89/s72489.htm.*

[8] 17 CFR 242.608(b)(2)(i).

[9] *See* Securities Exchange Act Release No. 94308 (Feb. 24, 2022), 87 FR 11755 (Mar. 2, 2022) (''OIP''). Comments received in response to the OIP are available at *https://www.sec.gov/comments/s7-24-89/s72489.htm.*

[10] *See* 17 CFR 242.608(b)(2)(i).

Amendment to July 24, 2022,[11] and on July 21, 2022, the Commission further extended the period within which to conclude proceedings regarding the Proposed Amendment to September 22, 2022.[12]

This order disapproves the Proposed Amendment.[13]

II. Overview

Pursuant to Regulation NMS and the Equity Data Plans,[14] the national securities exchange and national securities associations (''self-regulatory organizations'' or ''SROs'') must provide certain information with respect to quotations for and transactions in NMS stocks (''NMS information'') to an exclusive plan securities information processor (''exclusive SIP''), which consolidates the NMS information and makes it available to market participants on the consolidated tapes. The purpose of the Equity Data Plans is to facilitate the collection and dissemination of SIP data so that the public has ready access to a ''comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock at any time during the trading day.'' [15] Because the infrastructure for the collection, consolidation, and dissemination of this data had not been significantly updated since its initial implementation in the 1970s, the Commission adopted amendments to Regulation NMS that increase the content of NMS information and amend the manner in which such NMS information is collected, consolidated, and disseminated by the Equity Data Plans.[16] In the MDI Rules Release, the Commission stated, ''[t]he widespread availability of timely market information promotes fair and efficient markets and facilitates the ability of brokers and dealers to provide best execution to their customers.'' [17]

The MDI Rules increase the content of NMS information and modify the manner in which NMS information is collected, consolidated, and disseminated. Significantly, under the MDI Rules, the Commission required the introduction of a competitive decentralized consolidation model under which competing consolidators and self-aggregators will replace the exclusive SIPs that collect, consolidate, and disseminate equity market data under the Equity Data Plans.[18] Although the exclusive SIPs will no longer disseminate consolidated information for an individual NMS stock, the Equity Data Plans will continue to play an important role—they will develop and propose fees for the data content underlying consolidated market data, collect and allocate revenues collected for this data, develop the monthly performance metrics for competing consolidators, and provide an annual assessment of competing consolidator performance.

Rule 614(e) of Regulation NMS requires the participants of the effective national market system plan(s) for NMS stocks to file an amendment pursuant to Rule 608 of Regulation NMS to conform the plan(s) to the decentralized consolidation model.[19] Specifically, Rule 614(e)(1) directs the participants to file an amendment to conform the plan(s) to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the SROs to competing consolidators and self-aggregators. The Proposed Amendment was filed by the Participants pursuant to this requirement.[20]

As explained below, however, the Proposed Amendment does not comply with Rule 614(e)(1) because it does not conform the Plan to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the SROs to competing consolidators and self-aggregators. For example, inconsistent with the decentralized consolidation model and with the requirements of Rule 614(e), the Proposed Amendment: (1) amends the Plan to reflect that it will disseminate *consolidated market data* to competing consolidators and self-aggregators, even though the Plan will not be disseminating any consolidated market data; [21] (2) fails to amend the Plan to reflect that the Processor will no longer have the responsibility to disseminate regulatory halt notices once the decentralized consolidation model has been implemented; [22] (3) fails to include requirements for the Participants to timestamp every element of data necessary to generate consolidated market data; [23] and (4) fails to amend the Plan to remove references to a single processor.[24]

Because the Proposed Amendment is inconsistent with the MDI Rules, specifically Rule 614(e), the Commission must disapprove the Proposed Amendment under Rule 608(b)(2) of Regulation NMS because it cannot find that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect

[11] *See* Securities Exchange Act Release No. 94954 (May 19, 2022), 87 FR 31922 (May 25, 2022).

[12] *See* Securities Exchange Act Release No. 95347 (July 21, 2022), 87 FR 45142 (July 27, 2022).

[13] The Participants have filed similar amendments to the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and the Restated Consolidated Quotation (''CQ'') Plan, which the Commission is also disapproving. *See* Securities Exchange Act Release No. 95850 (Sept. 21, 2022) (File No. SR–CTA/CQ–2021–02). Separately, certain Participants have also filed amendments to implement the fee-related aspects of the MDI Rules. *See* Securities Exchange Act Release Nos. 93625 (Nov. 19, 2021), 86 FR 67517 (Nov. 26, 2021) (File No. SR–CTA/CQ–2021–03), and 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) (File No. S7–24–89) (together, the ''Proposed Fee Amendments''). The Commission is, by separate orders, also disapproving the Proposed Fee Amendments. *See* Securities Exchange Act Release No. 95851 (Sept. 21, 2022) (File No. SR–CTA/CQ–2021–03), and 95849 (Sept. 21, 2022) (File No. S7–24–89).

[14] The three effective national market system plans that govern the collection, consolidation, processing, and dissemination of certain NMS information are: (1) the CTA Plan; (2) the CQ Plan; and (3) the UTP Plan (collectively, the ''Equity Data Plans''). Each of the Equity Data Plans is an effective national market system plan under 17 CFR 242.608 (Rule 608) of Regulation NMS. *See also* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order approving UTP Plan).

[15] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3593 (Jan. 21, 2010).

[16] *See* MDI Rules Release, *supra* note 6.

[17] *Id.* at 18599.

[18] *See id.* at 18637 (''The Commission is adopting a decentralized consolidation model in which competing consolidators, rather than the exclusive SIPs, will collect, consolidate, and disseminate consolidated market data.'').

[19] 17 CFR 242.614(e). *See also* MDI Rules Release, *supra* note 6, 86 FR at 18680–81.

[20] The Participants have filed the Proposed Amendment under the Equity Data Plans. *See supra* note 14. While the Commission issued an order on August 6, 2020, approving, as modified, a new national market system plan regarding equity market data—the CT Plan—to replace the existing Equity Data Plans, that order was stayed on October 13, 2021, *see The Nasdaq Stock Market, et al. LLC* v. *Securities and Exchange Commission,* No. 21–1167 (D.C. Cir. Oct. 13, 2021), which was before the Participants filed the Proposed Amendment. The Commission's order approving the CT Plan was subsequently vacated. *See The Nasdaq Stock Market LLC, et al.* v. *Securities and Exchange Commission,* Nos. 21–1167, 21–1168, 21–1169 (D.C. Cir., July 5, 2022) (vacating Securities Exchange Act Release No. 92586 (Aug. 6, 2021), 86 FR 44142 (Aug. 11, 2021) (Order Approving, as Modified, a National Market System Plan Regarding Consolidated Market Data)).

[21] 17 CFR 242.603(b). *See also* MDI Rules Release, *supra* note 6, 86 FR at 18653 (''[T]hese changes to Rule 603(b) are appropriate to establish the decentralized consolidation model.'').

[22] *See, e.g.,* MDI Rules Release, *supra* note 6, 86 FR at 18633–35 (discussing the provision of ''regulatory data'' by the primary listing exchange for an NMS stock to competing consolidators and self-aggregators under the decentralized consolidation model).

[23] 17 CFR 242.614(e)(2).

[24] The MDI Rules Release amended Rule 603(b) to remove the requirement that ''all consolidated information for an individual NMS stock [be disseminated] through a single plan processor.'' *See* MDI Rules Release, *supra* note 6, 86 FR at 18652–53. *See also supra* note 21; MDI Rules Release, *supra* note 6, 86 FR at 18701 (discussing the retirement of the exclusive SIPs).

the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[25]

III. Summary of the Proposed Amendment

The Participants propose to amend the Plan to comply with Rule 614(e) of the MDI Rules. Under Rule 614(e), participants to the effective national market system plan(s) for NMS stocks were required to file by November 5, 2021, an amendment with the Commission that includes each of the requirements of Rule 614(e)(1)–(5).[26]

Specifically, Rule 614(e)(1) requires the amendment to conform the effective national market system plan(s) for NMS stocks to reflect that, under the decentralized consolidation model, the national securities exchange and national securities association participants will provide to competing consolidators and self-aggregators the information, with respect to quotations for and transactions in NMS stocks, that is necessary to generate consolidated market data.

Rule 614(e)(2) requires the amendment to include the application of timestamps by the national securities exchange and national securities association participants on all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data, including the time that such information was generated as applicable by the national securities exchange or national securities association and the time the national securities exchange or national securities association made such information available to competing consolidators and self-aggregators.

Rule 614(e)(3) requires the amendment to include assessments of competing consolidator performance, including speed, reliability, and cost of data provision and the provision of an annual report of such assessment to the Commission.

Rule 614(e)(4) requires the amendment to include the development, maintenance, and publication of a list that identifies the primary listing exchange for each NMS stock.

Rule 614(e)(5) requires the amendment to include the calculation and publication on a monthly basis of consolidated market data gross revenues for NMS stocks as specified by (i) listed on the NYSE; (ii) listed on Nasdaq; and (iii) listed on exchanges other than NYSE or Nasdaq.

[25] 17 CFR 242.608(b)(2).

[26] 17 CFR 242.614(e).

The following is a summary of the changes proposed to be made to the Plan by the Proposed Amendment.[27]

Section III. Definitions

Under the Proposed Amendment, the Plan would include the following new provision: ''Terms used in this plan have the same meaning as the terms are defined in Rule 600(b) under the Act.''

The Proposed Amendment amends the definitions of ''News Service,'' ''Subscriber,'' and ''Vendor'' to add competing consolidators as a source of Transaction Reports and Quotation Information.

The Proposed Amendment defines ''Primary Listing Exchange,'' to mean ''the national securities exchange on which an Eligible Security is listed.'' The proposed definition further states, ''[i]f an Eligible Security is listed on more than one national securities exchange, Primary Listing Exchange means the exchange on which the security has been listed the longest.'' The Participants explain that this definition is being added to comply with the requirements of the MDI Rules and to replace the definition of ''Listing Market.''[28]

The Proposed Amendment amends the definition of ''Quotation Information'' to define it as ''all information with respect to quotations for Eligible Securities required to be collected and made available to the Processor, Competing Consolidators, and Self-Aggregators pursuant to this Plan, including all data necessary to generate consolidated market data.'' Similarly, the Proposed Amendment amends the definition of ''Transaction Reports'' to mean ''all information with respect to transactions in Eligible Securities required to be collected and made available to the Processor, Competing Consolidators, and Self-Aggregators pursuant to this Plan, including all data necessary to generate consolidated market data.'' The Participants explain that these amendments are intended to track the MDI Rules more closely.[29]

Section IV. Administration of Plan

The Proposed Amendment amends Section IV.B., Operating Committee: Authority, to add references to competing consolidators and self-aggregators. Specifically, the Proposed Amendment states that the Operating Committee shall be responsible for overseeing the consolidation[30] of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to competing consolidators and self-aggregators, among other entities; that the Operating Committee shall be responsible for periodically evaluating the Processor and competing consolidators; and that the Operating Committee shall be responsible for setting the level of fees to be paid by competing consolidators and self-aggregators, among other entities, for services relating to Quotation Information or Transaction Reports in Eligible Securities, and for taking action in respect thereto in accordance with the Plan.

[27] The full text of the Proposed Amendment appears as Attachment A to the Notice. *See* Notice, *supra* note 7, 86 FR at 67543–55.

[28] *See id.* at 67541. The Proposed Amendment deletes a definition of ''Primary Listing Market'' from former Section X. (Section XI., as proposed), Regulatory and Operational Halts.

[29] *See id.*

The Proposed Amendment also amends Section IV.B. to require the Operating Committee to publish on the Plan's website the Primary Listing Exchange for each Eligible Security and to calculate and publish, on a monthly basis, consolidated market data gross revenues for Eligible Securities. The Participants explain that these amendments are intended to comply with Rule 614(e)(4) and Rule 614(e)(5)(ii).[31]

Section VII. Administrative Functions

The Proposed Amendment amends this section by deleting references to the Processor. Additionally, under the Proposed Amendment, the Administrator, not the Processor, shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in the Plan. The Participants explain that the Administrative Functions described in the section are more appropriately ascribed to the Administrator.[32]

Section VIII. Evaluation of Competing Consolidators

The Proposed Amendment adds new Section VIII to require the Operating Committee to assess the performance of competing consolidators and to submit an annual report to the Commission

[30] Under the decentralized consolidation model, the Operating Committee would no longer oversee the consolidation of data by the Processor, but rather the provision of data underlying consolidated market data to competing consolidators and self-aggregators. *See* Rule 603(b), 17 CFR 242.603(b); Rule 614(e)(1), 17 CFR 242.614(e)(1). *See also* MDI Rules Release, *supra* note 6, 86 FR at 18682.

[31] *See* Notice, *supra* note 7, 86 FR at 67541.

[32] *See id.*

containing the assessment.[33] The Proposed Amendment requires this annual report to include an analysis with respect to competing consolidators' speed, reliability, and cost of data provision. The Participants explain that these changes are intended to comply with the requirements of Rule 614(e)(3).[34]

In addition, the Proposed Amendment requires the Operating Committee, in conducting the analysis, to review the monthly performance metrics to be published by competing consolidators pursuant to Rule 614(d)(5).[35] Rule 614(d)(5) requires competing consolidators to publish on their websites monthly performance metrics as defined by the effective national market system plan(s) for NMS stocks.[36] The Proposed Amendment adds the following monthly performance metrics to this section:

A. Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;

B. Message rate and total statistics, including peak output rates on the following bases: 1-millisecond, 10-millisecond, 100-millisecond, 500-millisecond, 1-second, and 5-second;

C. System availability statistics, including system up-time percentage and cumulative amount of outage time;

D. Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and

E. Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:

1. When a Participant sends an inbound message to a competing consolidator and when the competing consolidator receives the inbound message;

2. When the competing consolidator receives the inbound message and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator; and

3. When a Participant sends an inbound message to a competing consolidator and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator.

The Participants explain that they have proposed to amend Section VIII to define the monthly performance metrics in accordance with Rule 614(d)(5).[37]

Section IX. (Previously Section VIII.), Transmission of Information to Processor, Competing Consolidators, and Self-Aggregators by Participants

The Proposed Amendment amends Section IX.A., Quotation Information, to add the requirement that each Participant collect and transmit to competing consolidators and self-aggregators all quotation information required to be made available by such Participant by Rule 603(b) of Regulation NMS,[38] including all data necessary to generate consolidated market data. Additionally, the Proposed Amendment requires each Participant to make available quotation information, and changes in any such information, to competing consolidators and self-aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.

In addition, under the Proposed Amendment, each bid and offer with respect to an Eligible Security furnished to competing consolidators and self-aggregators by any Participant pursuant to the Plan would be accompanied by the time (reported in microseconds) the Participant made such bid and offer available to Competing Consolidators and Self Aggregators. With respect to FINRA, the Proposed Amendment states that if FINRA's quotation facility provides a proprietary feed of its quotation information, then the quotation facility shall also furnish the Processor, competing consolidators, and self-aggregators with the time of the quotation as published on the quotation facility's proprietary feed, and that FINRA shall convert any quotation times reported to it in seconds or milliseconds to microseconds and shall furnish such times to the Processor, competing consolidators, and self-aggregators in microseconds.

Similarly, the Proposed Amendment amends Section IX.B., Transaction Reports, to require each Participant to make available Transaction Reports to competing consolidators and self-aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.

The Proposed Amendment also amends Section IX.B. to require Transaction Reports to competing consolidators and self-aggregators to include the time (in microseconds) that the Participant made such information available to competing consolidators and self-aggregators. With respect to FINRA, the Proposed Amendment states that if FINRA's trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor, competing consolidators and self-aggregators, then the FINRA trade reporting facility shall also furnish the Processor with the time of the transmission as published on the facility's proprietary feed. Additionally, the Proposed Amendment requires FINRA to convert times that its members report to it in seconds or milliseconds to microseconds and to furnish such times to the Processor, Competing Consolidators, and Self-Aggregators in microseconds. The Participants state that the amendments to Sections IX.A. and IX.B. are designed to comply with the requirements of Rule 614(e)(1) and (2).[39]

The Proposed Amendment also deletes the following statement from Section IX.B.: ''The Participants shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant.''

In addition, Section IX.B. currently includes a list of types of transactions that are not required to be reported to the Processor pursuant to the Plan. The Proposed Amendment adds competing consolidators and self-aggregators as entities to which these types of transactions are not required to be reported.

Finally, the Proposed Amendment amends Section IX.D. to include references to competing consolidators and self-aggregators. Section IX.D., as amended would read: ''Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, Competing Consolidators, and Self-Aggregators, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor, Competing Consolidators, and Self-Aggregators of such condition or event and shall resume collecting and transmitting Quotation Information and

[33] As a result of this addition, the Proposed Amendment renumbers the remaining sections of the Plan.

[34] *See* Notice, *supra* note 7, 86 FR at 67541.

[35] 17 CFR 242.614(d)(5).

[36] *See id.*

[37] *See* Notice, *supra* note 7, 86 FR at 67541–42.

[38] 17 CFR 242.603(b).

[39] Notice, *supra* note 7, 86 FR at 67542. The Participants state that the Proposed Amendment amends Section IX.B., Transaction Reports, to add the requirement that each Participant agrees to collect and transmit to competing consolidators and self-aggregators all transaction reports required to be made available pursuant to Rule 603(b) of Regulation NMS; however, the Proposed Amendment does not actually propose to make this change to the text of the Plan. *See id.* at 67550.

Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor, Competing Consolidators, and Self-Aggregators, the Participant shall promptly notify the Processor, Competing Consolidators, and Self-Aggregators of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.''

Section XI. (Previously Section X.), Regulatory and Operational Halts

The Proposed Amendment revises this section to delete the definition of ''Primary Listing Market'' from Section XI.A., Definitions for Purposes of Section XI. The Proposed Amendment also replaces references to ''Primary Listing Market'' with ''Primary Listing Exchange'' throughout Section XI.[40] The Participants state that this change would align the text of the Plan with terminology in the MDI Rules.[41]

The Proposed Amendment amends Section XI.B., Operational Halts, to state that competing consolidators and self-aggregators shall be notified by a Participant if that Participant has concerns about its ability to collect and transmit Quotation Information or Transaction Reports, or where it has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee. Similarly, the Proposed Amendment amends Section XI.H., Communications, to state that if a Primary Listing Exchange for an Eligible Security determines it appropriate to initiate a Regulatory Halt, it will notify competing consolidators and self-aggregators of such Regulatory Halt as well as provide notice that a Regulatory Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Primary Listing Exchange. The Participants state that these changes are consistent with Rule 614(e)(1) and would ensure that competing consolidators and self-aggregators are notified of information related to Regulatory and Operational Halts and that competing consolidators can disseminate this information to their customers.[42]

Section XII. (Previously Section XI.), Hours of Operation

The Proposed Amendment amends Section XII.B.(ii) and (iii) to add references to competing consolidators and self-aggregators. Specifically, with respect to the reporting obligations of Participants, proposed Section XII.B.(ii)provides that transactions in Eligible Securities executed after 8:00 p.m. and before 12:00 a.m. (midnight) shall be reported to the Processor, competing consolidators, and self-aggregators between the hours of 4:00 a.m. and 8:00 p.m. ET on the next business day (T+1), and shall be designated ''as/of'' trades to denote their execution on a prior day, and be accompanied by the time of execution. And proposed Section XII.B.(iii) provides that transactions in Eligible Securities executed between 12:00 a.m. (midnight) and 4:00 a.m. ET shall be transmitted to the Processor, competing consolidators, and self-aggregators between 4:00 a.m. and 9:30 a.m. ET, on trade date, shall be designated as ''.T'' trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution.

The Proposed Amendment also amends Section XII.D. to require Participants that enter Quotation Information or submit Transaction Reports to competing consolidators and self-aggregators between 4:00 a.m. and 9:30 a.m. ET, and after 4:00 p.m. ET until 8:00 p.m. ET, to do so for all Eligible Securities in which they enter quotations.

Section XIV. (Previously Section XIII.), Financial Matters

The Proposed Amendment amends Section XIV.C., Maintenance of Financial Records, by replacing references to the Processor with references to the Administrator. The Participants explain that the responsibilities described in that section are more appropriately ascribed to the Administrator.[43]

Section XV. (Previously Section XIV.), Indemnification

The Proposed Amendment amends this section to add references to Competing Consolidators and Self-Aggregators and to remove a reference to Vendors as a recipient of Transaction Reports, Quotation Information, or other information disseminated by the Processor. Specifically, the first paragraph in this section now states: ''Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq, and each of its directors, officers, employees and agents (including the Operating Committee and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Transaction Reports, Quotation Information or other information reported to the Processor, Competing Consolidators, and Self-Aggregators by such Participant and disseminated by the Processor, Competing Consolidators, and Self-Aggregators. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have.''

Section XVIII. (Previously Section XVII.), Applicability of Securities Exchange Act of 1934

The Proposed Amendment amends this section to include Competing Consolidators and Self-Aggregators as subject to any applicable provisions of the Act, as amended, and any rules and regulations promulgated thereunder.

Section XIX. (Previously Section XVIII.), Operational Issues

The Proposed Amendment amends Section XIX.A. to include references to Competing Consolidators and Self-Aggregators to require each Participant to collect and validate quotes and last sale reports within its own system prior to transmitting this data to Competing Consolidators and Self-Aggregators.

Section XXI. Depth of Book Display

The Proposed Amendment deletes this section. The Participants explain that this provision is obsolete given the MDI Rules.[44]

IV. Discussion

A. The Applicable Standard of Review

Under Rule 608(b)(2) of Regulation NMS, the Commission shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that the plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of

[40] The Proposed Amendment does not replace a reference to Primary Listing Market in the definition of ''Regulatory Halt'' in this section.

[41] *See* Notice, *supra* note 7, 86 FR at 67542.

[42] *See id.*

[43] *See id.*

[44] *See id.*

the purposes of the Act.[45] The Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.[46] Furthermore, Rule 700(b)(3)(ii) of the Commission's Rules of Practice states:

> The burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans is on the plan participants that filed the NMS plan filing. Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that an NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans.[47]

For the reasons discussed below, the Commission does not find that the Participants have met their burden to demonstrate that the Proposed Amendment is consistent with the Act.[48] Specifically, the Commission does not find that the Participants have demonstrated that the Proposed Amendment is consistent with either Rule 614(e) of Regulation NMS or Rule 608 of Regulation NMS. The Proposed Amendment clearly does not comply with the requirements of the MDI Rules.[49] Accordingly, the Commission cannot make a finding that the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[50]

B. The Requirements of the MDI Rules Regarding the Proposed Amendment

As adopted by the Commission, the MDI Rules implement a decentralized consolidation model in which competing consolidators would replace the exclusive plan processors of the Equity Data Plans as the entities responsible for disseminating consolidated market data.[51] The MDI Rules Release provides for an ''initial parallel operation period'' of 180 days during which the existing exclusive SIPs for the Equity Data Plans would operate in parallel with the competing consolidators,[52] and further provides for the transition from the initial parallel operation period to the retirement of the exclusive SIPs for equity market data:

> Within 90 days of the end of the initial parallel operation period, the Operating Committee will make a recommendation to the Commission as to whether the exclusive SIPs should be decommissioned. The Commission will consider an effective national market system plan amendment to effectuate a cessation of the operations of the exclusive SIPs and, if consistent with the requirements of Rule 608 and the Exchange Act, approve such an amendment.[53]

Pursuant to Rule 614(e)(1) of Regulation NMS, and as discussed in the MDI Rules Release, the Participants to the Plan were required to file an amendment to conform the Plan to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the national securities exchange and national securities association participants to competing consolidators and self-aggregators.[54]

C. Whether the Proposed Amendment Is Consistent With Rule 614(e)(1) of Regulation NMS

1. Consistency With the Decentralized Consolidation Model

Two commenters recommend disapproval of the Proposed Amendment because the amendment does not properly conform the Plan to the MDI Rules in that the amendments fail to accurately reflect the decentralized consolidation model.[55] One commenter states, ''[t]he MDI rule represents a fundamental shift to a decentralized consolidation model. The Plan amendments need to reflect that throughout the body and exhibits of the Plans.'' [56] The commenter also argues that the Proposed Amendment must ''[a]cknowledge that the Plan is no longer responsible for the creation, distribution and pricing of consolidated market data.'' [57]

The commenter states, ''[d]espite the fact that competing consolidators generate consolidated market data, the Nasdaq/UTP Plan as amended at IV(B) states that consolidated data is disseminated to competing consolidators.'' [58] The commenter reiterates that only competing consolidators would externally distribute and charge for consolidated market data and that the Plan would only be selling underlying content.[59]

The commenter also argues that the sections of the Plan that discuss vendors' and subscribers' contractual relationships with the Plan should be ''removed or significantly altered to reflect that the Plan no longer has agreements with vendors and end users and instead have agreements with the competing consolidators and self-aggregators related specifically to the cost of content underlying core market data.'' [60] This commenter states that ''the relationship between competing consolidators and their customers should not include a contractual relationship with the plan'' because vendors would be receiving consolidated market data from competing consolidators rather than from the Plan.[61]

This commenter also objects to the continued references to subscribers and vendors in the Plan as recipients of data from the Processor, arguing that under the decentralized consolidation model, ''only competing consolidators would sell consolidated market data to vendors and subscribers.'' [62]

One commenter objects to the retention of the concept of a single processor in the Proposed Amendment.[63] Another commenter also states that ''it is worth noting that the Plans do not reflect the decentralized consolidation model nor do they acknowledge the parallel period.'' [64] This commenter requests clarification of how the Plan will operate during the parallel operation period, such as the inclusion in the Plan of objective criteria for ending the parallel period and the addition of a section devoted to competing consolidators and self-

[45] 17 CFR 242.608(b)(2).

[46] *Id.*

[47] 17 CFR 201.700(b)(3)(ii).

[48] 17 CFR 201.700(b)(3).

[49] As discussed below, the Proposed Amendment does not comply with MDI Rules 603(b), 614(e)(1), and 614(e)(2). 17 CFR 242.603(b), 17 CFR 242.614(e)(1), 17 CFR 242.614(e)(2).

[50] 17 CFR 242.608(b)(2).

[51] *See* MDI Rules Release, *supra* note 6, 86 FR at 18637.

[52] *See id.* at 18700.

[53] *Id.* at 18701.

[54] *See id.* at 18700–01.

[55] *See* Letter from Patrick Flannery, Chief Executive Officer, MayStreet, Inc., to Vanessa Countryman, Secretary, Commission (Dec. 17, 2021) (''MayStreet Letter I''); Letter from Manisha Kimmel, Chief Policy Officer, MayStreet, Inc., to Vanessa Countryman, Secretary, Commission (Mar. 23, 2022) (''MayStreet Letter II''); Letter from Ellen Greene, Managing Director, Equity and Options Market Structure, and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission (Dec. 17, 2021) (''SIFMA Letter I'').

[56] MayStreet Letter II, *supra* note 55, at 2.

[57] *Id.* at 4–5.

[58] MayStreet Letter I, *supra* note 55, at 4, n.5.

[59] *See* MayStreet Letter II, *supra* note 55, at 4–5.

[60] *See* MayStreet Letter I, *supra* note 55, at 3.

[61] *Id. See also* MayStreet Letter II, *supra* note 54, at 9 (arguing that, since the Plan would only be selling underlying content to competing consolidators and self-aggregators, vendor and subscriber agreements should not be required).

[62] MayStreet Letter I, *supra* note 55, at 3.

[63] *See* SIFMA Letter I, *supra* note 55, at 8.

[64] MayStreet Letter II, *supra* note 55, at 8.

aggregators to help distinguish between their obligations and the obligations of the exclusive SIPs during the parallel period.[65] The commenter recommends that the Proposed Amendment clarify that all content underlying consolidated market data will be provided to competing consolidators and self-aggregators, and provide validation procedures to be followed by competing consolidators.

The Participants submitted a comment letter in which they argue that maintaining the exclusive SIPs through the parallel operation period is consistent with the MDI Rules Release, stating:

> [P]ursuant to the phased transition period set forth in the MDI Rules Release, the Plans must operate a parallel operation period during which the decentralized consolidation model introduced by the MDI Rules will run in parallel to the existing exclusive SIP model. . . . After completion of the parallel operation period, the Plans are required to submit an amendment to effectuate a cessation of the operations of the exclusive SIPs, which would include removing references of the exclusive SIPs from the text of the Plans.[66]

The Participants also maintain that the exclusive SIPs will continue to provide market data under the current Equity Data Plans during the parallel operation period and that the inclusion of the exclusive SIPs in the Equity Data Plans (as provided for in the Proposed Amendment) until the submission of a further amendment after the parallel operation period is consistent with the MDI Rules Release.[67]

The Commission agrees with the commenters who argue that the Proposed Amendment does not properly conform the Plan to the decentralized consolidation model. *First,* under the MDI Rules, the SROs are required to make available to competing consolidators and self-aggregators the data necessary to generate consolidated market data,[68] and competing consolidators and self-aggregators will then generate consolidated market data, rather than receive consolidated market data from the Plan.[69] The Participants, however, propose to amend the UTP Plan to give the Operating Committee the authority to oversee the consolidation of Quotation Information and Transaction Reports from the Participants to competing consolidators and self-aggregators.[70] This is not consistent with the decentralized consolidation model.

Specifically, Rule 614(d) provides that competing consolidators shall collect any information with respect to quotations for and transactions in NMS stocks as provided in Rule 603(b) that is necessary to create a consolidated market data product from each national securities exchange and national securities association,[71] calculate and generate a consolidated market data product,[72] and make the consolidated market data product available to subscribers.[73] Self-aggregators will receive information with respect to quotations for and transactions in NMS stocks, including all data necessary to generate consolidated market data, and generate consolidated market data solely for their internal use.[74] Additionally, pursuant to Rule 603(b), the Participants shall make available to all competing consolidators and self-aggregators ''all data necessary to generate consolidated market data.''[75] Accordingly, the Plan's modified role under the decentralized consolidation model will be to develop and file with the Commission the fees associated with the underlying data, to collect and allocate revenues for that data, to develop monthly performance metrics for competing consolidators, and to provide an annual assessment of competing consolidator performance.[76] Therefore, the Proposed Amendment impermissibly provides for the dissemination by the Plan of consolidated market data to competing consolidators and self-aggregators, which is inconsistent with Rule 603(b), which requires the Participants to make available the data necessary to generate consolidated market data to competing consolidators and self-aggregators so that, pursuant to Rule 614(d), those entities can generate consolidated market data themselves.

Second, the Proposed Amendment is inconsistent in certain other ways with the decentralized consolidation model provided for in the MDI Rules. Under the decentralized consolidation model, the primary listing exchanges will be required to collect, calculate, and make available regulatory data, which includes information relating to regulatory halts, to competing consolidators and self-aggregators in accordance with the definition of ''regulatory data'' in Rule 600(b)(78).[77] The Proposed Amendment, however, does not reflect this requirement with respect to regulatory data. For example, the Proposed Amendment fails to amend the Plan to reflect that the Processor will no longer have the responsibility to disseminate regulatory halt notices once the decentralized consolidation model has been implemented.

The Proposed Amendment also does not include requirements for the Participants to timestamp every element of data necessary to generate consolidated market data. Rule 614(e)(2) requires the application of timestamps by the Participants on all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data, including the time that such information was generated by the Participant and the time the Participant made such information available to competing consolidators and self-aggregators.[78] While the Proposed Amendment amends the UTP Plan's section governing the transmission of Quotation Information to require any Participant that furnishes bids and offers to competing consolidators and self-aggregators to timestamp the time the Participant made such bid and offer

[65] *See id.* at 7–8.

[66] Letter from James P. Dombach, Counsel for CTA, CQ, and UTP Plans, McGonigle, P.C., to Vanessa Countryman, Secretary, Commission, at 2 (Mar. 25, 2022) (''McGonigle Letter'').

[67] *See id.* at 1–2.

[68] *See* Rule 603(b), 17 CFR 242.603(b). *See also* Rule 600(b)(19), which defines ''consolidated market data'' as the following data, consolidated across all national securities exchanges and national securities associations: (i) Core data; (ii) Regulatory data; (iii) Administrative data; (iv) Self-regulatory organization-specific program data; and (v) Additional regulatory, administrative, or self-regulatory organization-specific program data elements defined as such pursuant to the effective national market system plan or plans required under § 242.603(b). *See* 17 CFR 242.600(b)(19).

[69] *See* Rule 614(d)(1)–(3). 17 CFR 242.614(d)(1)–(3).

[70] *See* Notice, *supra* note 7, 86 FR at 67545 (UTP Plan Proposed Amendment at Section IV.B.).

[71] *See* Rule 614(d)(1), 17 CFR 242.614(d)(1).

[72] *See* Rule 614(d)(2), 17 CFR 242.614(d)(2).

[73] *See* Rule 614(d)(3), 17 CFR 242.614(d)(3). The MDI Rules also define ''competing consolidator'' as a securities information processor required to be registered pursuant to § 242.614 (Rule 614) or a national securities exchange or national securities association that receives information with respect to quotations for and transactions in NMS stocks and generates a consolidated market data product for dissemination to any person. *See* 17 CFR 242.600(b)(16).

[74] The definition of ''self-aggregator'' was added by the MDI Rules. *See* 17 CFR 242.600(b)(83). A self-aggregator may make consolidated market data available to its affiliates that are registered with the Commission for their internal use. *Id.*

[75] 17 CFR 242.603(b).

[76] *See* MDI Rules Release, *supra* note 6, 86 FR at 18604, 18681.

[77] 17 CFR 242.600(b)(78) defines ''Regulatory Data'' as, among other things: (A) Information regarding Short Sale Circuit Breakers pursuant to § 242.201; (B) Information regarding Price Bands required pursuant to the Plan to Address Extraordinary Market Volatility . . . (C) Information relating to regulatory halts or trading pauses (news dissemination/pending, LULD, Market-Wide Circuit Breakers) and reopenings or resumptions; (D) The official opening and closing prices of the primary listing exchange; and (E) An indicator of the applicable round lot size. *See* 17 CFR 242.600(b)(78)(i). Regulatory data is one element of ''consolidated market data,'' as defined in Rule 600(b)(19). *See supra* note 68.

[78] 17 CFR 242.614(e)(2).

available to competing consolidators and self-aggregators,[79] this proposed timestamp provision does not apply to ''all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data.'' [80] Additionally, the Proposed Amendment does not specifically require that each Participant timestamp the data necessary to generate consolidated market data upon generation and upon the time it is made available to competing consolidators and self-aggregators, as required by Rule 614(e)(2).

And *finally,* the Commission disagrees with the Participants' statement that the continued references to the role of the Processor in the Plan, as amended by the Proposed Amendment, comply with the MDI Rules Release's implementation schedule for parallel operation of the exclusive SIP and the competing consolidators.[81] Rule 614(e)(1) requires the Participants to amend the Plan to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the SROs to competing consolidators and self-aggregators, *i.e.,* to conform the Plan to reflect the decentralized consolidation model.[82] However, the Proposed Amendment is not consistent with the decentralized consolidation model and does not conform to the fact that a single processor will no longer be in operation once the decentralized consolidation model has been fully implemented.

And while the MDI Rules Release contemplates the filing of a second amendment by the Plan ''to effectuate a cessation of the operations of the exclusive SIPs,'' [83] the current Proposed Amendment was required to conform the Plan to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the SROs to competing consolidators and self-aggregators, which, as discussed above, they have failed to do. Moreover, the failure of the Participants to explain in the Proposed Amendment how the Plan will function under the fully implemented decentralized consolidation model upon cessation of the exclusive SIPs not only denies market participants the opportunity to comment on those proposed provisions now, but it increases the uncertainty that firms face in determining whether to become competing consolidators or self-aggregators during the initial parallel operation period, thus hampering the implementation of the decentralized consolidation model required by the MDI Rules.[84]

Because the Proposed Amendment clearly does not comply with the plain terms of the MDI Rules [85] and is thus inconsistent with the requirements of Rule 614(e)(1), the Commission also does not find that the Participants have met their burden to demonstrate that the Proposed Amendment is consistent with Rule 608 as necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[86]

2. Technical Comments

One commenter criticizes the failure of the Proposed Amendment to incorporate the definitions of the MDI Rules.[87] This commenter states, ''[t]he definitions in each of the Plans should be updated to reflect the decentralized consolidation model. It is insufficient to simply refer to Rule 600(b), in large part because there seems to be confusion within the Plans as to the role of competing consolidators, self-aggregators, the exclusive SIPs and vendors.'' [88] Specifically, this commenter suggests that the Proposed Amendment add definitions of the following terms: competing consolidator, self-aggregator, consolidated market data, content underlying consolidated market data, initial parallel period, and parallel period, as well as a definition of the content that would be disseminated by the exclusive SIP to the Plan.[89] This commenter also suggests updating the existing definition of Processor, and clarifying the existing definitions of Subscriber and Vendor to reflect the decentralized consolidation model.[90]

This commenter also describes several other technical criticisms of the Proposed Amendment. The commenter states that the Proposed Amendment should have removed the addition of a new SRO participant from the Plan's ministerial amendment list,[91] arguing that competing consolidators and self-aggregators would need more time to update their systems to handle the new Participant's data.[92] The commenter also states that the Proposed Amendment needs to support the timestamps required by the MDI Rules to the microsecond,[93] and that validation procedures to be used by competing consolidators need to be added to the Plan to describe the Participants' and the competing consolidator's obligations.[94] The commenter further suggests that the Plan's capacity planning process needs to apply to competing consolidators and self-aggregators so that these entities can meet SRO-expected capacity requirements.[95] Finally, the commenter states that the Plan's conflict of interest and confidentiality provisions need to apply to competing consolidators since they will be replacing the exclusive SIPs.[96]

The Commission agrees with the commenter that the failure to include the definitions established by the MDI Rules contributes to ambiguity within the Plan. In lieu of incorporating the MDI Rules' definitions, the Proposed Amendment adds a statement that ''[t]erms used in this plan have the same meaning as the terms defined in Rule

[79] *See* Notice, *supra* note 7, 86 FR at 67550 (UTP Plan Proposed Amendment at Section IX.A.).

[80] In the MDI Rules Release, the Commission stated, ''[s]pecifically, the timestamps applied by the SROs must be to the individual components of data content underlying consolidated market data, *i.e.,* all of the individual components of data content underlying core data, regulatory data, administrative data, self-regulatory organization-specific program data, and additional elements defined as 'consolidated market data.''' MDI Rules Release, *supra* note 6, 86 FR at 18688.

[81] *See* McGonigle Letter, *supra* note 66, at 1–2. *See also* MDI Rules Release, *supra* note 6, 86 FR at 18700–01 (discussing the parallel operation implementation schedule).

[82] 17 CFR 242.614(e)(1).

[83] MDI Rules Release, *supra* note 6, 86 FR at 18701.

[84] *See id.* at 18699–700 (discussing the ''first wave'' registration period for competing consolidators, to begin on the date the Commission approves the amendments to the effective national market system plan(s) required under Rule 614(e) including the fees for the SRO data content necessary to generate consolidated market data).

[85] Specifically, Rules 603(b), 614(e)(1) and (e)(2). 17 CFR 242.603(b), 17 CFR 242.614(e)(1), 17 CFR 242.614(e)(2).

[86] *See* 17 CFR 242.608(b)(2).

[87] *See* MayStreet Letter II, *supra* note 55, at 5. This commenter also recommends that the Commission issue guidance to the Participants to aid in revising the Proposed Amendment. *See id.* at 4. The discussion and findings in this Order, in addition to the MDI Rules Release and the MDI Rules themselves, provide sufficient guidance to the Participants in amending the Plan.

[88] *Id.* at 5.

[89] *See id.* at 5–6.

[90] *See id.* at 6.

[91] A ''ministerial amendment'' permits an amendment to the Plan that is submitted by the Chairman of the UTP Plan Operating Committee to the Commission with less than 48 hours advance notice to the Participants. *See* Notice, *supra* note 7, 86 FR at 67554 (Proposed Amendment at Section XVII.).

[92] *See* MayStreet Letter II, *supra* note 55, at 6–7.

[93] *See id.* at 5.

[94] *See* MayStreet Letter I, *supra* note 55, at 4; MayStreet Letter II, *supra* note 55, at 8.

[95] *See* MayStreet Letter II, *supra* note 55, at 10.

[96] *See id.* at 7.

600(b) under the Act.'' [97] This creates ambiguity because the Proposed Amendment uses terms adopted by the MDI Rules but does not include definitions of those terms, so their applicability and the obligations they create are unclear or are not reflected in the Proposed Amendment. For example, the Proposed Amendment adds a requirement for the collection and transmission of Quotation Information, stating that each Participant agrees to collect and transmit to competing consolidators and self-aggregators ''all data necessary to generated [sic] consolidated market data.'' [98] However, the Proposed Amendment does not define ''consolidated market data'' or even the data necessary to generate it. The Plan thus fails to include an express requirement for the Participants to disseminate to competing consolidators and self-aggregators all of the elements of consolidated market data (*e.g.,* core data,[99] regulatory data, and administrative data) in accordance with the definition of ''consolidated market data'' in Rule 600(b)(19) [100] and Rule 603(b).[101] The absence of that definition in the Plan would lead to ambiguity about the Participants' obligations with respect to consolidated market data.

Relatedly, Rule 614(e)(2) requires the Participants to amend the Plan to apply timestamps to all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data. However, because there is no definition of ''consolidated market data'' in the Plan, there is thus no requirement in the language of the Plan for the Participants to timestamp the data components that constitute consolidated market data,[102] such as the elements of core data [103] (another definition established by the MDI Rules that the Proposed Amendment failed to include in the Plan), which include auction information, odd-lot information, and depth of book data. This is another instance in which the absence of definitions in the Plan would lead to ambiguity about the Participants' obligations with respect to consolidated market data.

In addition, as discussed above, under the MDI Rules, the primary listing exchanges are required to collect, calculate, and make available regulatory data to competing consolidators and self-aggregators in accordance with the definition of ''regulatory data'' in Rule 600(b)(78)(i).[104] The Proposed Amendment, however, does not add the definition of ''regulatory data'' to the Plan. Therefore, there is no unambiguous requirement in the Plan that the primary listing exchanges perform these functions.

V. Conclusion

For the reasons set forth above, the Commission finds, pursuant to Section 11A of the Act, and Rule 608(b)(2) thereunder, that the Proposed Amendment is inconsistent with the requirements of the Act and the rules and regulations thereunder applicable to an NMS plan amendment.

It is therefore ordered, pursuant to Section 11A of the Act, and Rule 608(b)(2) thereunder, that the Proposed Amendment (File No. S7–24–89) be, and hereby is, disapproved.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

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[97] *See* Notice, *supra* note 7, 86 FR at 67543 (Proposed Amendment at Section III.).

[98] *Id.* at 67549 (Proposed Amendment at Section IX.A.).

[99] Rule 600(b)(21) defines ''core data'' as (i) The following information with respect to quotations for, and transactions in, NMS stocks: (A) Quotation sizes; (B) Aggregate quotation sizes; (C) Best bid and best offer; (D) National best bid and national best offer; (E) Protected bid and protected offer; (F) Transaction reports; (G) Last sale data; (H) Odd-lot information; (I) Depth of book data; and (J) Auction information. *See* 17 CFR 242.600(b)(21).

[100] *See supra* note 68 (defining ''consolidated market data'').

[101] 17 CFR 242.603(b).

[102] *See supra* note 68 (defining ''consolidated market data'').

[103] *See supra* note 99 (defining ''core data'').

[104] *See supra* note 77 (defining ''regulatory data''). Regulatory data is one element of ''consolidated market data,'' as defined in Rule 600(b)(19). *See supra* note 68.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95853; File No. SR–NYSEARCA–2022–61]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade the Shares of the Breakwave Tanker Shipping ETF

September 21, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 13, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following under NYSE Arca Rule 8.200–E, Commentary .02 (''Trust Issued Receipts''): Breakwave Tanker Shipping ETF. 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 IV 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

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Rule 8.200–E, Commentary .02, which governs the listing and trading of Trust Issued Receipts: Breakwave Tanker Shipping ETF (the ''Fund'').[4]

The Fund will be a series of ETF Managers Group Commodity Trust I (the ''Trust'').[5] The Fund and the Trust will

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Commentary .02 to NYSE Arca Rule 8.200–E applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200–E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

[5] On July 1, 2022, the Trust submitted to the Commission on a confidential basis its draft registration statement on Form S–1 (the ''Registration Statement'') under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''). The initial confidential submission and all amendments thereto shall be publicly filed not later than 15 days before (i) the date on which the Trust commences a road show for the Fund, or (ii) the requested

be managed and controlled by their sponsor and investment manager, ETF Managers Capital LLC (the ''Sponsor''). The Sponsor is registered with the Commodity Futures Trading Commission (''CFTC'') as a commodity pool operator (''CPO'') and is a member of the National Futures Association (''NFA''). Breakwave Advisors LLC (''Breakwave'') is registered as a commodity trading advisor with the CFTC and will serve as the Fund's commodity trading advisor. ETFMG Financial LLC will be the Fund's distributor (''Distributor'' or ''Marketing Agent''). US Bancorp Fund Services LLC will be the Fund's ''Administrator'' and ''Transfer Agent''.

The Fund's Investment Objective and Strategy

According to the Registration Statement, the Fund's investment objective will be to provide investors with exposure to the daily change in the price of tanker freight futures, before expenses and liabilities of the Fund, by tracking the performance of a portfolio (the ''Benchmark Portfolio'') consisting of the nearest calendar quarter of futures contracts on specified indexes (each a ''Reference Index'') that measure prices for shipping crude oil (''Freight Futures''). Each Reference Index is published each U.K. business day by the London-based Baltic Exchange Ltd [6] and measures the charter rate for shipping crude oil in a specific size category of cargo ship and for a specific route. The two Reference Indexes are as follows: the TD3C Index: Persian Gulf to China 270,000mt cargo (Very Large Crude Carrier or VLCC tankers) and the TD20 Index: West Africa to Europe, 130,000mt cargo (Suezmax tankers).[7] The value of each of the TD3C Index and TD20 Index is disseminated daily at 4:00 p.m., London Time by the Baltic Exchange. Such Reference Index information also is widely disseminated by Reuters, Bloomberg and/or other major market data vendors.

The Fund will seek to achieve its objective by purchasing Freight Futures that are cleared through major exchanges (see description of Freight Futures below).

The principal markets for Freight Futures are ICE Futures Europe (the ''ICE'') and the Chicago Mercantile Exchange (''CME''). The applicable exchange acts as a counterparty for each member for clearing purposes. The Fund's investments in Freight Futures will be cleared by ICE and/or CME.[8] The ICE and CME are regulated in the U.S. by the CFTC. Freight futures clearing has been occurring since 2005.

The Fund's portfolio will be traded with a view to reflecting the performance of the Benchmark Portfolio (described below), whether the Benchmark Portfolio is rising, falling or flat over any particular period. To maintain the correlation between the Fund and the change in the Benchmark Portfolio, the Sponsor may adjust the Fund's portfolio of investments on a daily basis in response to creation and redemption orders or otherwise as required. The Sponsor anticipates that the Fund's Freight Futures positions will be held to expiration and settle in cash against the respective Reference Index as published by the Baltic Exchange and ICE or CME. However, positions may be closed out to meet orders for redemption of Baskets (described below), in which case the proceeds from the closed positions will not be reinvested.

At any given time, the average maturity of the futures held by the Fund will be approximately 50 to 70 days. During the month of December of each year, the Fund will rebalance its portfolio in order to bring the allocation of assets back to the desirable levels. During this period, the Fund would purchase or sell Freight Futures to achieve its targeted allocation.

When establishing positions in Freight Futures, the Fund will be required to deposit initial margin with a value of approximately 10% to 40% of the notional value of each Freight Futures position at the time it is established. These margin requirements are established and subject to change from time to time by the relevant exchanges, clearing houses or the Fund's futures commission merchant (''FCM''). On a daily basis, the Fund will be obligated to pay, or entitled to receive, variation margin in an amount equal to the change in the daily settlement level of its overall Futures positions. Any assets not required to be posted as margin with the FCM will be held at the Fund's custodian in cash or cash equivalents.[9] The Fund will place purchase orders for Freight Futures with an execution broker. The broker will identify a selling counterparty and, simultaneously with the completion of the transaction, will submit the block traded Freight Futures to the relevant exchange or clearing house for clearing, thereby completing and creating a cleared futures transaction. If the exchange or clearing house does not accept the transaction for any reason, the transaction will be considered null and void and of no legal effect.

Not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures and exchange-traded options on Freight Futures will consist of Freight Futures and exchange-traded

effective date of the Registration Statement, whichever occurs first. The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement.

[6] The Baltic Exchange, which is a wholly owned subsidiary of the Singapore Exchange Ltd (''SGX''), is a membership organization and an independent source of maritime market information for the trading and settlement of physical and derivative shipping contracts. According to the Baltic Exchange, this information is used by shipbrokers, owners and operators, traders, financiers and charterers as a reliable and independent view of the dry and tanker markets.

[7] The Reference Indexes are published by the Baltic Exchange's subsidiary company, Baltic Exchange Information Services Ltd (''Baltic''), which publishes a wide range of market reports, fixture lists and market rate indicators on a daily and (in some cases) weekly basis. The Baltic indices, which include the Reference Indexes, are an assessment of the price of moving the major raw materials by sea. The indices are based on assessments of the cost of transporting various bulk cargoes, both wet (*e.g.,* crude oil and oil products) and dry (*e.g.,* coal and iron ore), made by leading shipbroking houses located around the world on a per ton and daily hire basis. The information is collated and published by the Baltic Exchange. Procedures relating to administration of the Baltic indices are set forth in ''The Baltic Exchange, Guide to Market Benchmarks'' November 2016 (the ''Guide''), including production methods, calculation, confidentiality and transparency, duties of panelists, code of conduct, audits and quality control. The Guide is available at *www.balticexchange.com.* According to the Guide, these procedures are in compliance with the ''Principles for Financial Benchmarks'' issued by the International Organization of Securities Commissioners (or ''IOSCO'') (the ''IOSCO Principles''). The IOSCO Principles are designed to enhance the integrity, the reliability and the oversight of benchmarks by establishing guidelines for benchmark administrators and other relevant bodies in the following areas: Governance: to protect the integrity of the benchmark determination process and to address conflicts of interest; Benchmark quality: to promote the quality and integrity of benchmark determinations through the application of design factors; Quality of the methodology: to promote the quality and integrity of methodologies by setting out minimum information that should be addressed within a methodology. These principles also call for credible transition policies in case a benchmark may cease to exist due to market structure change. Accountability mechanisms: to establish complaints processes, documentation requirements and audit reviews. The IOSCO Principles provide a framework of standards that might be met in different ways, depending on the specificities of each benchmark. In addition to a set of high level principles, the framework offers a subset of more detailed principles for benchmarks having specific risks arising from their reliance on submissions and/or their ownership structure. For further information concerning the IOSCO Principles, *see http://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.*

[8] CME and ICE are members of the Intermarket Surveillance Group (''ISG''). *See* note 15 *infra.*

[9] The Fund will hold cash or cash equivalents, such as U.S. Treasuries or other high credit quality, short-term fixed-income or similar securities for direct investment or as collateral for the U.S. Treasuries and for other liquidity purposes, and to meet redemptions that may be necessary on an ongoing basis.

options on Freight Futures whose principal market is not a member of the ISG or is a market with which the Exchange does not have in place a comprehensive surveillance sharing agreement.

Benchmark Portfolio Construction

Freight Futures reflect market expectations for the future cost of transporting crude oil. The Benchmark Portfolio will hold long positions in Freight Futures corresponding to the TD3C Index and TD20 Index. The Benchmark Portfolio's initial allocation will be approximately 90% TD3C contracts and 10% TD20 contracts, based on contract value, not number of lots. Given each asset's individual price movements during the year, such percentages might deviate from the targeted allocation.

The Benchmark Portfolio will consist of positions in the three-month strip of the nearest calendar quarter of Freight Futures and roll them constantly to the next calendar quarter. The four-calendar quarters are January, February, and March (Q1), April, May, and June (Q2), July, August, and September (Q3), and October, November and December (Q4). The Benchmark Portfolio will hold all positions to maturity and settle them in cash. During any given calendar quarter, the Benchmark Portfolio will progressively increase its position to the next calendar quarter three-month strip, thus maintaining constant long exposure to the Freight Futures market as positions mature. The Fund maintains the right to invest in other maturities of Freight Futures if such strategy is deemed necessary.

To track the Benchmark Portfolio, the Fund will attempt to roll positions in the nearby calendar quarter, on a pro rata basis. For example, if the Fund was currently holding the Q1 calendar quarter comprising the January, February and March monthly contracts, each week in the month of February, the Fund will attempt to purchase Q2 contracts in an amount equal to approximately one quarter of the expiring February positions. As a result, by the end of February, the Fund would have rolled the February position to Q2 freight contracts, leaving the Fund with March and Q2 contracts. At the end of March, the Fund will have completed the roll and will then hold only Q2 exposure comprising April, May and June monthly contracts. Since Freight Futures contracts are cash settled, the Fund need not close out of existing contracts. Rather, it will hold such contracts to expiration and apply the above methodology in order acquire the nearby calendar contract.

The Benchmark Portfolio will not include, and the Fund will not invest in swaps, non-cleared freight forwards or other over-the-counter derivative instruments that are not cleared through exchanges or clearing houses. The Fund may hold exchange-traded options on Freight Futures.

The Benchmark Portfolio is maintained by Breakwave and will be rebalanced annually.

Overview of the Tanker Freight Industry

As stated in the Registration Statement, the following is a brief introduction of the global tanker industry. The data presented below is derived from information released from various third-party sources. The third-party sources from which certain of the information presented below include the United Nations Conference on Trade and Development, the Baltic and International Maritime Council, Clarksons Research, Bloomberg and others.

Seaborne crude transportation is a 130 plus year-old industry focusing on the transportation of unrefined crude oil in ships known as crude tankers. Modern crude tankers are ships that can carry as many as 2 million barrels of crude within the cargo tanks of the ship. Crude tankers carry unprocessed oil from the point of extraction, or storage, to refineries. These purpose-built ships do not generally carry any other type of oil cargo and are often referred to as 'dirty' cargo tankers. Crude tankers are among the largest types of ships in the world given the economies of scale required in making seaborne transportation a viable option for buyers and sellers of the commodity they carry. The framework of transporting crude oil is determined by three main characteristics: density of the crude (which can vary depending on where it was extracted), parcel size of the cargo being transported, and the degree of cleanliness required during handling. Crude tankers require dedicated port infrastructure for the loading and discharge of their cargo, and due to their size are limited in the number of ports they can call. These tankers are measured in their cargo carrying capacity in tons—referred to as deadweight tonnage (''DWT'') and have a typical lifespan of 25 years.

Crude oil tankers come in various sizes:

Very Large Crude Carriers or VLCC (~300,000 DWT) are the largest of the tanker asset classes. VLCCs transport crude oil mainly from the Middle East to Asia, from West Africa to Asia and from the US to Asia. There are about 850 VLCCs worldwide. The VLCC fleet is about 60% of the tanker fleet by DWT capacity.

Suezmax (~150,000 DWT) primarily transport crude oil from West Africa to Europe, from North Africa to Europe. The Suezmax is the largest tanker vessel class that can transit the Suez Canal. There are about 600 Suezmaxes worldwide representing ~22% of the global tanker fleet by DWT capacity.

Aframax (~80,000 DWT) primarily transport crude oil from Latin America to the US, from Australia to Southeast Asia, from Middle East to Asia and other. There are approximately 670 ships accounting from ~17% of the global tanker fleet by DWT capacity.

Smaller tankers (smaller than ~80,000 DWT) are a class of ships that and dirty oil products such as diesel, gasoline, jet fuel, fuel oil and kerosene derived from crude oil that has been processed at a refinery. There are approximately 80 ships accounting from ~1% of the global tanker fleet by DWT capacity.

Tanker Vessel Supply

According to the Registration Statement, there are approximately 2,140 crude tankers worldwide with a carrying capacity of roughly 432 million DWT and an average age of approximately 11.2 years. Supply of crude oil tankers is dynamic.

Factors impacting crude tanker supply include new orders, the scrapping of older vessels, new shipbuilding technologies, vessel congestion in ports, closures of major waterways, including canals, and wars and other geopolitical conflicts that can restrict access to vessels available for shipping crude oil.

Demand for Seaborne Oil Transportation

According to the Registration Statement, customers of seaborne crude transportation include major independent and state-owned oil companies, oil traders, refinery operators and international government entities. Vessel demand for the transportation of crude oil fluctuates seasonally based on world oil consumption. Peaks in annual demand are caused by anticipation of seasonal consumption of crude oil products by oil refiners and suppliers. Consumption varies with seasons and trends, such as winter in the Northern Hemisphere and peak travel seasons.

Demand for tanker freight is generally measured in ton-miles, which corresponds to one ton of freight carried one mile. Such measure takes into consideration both the quantity of cargo transport but also the distance between loading and offloading ports. Over the last 5 years, crude tanker demand has decreased by approximately −1% per

year. Global oil demand peaked in 2019 and since then has steadily declined mainly as a result of the COVID 19 pandemic. However, International Energy Agency (IEA) projects oil demand to increase to 101.6 million barrels per day, back to pre-pandemic levels, by 2023.

In 2010, demand for oil began increasing as the global economy, especially in countries impacted most by the Great Recession, returned to a period of growth. During the period of 2010–2017 crude tanker demand grew on average 2.3% per year. In 2017, crude tanker demand growth grew 5.3% while in 2018 demand growth increased by 2.7%. In 2019 crude tanker demand began contracting by −1.8%, followed by −6.5% in 2020 and −4.3% in 2021. In 2022, the Russian invasion in Ukraine had a significant impact on oil prices, and thus oil demand, as western sanctions against Russia have limited the supply of crude oil and refined products, leading to a considerable increase in oil prices.

Factors impacting demand for shipping tanker freight include global economic growth, demand for oil, government regulations, taxes and tariffs, fuel prices, vessel speeds and new trade routes.

Tanker Freight Charter Rates

According to the Registration Statement, crude oil freight rates reflect the price paid for each ton of oil cargo the ship will transport. The ''dollars per ton rates'' include the cost of the fuel, otherwise referred to as bunkers, that will be burned during the voyage of a pre-determined route. As a result, crude oil freight rates are not only exposed to the availability of ships and the underlying demand for ships, but also to the cost of bunkers.

Net Freight Component

The availability of ships of the correct size and technical specifications that are also in the correct geographic location to carry the cargoes that need to be transported is the largest driving force of crude oil freight rates. This is greatly impacted by the total number of ships in the global fleet. The global demand for oil—specifically the demand for oil in regions not serviced by pipelines from the point of production is the other major factor in determining freight rates. The above macro factors are in constant flux and shape the price for freight.

Bunker Component

Given the large quantities of bunker fuel that ships consume, crude oil tanker rates are greatly impacted by changes in the cost of bunkers, and as a result, the price of oil. In addition, refining margins play an equally important role in determining the price of bunker fuel. Combined, oil price and refining margins account for a significant part of the overall tanker freight cost.

Freight rates across shipping are generally quoted on time charter equivalent basis which is calculated by taking voyage revenues, subtracting voyage expense, including canal, bunker and port costs, and then dividing the total by the round-trip voyage duration in days. Such a calculation gives shipping companies a tool to measure period-to-period changes. Although the above calculation is helpful for shipping companies to calculate their net profit and decide whether a reference spot rate acceptable, the spot tanker market transacts on a USD per ton basis. Such a ''gross'' price includes all voyage expenses (fuel, canal and port costs, etc.). Given the freight futures market is predominantly used for hedging purposes by oil market participants, tanker freight futures are also quoted on a USD per ton basis.

Freight Futures

According to the Registration Statement, freight futures are financial futures contracts that allow ship owners, charterers and speculators to hedge against the volatility of freight rates. Freight Futures are built on indices such as the TD3C Index, TD20 Index, TD25 Index and TD22 Index. In addition to the crude oil tanker routes, there are also Freight Futures for routes corresponding to the transportation of refined oil products (gasoline, diesel, etc.). Freight Futures are financial instruments that trade off-exchange but then are cleared through an exchange. Market participants communicate their buy or sell orders through a network of execution brokers mainly through phone or instant messaging platforms with specific trading instructions related to price, size, and type of order.[10] The execution broker receives such order and then attempts to match it with a counterpart. Once there is a match and both parties confirm the transaction, the execution broker submits the transaction details including trade specifics, counterparty details and accounts to the relevant exchange for clearing, thus completing a cleared block futures transaction. Brokers are required to report to the relevant exchanges each trade that takes place. The exchange will then require the relevant member or FCM to submit the necessary margin to support the position similar to other futures clearing and margin requirements.

Freight Futures are listed and cleared on the following exchanges: CME and ICE.

Freight Futures settle monthly over the arithmetic average of spot index assessments in the contract month for the relevant underlying product, rounded to three decimal places. The daily index publication, against which Freight Futures settle, is published by the Baltic Exchange.

Although historically the Worldscale methodology has been used as means of transacting, lately, a USD per ton quoted methodology has been increasingly used. Both methods of quoting freight are identical: Worldscale represents a percentage of a predetermined fixed rate referred to as ''flat rate'', effectively translating the quoted freight from USD per ton to a percentage of the flat rate. As an example, a rate quoted at Worldscale 40 (WS 40) of a flat rate of $18 per ton would represent 40% of the $18/ton flat rate, or $7.20 per ton. Whether the rate is quote on Worldscale or on USD per ton, the resulting freight rate would be the same ($7.20 per ton).

Freight brokers have recently been reporting freight futures in both Worldscale and USD per ton basis.

Generally, Freight Futures trade from approximately 3:00 a.m. Eastern Time (''E.T.'') to approximately 1:00 p.m. E.T. The great majority of trading volume occurs during London business hours, from approximately 4:00 a.m. E.T. time to approximately 12:00 p.m. E.T. Some limited trading takes place during Asian business hours as well (12:00 a.m.–3:00 a.m. E.T.). The final closing prices for settlement are published daily around 12:30 p.m. E.T. Final cash settlement occurs the first business day following the expiry day.

Freight Futures are quoted in U.S. Dollars per metric ton, with a minimum lot size of 1,000 metric tons. One lot represents freight costs to transport in U.S. Dollars. The nominal value of a contract is simply the product of lots and Freight Futures prices. There are Futures Contracts of up to 72 consecutive months, starting with the current month, available for trading for each vessel class.

Similar to other futures, Freight Futures are subject to margin requirements by the relevant exchanges. The Sponsor anticipates that

[10] Freight Futures are primarily traded through broker members of the Forward Freight Agreement Brokers Association (''FFABA''), such as Clarkson's Securities, Freight Investor Services, GFI Group and ICAP. Members of the FFABA must be members of the Baltic Exchange and must be regulated by the Financial Conduct Authority if resident in the U.K., or if not resident in the U.K., by an equivalent body if required by the authorities in the jurisdiction. Source: The Baltic Code of the Baltic Exchange.

approximately 20% to 50% of the Fund's assets will be used as payment for or collateral for Freight Futures contracts. In order to collateralize its Freight Futures positions, the Fund will hold such assets, from which it will post margin to its FCM in an amount equal to the margin required by the relevant exchanges, and transfer to its FCM any additional amounts that may be separately required by the FCM.

The liquidity of tanker Freight Futures (clean and dirty) has been increasing, in lot terms, over the last five years. For example, in 2021, approximately 560 thousand lots in Freight Futures traded And, as of 2022, open interest in Freight Futures stood at approximately 145,000 lots across all asset classes representing an estimated value of more than $2 billion. Of such open interest, TD3C contracts account for approximately 50. Major market participants in the tanker Freight Futures market include commodity producers, commodity users, commodity trading houses, ship operators, major banks, investment funds and independent ship owners.

Calculating Net Asset Value (''NAV'')

The Fund's NAV will be calculated by taking the current market value of its total assets, subtracting any liabilities; and dividing that total by the total number of outstanding Shares.

The Administrator will calculate the NAV of the Fund once each NYSE Arca trading day. The NAV for a particular trading day will be released after 4:00 p.m. E.T. The Administrator will use the Baltic Exchange closing prices for the Freight Futures and any option contracts to calculate the NAV. The Administrator will calculate or determine the value of all other Fund investments using market quotations, if available, or other information customarily used to determine the fair value of such investments as of the close of the NYSE Arca Core Trading Session (normally 4:00 p.m. E.T.). The information may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilized. Third parties supplying quotations or market data may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Indicative Fund Value

In order to provide updated information relating to the Fund for use by investors and market professionals, an updated indicative fund value (''IFV'') will be made available through on-line information services throughout the Exchange Core Trading Session (normally 9:30 a.m. to 4:00 p.m., E.T.) on each trading day. The IFV will be calculated by using the prior day's closing NAV per Share of the Fund as a base and updating that value throughout the trading day to reflect changes in the most recently reported trade price for the futures and/or options held by the Fund. The IFV disseminated during NYSE Arca Core Trading Session hours should not be viewed as an actual real time update of the NAV, because the NAV will be calculated only once at the end of each trading day based upon the relevant end of day values of the Fund's investments.

The IFV will be disseminated on a per Share basis every 15 seconds during regular NYSE Arca Core Trading Session hours of 9:30 a.m. E.T. to 4:00 p.m. E.T. The customary trading hours of the Freight Futures trading are 3:00 a.m. E.T. to 1:00 p.m. E.T. This means that there is a gap in time at the end of each day during which the Fund's Shares will be traded on the NYSE Arca, but real-time trading prices for contracts are not available. During such gaps in time the IFV will be calculated based on the end of day price of such contracts from the Baltic Exchange's, CME's and ICE's immediately preceding settlement prices. In addition, other investments and U.S. Treasuries held by the Fund will be valued by the Administrator using rates and points received from client-approved third-party vendors (such as Reuters and WM Company) and broker-dealer quotes. These investments will not be included in the IFV.

Dissemination of the IFV provides additional information that is not otherwise available to the public and is useful to investors and market professionals in connection with the trading of the Fund's Shares on the NYSE Arca. Investors and market professionals are able throughout the trading day to compare the market price of Fund Shares and the IFV. If the market price of the Fund Shares diverges significantly from the IFV, market professionals will have an incentive to execute arbitrage trades. For example, if the Fund's Shares appears to be trading at a discount compared to the IFV, a market professional could buy the Fund's Shares on the NYSE Arca and take the opposite position in Freight Futures. Such arbitrage trades can tighten the tracking between the market price of the Fund's Shares and the IFV and thus can be beneficial to all market participants.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will create and redeem Shares from time to time in one or more ''Creation Baskets'' or ''Redemption Baskets'' (collectively, the ''Baskets''). A Basket consists of 25,000 Shares, which amount may be revised from time-to-time. The creation and redemption of Baskets will only be made in exchange for delivery to the Fund or the distribution by the Fund of the amount of Treasuries and any cash represented by the Baskets being created or redeemed, the amount of which is based on the combined NAV of the number of Shares included in the Baskets being created or redeemed determined as of 4:00 p.m. E.T. on the day the order to create or redeem Baskets is properly received.

''Authorized Participants'' are the only persons that may place orders to create and redeem Baskets. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions described below, and (2) Depository Trust Company (''DTC'') participants.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Transfer Agent to create one or more Baskets. For purposes of processing purchase and redemption orders, a ''business day'' means any day other than a day when any of the NYSE Arca, the Baltic Exchange, the ICE, the CME or the New York Stock Exchange is closed for regular trading. Purchase orders must be placed by 12:00 p.m. E.T. or the close of the Core Trading Session on NYSE Arca, whichever is earlier. The day on which a valid purchase order is received in accordance with the terms of the ''Authorized Participant Agreement'' is referred to as the purchase order date. Purchase orders are irrevocable.

Determination of Required Payment

The total payment required to create each Creation Basket is the NAV of 25,000 Shares on the purchase order date, but only if the required payment is timely received. To calculate the NAV, the Administrator will use the Baltic Exchange settlement price (typically determined after 12:00 p.m. E.T.) for the Freight Futures. Because orders to purchase Baskets must be placed no later than 12:00 p.m., E.T., but the total payment required to create a Basket typically will not be

determined until after 12:00 p.m., E.T., on the date the purchase order is received, Authorized Participants will not know the total amount of the payment required to create a Basket at the time they submit an irrevocable purchase order.

Delivery of Required Payment

An Authorized Participant who places a purchase order shall transfer to the Administrator the required amount of cash by the end of the next business day following the purchase order date. Upon receipt of the deposit amount, the Administrator will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account on the next business day following the purchase order date.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Baskets will mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Transfer Agent, and accepted by the Distributor, to redeem one or more Baskets. Redemption orders must be placed by 12:00 p.m. E.T. or the close of the Core Trading Session on the NYSE Arca, whichever is earlier.[11] A redemption order so received will be effective on the date it is received in satisfactory form in accordance with the terms of the Authorized Participant Agreement. The day on which the Marketing Agent receives a valid redemption order is the redemption order date. Redemption orders are irrevocable. By placing a redemption order, an Authorized Participant agrees to deliver the baskets to be redeemed through DTC's book-entry system to the Fund not later than 12:00 p.m., E.T., on the next business day immediately following the redemption order date.

Determination of Redemption Proceeds

The redemption proceeds from the Fund will consist of a cash redemption amount equal to the NAV of the number of Baskets requested in the Authorized Participant's redemption order on the redemption order date.

Because orders to redeem Baskets must be placed no later than 12:00 p.m., E.T., but the total amount of redemption proceeds typically will not be determined until after 12:00 p.m., E.T., on the date the redemption order is received, Authorized Participants will not know the total amount of the redemption proceeds at the time they submit an irrevocable redemption order.

The redemption proceeds due from the Fund will be delivered to the Authorized Participant at 1:00 p.m., E.T., on the second business day immediately following the redemption order date if, by such time, the Fund's DTC account has been credited with the Baskets to be redeemed.

Availability of Information

The NAV for the Fund's Shares will be disseminated daily to all market participants at the same time. The intraday, closing prices, and settlement prices of the Freight Futures will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors.

Complete real-time data for Freight Futures is available by subscription through on-line information services. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA"). The IFV will be available through on-line information services. The Freight Futures and exchange-traded options on Freight Futures trading prices will be disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. E.T. CME and ICE provide on a daily basis, transaction volumes, transaction prices, and open interest on their respective websites. In addition, historical data also exists for volumes and open interest. Daily settlement prices and historical settlement prices are available through a subscription service to the Baltic Exchange, ICE and CME, which maintain the licensing rights of relevant freight data. However, the exchanges provide the daily settlement price change of Freight Futures on their respective websites. Certain Freight Futures brokers provide real time pricing information to the general public either through their websites or through data vendors such as Bloomberg or Reuters. Most Freight Futures brokers provide, upon request, individual electronic screens that market participants can use to transact, place orders or only monitor Freight Futures market price levels.

In addition, the Fund's website, *www.tankeretf.com,* will display the applicable end of day closing NAV. The daily holdings of the Fund will be available on the Fund's website before 9:30 a.m. E.T. each day. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the composite value of the total portfolio, (ii) the quantity and type of each holding (including the ticker symbol, maturity date or other identifier, if any) and other descriptive information including, in the case of an option, its strike price, (iii) the percentage weighting of each holding in the Fund's portfolio; (iv) the number of Freight Futures contracts and the value of each Freight Futures (in U.S. dollars), (v) the type (including maturity, ticker symbol, or other identifier) and value of each Treasury security and cash equivalent, and (vi) the amount of cash held in the Fund's portfolio. The Fund's website will be publicly accessible at no charge.

The daily closing Benchmark Portfolio level and the percentage change in the daily closing level for the Benchmark Portfolio will be publicly available from one or more major market data vendors. The intraday value of the Benchmark Portfolio, updated every 15 seconds, will also be available through major market data vendors during those times that the hours trading in Freight Futures overlap with trading houses on NYSE Arca (*i.e.,* between 9:00 a.m. and 1:00 p.m. ET).

The website disclosure of the Fund's daily holdings will occur at the same time as the disclosure by the Trust of the daily holdings to Authorized Participants so that all market participants are provided daily holdings information at the same time. Therefore, the same holdings information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current daily holdings of the Fund through the Fund's website.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[12] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the

[11] The Sponsor represents that it believes that the designated time by which orders to create or redeem must be received by the Transfer Agent (12:00 p.m. E.T.) will not have a material impact on an Authorized Participant's arbitrage opportunities with respect to the Fund. As noted above, Freight Futures are cleared by CME and ICE until 1:00 p.m. E.T. and such clearing activity on CME and ICE will serve as an arbitrage mechanism for trading in the Fund's Shares. In addition, price information regarding trading of Freight Futures and options on Freight Futures on the applicable exchange and end-of-day settlement prices published by the applicable exchange will be available during the Core Trading Session.

[12] *See* NYSE Arca Rule 7.12–E.

Exchange, make trading in the Shares of the Fund inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the intraday value of the Benchmark Portfolio occurs. If the interruption to the dissemination of the IFV, or the value of the Benchmark Portfolio persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200–E. The trading of the Shares will be subject to NYSE Arca Rule 8.200–E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Funds will be in compliance with Rule 10A–3 [13] under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[14] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares of the Funds in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

To the extent that the Shares, Freight Futures, and those exchange-traded options trade on markets that are members of the ISG, the Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, Freight Futures, and exchange-traded options on Freight Futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, Freight Futures and exchange-traded options on Freight Futures from such markets and other entities. In addition, to the extent those instruments trade on markets that are ISG members or with which the Exchange has such agreements, the Exchange may obtain information regarding trading in the Shares, Freight Futures, and exchange-traded options on Freight Futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA'').[15]

Not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures and exchange-traded options on Freight Futures shall consist of Freight Futures and exchange-traded options on Freight Futures whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the Reference Indexes and portfolios, (b) limitations on portfolio holdings or reference assets, or (c) applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [16] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.200–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares of the Fund in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. To the extent that the Shares, Freight Futures, and those options trade on markets that are members of the ISG, the Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, Freight Futures, and exchange-traded options on Freight Futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, Freight Futures, and exchange-traded options on Freight Futures from such markets

[13] 17 CFR 240.10A–3.

[14] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[15] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

[16] 15 U.S.C. 78f(b)(5).

and other entities. In addition, to the extent those instruments trade on markets that are members of ISG or with which the Exchange has such agreements, the Exchange may obtain information regarding trading in the Shares, Freight Futures, and exchange-traded options on Freight Futures from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. Not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures and exchange-traded options on Freight Futures shall consist of Freight Futures and exchange-traded options on Freight Futures whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA. The Exchange will make available on its website daily trading volume of each of the Shares, closing prices of such Shares, and number of Shares outstanding. The intraday, closing prices, and settlement prices of Freight Futures will be readily available from the Baltic Exchange website, automated quotation systems, published or other public sources, or on-line information services.

Complete real-time data for the Freight Futures is available by subscription from on-line information services. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through on-line information services. The Freight Futures trading prices will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. E.T. CME and ICE provide on a daily basis, transaction volumes, transaction prices, trade time, and open interest on their respective websites. In addition, the Fund's website, will display the applicable end of day closing NAV. The daily holdings of the Fund will be disclosed on the Fund's website before 9:30 a.m. E.T. each day. The daily holdings of the Fund will be available on the Fund's website before 9:30 a.m. E.T. each day. The Fund's website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the composite value of the total portfolio, (ii) the quantity and type of each holding (including the ticker symbol, maturity date or other identifier, if any) and other descriptive information including, in the case of an option, its strike price, (iii) the value of each Freight Futures (in U.S. dollars), (iv) the type (including maturity, ticker symbol, or other identifier) and value of each Treasury security and cash equivalent, and (v) the amount of cash held in the Fund's portfolio.

Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of Trust Issued Receipts based on Freight Futures that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a new type of Trust Issued Receipts based on Freight Futures and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2022–61 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2022–61. 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–NYSEARCA–2022–61, and

should be submitted on or before October 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20814 Filed 9–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95850; File No. SR–CTA/CQ–2021–02]

Consolidated Tape Association; Order Disapproving the Thirty-Seventh Substantive Amendment to the Second Restatement of the CTA Plan and the Twenty-Eighth Substantive Amendment to the Restated CQ Plan

September 21, 2022.

I. Introduction

On November 5, 2021,[1] the Participants [2] in the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and the Restated Consolidated Quotation (''CQ'') Plan (collectively ''CTA/CQ Plans'' or ''Plans'') [3] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [4] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[5] a proposal (the ''Proposed Amendments'') to amend the Plans to implement the non-fee-related aspects of the Commission's Market Data Infrastructure Rules (''MDI Rules'').[6] The Proposed Amendments were published for comment in the **Federal Register** on November 29, 2021.[7]

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[8] to determine whether to approve or disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[9] On May 19, 2022, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[10] the Commission extended the period within which to conclude proceedings regarding the Proposed Amendments to July 27, 2022,[11] and on July 21, 2022, the Commission further extended the period within which to conclude proceedings regarding the Proposed Amendments to September 25, 2022.[12]

This order disapproves the Proposed Amendments.[13]

II. Overview

Pursuant to Regulation NMS and the Equity Data Plans,[14] the national securities exchange and national securities associations (''self-regulatory organizations'' or ''SROs'') must provide certain information with respect to quotations for and transactions in NMS stocks (''NMS information'') to an exclusive plan securities information processor (''exclusive SIP''), which consolidates the NMS information and makes it available to market participants on the consolidated tapes. The purpose of the Equity Data Plans is to facilitate the collection and dissemination of SIP data so that the public has ready access to a ''comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock at any time during the trading day.'' [15] Because the infrastructure for the collection, consolidation, and dissemination of this data had not been significantly updated since its initial implementation in the 1970s, the Commission adopted amendments to Regulation NMS that increase the content of NMS information and amend the manner in which such NMS information is collected, consolidated, and disseminated by the Equity Data Plans.[16] In the MDI Rules Release, the Commission stated, ''[t]he widespread availability of timely market information promotes fair and efficient markets and facilitates the ability of brokers and dealers to provide best execution to their customers.'' [17]

The MDI Rules increase the content of NMS information and modify the manner in which NMS information is collected, consolidated, and disseminated. Significantly, under the MDI Rules, the Commission required the introduction of a competitive decentralized consolidation model under which competing consolidators and self-aggregators will replace the

[17] 17 CFR 200.30–3(a)(12).

[1] *See* Letter from Robert Books, Chair, CTA/CQ Plans Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[2] The ''Participants'' are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq ISE, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc.

[3] The CTA Plan, pursuant to which markets collect and disseminate last-sale price information for non-Nasdaq-listed securities, is a ''transaction reporting plan'' under Rule 601 of Regulation NMS, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for non-Nasdaq-listed securities, is a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (Aug. 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (Jan. 22, 1980), 45 FR 6521 (Jan. 28, 1980) (permanently authorizing the CQ Plan).

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] The ''MDI Rules'' as used in this Order, and as relevant to the Proposed Amendments, are Rules 600, 603, and 614 of Regulation NMS. 17 CFR 242.600, 603, 614. *See also* Securities Exchange Act Release No. 90610 (Dec. 9, 2020), 86 FR 18596 (Apr. 9, 2021) (File No. S7–03–20) (''MDI Rules Release''); Securities Exchange Act Release No. 90610A (May 24, 2021), 86 FR 29195 (June 1, 2021) (File No. S7–03–20) (technical correction to MDI Rules Release). Several exchanges filed petitions for review challenging the MDI Rules Release in the U.S. Court of Appeals for the District of Columbia Circuit, which were denied on May 24, 2022. *See The Nasdaq Stock Market LLC, et al.* v. *SEC,* No. 21–1100 (D.C. Cir. May 24, 2022).

[7] *See* Securities Exchange Act Release No. 93615 (Nov. 19, 2021), 86 FR 67800 (Nov. 29, 2021) (''Notice''). Comments received in response to the Notice are available at *https://www.sec.gov/comments/sr-ctacq-2021-02/srctacq202102.htm*.

[8] 17 CFR 242.608(b)(2)(i).

[9] *See* Securities Exchange Act Release No. 94310 (Feb. 24, 2022), 87 FR 11748 (Mar. 2, 2022) (''OIP''). Comments received in response to the OIP are available at *https://www.sec.gov/comments/sr-ctacq-2021-02/srctacq202102.htm*.

[10] *See* 17 CFR 242.608(b)(2)(i).

[11] *See* Securities Exchange Act Release No. 94951 (May 19, 2022), 87 FR 31920 (May 25, 2022).

[12] *See* Securities Exchange Act Release No. 95345 (July 21, 2022), 87 FR 45136 (July 27, 2022).

[13] The Participants have filed a similar amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan''), which the Commission is also disapproving. *See* Securities Exchange Act Release No. 95848 (Sept. 21, 2022). Separately, certain Participants have also filed amendments to implement the fee-related aspects of the MDI Rules. *See* Securities Exchange Act Release Nos. 93625 (Nov. 19, 2021), 86 FR 67517 (Nov. 26, 2021) (File No. SR–CTA/CQ–2021–03), and 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) (File No. S7–24–89) (together, the ''Proposed Fee Amendments''). The Commission is, by separate orders, also disapproving the Proposed Fee Amendments. *See* Securities Exchange Act Release Nos. 95849 (Sept. 21, 2022) (File No. S7–24–89); 95851 (Sept. 21, 2022) (File No. SR–CTA/CQ–2021–03).

[14] The three effective national market system plans that govern the collection, consolidation, processing, and dissemination of certain NMS information are: (1) the CTA Plan; (2) the CQ Plan; and (3) the UTP Plan (collectively, the ''Equity Data Plans''). Each of the Equity Data Plans is an effective national market system plan under 17 CFR 242.608 (Rule 608) of Regulation NMS. *See also* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order approving UTP Plan).

[15] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3593 (Jan. 21, 2010).

[16] *See* MDI Rules Release, *supra* note 6.

[17] *Id.* at 18599.

exclusive SIPs that collect, consolidate, and disseminate equity market data under the Equity Data Plans.[18] Although the exclusive SIPs will no longer disseminate consolidated information for an individual NMS stock, the Equity Data Plans will continue to play an important role—they will develop and propose fees for the data content underlying consolidated market data, collect and allocate revenues collected for this data, develop the monthly performance metrics for competing consolidators, and provide an annual assessment of competing consolidator performance.

Rule 614(e) of Regulation NMS requires the participants of the effective national market system plan(s) for NMS stocks to file an amendment pursuant to Rule 608 of Regulation NMS to conform the plan(s) to the decentralized consolidation model.[19] Specifically, Rule 614(e)(1) directs the participants to file an amendment to conform the plan(s) to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the SROs to competing consolidators and self-aggregators. The Proposed Amendments were filed by the Participants pursuant to this requirement.[20]

As explained below, however, the Proposed Amendments do not comply with Rule 614(e)(1) because they do not conform the Plans to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the SROs to competing consolidators and self-aggregators. For example, inconsistent with the decentralized consolidation model and with the requirements of Rule 614(e), the Proposed Amendments: (1) amend the Plans to reflect that they will disseminate *consolidated market data* to competing consolidators and self-aggregators, even though the Plans will not be disseminating any consolidated market data; [21] (2) fail to amend the CTA Plan to require the individual Participants to disseminate data necessary to generate consolidated market data to competing consolidators and self-aggregators; [22] (3) fail to distinguish competing consolidators from vendors and subscribers; [23] (4) fail to amend the Plans to reflect that the Processors will no longer have the responsibility to disseminate regulatory halt notices once the decentralized consolidation model has been implemented; [24] (5) fail to include requirements for the Participants to timestamp every element of data necessary to generate consolidated market data; [25] and (6) fail to amend the Plans to remove references to a single processor.[26]

Because the Proposed Amendments are inconsistent with the MDI Rules, specifically Rule 614(e), the Commission must disapprove the Proposed Amendments under Rule 608(b)(2) of Regulation NMS because it cannot find that they are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[27]

III. Summary of the Proposed Amendments

The Participants propose to amend the Plans to comply with Rule 614(e) of the MDI Rules. Under Rule 614(e), participants to the effective national market system plan(s) for NMS stocks were required to file by November 5, 2021, an amendment with the Commission that includes each of the requirements of Rule 614(e)(1)–(5).[28]

Specifically, Rule 614(e)(1) requires the amendment to conform the effective national market system plan(s) for NMS stocks to reflect that, under the decentralized consolidation model, the national securities exchange and national securities association participants will provide to competing consolidators and self-aggregators the information, with respect to quotations for and transactions in NMS stocks, that is necessary to generate consolidated market data.

Rule 614(e)(2) requires the amendment to include the application of timestamps by the national securities exchange and national securities association participants on all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data, including the time that such information was generated as applicable by the national securities exchange or national securities association and the time the national securities exchange or national securities association made such information available to competing consolidators and self-aggregators.

Rule 614(e)(3) requires the amendment to include assessments of competing consolidator performance, including speed, reliability, and cost of data provision and the provision of an annual report of such assessment to the Commission.

Rule 614(e)(4) requires the amendment to include the development, maintenance, and publication of a list that identifies the primary listing exchange for each NMS stock.

Rule 614(e)(5) requires the amendment to include the calculation and publication on a monthly basis of consolidated market data gross revenues for NMS stocks as specified by (i) listed on the NYSE; (ii) listed on Nasdaq; and (iii) listed on exchanges other than NYSE or Nasdaq.

The following is a summary of the changes proposed to be made to the Plans by the Proposed Amendments.[29]

[18] *See id.* at 18637 (''The Commission is adopting a decentralized consolidation model in which competing consolidators, rather than the exclusive SIPs, will collect, consolidate, and disseminate consolidated market data.'').

[19] 17 CFR 242.614(e). *See also* MDI Rules Release, *supra* note 6, 86 FR at 18680–81.

[20] The Participants have filed the Proposed Amendments under the Equity Data Plans. *See supra* note 14. While the Commission issued an order on August 6, 2020, approving, as modified, a new national market system plan regarding equity market data—the CT Plan—to replace the existing Equity Data Plans, that order was stayed on October 13, 2021, *see The Nasdaq Stock Market, et al. LLC* v. *Securities and Exchange Commission,* No. 21–1167 (D.C. Cir. Oct. 13, 2021), which was before the Participants filed the Proposed Amendments. The Commission's order approving the CT Plan was subsequently vacated. *See The Nasdaq Stock Market LLC, et al.* v. *Securities and Exchange Commission,* Nos. 21–1167, 21–1168, 21–1169 (D.C. Cir., July 5, 2022) (vacating Securities Exchange Act Release No. 92586 (Aug. 6, 2021), 86 FR 44142 (Aug. 11, 2021) (Order Approving, as Modified, a National Market System Plan Regarding Consolidated Market Data)).

[21] 17 CFR 242.603(b). *See also* MDI Rules Release, *supra* note 6, 86 FR at 18653 (''[T]hese changes to Rule 603(b) are appropriate to establish the decentralized consolidation model.'').

[22] 17 CFR 242.603(b). *See also* MDI Rules Release, *supra* note 6, 86 FR at 18653.

[23] 17 CFR 242.600(b)(16) (defining ''competing consolidators''). *See, e.g.,* MDI Rules Release, *supra* note 6, 86 FR at 18664–65 (discussing why market data vendors would not be required to register as competing consolidators under the decentralized consolidation model).

[24] *See, e.g.,* MDI Rules Release, *supra* note 6, 86 FR at 18633–35 (discussing the provision of ''regulatory data'' by the primary listing exchange for an NMS stock to competing consolidators and self-aggregators under the decentralized consolidation model).

[25] 17 CFR 242.614(e)(2).

[26] The MDI Rules Release amended Rule 603(b) to remove the requirement that ''all consolidated information for an individual NMS stock [be disseminated] through a single plan processor.'' *See* MDI Rules Release, *supra* note 6, 86 FR at 18652–53. *See also supra* note 21; MDI Rules Release, *supra* note 6, 86 FR at 18701 (discussing the retirement of the exclusive SIPs).

[27] 17 CFR 242.608(b)(2).

[28] 17 CFR 242.614(e).

[29] The full text of the Proposed Amendments appears as Attachments A and B to the Notice. *See* Notice, *supra* note 7, 86 FR at 67802–29.

CTA Plan Proposed Amendments

Preface

Under the Proposed Amendments, the CTA Plan would include the following new provision: ''Terms used in this plan have the same meaning as the terms are defined in Rule 600(b) under the Act.''

Section I.—Definitions

The Proposed Amendments add, as Section I.(x), a definition of ''Primary Listing Exchange,'' which means ''the national securities exchange on which an Eligible Security is listed.'' The proposed definition further states, ''[i]f an Eligible Security is listed on more than one national securities exchange, Primary Listing Exchange means the exchange on which the security has been listed the longest.''

Section IV.—Administration of the CTA Plan

The Proposed Amendments add new Section IV.(e), Plan website Disclosures, requiring CTA to publish on the CTA Plan's website the Primary Listing Exchange for each Eligible Security, and, on a monthly basis, the consolidated market data gross revenues for Eligible Securities as specified by Tape A and Tape B securities. The Participants explain that this addition is intended to comply with Rule 614(e)(4) and Rule 614(e)(5)(i) and (iii).[30]

Section V.—The Processor and Competing Consolidators

The Proposed Amendments amend the title of Section V. to include competing consolidators, such that it is now titled ''The Processor and Competing Consolidators,'' and to add new Section V.(f), Evaluation of Competing Consolidators, to require the Operating Committee to assess the performance of competing consolidators on an annual basis and to submit an annual report to the Commission containing that assessment. The Proposed Amendments require this annual report to include an analysis with respect to competing consolidators' speed, reliability, and cost of data provision. The Participants explain that these changes are intended to comply with the requirements of Rule 614(e)(3).[31]

In addition, the Proposed Amendments require the Operating Committee, in conducting the analysis, to review the monthly performance metrics to be published by competing consolidators pursuant to Rule 614(d)(5).[32] Rule 614(d)(5) requires competing consolidators to publish on their websites monthly performance metrics as defined by the effective national market system plan(s) for NMS stocks.[33] The Proposed Amendments add the following monthly performance metrics to this section:

(i) Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;

(ii) Message rate and total statistics, including peak output rates on the following bases: 1-millisecond, 10-millisecond, 100-millisecond, 500-millisecond, 1-second, and 5-second;

(iii) System availability statistics, including system up-time percentage and cumulative amount of outage time;

(iv) Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and

(v) Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:

(A) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator receives the inbound message;

(B) When the competing consolidator receives the inbound message and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator; and

(C) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator.

The Participants explain that they have proposed to amend Section V. to define the monthly performance metrics in accordance with Rule 614(d)(5).[34]

Section VI.—Consolidated Tape

The Proposed Amendments amend Section VI.(c), Reporting Format and Technical Specifications, to include a reference to competing consolidators and self-aggregators such that last sale price information relating to a completed transaction in an Eligible Security reported to competing consolidators and self-aggregators by any Participant or other reporting party shall be in the format required in Section VI.(c).

In addition, the Proposed Amendments amend Section VI.(c) to delete from the required format the time of the transaction (reported in microseconds) as identified in the Participant's matching engine publication timestamp, and to replace it with the time the last sale price information was generated by the Participant (reported in microseconds). Furthermore, the Proposed Amendments amend Section VI.(c) to add to the required format, with respect to reports to competing consolidators and self-aggregators, the time the Participant made the last sale price information available to competing consolidators and self-aggregators (reported in microseconds). The Participants explain that the proposed references to competing consolidators and self-aggregators and the proposed requirement to report in microseconds the time that a Participant made the last sale price information available to competing consolidators and self-aggregators are intended to comply with Rule 614(e)(1) and (2).[35]

With respect to FINRA, the Proposed Amendments amend a statement in Section VI.(c) that the time of the transaction shall be the time of execution that a FINRA member reports to a FINRA trade reporting facility in accordance with FINRA rules. The Proposed Amendments amend this statement to state that the time the last sale price information was generated by a Participant shall be the time that a FINRA member reports to a FINRA trade reporting facility in accordance with FINRA rules. The Proposed Amendments also add references to competing consolidators and self-aggregators such that—if FINRA's trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor, competing consolidators, and self-aggregators—the FINRA trade reporting facility shall also furnish the Processor, competing consolidators, and self-aggregators with the time of the transmission as published on the facility's proprietary feed.

The Proposed Amendments also delete Section VI.(g), ITS Transactions, which concerns last sale prices reflecting ITS transactions. The Participants explain that they are proposing to remove this provision because the ITS is obsolete.[36]

Section VIII. Collection and Reporting of Last Sale Data

The Proposed Amendments amend Section VIII.(a), Responsibility of Exchange Participants, to remove a list of exchange participants and the requirement that each collect and report to the Processor all last sale price information to be reported to it relating to transactions in Eligible Securities taking place on its floor. The Proposed Amendments amend this statement to

[30] *See id.* at 67800.

[31] *See id.*

[32] 17 CFR 242.614(d)(5).

[33] *See id.*

[34] *See* Notice, *supra* note 7, 86 FR at 67800.

[35] *See id.*

[36] *See id.*

state that each Participant agrees to collect and report to the Processor all last sale price information to be reported by it relating to transactions in Eligible Securities.

The Proposed Amendments also add to the CTA Plan a statement that ''[e]ach Participant further agrees to collect and report to Competing Consolidators and Self-Aggregators all last sale price information to be reported to it related to transactions in Eligible Securities in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in Eligible Securities to any person.'' [37] In addition, the Proposed Amendments amend Section VIII.(b), FINRA Responsibility, to add references to competing consolidators and self-aggregators such that the provision states: ''The FINRA shall develop and adopt rules governing the reporting of last sale price information to be reported by its members to both the Processor for inclusion on the consolidated tape and to Competing Consolidators and Self-Aggregators. Such rules shall . . . (ii) be designed to avoid duplicate reporting of transactions on the consolidated tape or to Competing Consolidators and Self Aggregator. . . .'' The Participants explain that these additions are designed to comply with Rule 614(e)(1).[38]

Finally, the Proposed Amendments delete Section VIII.(c), Description of Reporting Procedures, which states that each Participant and each other reporting party has prepared and submitted to CTA and the Commission a description of the procedures by which it collects and reports to the Processor last sale price information reported by it pursuant to the CTA Plan. The Participants explain that this provision is no longer relevant under the MDI Rules.[39]

Section IX.—Receipt and Use of CTA Information

In Sections IX.(a), Requirements for Receipt and Use of Information, (b), Approvals of Redisseminators and Terminations of Approvals, and (c), Subscriber Terminations, the Proposed Amendments replace several references to ''each CTA network's information,'' ''a CTA network's information,'' ''that CTA network's information,'' and ''that CTA network's last sale price information'' with the term ''consolidated market data.''

The Proposed Amendments also amend Section IX.(a) to include references to competing consolidators and self-aggregators. Proposed Section IX.(a) states that, ''[p]ursuant to fair and reasonable terms and conditions, each CTA network's administrator shall provide for: (i) the dissemination of consolidated market data on terms that are not unreasonably discriminatory to Competing Consolidators, Self-Aggregators, vendors, newspapers, Participants, Participant members and member organizations, and other persons over that network's ticker and over the high speed line; and (ii) the use of consolidated market data by Competing Consolidators, Self-Aggregators, vendors, subscribers, newspapers, Participants, Participant members and member organizations and other persons.'' Additionally, the section now states that each CTA network's Participants will determine the terms and conditions applying in respect of a particular manner of receipt or use of consolidated market data, including whether the manner of receipt or use will require recipients or users to enter into agreements with the CTA network's administrator, and that these determinations will be made in a reasonably uniform manner to subject all parties that receive or use consolidated market data in a particular manner to terms and conditions that are substantially similar.

In addition, the Proposed Amendments amend Section IX.(a) to state that the Participants expect their CTA network's administrator to require the following parties to enter into agreements with the CTA network administrator: (i) any party that receives a CTA network's information by means of a direct computer-to-computer interface with the Processor or competing consolidator; (ii) any competing consolidator or self-aggregator that receives last sale transaction information directly from a Participant for the purpose of creating consolidated market data; (iii) vendors and other parties that redisseminate consolidated market data to others; and (iv) persons that use consolidated market data for such purposes as that CTA network's administrator may from time to time identify.

The Participants explain that the proposed revisions to Section IX.(a) are intended to make clear that the current market data contracts regarding the receipt of market data will be applicable to competing consolidators and self-aggregators.[40] The Participants state that the change is consistent with Rule 614(e)(1) and is necessary because competing consolidators and self-aggregators would be receiving and using consolidated market data and should be subject to the same contracts applicable to vendors and subscribers.[41]

The Proposed Amendments amend Section XI.(b), Approvals of Redisseminators and Terminations of Approvals, to state that all vendors and other parties that redisseminate consolidated market data (''data redisseminators'') shall be required to be approved by a CTA network's administrator. Additionally, the Proposed Amendments amend Section XI.(c), Subscriber Terminations, to state that a CTA network's administrator may determine that circumstances warrant directing a data redisseminator to cease providing consolidated market data to a subscriber, and that the CTA network's Participants may direct the data redisseminator to cease providing consolidated market data to the subscriber if a majority of those Participants determine that (i) such action is necessary or appropriate in the public interest or for the protection of investors, or (ii) the subscriber has breached any agreement required by the CTA network's administrator pursuant to Section IX.

Section XI.—Operational Matters

The Proposed Amendments delete from Section XI.(a), Regulatory and Operational Halts, the definition of ''Primary Listing Market'' in Section XI.(a)(i)(H) and the definition of ''Trading Center'' in Section XI.(a)(i)(N).

The Proposed Amendments add a reference to competing consolidators and self-aggregators to Section XI.(a)(ii), Operational Halts, to state that a Participant shall notify competing consolidators and self-aggregators if it has concerns about its ability to collect and transmit quotes, orders, or last sale prices, or where the Participant has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee. In addition, the Proposed Amendments add a reference to competing consolidators and self-aggregators to Section XI.(a)(viii), Communications, to require a Primary Listing Exchange for an Eligible Security to notify competing consolidators and self-aggregators if it determines to initiate a Regulatory Halt.

[37] The Proposed Amendments also delete the following statement from Section VIII.(a): ''CTA shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant.''

[38] *See* Notice, *supra* note 7, 86 FR at 67801.

[39] *See id.*

[40] *See id.*

[41] *See id.*

The Proposed Amendments also replace references to ''Primary Listing Market'' with ''Primary Listing Exchange'' throughout Section XI.

The Participants state that their revisions to Section XI to include references to notifying competing consolidators and self-aggregators in connection with Regulatory and Operational Halts are consistent with Rule 614(e)(1) and would ensure that competing consolidators and self-aggregators are notified of information related to Regulatory and Operational Halts and that competing consolidators can disseminate this information to their customers.[42]

CQ Plan Proposed Amendments

Preface

Under the Proposed Amendments, the CQ Plan would include the following new provision: ''Terms used in this plan have the same meaning as the terms are defined in Rule 600(b) under the Act.''

Section I.—Definitions

The Proposed Amendments define ''Primary Listing Exchange'' in Section I.(v) to mean ''the national securities exchange on which an Eligible Security is listed.'' The proposed definition further states, ''[i]f an Eligible Security is listed on more than one national securities exchange, Primary Listing Exchange means the exchange on which the security has been listed the longest.''

The Proposed Amendments amend the definition of ''Quotation Information'' in Section I.(x) (formerly, Section I.(w)) to change a reference to ''consolidated BBO'' to ''NBBO,'' such that Quotation Information now means, among other things, ''(iii) each NBBO contained in the foregoing information and any identifier associated therewith. . . .''

Section IV.—Administration of this CQ Plan

The Proposed Amendments add new Section IV.(d), Plan website Disclosures, requiring the Operating Committee to publish on the CQ Plan's website the Primary Listing Exchange for each Eligible Security and, on a monthly basis, the consolidated market data gross revenues for Eligible Securities as specified by Tape A and Tape B securities. The Participants explain that this addition is intended to comply with Rule 614(e)(4) and Rule 614(e)(5)(i) and (iii).[43]

Section V.—The Processor and Competing Consolidators

The Proposed Amendments amend the title of Section V. to include competing consolidators, such that it is now titled ''The Processor and Competing Consolidators,'' and to add new Section V.(f), Evaluation of Competing Consolidators, to require the Operating Committee to assess the performance of competing consolidators on an annual basis and to submit an annual report to the Commission containing the assessment. The Proposed Amendments require this annual report to include an analysis with respect to competing consolidators' speed, reliability, and cost of data provision. The Participants explain that these changes are intended to comply with the requirements of Rule 614(e)(3).[44]

In addition, the Proposed Amendments require the Operating Committee, in conducting the analysis, to review the monthly performance metrics to be published by competing consolidators pursuant to Rule 614(d)(5).[45] Rule 614(d)(5) requires competing consolidators to publish on their websites monthly performance metrics as defined by the effective national market system plan(s) for NMS stocks.[46] The Proposed Amendments add the following monthly performance metrics to this section:

(i) Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;

(ii) Message rate and total statistics, including peak output rates on the following bases: 1-millisecond, 10-millisecond, 100-millisecond, 500-millisecond, 1-second, and 5-second;

(iii) System availability statistics, including system up-time percentage and cumulative amount of outage time;

(iv) Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and

(v) Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:

(A) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator receives the inbound message;

(B) When the competing consolidator receives the inbound message and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator; and

(C) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator.

Section VI.—Collection and Reporting of Quotation Information

The Proposed Amendments amend Section VI.(a), Responsibilities of Participants, to state, ''Each Participant agrees to collect, and furnish to the Processor in a format acceptable to the Operating Committee, all quotation information required to be made available by such Participant by Rules [sic] 602(b)(1) of Regulation NMS. Each Participant further agrees to collect and report to Competing Consolidators and Self Aggregators all quotation information required to be made available by such Participant by Rule 603(b) of Regulation NMS, including all data necessary to generated consolidated market data.''[47]

In addition, under the Proposed Amendments, Section VI.(a) states that each bid and offer with respect to an Eligible Security furnished to the Processor, competing consolidators, and self-aggregators by any Participant pursuant to the Plan would be accompanied by (i) the information required by Rules 602(b)(1) or 603(b) of Regulation NMS, as applicable, and (ii) the time of the bid or offer as identified by: (A) in the case of a national securities exchange, the reporting Participant's matching engine publication timestamp (reported in microseconds); or (B) in the case of a national securities association, the quotation publication timestamp that the association's bidding or offering member reports to the association's quotation facility in accordance with FINRA rules. Each bid and offer with respect to an Eligible Security furnished to competing consolidators and self-aggregators by any Participant must be

[42] *See id.*

[43] *See id.*

[44] *See* Notice, *supra* note 7, 86 FR at 67801.

[45] 17 CFR 242.614(d)(5).

[46] *See id.*

[47] Notice, *supra* note 7, 86 FR at 67801. The Participants state that they propose to amend Sections VIII.(a) and (b) of the CQ Plan to add the requirement that each Participant agrees to collect and report to competing consolidators and self-aggregators all quotation information in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in Eligible Securities to any person. While the Participants refer to Sections VIII.(a) and (b) of the CQ Plan here, this section reference seems to be an error, and the Participants likely intended to refer instead to Section VI.(a) and (b), as the requirement being discussed is only present in Section VI.(b) of the CQ Plan as it is proposed to be amended. Separately, the amendment to Section VI.(a) lacks the requirement that Participants report quotation information to competing consolidators and self-aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in Eligible Securities to any person. *See id.* at 67823.

accompanied by the time (reported in microseconds) the Participant made the bid and offer available to competing consolidators and self-aggregators.

With respect to national securities associations, under the Proposed Amendments, if a national securities association quotation facility provides a proprietary feed of its quotation information, then the quotation facility shall also furnish the Processor, competing consolidators, and self-aggregators with the time of the quotation as published on the quotation facility's proprietary feed, and the national securities association shall convert any quotation times reported to it in seconds or milliseconds to microseconds and shall furnish such times to the Processor, competing consolidators, and self-aggregators in microseconds. Additionally, Section VI.(a), as proposed to be amended, states, ''Each bid and offer with respect to an Eligible Security made by a broker or dealer otherwise than on the floor of an exchange and furnished to the Processor, Competing Consolidators, and Self-Aggregators by any Participant which is a national securities association shall, at the time furnished, be accompanied by an appropriate symbol designated by the Operating Committee identifying such broker or dealer as required by paragraph (b)(i) of the Rule.''

The Proposed Amendments also amend Section VI.(b), Timeliness of Reporting, to add the following requirement: ''Each Participant further agrees to furnish quotation information, and changes in any such information, to the Competing Consolidator[s] and Self-Aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.'' The Participants explain that this addition is designed to comply with the requirements of Rule 614(e)(1).

In addition, the Proposed Amendments would amend Section VI.(c), High Speed Line and Market Identifiers, to remove a reference to an ''ITS/CAES BBO'' as excepted from the requirement that each bid or offer with respect to an Eligible Security furnished to the processor by a Participant that is a national securities association shall be accompanied by the symbol identifying the broker or dealer who was reported to the Processor as having made such bid or offer otherwise than on the floor of an exchange. The Participants explain that they propose to remove this reference because references to ITS/CAES are outdated.[48]

The Proposed Amendments also amend Section VI.(e), Unusual Market Conditions, to include references to competing consolidators and self-aggregators and to remove a reference to Rule 602(b)(1)[49] and replace it with a reference to Rules 601(b)(1) and 603(b) of Regulation NMS. The Proposed Amendments also remove a reference to vendors in Section VI.(e).

Finally, the Proposed Amendments delete Section VI.(f), Description of Reporting Procedures, which requires each Participant and each other reporting party to prepare and submit to the Operating Committee and the Processor a description of the procedures by which it intends to comply with its obligations under the CQ Plan. The Participants explain that the provisions of Section VI.(f) are no longer relevant.[50]

Section VII.—Receipt and Use of Quotation Information

In Sections VII.(a), Requirements for Receipt and Use of Information, (b), Approvals of Redisseminators and Terminations of Approvals, and (c), Subscriber Terminations, the Proposed Amendments replace several references to a ''CQ network's quotation information'' with the term ''consolidated market data.''

The Proposed Amendments would also amend Section VII.(a) to include references to competing consolidators and self-aggregators such that, pursuant to fair and reasonable terms and conditions, each network's administrator shall provide for: (i) the dissemination of each CQ network's quotation information on terms that are not unreasonably discriminatory to competing consolidators and self-aggregators; and (ii) the use of that CQ network's quotation information by competing consolidators and self-aggregators.

In addition, the Proposed Amendments would amend Section VII.(a) to state that the Participants in both CQ networks expect that their network's administrator will require the following parties to enter into agreements with the network's administrator: (i) any party that receives consolidated market data by means of a direct computer-to-computer interface with the Processor or competing consolidators; (ii) any competing consolidator or self-aggregator that receives quotation information directly from a Participant for the purpose of creating consolidated market data; (iii) vendors and other parties that redisseminate consolidated market data; and (iv) persons that use consolidated market data for such purposes as the CQ network's administrator may from time to time identify.

The Participants explain that the proposed revisions intend to make clear that the current market data contracts regarding the receipt of market data will be applicable to competing consolidators and self-aggregators.[51] The Participants state that the change is consistent with Rule 614(e)(1) and is necessary, stating that competing consolidators and self-aggregators would be receiving and using consolidated market data and should be subject to the same contracts applicable to vendors and subscribers.[52]

The Proposed Amendments would also amend Section VII.(b), Approvals of Redisseminators and Terminations of Approvals, to state that all vendors of and other parties that redisseminate consolidated market data (''data redisseminators'') shall be required to be approved by a CTA network's administrator. Additionally, the Proposed Amendments amend Section XI.(c), Subscriber Terminations, to state that a network's administrator may determine that circumstances warrant directing a data redisseminator to cease providing consolidated market data to a subscriber, and that the CQ network's Participants may direct the data redisseminator to cease providing consolidated market data to the subscriber if a majority of those Participants determine that (i) such action is necessary or appropriate in the public interest or for the protection of investors, or (ii) the subscriber has breached any agreement required by the CTA network's administrator pursuant to Section VII.

IV. Discussion

A. The Applicable Standard of Review

Under Rule 608(b)(2) of Regulation NMS, the Commission shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that the plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the

[48] *See* Notice, *supra* note 7, 86 FR at 67801.

[49] *See id.* at 67824.

[50] *See id.* at 67801.

[51] *See id.*

[52] *See id.*

mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[53] The Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.[54] Furthermore, Rule 700(b)(3)(ii) of the Commission's Rules of Practice states:

> The burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans is on the plan participants that filed the NMS plan filing. Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that an NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans.[55]

For the reasons discussed below, the Commission does not find that the Participants have met their burden to demonstrate that the Proposed Amendments are consistent with the Act.[56] Specifically, the Commission does not find that the Participants have demonstrated that the Proposed Amendments are consistent with either Rule 614(e) of Regulation NMS or Rule 608 of Regulation NMS. The Proposed Amendments clearly do not comply with the requirements of the MDI Rules.[57] Accordingly, the Commission cannot make a finding that the Proposed Amendments are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[58]

B. The Requirements of the MDI Rules Regarding the Proposed Amendments

As adopted by the Commission, the MDI Rules implement a decentralized consolidation model in which competing consolidators would replace the exclusive plan processors of the Equity Data Plans as the entities responsible for disseminating consolidated market data.[59] The MDI Rules Release provides for an ''initial parallel operation period'' of 180 days during which the existing exclusive SIPs for the Equity Data Plans would operate in parallel with the competing consolidators,[60] and further provides for the transition from the initial parallel operation period to the retirement of the exclusive SIPs for equity market data:

> Within 90 days of the end of the initial parallel operation period, the Operating Committee will make a recommendation to the Commission as to whether the exclusive SIPs should be decommissioned. The Commission will consider an effective national market system plan amendment to effectuate a cessation of the operations of the exclusive SIPs and, if consistent with the requirements of Rule 608 and the Exchange Act, approve such an amendment.[61]

Pursuant to Rule 614(e)(1) of Regulation NMS, and as discussed in the MDI Rules Release, the Participants to the Plans were required to file an amendment to conform the Plans to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the national securities exchange and national securities association participants to competing consolidators and self-aggregators.[62]

C. Whether the Proposed Amendments Are Consistent With Rule 614(e)(1) of Regulation NMS

1. Consistency With the Decentralized Consolidation Model

Two commenters recommend disapproval of the Proposed Amendments because the amendments do not properly conform the Plans to the MDI Rules in that the amendments fail to accurately reflect the decentralized consolidation model.[63] One commenter states, ''[t]he MDI rule represents a fundamental shift to a decentralized consolidation model. The Plan amendments need to reflect that throughout the body and exhibits of the Plans.'' [64] The commenter also states that the Proposed Amendments did not include any revisions to the exhibits, stating that Exhibit A to the current version of the CTA Plan (''Restated Articles of Association of Consolidated Tape Association'') ''does not reflect the shifting purpose of the Plan to provide underlying content for the creation of consolidated market data,'' [65] and argues that the Proposed Amendments must ''[a]cknowledge that the Plan is no longer responsible for the creation, distribution and pricing of consolidated market data.'' [66]

This commenter further argues that ''[t]he language of the Plan Amendments that states that competing consolidators and self-aggregators will be receiving and using consolidated market data is inconsistent with their role in actually generating consolidated market data based on the receipt of NMS information,'' [67] and reiterates that only competing consolidators would externally distribute and charge for consolidated market data and that the Plans would only be selling underlying content.[68] This commenter also disagrees with what it describes as the Proposed Amendments' treatment of competing consolidators as vendors.[69] The commenter states that ''[s]ubjecting competing consolidators to the same fees and contractual requirements as data vendors and subscribers that receive consolidated market data from the exclusive SIP fails to recognize that competing consolidators are SIPs and not similarly situated to today's data vendors.'' [70] The commenter further states that competing consolidators will take on added risk and expense, ''including the costs associated with generating consolidated market data, disclosing operational and performance metrics, registering with the SEC, and ongoing compliance with Rule 614.'' [71]

Another commenter also argues that the Proposed Amendments' treatment of competing consolidators as market data vendors contravenes the MDI Rules.[72] This commenter argues that the

[53] 17 CFR 242.608(b)(2).

[54] *Id.*

[55] 17 CFR 201.700(b)(3)(ii).

[56] 17 CFR 201.700(b)(3).

[57] As discussed below, the Proposed Amendments do not comply with MDI Rules 603(b), 614(e)(1), and 614(e)(2). 17 CFR 242.603(b), 17 CFR 242.614(e)(1), 17 CFR 242.614(e)(2).

[58] 17 CFR 242.608(b)(2).

[59] *See* MDI Rules Release, *supra* note 6, 86 FR at 18637.

[60] *See id.* at 18700.

[61] *Id.* at 18701.

[62] *See id.* at 18700–01.

[63] *See* Letter from Patrick Flannery, Chief Executive Officer, MayStreet, Inc., to Vanessa Countryman, Secretary, Commission (Dec. 17, 2021) (''MayStreet Letter I''); Letter from Manisha Kimmel, Chief Policy Officer, MayStreet, Inc., to Vanessa Countryman, Secretary, Commission (Mar. 23, 2022) (''MayStreet Letter II''); Letter from Ellen Greene, Managing Director, Equity and Options Market Structure, and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission (Dec. 17, 2021) (''SIFMA Letter I'').

[64] MayStreet Letter II, *supra* note 63, at 2.

[65] *Id.* at 8.

[66] *Id.* at 4–5.

[67] MayStreet Letter I, *supra* note 63, at 5.

[68] *See* MayStreet Letter II, *supra* note 63, at 4–5.

[69] *See* MayStreet Letter I, *supra* note 63, at 2, 4–5 (explaining that competing consolidators are generating and distributing consolidated market data for the first time, unlike vendors who redistribute consolidated market data).

[70] MayStreet Letter I, *supra* note 63, at 3–4; *see id.* at 1 (stating that competing consolidators should be treated as the replacements to the exclusive SIPs to meet the requirements of the MDI Rules).

[71] *Id.* at 5.

[72] *See* SIFMA Letter I, *supra* note 63, at 8. *See also id.* at 4–5; Letter from Ellen Greene, Managing Director, Equity and Options Market Structure, and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission, at 2–3 (Apr. 27, 2022) (''SIFMA Letter II'').

Commission's MDI Rules replace the exclusive SIPs with competing consolidators and that competing consolidators should therefore be ''treated in the same manner as the exclusive SIPs are today.'' [73] This commenter states that the Participants are, through the Proposed Amendments, ''acting in an unreasonably discriminatory manner, effectively disregarding these Exchange Act mandates in addition to the Commission's directive in the Infrastructure Rule.'' [74]

One commenter argues that the sections of the Plans that discuss vendors' and subscribers' contractual relationships with the Plans should be ''removed or significantly altered to reflect that the Plans no longer have agreements with vendors and end users and instead have agreements with the competing consolidators and self-aggregators related specifically to the cost of content underlying core market data.'' [75] This commenter states that ''the relationship between competing consolidators and their customers should not include a contractual relationship with the plan'' because vendors would be receiving consolidated market data from competing consolidators rather than from the Plans.[76] The commenter also states that contracts applicable to vendors would be inappropriate for competing consolidators because, unlike vendors, competing consolidators would be receiving data underlying consolidated market data from the exchanges, not consolidated market data from the exclusive SIPs.[77] This commenter also objects to the continued references to subscribers and vendors in the Plans as recipients of data from the Processor, arguing that under the decentralized consolidation model, ''only competing consolidators would sell consolidated market data to vendors and subscribers.'' [78]

One commenter objects to the retention of the concept of a single processor in the Proposed Amendments.[79] Another commenter also states that ''it is worth noting that the Plans do not reflect the decentralized consolidation model nor do they acknowledge the parallel period.'' [80] This commenter requests clarification of how the CTA and CQ Plans will operate during the parallel operation period, such as the inclusion in the Plans of objective criteria for ending the parallel period and the addition of a section devoted to competing consolidators and self-aggregators to help distinguish between their obligations and the obligations of the exclusive SIPs during the parallel period.[81] The commenter recommends that the Proposed Amendments clarify that all content underlying consolidated market data will be provided to competing consolidators and self-aggregators and provide validation procedures to be followed by competing consolidators. The commenter also suggests specific modifications to CTA Plan Sections V. and VI. to make clear that the functions of the Processor apply only during the parallel operation period and to embed in the body of the Plans the contractual terms regarding the provision of capacity forecasts to competing consolidators, data correction requirements, and indemnification (of competing consolidators from Participants) from CQ Plan Exhibit A and CTA Plan Exhibit B.[82]

The Participants submitted a comment letter in which they argue that maintaining the exclusive SIPs through the parallel operation period is consistent with the MDI Rules Release, stating:

> [P]ursuant to the phased transition period set forth in the MDI Rules Release, the Plans must operate a parallel operation period during which the decentralized consolidation model introduced by the MDI Rules will run in parallel to the existing exclusive SIP model. . . . After completion of the parallel operation period, the Plans are required to submit an amendment to effectuate a cessation of the operations of the exclusive SIPs, which would include removing references of the exclusive SIPs from the text of the Plans.[83]

The Participants also maintain that the exclusive SIPs will continue to provide market data under the current Equity Data Plans during the parallel operation period and that the inclusion of the exclusive SIPs in the Equity Data Plans (as provided for in the Proposed Amendments) until the submission of a further amendment after the parallel operation period is consistent with the MDI Rules Release.[84]

The Commission agrees with the commenters who argue that the Proposed Amendments do not properly conform the Plans to the decentralized consolidation model. *First,* under the MDI Rules, the SROs are required to make available to competing consolidators and self-aggregators the data necessary to generate consolidated market data,[85] and competing consolidators and self-aggregators will then generate consolidated market data, rather than receive consolidated market data from the Plans.[86] The Participants, however, propose to amend the Plans to provide for the dissemination of consolidated data to competing consolidators and self-aggregators.[87] This is not consistent with the decentralized consolidation model.

Specifically, Rule 614(d) provides that competing consolidators shall collect any information with respect to quotations for and transactions in NMS stocks as provided in Rule 603(b) that is necessary to create a consolidated market data product from each national securities exchange and national securities association,[88] calculate and

[73] SIFMA Letter I, *supra* note 63, at 8.

[74] *Id.* at 8.

[75] MayStreet Letter I, *supra* note 63, at 3.

[76] *Id.* at 3. *See also* MayStreet Letter II, *supra* note 63 at 9 (arguing that, since the Plans would only be selling underlying content to competing consolidators and self-aggregators, vendor and subscriber agreements should not be required).

[77] *See* MayStreet Letter I, *supra* note 63, at 5.

[78] *Id.* at 3.

[79] *See* SIFMA Letter I, *supra* note 63, at 8.

[80] MayStreet Letter II, *supra* note 63, at 8.

[81] *See id.* at 7–8.

[82] *See id.*

[83] Letter from James P. Dombach, Counsel for CTA, CQ, and UTP Plans, McGonigle, P.C., to Vanessa Countryman, Secretary, Commission, at 2 (Mar. 25, 2022) (''McGonigle Letter'').

[84] *See id.* at 1–2.

[85] *See* Rule 603(b), 17 CFR 242.603(b). *See also* Rule 600(b)(19), which defines ''consolidated market data'' as the following data, consolidated across all national securities exchanges and national securities associations: (i) Core data; (ii) Regulatory data; (iii) Administrative data; (iv) Self-regulatory organization-specific program data; and (v) Additional regulatory, administrative, or self-regulatory organization-specific program data elements defined as such pursuant to the effective national market system plan or plans required under § 242.603(b). *See* 17 CFR 242.600(b)(19).

[86] *See* Rule 614(d)(1)–(3). 17 CFR 242.614(d)(1)–(3).

[87] The Participants propose to amend the CTA Plan to require the CTA network administrator to provide for the dissemination of consolidated market data to competing consolidators and self-aggregators and to provide for the use of that consolidated market data by competing consolidators and self-aggregators. *See* Notice, *supra* note 7, 86 FR at 67811 (CTA Plan Proposed Amendment at Section IX.(a)). The Participants also propose to amend the CQ Plan to require each network's administrator to provide for the dissemination of each CQ network's consolidated quotation information on terms that are not unreasonably discriminatory to competing consolidators and self-aggregators, and to provide for the use of that CQ network's consolidated quotation information by competing consolidators and self-aggregators. *See id.* at 67824 (CQ Plan Proposed Amendment at Section VII.(a)). *See also* Consolidated Quotation System, Multicast Output Binary Specification, 8 (Jan. 26. 2021), *available at https://www.ctaplan.com/publicdocs/ctaplan/CQS_Pillar_Output_Specification.pdf.* The Participants also state that, for both the CTA Plan and the CQ Plan, competing consolidators and self-aggregators will be receiving and using consolidated market data. *See* Notice, *supra* note 7, 86 FR at 67801 (describing the Proposed Amendments).

[88] *See* Rule 614(d)(1), 17 CFR 242.614(d)(1).

generate a consolidated market data product,[89] and make the consolidated market data product available to subscribers.[90] Self-aggregators will receive information with respect to quotations for and transactions in NMS stocks, including all data necessary to generate consolidated market data, and generate consolidated market data solely for their internal use.[91] Additionally, pursuant to Rule 603(b), the Participants shall make available to all competing consolidators and self-aggregators ''all data necessary to generate consolidated market data.'' [92] Accordingly, the Plans' modified role under the decentralized consolidation model will be to develop and file with the Commission the fees associated with the underlying data, to collect and allocate revenues for that data, to develop monthly performance metrics for competing consolidators, and to provide an annual assessment of competing consolidator performance.[93] Therefore, the Proposed Amendments impermissibly provide for the dissemination by the Plans of consolidated market data to competing consolidators and self-aggregators, which is inconsistent with Rule 603(b), which requires the Participants to make available the data necessary to generate consolidated market data to competing consolidators and self-aggregators so that, pursuant to Rule 614(d), those entities can generate consolidated market data themselves.

Second, while Rule 603(b) requires national securities exchanges and associations on which an NMS stock is traded to make available to all competing consolidators and self-aggregators their information with respect to quotations for and transactions in NMS stocks, including all data necessary to generate consolidated market data,[94] the Proposed Amendments do not add this requirement to the CTA Plan. Instead, the Proposed Amendments add to the CTA Plan a requirement that each Participant agrees to collect and report to competing consolidators and self-aggregators all ''last sale price information''—not *all data necessary to generate consolidated market data.*[95] Last sale price information is but one component of ''core data'' adopted by the MDI Rules, and core data is itself only one component of consolidated market data.[96] Rule 603(b) requires the Participants to make available all data necessary to generate consolidated market data to competing consolidators and self-aggregators,[97] not just last sale price information.

Third, under the Proposed Amendments, the Plans would treat competing consolidators in the same manner as vendors and subscribers with respect to market data contracts.[98] Under Rule 600(b)(16), a competing consolidator is, by definition, either a SIP required to register under Rule 614 or an SRO.[99] The Participants, however, would apply current market data contracts for vendors and subscribers to competing consolidators and self-aggregators,[100] arguing that this ''is necessary since the Competing Consolidators and Self-Aggregators will [sic] receiving and using consolidated market data, and any such party should be subject to the same contracts applicable to vendors and subscribers.'' [101]

The Commission agrees with the commenters who argue that applying contract provisions for vendors and subscribers to competing consolidators is inconsistent with the MDI Rules,[102] because unlike vendors and subscribers, competing consolidators will not receive consolidated market data from the Plans. Instead, as replacements for the exclusive SIPs, competing consolidators will generate consolidated market data themselves and disseminate it to subscribers. In the MDI Rules Release, the Commission clearly distinguished competing consolidators from vendors. For example, the Commission explained that only entities that receive information with respect to quotations for and transactions in NMS stocks directly from an SRO pursuant to an effective national market systems plan and that generate consolidated market data products for dissemination must register as competing consolidators.[103] By comparison, the Commission stated, ''[a] market data vendor that purchases proprietary data feeds from an SRO or SROs, or that purchases data from a competing consolidator, and aggregates and disseminates such data to its customers, will not be required to register as a competing consolidator,'' [104] but ''vendors that do not register as competing consolidators would not be permitted to purchase the NMS information necessary to generate consolidated market data from the SROs at prices established by an effective national market system plan.'' [105]

Fourth, the Proposed Amendments are inconsistent in certain other ways with the decentralized consolidation model provided for in the MDI Rules. Under the decentralized consolidation model, the primary listing exchanges will be required to collect, calculate, and make available regulatory data, which includes information relating to regulatory halts, to competing consolidators and self-aggregators in accordance with the definition of ''regulatory data'' in Rule 600(b)(78).[106]

[89] *See* Rule 614(d)(2), 17 CFR 242.614(d)(2).

[90] *See* Rule 614(d)(3), 17 CFR 242.614(d)(3). The MDI Rules also define ''competing consolidator'' as a securities information processor required to be registered pursuant to § 242.614 (Rule 614) or a national securities exchange or national securities association that receives information with respect to quotations for and transactions in NMS stocks and generates a consolidated market data product for dissemination to any person. *See* 17 CFR 242.600(b)(16).

[91] The definition of ''self-aggregator'' was added by the MDI Rules. *See* 17 CFR 242.600(b)(83). A self-aggregator may make consolidated market data available to its affiliates that are registered with the Commission for their internal use. *Id.*

[92] 17 CFR 242.603(b).

[93] *See* MDI Rules Release, *supra* note 6, 86 FR at 18604, 18681.

[94] 17 CFR 242.603(b).

[95] *See* Notice, *supra* note 7, 86 FR at 67810 (CTA Plan Proposed Amendment at Section VIII.(a)). As discussed above, Rule 600(b)(19) defines ''consolidated market data'' as the following data, consolidated across all national securities exchanges and national securities associations: (i) Core data; (ii) Regulatory data; (iii) Administrative data; (iv) Self-regulatory organization-specific program data; and (v) Additional regulatory, administrative, or self-regulatory organization-specific program data elements defined as such pursuant to the effective national market system plan or plans required under § 242.603(b). *See* 17 CFR 242.600(b)(19). Rule 600(b)(21) defines ''core data'' as (i) The following information with respect to quotations for, and transactions in, NMS stocks: (A) Quotation sizes; (B) Aggregate quotation sizes; (C) Best bid and best offer; (D) National best bid and national best offer; (E) Protected bid and protected offer; (F) Transaction reports; (G) Last sale data; (H) Odd-lot information; (I) Depth of book data; and (J) Auction information.'' *See* 17 CFR 242.600(b)(21).

[96] *See id.*

[97] 17 CFR 242.603(b).

[98] *See* SIFMA Letter I, *supra* note 63, at 4–5, 8; SIFMA Letter II, *supra* note 72, at 2–3; MayStreet Letter I, *supra* note 63, at 2, 4–5.

[99] 17 CFR 242.600(b)(16).

[100] *See* Notice, *supra* note 7, 86 FR at 67811–12 (CTA Plan Proposed Amendment at Section IX.; *id.* at 67824–25 (CQ Plan Proposed Amendment at Section VII.).

[101] Notice, *supra* note 7, 86 FR at 67801.

[102] *See* SIFMA Letter I, *supra* note 63, at 4–5, 8; MayStreet Letter I, *supra* note 63, at 2, 4–5. *See also* SIFMA Letter II, *supra* note 72, at 2–3 (objecting to the Proposed Fee Amendments because they propose to charge redistribution fees to competing consolidators like market data vendors).

[103] *See* MDI Rules Release, *supra* note 6, 86 FR at 18665.

[104] *Id.*

[105] *Id.*

[106] 17 CFR 242.600(b)(78) defines ''Regulatory Data'' as, among other things: (A) Information regarding Short Sale Circuit Breakers pursuant to § 242.201; (B) Information regarding Price Bands required pursuant to the Plan to Address Extraordinary Market Volatility . . . (C) Information relating to regulatory halts or trading pauses (news dissemination/pending, LULD, Market-Wide Circuit Breakers) and reopenings or resumptions; (D) The official opening and closing prices of the primary listing exchange; and (E) An indicator of the applicable round lot size. *See* 17 CFR 242.600(b)(78)(i). Regulatory data is one element of

The Proposed Amendments, however, do not reflect this requirement with respect to regulatory data. For example, the Proposed Amendments fail to amend the CTA and CQ Plans to reflect that the Processors will no longer have the responsibility to disseminate regulatory halt notices once the decentralized consolidation model has been implemented.

The Proposed Amendments also do not include requirements for the Participants to timestamp every element of data necessary to generate consolidated market data. Rule 614(e)(2) requires the application of timestamps by the Participants on all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data, including the time that such information was generated by the Participant and the time the Participant made such information available to competing consolidators and self-aggregators.[107] While the Proposed Amendment to the CTA Plan requires that a Participant that reports last sale price information to competing consolidators and self-aggregators timestamp in microseconds the time the Participant generated the last sale price information and made the last sale price information available to those entities,[108] this proposed timestamp provision does not satisfy the requirements of Rule 614(e)(2), because it applies only to last sale price information, not to ''all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data'' as required under the rule. And while the Proposed Amendment to the CQ Plan amends the section governing the collection and reporting of Quotation Information to require any Participant that furnishes bids and offers to competing consolidators and self-aggregators to timestamp the time the Participant made such bid and offer available to competing consolidators and self-aggregators,[109] this proposed timestamp provision does not apply to ''all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data.'' [110] Additionally, the Proposed Amendment to the CQ Plan states that each bid and offer furnished to competing consolidators and self-aggregators shall be accompanied by the information required by Rule 602(b)(1) or Rule 603(b),[111] but it does not specifically require that each Participant timestamp the data necessary to generate consolidated market data upon generation and upon the time it is made available to competing consolidators and self-aggregators, as required by Rule 614(e)(2).

And *finally,* the Commission disagrees with the Participants' statement that the continued references to the role of the Processor in the Plans, as amended by the Proposed Amendments, comply with the MDI Rules Release's implementation schedule for parallel operation of the exclusive SIPs and the competing consolidators.[112] Rule 614(e)(1) requires the Participants to amend the Plans to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the SROs to competing consolidators and self-aggregators, *i.e.,* to conform the Plans to reflect the decentralized consolidation model.[113] However, the Proposed Amendments are not consistent with the decentralized consolidation model and do not conform to the fact that a single processor will no longer be in operation once the decentralized consolidation model has been fully implemented.

And while the MDI Rules Release contemplates the filing of a second amendment by the Plans ''to effectuate a cessation of the operations of the exclusive SIPs,'' [114] the current Proposed Amendments were required to conform the Plans to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the SROs to competing consolidators and self-aggregators, which, as discussed above, they have failed to do. Moreover, the failure of the Participants to explain in the Proposed Amendments how the Plans will function under the fully implemented decentralized consolidation model upon cessation of the exclusive SIPs not only denies market participants the opportunity to comment on those proposed provisions now, but it increases the uncertainty that firms face in determining whether to become competing consolidators or self-aggregators during the initial parallel operation period, thus hampering the implementation of the decentralized consolidation model required by the MDI Rules.[115]

Because the Proposed Amendments clearly do not comply with the plain terms of the MDI Rules [116] and are thus inconsistent with the requirements of Rule 614(e)(1), the Commission also does not find that the Participants have met their burden to demonstrate that the Proposed Amendments are consistent with Rule 608 as necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[117]

2. Technical Comments

One commenter criticizes the failure of the Proposed Amendments to incorporate the definitions of the MDI Rules.[118] This commenter states, ''[t]he definitions in each of the Plans should be updated to reflect the decentralized consolidation model. It is insufficient to simply refer to Rule 600(b), in large part because there seems to be confusion within the Plans as to the role of competing consolidators, self-aggregators, the exclusive SIPs and vendors.'' [119] Specifically, this commenter suggests that the Proposed Amendments add definitions of the following terms: competing consolidator, self-aggregator, consolidated market data, content

''consolidated market data,'' as defined in Rule 600(b)(19). *See supra* note 85.

[107] 17 CFR 242.614(e)(2).

[108] *See* Notice, *supra* note 7, 86 FR at 67808 (CTA Plan Proposed Amendment at Section VI.(c)).

[109] *See id.* at 67823 (CQ Plan Proposed Amendment at Section VI.(a)).

[110] In the MDI Rules Release, the Commission stated, ''[s]pecifically, the timestamps applied by the SROs must be to the individual components of data content underlying consolidated market data, *i.e.,* all of the individual components of data content underlying core data, regulatory data, administrative data, self-regulatory organization-specific program data, and additional elements defined as 'consolidated market data.' '' MDI Rules Release, *supra* note 6, 86 FR at 18688.

[111] *See* Notice, *supra* note 7, 86 FR at 67823 (CQ Plan Proposed Amendment at Section VI.(a)).

[112] *See* McGonigle Letter, *supra* note 83, at 1–2. *See also* MDI Rules Release, *supra* note 6, 86 FR at 18700–01 (discussing the parallel operation implementation schedule).

[113] 17 CFR 242.614(e)(1).

[114] MDI Rules Release, *supra* note 6, 86 FR at 18701.

[115] *See id.* at 18699–700 (discussing the ''first wave'' registration period for competing consolidators, to begin on the date the Commission approves the amendments to the effective national market system plan(s) required under Rule 614(e) including the fees for the SRO data content necessary to generate consolidated market data).

[116] Specifically, Rules 603(b), 614(e)(1) and (e)(2). 17 CFR 242.603(b), 17 CFR 242.614(e)(1), 17 CFR 242.614(e)(2).

[117] *See* 17 CFR 242.608(b)(2).

[118] *See* MayStreet Letter II, *supra* note 63, at 5. This commenter also recommends that the Commission issue guidance to the Participants to aid in revising the Proposed Amendments. *See id.* at 4. The discussion and findings in this Order, in addition to the MDI Rules Release and the MDI Rules themselves, provide sufficient guidance to the Participants in amending the Plans.

[119] *Id.* at 5.

underlying consolidated market data, initial parallel period, and parallel period, as well as a definition of the content that would be disseminated by the exclusive SIP to the Plans.[120] This commenter also suggests updating the existing definitions of Processor, System, and Consolidated Quotation System, and clarifying the existing definitions of Subscriber, Vendor, and the CQ Network's Quotation Information to reflect the decentralized consolidation model.[121]

This commenter also describes several other technical criticisms of the Proposed Amendments. The commenter states that the Proposed Amendments should have removed the addition of a new SRO participant from the Plans' ministerial amendment list,[122] arguing that competing consolidators and self-aggregators would need more time to update their systems to handle the new Participant's data.[123] The commenter also states that the Proposed Amendments need to support the timestamps required by the MDI Rules to the microsecond,[124] and that validation procedures to be used by competing consolidators need to be added to the Plans to describe the Participants' and the competing consolidator's obligations.[125] The commenter further suggests that the Plans' capacity planning process needs to apply to competing consolidators and self-aggregators so that these entities can meet SRO-expected capacity requirements.[126] Finally, the commenter states that the Plans' conflict of interest and confidentiality provisions need to apply to competing consolidators since they will be replacing the exclusive SIPs.[127]

The Commission agrees with the commenter that the failure to include the definitions established by the MDI Rules contributes to ambiguity within the Plans. In lieu of incorporating the MDI Rules' definitions, the Proposed Amendments add a statement to each Plan that ''[t]erms used in this plan have the same meaning as the terms defined in Rule 600(b) under the Act.'' [128] This creates ambiguity because the Proposed Amendments use the terms adopted by the MDI Rules but do not include definitions of those terms, so their applicability and the obligations they create are unclear or are not reflected in the Proposed Amendments. For example, the Proposed Amendment to the CQ Plan adds a requirement for the collection and reporting of Quotation Information, stating that each Participant agrees to collect and transmit to competing consolidators and self-aggregators ''all data necessary to generated [sic] consolidated market data.'' [129] However, the Proposed Amendments do not define ''consolidated market data'' or even the data necessary to generate it. The Plans thus fail to include an express requirement for the Participants to disseminate to competing consolidators and self-aggregators all of the elements of consolidated market data (*e.g.,* core data,[130] regulatory data, and administrative data) in accordance with the definition of ''consolidated market data'' in Rule 600(b)(19) [131] and Rule 603(b).[132] The absence of that definition in the Plans, especially in light of the instances described above in which the Proposed Amendments have failed to reflect the full scope of data required to be made available to competing consolidators and self-aggregators,[133] would lead to ambiguity about the Participants' obligations with respect to consolidated market data.

Relatedly, Rule 614(e)(2) requires the Participants to amend the Plans to apply timestamps to all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data. However, because there is no definition of ''consolidated market data'' in the Plans, there is thus no requirement in the language of the Plans for the Participants to timestamp the data components that constitute consolidated market data,[134] such as the elements of core data [135] (another definition established by the MDI Rules that the Proposed Amendments failed to include in the Plans), which include auction information, odd-lot information, and depth of book data. This is another instance in which the absence of definitions in the Plans would lead to ambiguity about the Participants' obligations with respect to consolidated market data.

In addition, as discussed above, under the MDI Rules, the primary listing exchanges are required to collect, calculate, and make available regulatory data to competing consolidators and self-aggregators in accordance with the definition of ''regulatory data'' in Rule 600(b)(78)(i).[136] The Proposed Amendments, however, do not add the definition of ''regulatory data'' to the Plans. Therefore, there is no unambiguous requirement in the Plans that the primary listing exchanges perform these functions.

Further, the CTA Plan Proposed Amendment would require that the CTA network enter into agreements with vendors and other parties that redisseminate consolidated market data to others,[137] without including the definition of ''consolidated market data.'' Also, as stated by a commenter,[138] the MDI Rules define a competing consolidator as a securities information processor, but the Proposed Amendments fail to add the definition of ''competing consolidator'' the Plans. The Proposed Amendments also fail to treat competing consolidators as securities information processors, instead treating them, incorrectly, as vendors and subscribers.[139] The failure to incorporate into the Plans the full text of the definitions established by the MDI Rules thus increases the likelihood of ambiguity.

V. Conclusion

For the reasons set forth above, the Commission finds, pursuant to Section 11A of the Act, and Rule 608(b)(2) thereunder, that the Proposed Amendments are inconsistent with the requirements of the Act and the rules and regulations thereunder applicable to an NMS plan amendment.

It is therefore ordered, pursuant to Section 11A of the Act, and Rule

[120] *See id.* at 5–6.

[121] *See id.* at 6.

[122] A ''ministerial amendment'' permits an amendment to the Plans that is submitted by the Chairman of the CTA Plan and the Chairman of the CQ Operating Committee with less than 48 hours' advance notice to the Participants. *See* Notice, *supra* note 7, 86 FR at 67805 (CTA Plan Proposed Amendment at Section IV.(b)); *id.* at 67820 (CQ Plan Proposed Amendment at Section IV.(c)).

[123] *See* MayStreet Letter II, *supra* note 63, at 6–7.

[124] *See id.* at 5.

[125] *See* MayStreet Letter I, *supra* note 63, at 4; MayStreet Letter II, *supra* note 63, at 8.

[126] *See* MayStreet Letter II, *supra* note 63, at 10.

[127] *See id.* at 7.

[128] Notice, *supra* note 7, 86 FR at 67802 (CTA Plan Proposed Amendment at Preface); *id.* at 67818 (CQ Plan Proposed Amendment at Preface).

[129] Notice, *supra* note 7, 86 FR at 67823 (CQ Plan Proposed Amendment at Section VI.(a)).

[130] *See supra* note 95 (defining ''core data'').

[131] *See id.* (defining ''consolidated market data'').

[132] 17 CFR 242.603(b). As noted above, the CTA Plan Proposed Amendment does not add a requirement for the Participants to collect and report to competing consolidators and self-aggregators all data necessary to generate consolidated market data. *See supra* notes 94–97 and accompanying text.

[133] *See supra* notes 94–97 and accompanying text.

[134] *See supra* note 95 (defining ''consolidated market data'').

[135] *See id.* (defining ''core data'').

[136] *See supra* note 106 (defining ''regulatory data''). Regulatory data is one element of ''consolidated market data,'' as defined in Rule 600(b)(19). *See supra* note 95.

[137] *See* Notice, *supra* note 7, 86 FR at 67811 (CTA Plan Proposed Amendment at Section IX.(a)).

[138] *See supra* note 119.

[139] *See supra* notes 98–105 and accompanying text. *See also supra* note 23.

608(b)(2) thereunder, that the Proposed Amendments (File No. SR–CTA/CQ–2021–02) be, and hereby are, disapproved.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95854; File No. SR–MRX–2022–10]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Rules Relating to Single-Leg and Complex Orders in Connection With a Technology Migration

September 21, 2022.

I. Introduction

On July 25, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to single-leg and Complex Orders in connection with a technology migration. The proposed rule change was published for comment in the **Federal Register** on July 29, 2022.[3] The Commission received no comments regarding the proposal. On September 8, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission extended the time for Commission action on the proposal until October 27, 2022.[5] On September 9, 2022, MRX filed Amendment No. 1 to the proposal, which replaces and supersedes the original filing in its entirety.[6] The Commission is publishing this notice to solicit comment on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

1. Purpose

In connection with a technology migration to an enhanced Nasdaq, Inc. (''Nasdaq'') functionality which will result in higher performance, scalability, and more robust architecture, the Exchange intends to adopt certain trading functionality currently utilized at Nasdaq affiliate exchanges. Also, the Exchange intends to remove certain functionality. Specifically, the following sections would be amended: Options 3, Section 7, Types of Orders and Order and Quote Protocols, Options 3, Section 10, Priority of Quotes and Orders; Options 3, Section 11, Auction Mechanisms; Options 3, Section 12, Crossing Orders, Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions; Options 3, Section 14, Complex Orders; and Options 3, Section 16, Complex Risk Protections. Each change will be described below.

Legging Order

The Exchange proposes to amend Options 3, Section 7(k)(1) to add a provision which states that a Legging Order [7] will not be generated during a Posting Period, as described in detail below, in progress on the same side in the series pursuant to Options 3, Section 15 regarding Acceptable Trade Range (''ATR''). A Legging Order would not be generated because it would no longer be at the Exchange's displayed best bid or offer, therefore, generating a Legging Order during a Posting Period in progress, on the same side in the series, would lead to its immediate removal, making it superfluous to have been generated.

ATR is a risk protection, that sets dynamic boundaries within which quotes and orders may trade.[8] It is designed to guard the System [9] from experiencing dramatic price swings by preventing the immediate execution of quotes and orders beyond the thresholds set by this risk protection. The Exchange recently amended ATR to adopt an iterative process wherein an order/quote that reaches its ATR boundary is paused for a brief period of time to allow more liquidity to be collected, before the order/quote is automatically re-priced and a new ATR is calculated.[10]

Specifically, SR–MRX–2022–16 amended current Options 3, Section 15(a)(2)(A)(iii) to adopt an iterative process wherein an order or quote reaches the outer limit of the ATR (''Threshold Price'') without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second (''Posting Period''), to allow the market to refresh and determine whether or not more liquidity will become available (on the Exchange or any other exchange if the order is designated as routable) within the posted price of the order or quote before moving on to a new Threshold Price. With this change, upon posting, either the current Threshold Price of the order/quote or an updated NBB for buy orders/quotes or the NBO for sell orders/quotes (whichever is higher for a buy order/quote or lower for a sell order/quote) would become the reference price for calculating a new ATR. If the order/quote remains unexecuted after the Posting Period, a new ATR will be calculated and the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95363 (July 25, 2022), 87 FR 45814 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 95704 (September 8, 2022), 87 FR 56457 (September 14, 2022).

[6] Amendment No. 1 modifies the original proposal to (1) amend MRX Options 3, Sections 7, 11, 12, and 13 to add a paragraph at the beginning of each of the rules indicating that certain orders that require stock-tied functionality will be implemented at a later date as part of the technology migration; (2) add references to the ''internal BBO'' to the Qualified Contingent Cross and Complex Qualified Contingent Cross provisions in MRX Options 3, Sections 12(c) and (d), and to the proposed Complex Preferenced Order provisions in MRX Options 3, Section 14(b)(19), to conform with the concept of re-pricing at an ''internal BBO,'' as provided in MRX Options 3, Section 5(c) and (d); (3) amend MRX Options 3, Section 13(d)(4) to replace an incorrect reference to the ''Crossing Transaction'' with a reference to the ''exposure period;'' and (4) replace references to File No. SR–MRX–2022–5P with references to File No. SR–MRX–2022–16, to reflect the immediate effectiveness of File No. SR–MRX–2022–16. *See* Securities Exchange Act Release No. 95807 (September 16, 2022) (File No. SR–MRX–2022–16) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) (''SR–MRX–2022–16''). Amendment No. 1 is available at *https://www.sec.gov/comments/sr-mrx-2022-10/srmrx202210-20138852-308557.pdf.*

[7] A Legging Order is a limit order on the regular limit order book that represents one side of a Complex Options Order that is to buy or sell an equal quantity of two options series resting on the Exchange's Complex Order Book. *See* Options 3, Section 7(k).

[8] *See* Options 3, Section 15(a)(2)(A).

[9] The term ''System'' means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. See MRX Options 1, Section 1(a)(49).

[10] *See* SR–MRX–2022–16. SR–MRX–2022–16 proposed an iterative process for ATR wherein the Exchange will attempt to execute interest that exceeds the outer limit of the ATR for a brief period of time while that interest is automatically re-priced as described herein. The Exchange also updated the reference price definition to provide that upon receipt of a new order or quote, the reference price will now be the better of the NBB or internal best bid for sell orders/quotes and the better of the NBO or internal best offer for buy orders/quotes or the last price at which the order/quote is posted, whichever is higher for a buy order/quote or lower for a sell order/quote. The additions of ''internal BBO'' were consistent with the re-pricing of orders. SR–MRX–2022–16 is effective, but not yet operative. SR–MRX–2022–16 would be implemented as part of the same technology migration as the changes proposed herein.

order/quote will execute, route, or post up to the new Threshold Price. This process will repeat until either (1) the order/quote is executed, cancelled, or posted at its limit price or (2) the order/quote has been subject to a configurable number of instances of the ATR as determined by the Exchange (in which case it will be returned).

With this change, during the proposed Posting Period, an order would be in flux and would potentially increase (decrease) past the price of any Legging Order generated on the bid (offer) as the order works its way through the order book. Legging Orders are removed from the order book when they are no longer at the Exchange's displayed best bid or offer and, therefore, generating a Legging Order during a Posting Period in progress on the same side in the series would lead to its immediate removal. Accordingly, in the current proposal, the Exchange proposes to amend Options 3, Section 7(k)(1) to provide that a Legging Order would not be created during the Posting Period in progress on the same side in the series. By way of example, assume that the ATR is set for $0.05, the MPV is $0.01 and the following quotations are posted on MRX and away markets:

Away Exchange Quotes:

Exchange	Bid size	Bid price	Offer price	Offer size
ISE	10	0.75	$0.90	10
AMEX	10	0.75	0.92	10
PHLX	10	0.75	0.94	10

MRX Price Levels:

Exchange	Bid size	Bid price	Offer price	Offer size
MRX	10	$0.75	$0.90	10
MRX	10	0.75	0.95	10
MRX	10	0.75	1.00	10
MRX	10	0.75	1.05	10

MRX receives a routable order to buy 70 contracts at $1.10. The ATR is $0.05 and the reference price is the National Best Offer—$0.90. The ATR threshold is then $0.90 + $0.05 = $0.95 which is the Threshold Price. The order is allowed to execute up to and including $0.95.

- 10 contracts will be executed at $0.90 against MRX
- 10 contracts will be executed at $0.90 against ISE
- 10 contracts will be executed at $0.92 against AMEX
- 10 contracts will be executed at $0.94 against PHLX
- 10 contracts will be executed at $0.95 against MRX
- Then, after executing at multiple price levels, the order is posted at $0.95 for a brief period not to exceed one second (Posting Period) to determine whether additional liquidity will become available.
- During this pause, the MRX BBO for this option is 0.95 × 1.00
- Assume the leg above with the Posting Period in process is Leg A of an A–B complex strategy
- Leg B has a BBO of 0.85 × 0.88
- Therefore, the cBBO [11] of this A–B complex strategy is 0.07 × 0.15
  - (Leg A Bid 0.95 – Leg B Offer 0.88 = 0.07)
  - (Leg A Offer 1.00 – Leg B Bid 0.85 = 0.15)
- Also during the pause, a Complex Options Order to buy A–B arrives for net price of $0.11
- The Complex Options Order could generate a Legging Order at $0.96 on the bid of Leg A, relying on the $0.85 bid to sell Leg B and achieve a net price $0.11, however the Legging Order is not generated because Leg A has an order on the bid side in an ATR Posting Period which will continue to move through the order book, and would ultimately lead to the immediate removal of the Legging Order once it is no longer at the Exchange's displayed best bid.
- During the Posting Period, a new ATR Price of $1.00 is determined (new reference price $0.95 + $0.05 = $1.00).
- If, during the Posting Period (brief pause not to exceed 1 second), no liquidity becomes available within the order's posted price of $0.95, then at the conclusion of the Posting Period, the System will execute 10 contracts at $1.00
- Then, after executing at multiple price levels, the order is posted at $1.00 for a brief period not to exceed one second to determine whether additional liquidity will become available.
- A new ATR Threshold Price of $1.05 is determined (new reference price of $1.00 + $0.05 = $1.05).
- During this time the MRX BBO would be $1.00 × $1.05.
- If, during the brief pause not to exceed 1 second, no liquidity becomes available within the order's posted price of $1.00, the System will then execute 10 contracts at $1.05.

The Exchange believes from a System processing and user acceptance standpoint, the best practice is to wait for the ATR Posting Period to complete before attempting to generate a Legging Order on the same side in the series, as the time required to complete the ATR Posting Period is minimal. Nasdaq Phlx LLC's (''Phlx'') legging order rule in Options 3, Section 14(f)(iii)(C)(2) has the same restriction on generating legging orders during the ATR Posting Period as proposed to be added to MRX's Legging Order rule.[12]

Changes to the Single-Leg Price Improvement Mechanism for Crossing Transactions

The Price Improvement Mechanism (''PIM'') is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent (a ''Crossing Transaction''). The Exchange provides a PIM for

[11] The ''cBBO'' represents the net price of a complex strategy comprised of the best bids and offers of the individual legs.

[12] Phlx Options 3, Section 14(f)(iii)(C)(2) provides that a Legging Order will not be created, ''. . . (ii) if there is . . . a Posting Period under Options 3, Section 15 regarding Acceptable Trade Range on the same side in progress in the series . . .''.

single-leg[13] orders and for Complex Orders[14] and proposes to amend both single-leg and Complex PIM rules. The Exchange proposes to amend the single-leg PIM in Options 3, Section 13(d)(4) which currently provides,

When a market order or marketable limit order on the opposite side of the market from the Agency Order ends the exposure period, it will participate in the execution of the Agency Order at the price that is mid-way between the best counter-side interest and the NBBO, so that both the market or marketable limit order and the Agency Order receive price improvement. Transactions will be rounded, when necessary, to the $.01 increment that favors the Agency Order.

Today, unrelated interest in the form of a market order or marketable limit order, on the opposite side of the market from an Agency Order,[15] may end an exposure period[16] within a single-leg PIM and participate in the execution of the Agency Order. The unrelated order would participate at the price that is mid-way between the best counter-side interest and the NBBO, so that both the market order or marketable limit order and the Agency Order receive price improvement.

First, the Exchange proposes to *not* permit unrelated marketable interest on the opposite side of the market from the Agency Order, which is received during a single-leg PIM, to early terminate a PIM. The Exchange proposes to amend MRX Options 3, Section 13(d)(4) to instead provide,

Unrelated market or marketable interest (against the MRX BBO) on the opposite side of the market from the Agency Order received during the exposure period will not cause the exposure period to end early and will execute against interest outside of the Crossing Transaction. If contracts remain from such unrelated order at the time the auction exposure period ends, they will be considered for participation in the order allocation process described in sub-paragraph (3).[17]

Today, Phlx[18] and Nasdaq BX, Inc. (''BX'')[19] similarly do not permit unrelated interest on the opposite side of the market from the Agency Order to early terminate their price improvement auctions. With this proposed change, the single-leg PIM exposure period would continue for the full period despite the receipt of unrelated marketable interest on the opposite side of the market from the Agency Order. Allowing the single-leg PIM to run its full course would provide an opportunity for additional price improvement to the Crossing Transaction. Further, the unrelated interest would participate in the single-leg PIM allocation with any residual contracts remaining after interacting with the order book pursuant to MRX Options 3, Section 13(d). The aforementioned residual contracts are contracts that remain available for execution after the unrelated order on the opposite side of market as the Agency Order, which was marketable with bids and offers on the same side of the market as the Agency Order, executed against bids and offers on the Exchange's order book.

Second, the Exchange also proposes to amend current MRX Options 3, Section 13(c)(5) which states,

The exposure period will automatically terminate (i) at the end of the time period designated by the Exchange pursuant to Options 3, Section 13(c)(1) above, (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series, or (iii) upon the receipt of a non-marketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange.

Specifically, the Exchange proposes to remove ''(ii),'' which provides the exposure period will automatically terminate ''. . . (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series . . .''. The Exchange notes that this sentence applies to the receipt of marketable orders both on the same side and opposite side of the Agency order. As described above, the Exchange proposes to *not* permit unrelated marketable interest on the opposite side of the market from the Agency Order, which is received during a single-leg PIM, to early terminate a PIM. Therefore, with respect to the opposite side of the Agency Order, the termination of the auction will no longer be possible with the proposed change to MRX Options 3, Section 13(d)(4). With respect to the same side of the Agency Order, today, an unrelated market or marketable limit order in the same series on the same side of the Agency Order would cause the PIM to early terminate as well. At this time the Exchange proposes to *not* permit an unrelated market or marketable limit order in the same series *on the same side* of the Agency Order to cause the PIM to early terminate. This proposed change will align the functionality of MRX's PIM to that of BX's PRISM and Phlx's PIXL,[20] which do not permit an unrelated market or marketable limit order in the same series on the same side of the Agency Order to cause the PRISM or PIXL to early terminate, unless the BBO improves beyond the price of the Crossing Transaction on the same side.

[13] *See* MRX Options 3, Section 13(a)–(d).

[14] *See* MRX Options 3, Section 13(e).

[15] An Agency Order is the part of a Crossing Transaction that an Electronic Access Member represents as agent. *See* MRX Options 3, Section 13(b).

[16] Upon entry of a Crossing Transaction into the PIM, a broadcast message that includes the series, price and size of the Agency Order, and whether it is to buy or sell, will be sent to all Members. The Exchange designates a time of no less than 100 milliseconds and no more than 1 second for Members to indicate the size and price at which they want to participate in the execution of the Agency Order (''Improvement Orders''). During the exposure period, Improvement Orders may not be canceled, but may be modified to (i) increase the size at the same price, or (ii) improve the price of the Improvement Order for any size up to the size of the Agency Order. During the exposure period, responses (including the Counter-Side Order, Improvement Orders, and any changes to either) submitted by Members shall not be visible to other auction participants. The exposure period will automatically terminate (i) at the end of the time period designated by the Exchange pursuant to Options 3, Section 13(c)(1) above, (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series, or (iii) upon the receipt of a non-marketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange. *See* MRX Options 3, Section 13(c).

[17] Subparagraph (3) of Options 3, Section 13(d) describes the manner in which a Counter-Side Order would be allocated. The Counter Side Order is one part of a Crossing Transaction and represents the full size of the Agency Order. The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both. *See* MRX Options 3, Section 13(b).

[18] Phlx Options 3, Section 13(b)(4) provides that an unrelated market or marketable Limit Order (against the PBBO) on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. *See* Securities Exchange Act Releases No. 79835 (January 18, 2017), 82 FR 8445 (January 25, 2017) (SR–Phlx–2016–119) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the PIXL Price Improvement Auction in Phlx Rule 1080(n) and To Make Pilot Program Permanent) and 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108) (''PIXL Approval Order''). The Commission noted in SR–Phlx–2016–119 that, ''In approving this feature on a pilot basis, the Commission found that 'allowing the PIXL auction to continue for the full auction period despite receipt of unrelated orders outside the Auction would allow the auction to run its full course and, in so doing, will provide a full opportunity for price improvement to the PIXL Order. Further, the unrelated order would be available to participate in the PIXL order allocation.' The Exchange does not believe that this provision has had a significant impact on either the unrelated order or the PIXL Auction process, either for simple or Complex PIXL Orders. The Exchange therefore has requested that the Commission approve this aspect of the Pilot on a permanent basis for both simple and Complex PIXL Orders.''

[19] BX Options 3, Section 13(ii)(D) provides that unrelated market or marketable interest (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction.

[20] *See* Options 3, Section 13 of BX's PRISM Rules and Phlx's PIXL Rules.

The Exchange notes that a market or marketable limit order in the same series on the same side of the Agency Order cannot interact with a PIM auction. The market or marketable limit order may interact with the single-leg order book, and if there are residual contracts that remain from the market or marketable limit order in the same series on the same side of the Agency Order, they could rest on the order book and improve the BBO beyond the price of the Crossing Transaction which would cause early termination pursuant to proposed Options 3, Section 13(c)(5)(ii) as discussed below. In this instance, residual contracts are contracts that remain available for execution after the unrelated order on the same side of market as the Agency Order, which was marketable with bids and offers on the opposite side of the market as the Agency Order, executed against bids and offers on the Exchange's order book. The Exchange believes that this outcome would allow for the single-leg PIM exposure period to continue for the full period despite the receipt of unrelated marketable interest on the same side of the market from the Agency Order, provided residual interest does not go on to rest on the order book, improving the BBO beyond the price of the Crossing Transaction. Allowing the single-leg PIM to run its full course (unless the BBO improves beyond the price of the Crossing Transaction on the same side), rather than early terminate, would provide an opportunity for price improvement to the Agency Order.

Third, the Exchange proposes to amend current MRX Options 3, Section 13(c)(iii) to align the rule text more closely with language in BX Options 3, Section 13(ii)(B)(2).[21] Specifically, the Exchange proposes to amend Options 3, Section 13(c)(5) to delete current ''iii'' and renumber as ''ii''. Proposed new Options 3, Section 13(c)(5)(ii) would state, ''The exposure period will automatically terminate . . . (ii) any time the Exchange best bid or offer improves beyond the price of the Crossing Transaction on the same side of the market as the Agency Order . . .'' The proposed rule is designed to align to BX's rule text to remove any ambiguity that a market or marketable limit order priced more aggressively than the Agency Order could ultimately rest on the order book, improving the BBO beyond the price of the Crossing Transaction and, therefore, cause the early termination of a PIM auction.

By way of example, assume: MRX 1.00 × 2.00 (10) and a second MRX Market Maker's quote is 1.00 × 2.10 (10). If a PIM auction starts with a buy at 1.50, and subsequently an order to buy for 20 @2.00 arrives, the incoming order would trade with the quote, and the remaining 10 contracts would rest on the order book. Thereafter, the MRX BBO would update to 2.00 × 2.10 and trigger the early termination of the single-leg PIM pursuant to Options 3, Section 13(c)(5)(iii), which is being renumbered to Options 3, Section 13(c)(5)(ii). Early terminating the single-leg PIM in this example is necessary because the price of the single-leg PIM is no longer at the top of book (best price) and would not have execution priority with respect to responses or unrelated interest that arrive. By early terminating the single-leg PIM, MRX allows responses to the single-leg PIM, which arrived prior to the time the Exchange's best bid and offer improved beyond the Crossing Transaction, to execute.

The Exchange believes the proposed rule text will provide greater clarity to the manner in which the System operates today with respect to early termination of single-leg PIMs when the BBO on the same side improves beyond the price of the Crossing Transaction. The proposed amendment to the rule text is not intended to amend the current System functionality, rather it is intended to make clear that a market or marketable limit order could ultimately rest on the order book with residual interest and improve the BBO on the same side as the Agency Order beyond the price of the Crossing Transaction and cause the single-leg PIM to early terminate.

Fourth, the Exchange proposes to add a new MRX Options 3, Section 13(c)(5)(iii) which states, ''. . . (iii) any time there is a trading halt on the Exchange in the affected series . . .''. This proposed rule text is not modifying how the System currently operates.[22] Today, a trading halt would cause a single-leg PIM to early terminate. Current MRX Options 3, Section 13(d)(5) notes such an early termination as a result of the aforementioned trading halt. Adding this circumstance to the list of events that would terminate the exposure period would make the list complete and add clarity to the rule. Furthermore, the Exchange notes that in a separate rule change, SR–MRX–2022–5P,[23] [sic] the Exchange is proposing to amend Options 3, Section 13(d)(5) to change the System behavior such that if a trading halt is initiated after an order is entered into the PIM, such auction will be automatically terminated with execution solely with the Counter-Side Order. Today, if a trading halt is initiated after an order is entered into the PIM, such auction will be automatically terminated without execution.[24]

Changes to the Complex PIM

In accordance with the proposed rule change regarding the early termination provisions of a single-leg PIM auction explained above, the Exchange also proposes to remove a paragraph related to Complex PIM in current MRX Options 3, Section 13(e)(4)(vi) which provides,

> A Complex Price Improvement Mechanism in a complex strategy may be ongoing at the same time as a Price Improvement Auction pursuant to this Rule or during an exposure period pursuant to Supplementary Material .02 to Options 5, Section 2 in a component leg(s) of such Complex Order. If a Complex Price Improvement Mechanism is early terminated pursuant to paragraph (iv) above, and the incoming Complex Order that causes the early termination in the complex strategy is also marketable against a component leg(s) of the complex strategy that is the subject of a concurrent ongoing Price Improvement Auction pursuant to this Rule or an exposure period pursuant to Supplementary Material .02 to Options 5, Section 2, then the concurrent Complex Price Improvement Mechanism and component leg auction(s) are processed in the following sequence: (1) the Complex Price Improvement Mechanism is early terminated; (2) the component leg auction(s) are early terminated and processed; and (3) legging of residual incoming Complex Order interest occurs, except with respect to Stock Option Orders and Stock Complex Orders.

[21] BX Options 3, Section 13(ii)(B) provides ''Conclusion of Auction. The PRISM Auction shall conclude at the earlier to occur of (1) through (3) below, with the PRISM Order executing pursuant to paragraph (C)(1) or (C)(2) below if it concludes pursuant to (2) or (3) of this paragraph. (1) The end of the Auction period; (2) For a PRISM Auction any time the BX BBO crosses the PRISM Order stop price on the same side of the market as the PRISM Order; (3) Any time there is a trading halt on the Exchange in the affected series.''

[22] MRX Options 3, Section 13(d)(5) currently states that, ''If a trading halt is initiated after an order is entered into the Price Improvement Mechanism, such auction will be automatically terminated without execution.'' Of note, the Exchange is proposing to amend MRX's PIM within a separate rule change, SR–MRX–2022–5P. Among other things, the Exchange proposes to amend the PIM functionality so that if a trading halt is initiated after an order is entered into the PIM, the auction will be automatically terminated with an execution. Specifically, SR–MRX–2022–5P proposes to renumber current MRX Options 3, Section 13(d) to Options 3, Section 13(d)(6) and proposes to state, ''If a trading halt is initiated after an order is entered into the Price Improvement Mechanism, such auction will be automatically terminated with execution solely with the Counter-Side Order.''

[23] MRX has separately filed to amend Options 3, Section 13(d)(5) within SR–MRX–2022–5P. [sic] SR–MRX–2022–5P [sic] proposes to amend, among other things, the rule text in Options 3, Section 13, except that it does not amend Options 3, Section 13(c)(5).

[24] *See* current MRX Options 3, Section 13(d)(5).

Today, unrelated marketable interest may cause the early termination of a single-leg PIM, if a component leg of a Complex Order is marketable against the order book in the same series as the single-leg PIM. An example is provided below.

Example #1 (Complex PIM early termination elimination – opposite side) [25]

Complex Order Strategy A–B
MM Quote Leg A 4.20 (100) × 4.50 (100)
MM Quote Leg B 4.00 (100) × 4.10 (100)
cBBO 0.10 × 0.50
(Leg A Bid 4.20 – Leg B Offer 4.10 = 0.10)
(Leg A Offer 4.50 – Leg B Bid 4.00 = 0.50)
Complex PIM to Buy A–B 10 @ 0.20, with an election to automatically match to a net price of 0.10
Complex PIM begins
Single-leg PIM Auction on Leg A to Buy 100 @ 4.25
Single-leg PIM begins

During both auction timers, an unrelated marketable Complex Order A–B to sell 50 @ a net price of 0.10 arrives (the individual legs of the marketable Complex Order would be selling A @ 4.20 and buying B @ 4.10).

Complex Order PIM is early terminated and trades 4 with the Counter-Side Order @ a net price of 0.10 and 6 with the unrelated Complex Order @ a net price of 0.15.

Today, the unrelated Complex Order would have legged-in after trading with the Complex PIM and caused the single-leg PIM to early terminate because one leg of the Complex Order was marketable against the Leg A bid of 4.20.

With the proposed amendment, the unrelated Complex Order will not cause the single-leg PIM to early terminate as a result of trading with an unrelated order on the opposite side in the same series. The unrelated marketable Complex Order will trade with the Complex PIM as well as the best bids and offers from the single-leg order book. In this case, the remaining quantity of the unrelated Complex Order would leg-in and trade with the single-leg quotes without impacting the single-leg PIM; the single-leg PIM auction timer would conclude after running its full course. Thereafter, if there are no responses to the single-leg PIM, the Agency Order would trade 100 @4.25 with the Counter-Side Order.

Today, if a Complex PIM is early terminated pursuant to MRX Options 3, Section 14(e)(4)(iv) [26] and the incoming Complex Order that causes the early termination in the complex strategy is also marketable against a component leg(s) of the complex strategy that is the subject of a concurrent ongoing single-leg PIM, or an exposure period pursuant to flash functionality as provided for in Supplementary Material .02 to Options 5, Section 2,[27] then the concurrent Complex PIM and component leg auction(s) are processed in accordance with MRX Options 3, Section 14(e)(4)(vi).

With this proposed change, a single-leg PIM will no longer early terminate as a result of the arrival of unrelated marketable interest on either the same or the opposite side of the market from the Agency Order. Because a single-leg PIM will no longer early terminate from the arrival of unrelated marketable interest on either the same or the opposite side of the market from the Agency Order, and because the flash functionality will no longer exist,[28] the Exchange proposes to delete MRX Options 3, Section 13(e)(4)(vi) in its entirety.

Additionally, the Exchange proposes to remove a related paragraph in current Supplementary Material .01(b)(iii) of MRX Options 3, Section 14 describing Complex Order Exposure, which states,

> A Complex Order Exposure in a complex strategy may be ongoing in a complex strategy at the same time as a Price Improvement Auction pursuant to Options 3, Section 13 or during an exposure period pursuant to Supplementary Material .02 to Options 5, Section 2 in a component leg(s) of such complex strategy. If a Complex Order Exposure is early terminated pursuant to paragraph (ii) above, and the incoming Complex Order that causes the early termination in the complex strategy is also marketable against a component leg(s) of the complex strategy that is the subject of a concurrent ongoing Price Improvement Auction pursuant to Options 3, Section 13 or an exposure period pursuant to Supplementary Material .02 to Options 5, Section 2, then the concurrent Complex Order and component leg auction(s) are processed in the following sequence: (1) the Complex Order exposure is early terminated; (2) the component leg auction(s), which are early terminated and processed; and (3) legging of residual incoming Complex Order interest occurs.

Today, unrelated marketable interest may cause the early termination of a single-leg PIM, therefore, when a Complex Order legs into the single-leg order book, it may cause the early termination of a single-leg PIM if that leg was on either the same or the opposite side of the market from the single-leg PIM. An example is provided below.

Example #2 (Complex Exposure early termination elimination – opposite side) [29]

Complex Order Strategy A–B
MM Quote Leg A 4.20 (100) × 4.50 (100)
MM Quote Leg B 4.00 (100) × 4.10 (100)
cBBO 0.10 × 0.50
(Leg A Bid 4.20 – Leg B Offer 4.10 = 0.10)
(Leg A Offer 4.50 – Leg B Bid 4.00 = 0.50)
Complex Order in A–B Strategy marked for Complex Order Exposure to buy 10 @ 0.20
Complex Order Exposure auction begins
Single-leg PIM Auction on Leg A to Buy 100 @ 4.25
Single-leg PIM begins

During both auction timers, unrelated marketable Complex Order A–B Sell 50 @ 0.10 arrives.

Complex Order Exposure is early terminated and the exposed order to buy A–B 10 @ 0.20 and trades with the unrelated Complex Order 10 @ net price of 0.10.

Today, the unrelated marketable Complex Order would have legged-in after trading with the Complex Order Exposure and caused the single-leg PIM to early terminate because one leg of the marketable Complex Order on the opposite side was marketable against the Leg A bid of 4.20.

With the proposed amendment, the unrelated marketable Complex Order will not cause the single-leg PIM on the opposite side in the same series to early terminate as a result of the component leg of the Complex Order being marketable against the bid in the same series as the single-leg PIM. The unrelated marketable Complex Order will trade with the Complex Order Exposure order as well as the best bids and offers from the single-leg order book. In this case, the remaining quantity would leg-in and trade with the single-leg quotes without impacting the single-leg PIM; the auction timer would conclude after running its full course. Thereafter, the Crossing Transaction would trade 100 @4.25 Agency Order with the Counter-Side Order.

[25] Example 1 addresses an order on the opposite side of the Agency Order, although the same early termination would apply to an order on the same side of an Agency Order pursuant to MRX Options 3, Section 13(e)(4)(vi).

[26] MRX Options 3, Section 14(e)(4)(iv) provides, "The exposure period will automatically terminate (A) at the end of the time period designated by the Exchange pursuant to subparagraph (4)(i) above, (B) upon the receipt of a Complex Order in the same complex strategy on either side of the market that is marketable against the Complex Order Book or bids and offers for the individual legs, or (C) upon the receipt of a non-marketable Complex Order in the same complex strategy on the same side of the market as the Agency Complex Order that would cause the execution of the Agency Complex Order to be outside of the best bid or offer on the Complex Order Book."

[27] Pursuant to Supplementary Material .02 to ISE Options 5, Section 2, ISE permits certain orders to first be exposed at the NBBO to all Members for execution at the National Best Bid or Offer ("NBBO") before the order would be routed to another market for execution ("flash functionality"). MRX Options 5 Rules are incorporated by reference to ISE Options 5 Rules.

[28] MRX filed a rule change to eliminate its flash functionality. *See* Securities Exchange Act Release No. 94897 (May 12, 2022), 87 FR 30294 (May 18, 2022) (SR–ISE–2022–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration). MRX's rule regarding flash functionality at Supplementary Material .02 to Options 5, Section 2 is incorporated by reference to Nasdaq ISE, LLC Options 5 rules. Therefore, eliminating the flash functionality from ISE Options 5 rules also eliminates the flash functionality from MRX's Options 5 rules. SR–ISE–2022–11 is effective but not yet operative. SR–ISE–2022–11 would be implemented as part of the same technology migration as the changes proposed herein.

[29] Example 2 addresses an order on the opposite side of the Agency Order, although the same early termination would apply to an order on the same side of the Agency Order pursuant to Supplementary Material .01(b)(iii) of MRX Options 3, Section 14.

Today, when a Complex Order Exposure early terminates, as a result of the arrival of unrelated marketable Complex Order interest that trades against the exposed Complex Order and the best bids and offers on the single-leg order book (as described in Supplementary Material .01(b)(ii) of MRX Options 3, Section 14), the component legs of the unrelated marketable Complex Order on either the same or the opposite side of the single-leg PIM may leg-in and cause early termination of the single-leg PIM. Thereafter, the component leg auction(s) would be processed pursuant to Supplementary Material .01(b)(iii) of MRX Options 3, Section 14. With this proposed change to MRX Options 3, Section 13(d)(4), a single-leg PIM will no longer early terminate from the arrival of unrelated marketable interest on either the same or opposite side of the market from the Agency Order. Therefore, because a single-leg PIM will no longer early terminate from the arrival of unrelated marketable interest on either the same or opposite side of the market from the Agency Order, and because the flash functionality will no longer exist,[30] the early termination provisions addressed in Supplementary Material .01(b)(iii) of MRX Options 3, Section 14 will no longer arise, accordingly, the Exchange proposes to delete Supplementary Material .01(b)(iii) of MRX Options 3, Section 14 in its entirety.

Re-Pricing

In connection with the technology migration, the Exchange recently adopted re-pricing functionality for certain quotes and orders that lock or cross an away market's price.[31] As a result of the effectiveness of SR–MRX–2022–16, the Exchange proposes a number of corresponding amendments in Options 2, Section 12, as well as the proposed definition of Complex Preferenced Orders, which is discussed below, in connection with adopting the re-pricing mechanism.

With the recent change within SR–MRX–2022–16, the System will re-price certain quotes and orders that lock or cross an away market's price. Specifically, quotes and orders which lock or cross an away market price will be automatically re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed one minimum price variance (''MPV'') above (for offers) or below (for bids) the national best price. The re-priced quotes and orders will be displayed on OPRA at its displayed price and placed on the Exchange's order book at its re-priced, non-displayed price, which may be priced better than the NBBO. The quotes and orders will remain on the Exchange's order book and will be accessible at their non-displayed price. With this change, a non-displayed limit order or quote may be available on the Exchange at a price that is better than the NBBO. The following example illustrates how the proposed re-pricing mechanism would work:

Symbol ABCD in a Non-Penny name
CBOE BBO at 1.00 × 1.20
DNR order to buy ABCD for 1.30 arrives
DNR buy order books at 1.20 (current national best offer) and displays at 1.15 (one MPV below national best offer) *
CBOE BBO adjusts to 1.00 × 1.25
DNR buy order adjusts to book at 1.25 (current national best offer) and displays at 1.20 (one MPV below national best offer) *
* OPRA will show the displayed price, not the booked price

Recently amended Options 3, Section 5(c) provides that the System automatically executes eligible orders using the Exchange's displayed best bid and offer (*i.e.,* BBO) or the Exchange's non-displayed order book (''internal BBO'') if the best bid and/or offer on the Exchange has been re-priced pursuant to Options 3, Section 5(d).[32] The definition of an ''internal BBO'' will cover re-priced quotes and orders that remain on the order book and are available at non-displayed prices while resting on the order book.[33]

In connection with the foregoing changes, the Exchange proposes to add references to ''internal BBO'' within Options 3, Section 12(c) and (d) which describe the Qualified Contingent Cross Orders and Complex Qualified Contingent Cross Orders, respectively, to conform with the concept of re-pricing at an internal BBO as provided in Options 3, Sections 4(b)(6) and 4(b)(7) and Options 3, Section 5(c) and (d) within SR–MRX–2022–16. As noted above, the internal BBO could be better than the NBBO. The Exchange believes that adding references to the internal BBO to Options 3, Section 12(c) and (d) would continue to require Members to be at or between the best price, that is not at the same price as a Priority Customer Order on the Exchange's limit order book, to execute a Qualified Contingent Cross Order. Further, with respect to Complex Qualified Contingent Cross Orders, the Exchange would continue to require a Member to be at or between the best price for the individual series and comply with other relevant provisions noted within Options 3, Section 12(d) to execute a Complex Qualified Contingent Cross Order. The Exchange believes that the addition of ''internal BBO'' is consistent with the intent of these order types, which is to require Members submit these orders at the best price and not execute ahead of better-priced quotes or orders.

The Exchange proposes to amend Options 3, Section 12(c), which describes the conditions under which a Qualified Contingent Cross Order may be entered into the System for execution, to state that a Qualified Contingent Cross Order may be executed upon entry provided the execution is at or between the *better of the internal BBO* or the NBBO.[34] Similarly, the Exchange proposes to amend Options 3, Section 12(d), which describes the conditions under which a Complex Qualified Contingent Cross Order may be entered into the System for execution, to state that Complex Options Orders may be entered as Qualified Contingent Cross Orders to be automatically executed upon entry so long as the options legs can be executed

[30] *Id.* [sic].

[31] *See* SR–MRX–2022–16. This rule change is effective, but not yet operative. SR–MRX–2022–16 would be implemented as part of the same technology migration as the changes proposed herein.

[32] A similar change was made for quotes within Options 3, Section 4(b)(7). The Exchange added the following new rule text to Options 3, Section 4(b)(7), ''The System automatically executes eligible quotes using the Exchange's displayed best bid and offer (''BBO'') or the Exchange's non-displayed order book (''internal BBO'') if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) below and subsection (6) above.''

[33] The Exchange amended the rule text within Options 3, Section 4 and Options 3, Section 5, within SR–MRX–2022–16, to describe the manner in which a non-routable quotes and orders would be re-priced, respectively. The Exchange added rule text within Options 3, Section 4(b)(6) to state, ''A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced *to the current national best offer (for bids) or the current national best bid (for offers)* and displayed at one minimum price variance above (for offers) or below (for bids) the national best price, or immediately cancelled, as configured by the Member.'' The Exchange amended the rule text within Options 3, Section 5(d) to state, ''An order that is designated by a Member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions. If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.''

[34] The Qualified Contingent Cross Order must also not be at the same price as a Priority Customer Order on the Exchange's limit order book. *See* Options 3, Section 12(c).

at prices that are at or between the *better of the internal BBO* or the NBBO for the individual series.[35]

The Exchange also proposes to add the ''internal BBO'' rule text in its description of Complex Preferenced Orders within new Options 3, Section 14(b)(19). This change is described below.

Delayed Functionality

The Exchange proposes to delay the implementation of certain functionality in Options 3, Section 7, 11, 12, 13, and 14 in connection with the technology migration. Specifically, Stock-Option Strategies as described in MRX Options 3, Section 14(a)(2),[36] Stock-Complex Strategies as described in MRX Options 3, Section 14(a)(3),[37] Complex QCC with Stock Orders as described in MRX Options 3, Section 14(b)(15),[38] and QCC with Stock Orders [39] as described in Options 3, Section 7(t) and 12(e), Stock-Option Orders [40] as described in Options 3, Sections 11(c) and 13(e), Stock-Complex Orders [41] as described in Options 3, Sections 11(c) and 13(e) and Trade Value Allowance,[42] as described in Supplementary Material .03 of MRX Options 3, Section 14, would not be available for symbols that migrated to the platform (''Delayed Functionalities''). Today, these Delayed Functionalities are available to Members.

The Delayed Functionalities would not be available for symbols that migrated to the platform and thereafter, until such time as the Exchange recommenced their availability by announcing a date in an Options Trader Alert, which date would be prior to one year from the start of the migration of the symbols to the platform. The Exchange is staging the migration to provide maximum benefit to its Members while also ensuring a successful rollout. The Exchange intends to focus its resources on the other amendments to its System that are contemplated with this System migration and other amendments that have been filed with the Commission. Additionally, the Exchange desires to offer Members adequate time to test their access to the new platform to ensure a smooth transition for Members. The proposed delay will also provide the Exchange additional time to code, test, and implement on the Delayed Functionalities on the enhanced platform. The Exchange further notes that it is contemplating amendments to its stock-tied functionality and desires additional time to draft and code those changes before reintroducing stock-tied on MRX.[43]

While no Members will be able to utilize the Delayed Functionalities on MRX to accomplish an options transaction with stock until they are reactivated on MRX, ISE currently offers the Delayed Functionalities. As such, the ability to transact options with stock would be available on ISE for Members, as is the case today. The Exchange has issued Options Technical Updates to apprise Members of the migration schedule.[44] The Exchange intends to continue to issue Options Trader Alerts to ensure Members are aware of when the functionality will be available on its market.

Other Complex Order Amendments

Opening Only Complex Order

Currently, MRX Options 3, Section 14(b)(10) states, ''An Opening Only Complex Order is a Limit Order that may be entered for execution during the Complex Opening Process described in Supplementary Material .04 to Options 3, Section 14. Any portion of the order that is not executed during the Complex Opening Process is cancelled.'' The Exchange proposes to amend MRX Options 3, Section 14(b)(10) to remove the word ''Limit'' within the description of the Opening Only Complex Order to allow Opening Only Complex Orders to be submitted as Market Orders or Limit Orders. This amendment is consistent with current System operations. The Exchange believes that both Market and Limit Orders should be permitted in the Complex Opening Process.[45] Market Orders are typically the most aggressively priced orders, while Limit Orders have a limit price contingency that Market Orders do not have. Allowing both of these order types to participate in the Complex Opening Process allows greater liquidity to be present to determine the Opening

[35] Currently, Options 3, Section 12(d) provides in its entirety that Complex Options Orders may be entered as Qualified Contingent Cross Orders, as defined in Options 3, Section 7(j). Such orders will be automatically executed upon entry so long as: (i) the price of the transaction is at or within the best bid and offer for the same complex options strategy on the Complex Order Book; (ii) there are no Priority Customer Complex Options Orders for the same strategy at the same price on the Complex Order Book; and (iii) the options legs can be executed at prices that (A) are at or between the NBBO for the individual series, and (B) comply with the provisions of Options 3, Section 14(c)(2)(i), provided that no legs of the Complex Options Order can be executed at the same price as a Priority Customer Order on the Exchange in the individual options series. Complex Qualified Contingent Cross Orders will be rejected if they cannot be executed. Complex Qualified Contingent Cross Orders may be entered in one cent increments. Each leg of a Complex Options Order must meet the 1,000 contract minimum size requirement for Qualified Contingent Cross Orders.

[36] A Stock-Option Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg. *See* MRX Options 3, Section 14(a)(2).

[37] A Stock-Complex Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of a Complex Options Strategy on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option legs to the total number of units of the underlying stock or convertible security in the stock leg. Only those Stock-Complex Strategies with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis, are eligible for processing. *See* MRX Options 3, Section 14(a)(3).

[38] A Complex QCC with Stock Order is a Qualified Contingent Cross Complex Order, as defined in subparagraph (b)(6) of Options 3, Section 14, entered with a stock component to be communicated to a designated broker-dealer for execution pursuant to MRX Options 3, Section 12(f).

[39] A QCC with Stock Order is a Qualified Contingent Cross Order, as defined in Options 3, Section 7(j), entered with a stock component to be communicated to a designated broker-dealer for execution pursuant to Options 3, Section 12(c). *See* Options 3, Section 7(t).

[40] The term ''Stock-Option Order'' refers to an order for a Stock-Option Strategy as defined in Options 3, Section 14(a)(2).

[41] The term ''Stock-Complex Order'' refers to an order for a Stock-Complex Strategy as defined in Options 3, Section 14(a)(3).

[42] Trade Value Allowance permits Stock-Option Strategies and Stock-Complex Strategies at valid increments Options 3, Section 14(c)(1), Stock-Option Strategies and Stock-Complex Strategies to trade outside of their expected notional trade value by a specified amount, in order to facilitate the execution of the stock leg and options leg(s). The Trade Value Allowance is the percentage difference between the expected notional value of a trade and the actual notional value of the trade. The amount of Trade Value Allowance permitted may be determined by the Member, or a default value determined by the Exchange and announced to Members; provided that any amount of Trade Value Allowance is permitted in mechanisms pursuant to Options 3, Sections 11 and 13 when auction orders do not trade solely with their contra-side order. *See* Supplementary Material .03 of MRX Options 3, Section 14.

[43] MRX would also need time to file any related rule changes with the Commission prior to reintroducing stock-tied functionality.

[44] *See* Options Technical Updates #2022–2 and 2022–3. *See also https://www.nasdaq.com/solutions/mrx-replatform.*

[45] The Complex Opening Process is described in Supplementary Material .04 of MRX Options 3, Section 14.

Price.[46] All Members may enter both Market Orders and Limit Orders during the Complex Opening Process, as well as intra-day.

Complex QCC With Stock Orders

The Exchange proposes to correct a non-substantive citation with MRX Options 3, Section 14(b)(15) related to Complex QCC with Stock Orders. The current citation to MRX Options 3, Section 12(e) within the description of this order type is incorrect. The citation should be to MRX Options 3, Section 12(f). Correcting this cross reference will clarify the description of the order type.

Complex Preferenced Orders

The Exchange proposes to add ''Complex Preferenced Orders'' to the list of Complex Order Types in Options 3, Section 14(b). This proposal describes how Complex Preferenced Orders will work. MRX Options 2, Section 10 currently describes Preferenced Orders which may be Complex Preferenced Orders.[47] To complete the list of Complex Order types, the Exchange proposes to state in MRX Options 3, Section 14(b)(19) that,

> [a] Complex Preferenced Order is a Complex Order for which an Electronic Access Member has designated a Preferred Market Maker as described in Options 2, Section 10. The component leg(s) of a Complex Order with a Preferenced Order instruction may allocate pursuant to Options 3, Section 10(c)(1)(C) when the Complex Preferenced Order legs into the single-leg market provided that the Preferred Market Maker is quoting at the better of the internal BBO or the NBBO for a component leg(s) of the Complex Preferenced Order at the time the Complex Preferenced Order is received. A Preferred Market Maker will not receive an allocation pursuant to Options 3, Section 10(c)(1)(C) for a component leg(s) of a Complex Preferenced Order if the Preferred Market Maker is not quoting at the better of the internal BBO or the NBBO for that leg at the time the Complex Preferenced Order is received.

Allocation of a leg(s) of a Complex Preferenced Order, pursuant to MRX Options 3, Section 10, would occur when a leg(s) of a Complex Order trades synthetically with the Preferred Market Maker's[48] quote that was at the better of the internal BBO or the NBBO on the single-leg order book in accordance with MRX Options 3, Section 10. A Preferred Market Maker must be quoting at the NBBO for a component leg(s) of the Complex Preferenced Order at the time the Complex Preferenced Order is received. As is the case for single-leg orders, a Preferred Market Maker will not receive an allocation pursuant to Options 3, Section 10(c)(1)(C) for a component leg(s) of a Complex Preferenced Order if the Preferred Market Maker is not quoting at the better of the internal BBO or NBBO for that leg at the time the Complex Preferenced Order is received.

The referenced internal BBO is being utilized within the description of the Complex Preferenced Order because the internal BBO for a leg component of Complex Order on the single-leg order book may be priced better than the NBBO. The Exchange notes that similar changes were recently made to the Preferenced Order type for single-leg orders within Options 7, Section 3.[49] The Exchange described re-pricing earlier in Purpose section.

With respect to orders which leg into the single-leg order book, MRX Options 3, Section 14(c) states that, ''Except as otherwise provided in this Rule, complex strategies shall be subject to all other Exchange Rules that pertain to orders and quotes generally.'' Additionally, the Exchange notes that orders that execute against interest on the single-leg order book, including the options leg of Complex Options Strategies are subject to the provisions of MRX Options 3, Section 5 which, among other things, describes the NBBO Price Protection and Trade-Through Compliance and Locked or Crossed Markets.

Further, Supplementary Material .01 to Options 9, Section 1 provides,

> [i]t will be a violation of this Rule for a Member to have a relationship with a third party regarding the disclosure of agency orders. Specifically, a Member may not disclose to a third party information regarding agency orders represented by the Member prior to entering such orders into the System to allow such third party to attempt to execute against the Member's agency orders. A Member's disclosing information regarding agency orders prior to the execution of such orders on the Exchange would provide an inappropriate informational advantage to the third party in violation of this Rule. For purposes of this paragraph .01, a third party includes any other person or entity, including affiliates of the Member. Nothing in this paragraph is intended to prohibit a Member from soliciting interest to execute against an order it represents as agent (a ''solicited order''), the execution of which is governed by Options 3, Section 22(e) and paragraph .02 of Supplementary Material to Options 3, Section 22.

This rule prohibits a Member from notifying a Preferred Market Maker of an intention to submit a Complex Preferenced Order so that the Preferred Market Maker could change its quotation to match the NBBO immediately prior to submission of the Complex Preferenced Order, and then fade its quote. The Exchange represents that it proactively conducts surveillance for, and enforces against, violations of Supplementary Material .01 to Options 9, Section 1.

The Exchange's proposal to add ''Complex Preferenced Orders'' to the list of Complex Order Types in MRX Options 3, Section 14(b) will continue to encourage Preferred Market Makers to quote aggressively in an effort to execute against the Complex Preferenced Order. Preferred Marker Makers are not able to ascertain if a particular order is a Complex Preferenced Order. The Exchange believes the proposal will encourage Market Makers to quote tighter and add a greater amount of liquidity on MRX in an attempt to interact with Complex Preferenced Orders that are sent to the Exchange. This order flow will benefit all market participants on the Exchange because any MRX Member may interact with that order flow.

The addition of Complex Preferenced Orders to the list of order types in MRX Options 3, Section 14(b) will make clear to Members the availability of Complex Preferenced Orders. Both Phlx[50] and MIAX[51] have a similar order type.

[46] The Opening Price is described in MRX Options 3, Section 14(a)(2).

[47] MRX Options 2, Section 10 provides, ''Preferenced Orders. An Electronic Access Member may designate a ''Preferred Market Maker'' on orders it enters into the System (''Preferenced Orders''). (1) A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class. (2) If the Preferred Market Maker is not quoting at a price equal to the NBBO at the time the Preferenced Order is received, the allocation procedure described in Options 3, Section 10(c)(1)(C) shall not be applied to the execution of the Preferenced Order. (3) If the Preferred Market Maker is quoting at the NBBO at the time the Preferenced Order is received, the allocation procedure described in Options 3, Section 10(c)(1)(C) shall be applied to the execution of the Preferenced Order.''

[48] Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class. *See* MRX Options 2, Section 10(a)(1).

[49] *See* MRX–2022–16.

[50] *See* Phlx Options 3, Section 14(b)(v) which specifies that a Directed Order may be submitted as a Complex Order. *See also* Phlx Options 3, Section 7(b)(11) which describes a Directed Order. Phlx's Options 2, Section 10 Directed Order rule is similar to MRX's Options 2, Section 10 Preferenced Order rule.

[51] A ''Directed Order'' is an order entered into the System by an Electronic Exchange Member with a designation for a Lead Market Maker (referred to as a ''Directed Lead Market Maker''). Only Priority Customer Orders will be eligible to be entered into the System as a Directed Order by an Electronic Exchange Member. *See* MIAX Rule 100. *See also* MIAX Rule 514(h) which describes allocation. Today, MIAX permits Directed Orders to be submitted as a New Order—Multileg. *See https://www.miaxoptions.com/sites/default/files/page-*

Options 3, Section 14(c)(2) and MRX Supplementary Material .02 to Options 3, Section 14

The Exchange proposes a non-substantive amendment in MRX Options 3, Section 14(c)(2) to amend an incorrect reference to ''ISE''. The reference should be to ''MRX''. Also, the Exchange proposes to make a non-substantive technical correction in Supplementary Material .02 of MRX Options 3, Section 14 to make a grammatical amendment to change the word ''which'' to ''whom''.

Complex Opening Price Determination

The Exchange proposes to amend the citation within Supplementary Material .05(d)(2) to Options 3, Section 14 which states, ''*Potential Opening Price.* The System will calculate the Potential Opening Price by identifying the price(s) at which the maximum number of contracts can trade (''maximum quantity criterion'') taking into consideration all eligible interest pursuant to Supplementary Material .06(b) to this Rule.'' The citation to Supplementary Material .06(b), related to Uncrossing is incorrect. The citation should be to Supplementary Material .05(b), related to Complex Opening Price Determination. The citation is referring is to eligible interest during the Complex Opening Price Determination.

The Exchange proposes to amend the Complex Opening Price Determination in Supplementary Material .05(d)(3) to Options 3, Section 14 to allow for additional contracts to be included in the Potential Opening Price calculation leading to better price discovery and more contracts executing as part of the Complex Opening Price Determination process.

With this proposal, when the interest does not match the size and there is more than one Potential Opening Price at which the interest may execute, the Exchange would calculate a Potential Opening Price using the mid-point of the highest (lowest) executable offer (bid) price and the next available executable offer (bid) price rounded, if necessary, down (up) to the closest minimum trading increment. As a result, more options contracts are likely to be executed at better prices than under the current rule. Example number 3 below demonstrates this behavior. This behavior differs from current rules in that, today, the Exchange would calculate the Potential Opening Price as the highest (lowest) executable bid (offer) when there would be contracts left unexecuted on the bid (offer) side of the complex market.

Further, the proposed amendment will allow Market Complex Orders to participate in the Opening Price Determination process in a broader capacity than the rule allows for today. Today, if there are only Market Complex Orders on both sides of the market, or if there are Market Complex Orders on the bid (offer) side of the market for greater than the total size of Complex Orders on the offer (bid) side of the market, then MRX will not trade in the Complex Opening Price Determination process and would instead open pursuant to an Uncrossing as provide for in Supplementary Material .06(b) of MRX Options 3, Section 14. With the proposed amendment Market Complex Orders will be included in the Complex Opening Price Determination process in both situations described above, leading to more contracts being able to trade in the Complex Opening Price Determination with better price discovery. Example 5 below illustrates this point.

Finally, the proposed amendment considers the Boundary Price earlier in the Complex Opening Process. Today, the rule seeks to satisfy the maximum quantity criterion first and then consider Boundary Prices. With the proposed change, the Exchange will consider the Boundary Price while determining the Potential Opening Price, thereby enabling as many contracts as possible to trade sooner, which reduces risk for market participants awaiting executions. With this proposal, the Complex Opening Process considers the Boundary Price earlier in the process and the Boundary Price becomes the limit price for Market Complex Orders. This proposal should maximize the number of contracts executed, to the benefit of those Members participating in that complex strategy.

Current Supplementary Material .05 of MRX Options 3, Section 14 describes how Complex Orders arrive at an Opening Price. Specifically, Supplementary .05(b) of MRX Options 3, Section 14 describes the interest that is eligible within the Complex Opening Price Determination. The rule text provides that the System would calculate Boundary Prices [52] at or within which Complex Orders may be executed during the Complex Opening Price Determination.[53] Current Supplementary Material .05(d)(2) of MRX Options 3, Section 14 provides, ''The System will calculate the Potential Opening Price [54] by identifying the price(s) at which the maximum number of contracts can trade (''maximum quantity criterion'') taking into consideration all eligible interest pursuant to Supplementary Material .06(b) to this Rule.'' [55] The System takes into consideration all Complex Orders, identifies the price at which the maximum number of contracts can trade, and calculates the Potential Opening Price as described in Supplementary Material .05(d)(2) of MRX Options 3, Section 14. Supplementary Material .05(d)(3) of MRX Options 3, Section 14 further describes the way the System handles more than one Potential Opening Price. Current Supplementary Material .05(d)(3) of MRX Options 3, Section 14 states,

> When two or more Potential Opening Prices would satisfy the maximum quantity criterion: (A) without leaving unexecuted contracts on the bid or offer side of the market of Complex Orders to be traded at those prices, the System takes the highest and lowest of those prices and takes the mid-point; provided that (1) if the highest and/or lowest price described above is through the price of a bid or offer that is priced to not allocate in the Complex Opening Price Determination, the highest and/or lowest price will be rounded to the price of such bid or offer that is priced to not allocate before taking the mid-point, and (2) if the midpoint is not expressed as a permitted minimum trading increment, it will be rounded down to the nearest permissible minimum trading increment; or (B) leaving unexecuted contracts on the bid (offer) side of the market of Complex Orders to be traded at those prices, the Potential Opening Price is the highest (lowest) executable bid (offer) price. Notwithstanding the foregoing: (C) if there are Market Complex Orders on the bid (offer) side of the market that would equal the full quantity of Complex Orders on offer (bid) side of the market, the limit price of the highest (lowest) priced Limit Complex Order is the Potential Opening Price; and (D) if there are only Market Complex Orders on both sides of the market, or if there are Market Complex Orders on the bid (offer) side of the market for greater than the total

files/FIX%20Order%20Interface_FOI_v2.5a_re.pdf. Pursuant to MIAX's specifications, ''AllocAccount (Tag 79) is defined as MIAX assigned directed firm code of the designated participant for directed order flow.''

[52] The Boundary Price is described in Supplementary Material .05(d)(1) of MRX Options 3, Section 14(a)(1).

[53] *See* Supplementary Material .05(d)(1) of MRX Options 3, Section 14.

[54] The Potential Opening Price is described in Supplementary Material .05(d)(2) of MRX Options 3, Section 14.

[55] The Exchange proposes to amend the citation within Supplementary Material .05(d)(2) to Options 3, Section 14 within this proposal. The citation to Supplementary Material .06(b), related to Uncrossing, should be to Supplementary Material .05(b), related to Complex Opening Price Determination. Specifically, the reference is to Eligible Interest during the Complex Opening Price Determination.

size of Complex Orders on the offer (bid) side of the market, there will be no trade in the Complex Opening Price Determination and the complex strategy will open pursuant to the Complex Uncrossing Process described in Supplementary Material .06(b) to this Rule.

At this time, the Exchange proposes to amend the System handling within the Complex Opening Process by replacing Supplementary Material .05(d)(3) of MRX Options 3, Section 14 with the following proposed rule text,

Opening Price Determination. When interest crosses and does not match in size, the System will calculate the Potential Opening Price based on the highest (lowest) executable offer (bid) price when the larger sized interest is offering (bidding), provided, however, that if there is more than one price at which the interest may execute, the Potential Opening Price when the larger sized interest is offering (bidding) shall be the mid-point of the highest (lowest) executable offer (bid) price and the next available executable offer (bid) price rounded, if necessary, down (up) to the closest minimum trading increment; or

When interest crosses and is equal in size, the System will calculate the Potential Opening Price based on the mid-point of lowest executable bid price and the highest executable offer price, rounded, if necessary, up to the closest minimum trading increment.

(A) Executable bids/offers include any interest which could be executed at the Potential Opening Price without trading through residual interest or the Boundary Price or without trading at the Boundary Price where there is Priority Customer interest at the best bid or offer for any leg, consistent with paragraph Options 3, Section 14(c)(2).

(B) Executable bids/offers will be bounded by the Boundary Price on the contra-side of the interest, for determination of the Potential Opening Price described above.

This proposed new Complex Opening Process seeks to maximize the interest which is traded during the Complex Opening Price Determination process and deliver a rational price for the available interest at the opening. The Complex Opening Price Determination process maximizes the number of contracts executed during the Complex Opening Process and ensures that residual contracts of partially executed orders or quotes are at a price equal to or inferior to the Opening Price. In other words, the logic ensures there is no remaining unexecuted interest available at a price which crosses the Opening Price. If multiple prices exist that ensure that there is no remaining unexecuted interest available through such price(s), the opening logic selects the mid-point of such price points. Below are some examples.

Example #3 (More Than One Potential Opening Price—Mid-Point of Larger-Sized Interest)

''*if there is more than one price at which the interest may execute, the Potential Opening Price when the larger sized interest is offering (bidding) is the mid-point of the highest (lowest) executable offer (bid) price and the next available executable offer (bid) price rounded, if necessary, down (up) to the closest minimum trading increment*''

Assume
Complex Order Strategy: A+B strategy
Quote for Leg A @ 1.75 × 1.95
Quote for Leg B @ 1.75 × 1.95
Boundary Price = 3.50 (10) − 3.90 (10)
(Leg A Bid 1.75 + Leg B Bid 1.75 = 3.50)
(Leg A Offer 1.95 + Leg B Offer 1.95 = 3.90)
Complex Order #1: Buy 20 for $3.79
Complex Order #2: Buy 20 at $3.73
Complex Order #3: Sell 20 at $3.60

With the proposed amendment, Opening Price would be for 20 strategies at a price of $3.76. The execution price of $3.76 is derived from the mid-point of the lowest executable bid price of $3.73 and the next available executable bid price of $3.79. In this example, 20 strategies can be opened at multiple price points ranging from $3.73 up to $3.79. None of these Potential Opening Prices would cause the unexecuted $3.73 buy order to be available at a price which crosses the Opening Price, therefore, the System opens at the mid-point of such prices, $3.76.

Today, with this same example, the Opening Price would be 3.79, the highest executable bid price, which provides the offer side with all price improvement. With the proposed amendment, the Opening Price seeks to distribute to the extent possible price improvement to both the bid and offer side of the transaction.

Example #4 (Mid-Point When Interest is Equal In Size)

''*Provided such crossing interest is equal in size, the System will calculate the Potential Opening Price based on the mid-point of lowest executable bid price and the highest executable offer price, rounded, if necessary, up to the closest minimum trading increment*''

Complex Order Strategy: A+B strategy
Quote for Leg A @ 1.75 × 1.95 each
Quote for Leg B @ 1.75 × 1.95 each
Boundary Price = 3.50 (10) − 3.90 (10)
(Leg A Bid 1.75 + Leg B Bid 1.75 = 3.50)
(Leg A Offer 1.95 + Leg B Offer 1.95 = 3.90)
Complex Order #1: Buy 10 for $3.78
Complex Order #2: Buy 20 for $3.74
Complex Order #3: Buy 10 at $3.71
Complex Order #4: Sell 20 at $3.64
Complex Order #5: Sell 20 at $3.66

With the proposed amendment, the Opening Price will be for 40 strategies at a price of $3.69. The execution price of $3.69 is derived from the mid-point of the lowest executable bid price of $3.71 and the highest executable offer price of $3.66, rounded up to the closest minimum trading increment. Today, rounding would be down and with this proposal the rounding would be up.

If the example were changed slightly such that Complex Order #4 and Complex Order #5 were Market Complex Orders rather than Limit Orders, the Opening Price for the 40 strategies would be $3.61, which is derived from the mid-point of the lowest executable bid price of $3.71 and the highest executable offer of $3.50 (which is the Boundary Price of the sell Market Complex Orders), rounded up to the closest minimum trading increment.

The Exchange notes that executable bids/offers include any interest that could be executed at the net price without trading through residual interest or the Boundary Price, or without trading at the Boundary Price where there is Priority Customer interest at the best bid or offer for any leg, consistent with current MRX Options 3, Section 14(c)(2).[56] Further, executable bids/offers would be bounded to the Boundary Price on the contra-side of the interest, for determination of the Opening Price described above when crossing interest is different in size and when crossing interest is equal in size.

The amendment will benefit Members by smoothing the way for the complex strategy to open with Market Complex Orders. Today, Market Complex Orders participate in the Complex Opening Process in a limited capacity as explained above. By permitting Market Complex Orders to participate in the Complex Opening Price Determination process in more situations, the Exchange can provide more opportunity for Complex Orders to trade in the Opening Process without having to go to the Uncrossing process. Market conditions can change between the Complex Opening Price Determination process and the Uncrossing process, which can lead to missed opportunities for execution. The proposed rule would have the Boundary Price assign limits to the Opening Price and therefore permit Market Complex Orders to participate in the Complex Opening Process to the extent that they are within the Boundary Prices. With this change, MRX would permit a complex strategy to calculate

[56] MRX Options 3, Section 14(c)(2) provides, ''Complex strategies will not be executed at prices inferior to the best net price achievable from the best ISE bids and offers for the individual legs. Notwithstanding the provisions of Options 3, Section 10: (i) a Complex Options Strategies may be executed at a total credit or debit price with one other Member without giving priority to bids or offers established on the Exchange that are no better than the bids or offers in the individual options series comprising such total credit or debit; provided, however, that if any of the bids or offers established on the Exchange consist of a Priority Customer Order, the price of at least one leg of the complex strategy must trade at a price that is better than the corresponding bid or offer on the Exchange by at least one minimum trading increment for the series as defined in Options 3, Section 3; (ii) the option leg of a Stock-Option Strategy has priority over bids and offers for the individual options series established on the Exchange by Professional Orders and market maker quotes that are no better than the price of the options leg, but not over such bids and offers established by Priority Customer Orders; and (iii) the options legs of a Stock-Complex Strategy are executed in accordance with subparagraph (c)(2)(i).

an Opening Price utilizing a greater number of Market Complex Orders, which benefits the Opening Process by taking into account these more aggressively priced orders [57] while also bringing more liquidity into the Opening Price calculation.

Example #5 (Market Complex Orders trading in Opening Price Determination)

''*Provided interest crosses and does not match in size, the System will calculate the Potential Opening Price based on the highest (lowest) executable offer (bid) price when the larger sized interest is offering (bidding)*''

As referenced above,

Assume
Complex Order Strategy: A+B strategy
Quote for Leg A @ 1.75 × 2.00
Quote for Leg B @ 1.75 × 2.00
Boundary Price = 3.50 (10)—4.00 (10)
(Leg A Bid 1.75 + Leg B Bid 1.75 = 3.50)
(Leg A Offer 2.00 + Leg B Offer 2.00 = 4.00)
Market Complex Order #1: Buy 30
Complex Order #2: Sell 20 at $3.95
After Complex Opening Price Determination process, but before Uncrossing
ABBO for Leg A updates: 1.85 × 1.90
ABBO for Leg B updates 1.85 × 1.90
cNBBO: 3.70 × 3.80
(ABBO Leg A Bid 1.85 + Leg B Bid 1.85 = 3.70)
(ABBO Leg A Offer 1.90 + Leg B Offer 1.90 = 3.80)

With the proposed amendment the Market Complex Order can be considered in the Complex Opening Price Determination process and therefore is able to trade at the Opening Price of $4.00 for 20 strategies with Complex Order #2 and also able to trade 10 strategies at a net price $4.00 with the individual legs at the best bids and offers before the ABBO updates, leaving no place for this complex strategy to trade. The Opening Price in this example is determined as the lowest executable bid because the bid side is the larger sized interest, which is limited by the Boundary Price on the offer side at 4.00.

Today, Market Complex Orders with a larger quantity than the quantity of interest on the contra side of the market do not participate in the Complex Opening Price Determination and can only execute during the Uncrossing pursuant to Supplementary Material .05(d)(6) of MRX Options 3, Section 14. In the example above, the ABBO of each leg updates after the Complex Opening Price Determination process and restricts the Market Complex Order and Complex Limit Order from trading in the Uncrossing because they cannot match at a price that would be within the Price Limits for Complex Orders pursuant to MRX Options 3, Section 16(a).

Finally, with this proposal and as demonstrated in Example 5 above, a complex strategy would open pursuant to Supplementary Material .05(d)(5) of MRX Options 3, Section 14, with less contracts becoming subject to the Uncrossing pursuant to Supplementary Material .05(d)(6) of MRX Options 3, Section 14. As a result of this change, more interest would be able to trade within the Opening Process, ensuring a greater number of contracts are executed on MRX at the Complex Opening and lessening the likelihood that contracts which remain unmatched during the Complex Opening Price Determination process receive no execution in the Uncrossing due to changing market conditions.[58]

Phlx has a similar methodology to arrive at a complex opening price at Phlx Options 3, Section 14(d)(ii)(C)(2) [59] as compared to proposed Supplementary Material .05(d)(3) of MRX Options 3, Section 14. Phlx's COOP Evaluation and MRX's proposed Opening Price Determination both seek the price at which the maximum number of contracts can trade. Phlx's COOP Evaluation is an auction with a timer, unlike MRX's Opening Price Determination.[60] Proposed Supplementary Material .05(d)(3)(A) and (B) of MRX Options 3, Section 14 differs from Phlx Options 3, Section 14(d)(ii)(C)(2). MRX will open a complex strategy with the Complex Order Book crossed if an Opening Price cannot be found within the Boundary Prices and remain crossed while attempting to uncross the Complex Order Book on a best effort basis, pursuant to Supplementary Material .06 of MRX Options 3, Section 14, until all interest can be executed. Today, Phlx will open a complex strategy crossed when a price cannot be found within Phlx's cPBBO during the COOP Evaluation period and there are more aggressive away market prices that are limiting the ability to leg into the single-leg book, but will not remain crossed as complex orders that are through Phlx's cPBBO would be cancelled pursuant to Phlx Options 3, Section 14(f)(i)(A).[61]

[57] The allowance of a greater number of Market Complex Orders within the Opening Process provides a greater depth of price discovery for an options series. As noted above, the Boundary Price would assign limits to the Opening Price, therefore preventing Market Complex Orders which are aggressively priced from negatively impacting the Opening Price.

[58] Unmatched orders would rest on the Order Book with the potential to execute intra-day.

[59] COOP Evaluation. Upon expiration of the COOP Timer, the System will conduct a COOP Evaluation to determine, for a Complex Order Strategy, the price at which the maximum number of contracts can trade, taking into account Complex Orders marked All-or-None (which will be executed if possible) unless the maximum number of contracts can only trade without including All-or-None Orders. The Exchange will open the Complex Order Strategy at that price, executing marketable trading interest, in the following order: first, to Public Customers in time priority; next to Phlx electronic market makers on a pro rata basis; and then to all other participants on a pro rata basis. The imbalance of Complex Orders that are unexecutable at that price are placed on the CBOOK. (1) No trade possible. If at the end of the COOP Timer the System determines that no market or marketable limit Complex Orders or COOP Sweeps, Complex Orders or COOP Sweeps that are equal to or improve the cPBBO, and/or Complex Orders or COOP Sweeps that cross within the cPBBO exist in the System, all Complex Orders received during the COOP Timer will be placed on the CBOOK, as described in paragraph (f) below. (2) Trade is possible. If at the end of the COOP Timer the System determines that there are market or marketable limit Complex Orders or COOP Sweeps, Complex Orders or COOP Sweeps that are equal to or improve the cPBBO, and/or Complex Orders or COOP Sweeps that cross within the cPBBO in the System, the System will do the following: if such interest crosses and does not match in size, the execution price is based on the highest (lowest) executable offer (bid) price when the larger sized interest is offering (bidding), provided, however, that if there is more than one price at which the interest may execute, the execution price when the larger sized interest is offering (bidding) is the midpoint of the highest (lowest) executable offer (bid) price and the next available executable offer (bid) price rounded, if necessary, down (up) to the closest minimum trading increment. If the crossing interest is equal in size, the execution price is the midpoint of lowest executable bid price and the highest executable offer price, rounded, if necessary, up to the closest minimum trading increment. Executable bids/offers include any interest which could be executed at the net price without trading through residual interest or the cPBBO or without trading at the cPBBO where there is Public Customer interest at the best bid or offer for any leg, consistent with paragraph (c)(iii). If there is any remaining interest and there is no component that consists of the underlying security and provided that the order is not marked all-or-none, such interest may ''leg'' whereby each options component may trade at the PBBO with existing quotes and/or Limit Orders on the Limit Order book for the individual components of the Complex Order; provided that remaining interest may execute against any eligible Complex Orders received before legging occurs. If the remaining interest has a component that consists of the underlying security, such Complex Order will be placed on the CBOOK (as defined below). (3) The Complex Order Strategy will be open after the COOP even if no executions occur.

[60] Phlx's All-or-None order type differs from MRX's All-or-None order in that only Public Customers may utilize the Phlx All-or-None order type and Phlx's All-or-None order may rest on the order book. *See* Phlx Option 3, Section 7(b)(5). MRX's All-or-None order is a limit or market order that is to be executed in its entirety or not at all. *See* MRX Options 3, Section 7(c).

[61] By way of example, assume Phlx cPBBO is 1.00 × 2.00 and cNBBO is 1.45 × 1.50. Also, assume Phlx complex Day Order to buy the strategy @$0.50 which begins a COOP timer. Next, a complex day order to sell the strategy @$0.50 arrives during the COOP timer. These orders are crossed, but are not within Phlx's cPBBO, and, therefore, both orders cannot trade as part of the COOP Evaluation. Additionally, the sell order cannot leg into Phlx's simple order book because of the more aggressive cNBBO which would limit legging as part of the ACE price protection described within Phlx Options 3, Section 16(b)(i), and, therefore, the sell order that is crossed with Phlx's cPBBO cannot remain on the Complex Order Book and is ultimately cancelled. In contrast, on MRX, this sell order would remain crossed on the Complex Order Book while continuously looking for an opportunity to uncross and trade these Complex Orders as new orders arrive or the market moves. Options 3, Section 14 (f)(i)(A) provides that Complex Orders must be entered onto the CBOOK in increments of $0.01. The individual components of a Complex Order may be executed in minimum increments of

Continued

The Exchange also proposes to amend the Opening Price in Supplementary Material .05(d)(4) of MRX Options 3, Section 14 that currently provides,

> Opening Price. If the Potential Opening Price is at or within the Boundary Prices, the Potential Opening Price becomes the Opening Price. If the Potential Opening Price is not at or within the Boundary Prices, the Opening Price will be the price closest to the Potential Opening Price that satisfies the maximum quantity criteria without leaving unexecuted contracts on the bid or offer side of the market at that price and is at or within the Boundary Prices. If the bid Boundary Price is higher than the offer Boundary Price, or if no valid Opening Price can be found at or within the Boundary Prices, there will be no trade in the Complex Opening Price Determination and the complex strategy will open pursuant to the Complex Uncrossing Process described in Supplementary Material .06(b) to this Rule.

The Exchange proposes to amend this rule to instead provide,

> If the Potential Opening Price is at or within the Boundary Prices, the Potential Opening Price becomes the Opening Price and the complex strategy will open pursuant to Supplementary Material .05(d)(5) to this Rule. If the bid Boundary Price is higher than the offer Boundary Price, or if no valid Potential Opening Price can be found at or within the Boundary Prices, there will be no trade in the Complex Opening Price Determination and the complex strategy will open pursuant to the Complex Uncrossing Process described in Supplementary Material .06(b) to this Rule.

With the proposed change, if the Potential Opening Price is at or within the Boundary Prices, the Potential Opening Price becomes the Opening Price and the complex strategy will open pursuant to the Uncrossing described in Supplementary Material .05(d)(5) of MRX Options 3, Section 14, as is the case today. However, as is the case today, if the bid Boundary Price is higher than the offer Boundary Price, or if no valid Potential Opening Price can be found at or within the Boundary Prices, there will be no trade in the Complex Opening Price Determination and the complex strategy will open pursuant to the Complex Uncrossing process described in Supplementary Material .06(b) of MRX Options 3, Section 14 pursuant to the proposed amendment to the Complex Opening Price Determination.

Complex Order Risk Protections

The Exchange proposes a non-substantive amendment to the title of a Complex Order Risk Protection in MRX Options 3, Section 16, Complex Order Risk Protections. Specifically, the Exchange proposes to amend MRX Options 3, Section 16(c)(1) to change the title from ''Limit Order Price Protection'' to ''Complex Order Price Protection.'' The Exchange believes the proposed title more accurately describes the risk protection. The Exchange also proposes a non-substantive amendment to correct an incorrect citation in MRX Options 3, Section 16(b) to ''Options 2, Section 11.'' The correct citation is ''Options 3, Section 11.'' Correcting this citation will make clear what was section was being referenced.

Implementation

The Exchange intends to begin implementation of the proposed rule change prior to December 23, 2022. The implementation would commence with a limited symbol migration and continue to migrate symbols over several weeks. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[62] in general, and furthers the objectives of Section 6(b)(5) of the Act,[63] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest for the reasons discussed below.

Legging Order

Amending MRX Options 3, Section 7(k)(1) to add a provision which states that a Legging Order will not be generated during a Posting Period in progress on the same side in the series pursuant to Options 3, Section 15 regarding Acceptable Trade Range, is consistent with the Act because from a System processing and user acceptance standpoint, the best practice is to wait for the ATR Posting Period to complete before attempting to generate a Legging Order on the same side in the series, as the time required to complete the ATR Posting Period is minimal. The proposed change is designed to protect investors and the public interest as automatically generated Legging Orders would be removed from the single-leg order book when they are no longer at the Exchange's displayed best bid or offer. Generating a Legging Order during a Posting Period in progress on the same side in the series would lead to the immediate removal of the Legging Order from the single-leg order book, making it superfluous to have been generated. Phlx's legging order rule in Options 3, Section 14(f)(iii)(C)(2)[64] has the same restriction on generating legging orders as proposed herein.

Re-Pricing

The Exchange believes that amending Options 3, Section 12(c) and (d) and Options 3, Section 14(b)(19) to account for re-pricing of quotes and orders that would otherwise lock or cross an away market, as provided in Options 3, Section 4(b)(6) and (7) and Options 3, Section 5(c) and (d) of SR–MRX–2022–16, is consistent with the Act.

As discussed above with the implementation of re-pricing as provided in Options 3, Section 4(b)(6) and (7) and Options 3, Section 5(c) and (d), interest could be available on the Exchange at a price that is better than the NBBO but is non-displayed (*i.e.* the Exchange's non-displayed order book or internal BBO). The proposed addition of ''internal BBO'' to Options 3, Section 12(c) and (d) will ensure that Members continue to submit Qualified Contingent Cross Orders and Complex Qualified Contingent Cross Orders at prices equal to or better than the best prices available in the market and ensure that these orders are not executed ahead of better-priced interest. By including ''internal BBO'' the Exchange ensures that such Qualified Contingent Cross Orders and Complex Qualified Contingent Cross Orders will continue to be executed at the best price and would not be executed ahead of better-priced interest.

Further, with respect to the amendment to Options 3, Section 14(b)(19), regarding Complex Preferenced Orders, the addition of ''internal BBO'' is designed to ensure that Complex Preferenced Orders are not allocated unless the Preferred Market Maker is quoting at the better of the internal BBO (which could be better than the NBBO) or the NBBO for a component leg(s) of the Complex Preferenced Order at the time the Complex Preferenced Order is received.

Changes to the Single-Leg Price Improvement Mechanism for Crossing Transactions

The Exchange's proposal to amend MRX Options 3, Section 13(d)(4), related to single-leg PIM, to not permit unrelated marketable interest, on the opposite side of the market from the Agency Order, which is received during a single-leg PIM to early terminate a single-leg PIM is consistent with the Act

$0.01, regardless of the minimum increments applicable to such components. Such orders will be placed on the CBOOK by the System when the following conditions exist: (A) When the Complex Order does not price-improve upon the cPBBO upon receipt. . .''.

[62] 15 U.S.C. 78f(b).

[63] 15 U.S.C. 78f(b)(5).

[64] *See* note 8 above. [sic]

and promotes just and equitable principles because allowing the auction to run its full course would provide a full opportunity for price improvement to the Crossing Transaction. The unrelated interest would participate in the single-leg PIM allocation pursuant to MRX Options 3, Section 13(d), if residual contracts remain after executing with interest on the single-leg order book. Today, Phlx [65] and BX [66] do not permit unrelated interest on the same or opposite side of an Agency Order to early terminate their simple price improvement auctions.

The proposed amendment in MRX Options 3, Section 13(c)(5)(ii), related to single-leg PIM, applies to the receipt of marketable orders both on the same side and opposite side of the Agency order. With respect to the same side of the Agency Order, today, an unrelated market or marketable limit order in the same series on the same side of the Agency Order would cause the single-leg PIM to early terminate as well. The proposal promotes just and equitable principles of trade because a market or marketable limit order in the same series on the same side of the Agency Order cannot interact with a single-leg PIM auction. The market or marketable limit order may interact with the order book, and if there are residual contracts that remain from the market or marketable order in the same series on the same side of the Agency Order, they will rest on the order book and improve the BBO beyond the price of the Crossing Transaction which will cause early termination of the single-leg PIM pursuant to proposed MRX Options 3, Section 13(c)(5)(ii). The Exchange believes that this outcome would allow for the single-leg PIM exposure period to continue for the full period despite the receipt of unrelated marketable interest on the same side of the market from the Agency Order, provided residual interest does not go on to rest on the order book improving the BBO beyond the price of the Crossing Transaction of the PIM. Allowing the single-leg PIM to run its full course protects investors and the general public because it would provide an opportunity for price improvement to the Agency Order.

Amending current MRX Options 3, Section 13(c)(5)(iii) to align the rule text more closely with BX Options 3, Section 13(ii)(B)(2) [67] is consistent with the Act because it removes any ambiguity that a market or marketable limit order priced more aggressively than the Agency Order on the same side could ultimately rest on the order book, improving the BBO beyond the price of the Crossing Transaction of the PIM and, therefore, cause the early termination of a single-leg PIM. Continuing to permit a single-leg PIM to early terminate any time the Exchange best bid or offer improves beyond the price of the Crossing Transaction on the same side of the market as the Agency Order protects investors and the general public because the Crossing Transaction Agency Order's price is inferior to the Exchange's best bid or offer on the same side of the market as the Agency Order. Upon early termination of the single-leg PIM, the Crossing Transaction would execute against responses that arrived prior to the time the Exchange's best bid or offer improved beyond the Crossing Transaction. The proposed amendment to the rule text is not intended to amend the current System functionality, rather it is intended to make clear that a market or marketable limit order could ultimately rest on the order book and improve the BBO beyond the price of the Crossing Transaction.

Adding proposed new MRX Options 3, Section 13(c)(5)(iii), which describes the automatic termination of the exposure period resulting from a trading halt on the Exchange in the affected series, is consistent with the Act because a trading halt would cause an option series to stop trading on MRX and thereby impact the PIM auction. Today, if a trading halt is initiated after an order is entered into the single-leg PIM, such auction will be automatically terminated without execution. Of note, the Exchange is separately proposing to amend MRX Options 3, Section 13(d)(5) [68] to change System behavior such that if a trading halt is initiated after an order is entered into the single-leg PIM, such auction will be automatically terminated with execution solely with the Counter-Side Order.[69] The proposed amendment to MRX Options 3, Section 13(c)(5)(iii) protects investors and the general public by making clear that a trading halt would lead to early termination of a single-leg PIM. This amendment is not intended to amend the current System functionality, rather it is intended to make clear that a trading halt will cause the single-leg PIM to early terminate.

Changes to the Complex PIM

Deleting MRX Options 3, Section 13(e)(4)(vi) within Complex PIM, as well as a paragraph in Supplementary Material .01(b)(ii) of MRX Options 3, Section 14 discussing Complex Order Exposure, related to the early termination of single-leg PIM from the arrival of unrelated marketable interest on either the same or opposite side of the market from the Agency Order, is consistent with the Act because a single-leg PIM will no longer early terminate from the arrival of unrelated marketable interest on either the same or opposite side of the market from the Agency Order and because the flash functionality will no longer exist.[70] The removal of the aforementioned rule text will protect investors and the public by avoiding confusion as the scenarios contemplated by MRX Options 3, Section 13(e)(4)(vi) and Supplementary Material .01(b)(ii) of MRX Options 3, Section 14 will no longer be able to occur.

Delayed Functionality

The Exchange's proposal to delay the implementation of certain stock-tied functionality in connection with the technology migration is consistent with the Act as it will allow the Exchange additional time to code, test and implement this functionality on the enhanced platform. The Delayed Functionalities will not be available for symbols that migrated to the platform and thereafter, until such time as the Exchange recommenced their availability by announcing a date in an Options Trader Alert, which date would be prior to one year from the start of the migration of the symbols to the platform. The Exchange is staging the migration to provide maximum benefit to its Members while also ensuring a successful rollout. As noted above, the Exchange is contemplating amendments to its stock-tied functionality and desires additional time to draft and code those changes before reintroducing stock-tied on MRX.[71] While no Member will be able to utilize the Delayed Functionalities on MRX to accomplish an options transaction with stock until they are reactivated on MRX, the Exchange notes that today, ISE offers the Delayed Functionalities and the ability to transact options with stock would be

[65] *See* note 14 above. [sic]

[66] *See* note 15 above. [sic]

[67] *See* note 17 above. [sic]

[68] *See* note 18 above. [sic]

[69] SR–MRX–2022–5P [sic] proposes to renumber MRX Options 3, Section 13(d)(5) as Options 3, Section 13(d)(6), and proposes to amend the rule text to state, ''If a trading halt is initiated after an order is entered into the Price Improvement Mechanism, such auction will be automatically terminated with execution solely with the Counter-Side Order.''

[70] *See* note 24 above. [sic]

[71] MRX would also need time to submit any related rule filings with the Commission prior to reintroducing this functionality.

available on ISE for Members, as is the case today.

Other Complex Order Amendments

Opening Only Complex Order

The Exchange's proposal to remove the word ''Limit'' within the description of the Opening Only Complex Order Type in MRX Options 3, Section 14(b)(10) is consistent with the Act because it allows Opening Only Complex Orders to be submitted as Market Orders or Limit Orders. The Exchange believes that allowing Market and Limit Orders to be submitted within the Complex Opening Process promotes just and equitable principles of trade. Market Orders are typically the most aggressively priced orders while Limit Orders have a limit price contingency that Market Orders do not have. Allowing both of these order types to participate in the Complex Opening Process protects investors and the general public because it allows greater liquidity to be present to determine the Opening Price. All Members may enter both Market Orders and Limit Orders in the Complex Opening Process as well as intra-day. This proposal is consistent with current System operations.

Complex QCC With Stock Orders

The Exchange's proposal to amend an incorrect citation with MRX Options 3, Section 14(b)(15), related to Complex QCC with Stock Orders, is consistent with the Act because the current citation to MRX Options 3, Section 12(e) in the description of this order type should be to MRX Options 3, Section 12(f). This non-substantive amendment will make clear what was meant by the reference.

Complex Preferenced Orders

The Exchange's proposal to add ''Complex Preferenced Orders'' to the list of Complex Order Types in MRX Options 3, Section 14(b) is consistent with the Act because the Exchange believes that this order type will promote just and equitable principles of trade because the order type will continue to encourage Preferred Market Makers to quote aggressively in an effort to execute against the Complex Preferenced Order. Preferred Marker Makers are not able to ascertain if a particular order is a Complex Preferenced Order. The Exchange believes the proposal will protect investors and the general public by encouraging greater order flow to be sent to the Exchange through Complex Preferenced Orders and that this increased order flow will benefit all market participants on the Exchange because they may interact with that order flow.

The proposal promotes just and equitable principles of trade because it continues to prioritize Priority Customer [72] Orders on the single-leg order book. Priority Customers have priority over non-Priority Customer interest at the same price in the same options series on the single-leg order book.[73] Complex Preferenced Orders are allocated based on the competitive bidding of market participants. The Exchange's proposal promotes just and equitable principles of trade as a Preferred Marker Maker must be at the NBBO for a component leg(s) of the Complex Preferenced Order at the time the Complex Preferenced Order is received. Moreover, participation entitlements for Preferred Market Makers are designed to balance the obligations [74] that the Preferred Market Maker has to the market with corresponding benefits. In its approval of other options exchange preferenced or directed order programs, the Commission has, like proposals to amend a specialist guarantee, focused on whether the percentage of the ''entitlement'' would rise to a level that could have a material adverse impact on quote competition within a particular exchange, and concluded that such programs do not jeopardize market integrity or the incentive for market participants to post competitive quotes.[75]

Further, adding this existing order type, which is described in MRX Options 2, Section 10, would complete the list of Complex Order types in MRX Options 3, Section 14(b). The addition of Complex Preferenced Orders to the list of order types in MRX Options 3, Section 14(b) will make clear to Members the availability of Complex Preferenced Orders. Both Phlx [76] and MIAX [77] have a similar order type.

Options 3, Section 14(c)(2) and MRX Supplementary Material .02 to Options 3, Section 14

Correcting an incorrect reference to ''ISE'' with MRX Options 3, Section 14(c)(2), which should be to ''MRX,'' will add clarity to the rule; this amendment is non-substantive. The Exchange's proposal to make a technical correction in Supplementary Material .02 of MRX Options 3, Section 14 to amend the word ''which'' to ''whom'' is a non-substantive amendment.

Complex Opening Price Determination

The Exchange's proposal to amend the citation within Supplementary Material .05(d)(2) to Options 3, Section 14, related to the Potential Opening Price, is consistent with the Act because the current citation to Supplementary Material .06(b) should be to Supplementary Material .05(b). This non-substantive amendment will make clear what was meant by the reference.

The Exchange's proposal to amend Supplementary Material .05(d)(3) of MRX Options 3, Section 14, which describes the Complex Opening Price Determination, is consistent with the Act because the proposed new Complex Opening Process would allow for additional contracts to be included in the Potential Opening Price calculation. This proposed methodology would protect investors and the general public by leading to better price discovery and more contracts executing as part of the Complex Opening Price Determination. With this proposal, when the interest does not match the size and there is more than one Potential Opening Price at which the interest may execute, then the Exchange would calculate a Potential Opening Price using the mid-point of the highest (lowest) executable offer (bid) price and the next available executable offer (bid) price rounded, if necessary, down (up) to the closest minimum trading increment. As a result, the proposal promotes just and equitable principles of trade as more options contracts are likely to be executed at better prices than under current rule. This behavior differs from MRX's current opening rule in that, today, the Exchange would calculate the Potential Opening Price as the highest (lowest) executable bid (offer) when there would be contracts left unexecuted on the bid (offer) side of the

[72] 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 account(s). *See* Options 1, Section 1(a)(36).

[73] *See* MRX Options 3, Section 10(c)(1)(A).

[74] Primary Market Makers are obligated to quote in the Opening Process pursuant to MRX Options 3, Section 8(c) as well as intra-day pursuant to Options 2, Section 5(e), in addition to other obligations noted within MRX Options 2, Sections 4–8.

[75] *See* Securities Exchange Act Release Nos. 74129 (January 23, 2015), 80 FR 4954 at 4955 (January 29, 2015) (SR–BX–2014–049) (Order Approving Proposed Rule Change Relating to Directed Market Makers); and 51759 (May 27, 2005), 70 FR 32860 at 32861(June 6, 2005) (SR–Phlx–2004–91) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto To Establish a Directed Order Process for Orders Delivered to the Phlx Via AUTOM).

[76] *See* note 46 above. [sic]

[77] *See* note 47 above. [sic]

complex market. The proposed methodology is similar to Phlx.[78]

Further, the proposed amendment promotes just and equitable principles of trade by allowing Market Complex Orders to participate in the Opening Price Determination process in a broader capacity than the MRX opening rule allows for today. Today, if there are only Market Complex Orders on both sides of the market, or if there are Market Complex Orders on the bid (offer) side of the market for greater than the total size of Complex Orders on the offer (bid) side of the market, then MRX will not trade in the Complex Opening Price Determination process and would instead open pursuant to an Uncrossing pursuant to Supplementary Material .06(b) of MRX Options 3, Section 14. The proposed rule would have the Boundary Price assign limits to the Opening Price and, therefore, permit Market Complex Orders to participate in the Complex Opening Process, without limitation to the benefit of investors and the public interest. With this change, MRX would permit a complex strategy to calculate an Opening Price utilizing a greater number of Market Complex Orders, which benefits the Opening Process by taking into account these more aggressively priced orders[79] while also bringing more liquidity into the Opening Price calculation. The amendment is designed to promote just and equitable principles of trade as it will benefit Members by smoothing the way for the complex strategy to open with Market Complex Orders.

Finally, the proposed amendments to the Complex Opening Process should promote just and equitable principles by allowing a complex strategy to open pursuant to Supplementary Material .05(d)(4) of MRX Options 3, Section 14, with less contracts becoming subject to the Uncrossing pursuant to Supplementary Material .05(d)(5) of MRX Options 3, Section 14. As a result of this change, more interest would be able to trade within the Opening Process, ensuring a greater number of contracts are executed on MRX at the opening and lessening the likelihood that contracts which remain unmatched during the Uncrossing receive no execution.[80]

[78] *See* Phlx Options 3, Section 14(d)(ii)(C)(2).

[79] The allowance of a greater number of Market Complex Orders within the Opening Process provides a greater depth of price discovery for an options series. As noted above, the Boundary Price would assign limits to the Opening Price, therefore preventing Market Complex Orders which are aggressively priced from negatively impacting the Opening Price.

[80] Unmatched orders would rest on the order book with the potential to execute intra-day.

Complex Order Risk Protections

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.

Legging Orders

Amending MRX Options 3, Section 7(k)(1) to add a provision which states that a Legging Order will not be generated during a Posting Period in progress on the same side in the series pursuant to Options 3, Section 15 regarding Acceptable Trade Range does not impose an undue burden on intra-market competition because the amendment will apply equally to all Members as Legging Orders are generated by the System.

Additionally, this proposal does not impose an undue burden on inter-market competition as other options exchanges may adopt Legging Orders and similar rules for the generation of such orders. Today, Phlx's legging order rule in Options 3, Section 14(f)(iii)(C)(2) has the same restriction as proposed to be added to MRX's Legging Order rule in MRX Options 3, Section 7(k)(1).[81]

Re-Pricing

Adding language consistent with re-pricing within Options 3, Section 12(c) and (d) and Options 3, Section 14(b)(19) does not impose an undue burden on competition, rather it will ensure that the rules conform to the concept of re-pricing at an internal BBO within Options 3, Section 4(b)(6) and (7) and Options 5(c) and (d) which recently became effective.[82] With this recent change, re-priced quotes and orders are accessible on the Exchange's order book at the non-displayed price. Amending Options 3, Section 12(c) and (d) to utilize the ''internal BBO'' language would continue to require Members to submit Qualified Contingent Cross Orders and Complex Qualified Contingent Cross Orders at the best price to receive an execution. Furthermore, amending Options 3, Section 14(b)(19) to utilize the ''internal BBO'' language would continue to require Members to quote at the best price to receive allocation of a Complex Preferenced Order. The introduction of ''internal BBO'' will ensure that Qualified Contingent Cross Orders and Complex Qualified Contingent Cross Orders do not execute if better-priced interest is available and that a Complex Preferenced Order would not receive a Preferred Market Maker allocation if better-priced interest was available.

[81] *See* note 8 above. [sic]

[82] *See* SR–MRX–2022–16.

Changes to the Single-Leg Price Improvement Mechanism for Crossing Transactions

The Exchange's proposal to amend MRX Options 3, Section 13(d)(4), MRX Options 3, Section 13(c)(5)(ii) and (iii), and add a proposed new MRX Options 3, Section 13(c)(5)(iii), related to single-leg PIM, does not impose an undue burden on intra-market competition because the amendment will apply equally to all Members. All Members may utilize PIM.

The Exchange's proposal to amend MRX Options 3, Section 13(d)(4), MRX Options 3, Section 13(c)(5)(ii) and (iii), and add a proposed new MRX Options 3, Section 13(c)(5)(iii), related to single-leg PIM, does not impose an undue burden on inter-market competition because other options exchanges may adopt similar rules. Today, Phlx[83] and BX[84] do not permit unrelated marketable interest on either the same or opposite side of the market from an Agency Order to early terminate their simple price improvement auctions.

Changes to the Complex PIM

Deleting MRX Options 3, Section 13(e)(4)(vi) within Complex PIM, as well as a related paragraph in Supplementary Material .01(b)(ii) of MRX Options 3, Section 14, which describes Complex Order Exposure, related to the early termination of single-leg PIM as a result of the arrival of unrelated marketable interest on either the same or the opposite side of the market from the Agency Order does not impose an undue burden on intra-market competition because the amendment will apply equally to all Members. All Members may utilize Complex PIM.

Deleting MRX Options 3, Section 13(e)(4)(vi) within Complex PIM, as well as a related paragraph in Supplementary Material .01(b)(ii) of MRX Options 3, Section 14, which describes Complex Order Exposure, related to the early termination of single-leg PIM from the arrival of unrelated marketable interest on either the same or opposite side of the market from the Agency Order does not impose an undue burden on inter-market competition as other options exchanges may adopt similar rules. Today, Phlx[85] and BX[86] do not permit unrelated marketable interest on either the same

[83] *See* note 14 above. [sic]

[84] *See* note 15 above. [sic]

[85] *See* note 14 above. [sic]

[86] *See* note 15 above. [sic]

or opposite side of the market from an Agency Order to early terminate their simple price improvement auctions.

Delayed Functionality

The Exchange's proposal to delay the implementation of certain stock-tied functionality in connection with the technology migration does not impose an undue burden on intra-market competition as no Member will be able to utilize the Delayed Functionalities. Furthermore, ISE offers the Delayed Functionalities today.

The Exchange's proposal to delay the implementation of certain stock-tied functionality in connection with the technology migration does not impose an undue burden on inter-market competition because the Exchange does not believe that the proposed rule change will impact the intense competition that exists in the options market. Today, ISE offers the Delayed Functionalities.

Other Complex Order Amendments

The Exchange does not believe that the proposed amendments to the Complex Orders rule will impose any significant burden on inter-market competition. Other exchanges today offer complex order functionalities. These options markets may amend their rules to mirror those of MRX. Other options exchanges offer orders similar to Complex Preferenced Orders.[87] Additionally, the proposed Complex Opening Process is similar to Phlx.[88] Finally, the proposed Complex Opening Process methodology would allow MRX to compete with other options exchanges that offer Complex Order functionality.

Opening Only Complex Order

The Exchange's proposal to remove the word ''Limit'' within the description of the Opening Only Complex Order Type in MRX Options 3, Section 14(b)(10) does not impose an undue burden on intra-market competition because this proposed change will apply to all Members.

Complex QCC With Stock Orders

The Exchange's proposal to amend an incorrect citation with MRX Options 3, Section 14(b)(15), related to Complex QCC with Stock Orders, does not impose an undue burden on intra-market competition because the amendment is non-substantive.

Complex Preferenced Orders

The Exchange's proposal to add ''Complex Preferenced Orders'' to the list of Complex Order Types in MRX Options 3, Section 14(b) does not impose an undue burden on intra-market competition. Preferred Market Makers have obligations [89] unlike other market participants. The allocation entitlements for Preferred Market Makers are designed to balance the obligations that the Preferred Market Makers has to the market with corresponding benefits. In order to receive the participation entitlement for a Complex Preferenced Order, Preferred Market Makers are required to quote 90% of the trading day as compared to Market Makers who are required to quote 60% of the trading day.[90] Further, Priority Customers [91] have priority over non-Priority Customer interest at the same price in the same options series on the single-leg order book.[92]

At the time of receipt of the Complex Preferenced Order, a Preferred Market Maker would have to be quoting at the NBBO, which is intended to incentivize the Preferred Market Maker to quote aggressively in order to execute against the Complex Preferenced Order. Preferred Marker Makers are not able to ascertain if a particular order is a Complex Preferenced Order. The Exchange believes the proposal will encourage Market Makers to quote tighter and add a greater amount of liquidity on MRX in an attempt to interact with Complex Preferenced Orders that are sent to the Exchange. This order flow will benefit all market participants on the Exchange because any MRX Member may interact with that order flow. Finally, any MRX Member on the single-leg or Complex Order Book may trade with a Complex Preferenced Order. Also, any MRX Market Maker may elect to receive Preferenced Order.

Options 3, Section 14(c)(2) and MRX Supplementary Material .02 to Options 3, Section 14

Correcting an incorrect reference to ''ISE'' with MRX Options 3, Section 14(c)(2), which should be to ''MRX,'' will add clarity to the rule; this amendment is non-substantive. The Exchange's proposal to make a technical correction in Supplementary Material .02 of MRX Options 3, Section 14 to amend the word ''which'' to ''whom'' is a non-substantive amendment.

Complex Opening Price Determination

The Exchange's proposal to amend an incorrect citation within Supplementary Material .05(d)(2) to Options 3, Section 14, related to the Potential Opening Price, does not impose an undue burden on intra-market competition because the amendment is non-substantive.

The Exchange's proposal to amend Supplementary Material .05(d)(3) to MRX Options 3, Section 14, which describes the Complex Opening Price Determination, does not impose an undue burden on intra-market competition because all Members may submit interest into the Complex Opening Process.

Complex Order Risk Protections

The Exchange's proposal to amend the title of a Complex Order Risk Protection in Options 3, Section 16, Complex Order Risk Protections is a non-substantive amendment.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[93] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[94] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Legging Orders

The Exchange proposes to amend MRX Options 3, Section 7(k)(1) to provide that a Legging Order will not be generated during an ATR Posting Period, as provided in Options 3, Section 15, on the same side in the series. The Exchange states that during an ATR Posting Period, an order could increase (decrease) past the price of any Legging Order generated on the bid (offer) as the order works its way through the order book.[95] The Exchange further states because Legging Orders

[87] *See e.g.* Phlx Options 2, Section 10 and MIAX Rule 100.

[88] *See* Phlx Options 3, Section 14(d)(ii)(C)(2).

[89] *See* MRX Options 2, Section 5.

[90] *See* MRX Options 2, Section 5.

[91] *See* note 68 above. [sic]

[92] *See* MRX Options 3, Section 10(c)(1)(A).

[93] 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).

[94] 15 U.S.C. 78f(b)(5).

[95] *See* Amendment No. 1 at 7.

are removed from the order book when they are no longer at the Exchange's displayed best bid or offer, generating a Legging Order during a Posting Period in progress on the same side in the series would lead to the immediate removal of the Legging Order.[96] The Commission believes that not generating a Legging Order during an ATR Posting Period on the same side in the series will protect investors and the public interest by avoiding the generation of an order that would be removed immediately, which should help to provide for orderly trading on the Exchange and the efficient operation of the Exchange's system. Another options exchange also does not generate legging orders under these circumstances.[97]

B. Repricing and the Internal BBO

The Exchange recently adopted a re-pricing functionality for certain quotes and orders that lock or cross an away market's price.[98] As described more fully above, these re-priced orders and quotes may rest on the Exchange's order book at non-displayed prices (the internal BBO), which may be better than the NBBO. Currently, a Qualified Contingent Cross Order must be executed at a price that is at or between the NBBO, and the component legs of a Complex Qualified Contingent Cross Order must executed at a price that is at or between the NBBO for the series.[99] The Exchange proposes to amend its rules to require a Qualified Contingent Cross Order to execute at a price that is at or between the better of the internal BBO or the NBBO, and to require each component leg of a Complex Qualified Contingent Cross Order to execute at a price that is at or between the better of the internal BBO or the NBBO for the individual series.[100] Because MRX's non-displayed internal BBO could be better than the NBBO for a series, the Commission believes that requiring a Qualified Contingent Cross Order and the component legs of a Complex Qualified Contingent Cross Order to execute at a price that is at or between the better of the internal BBO or the NBBO for that series will protect investors and the public interest by effectively maintaining the existing requirement in the Exchange's rules that the option leg(s) of Qualified Contingent Cross and Complex Qualified Contingent Cross Orders execute at a price that is at or between best prices available for the options leg(s).

C. Price Improvement Mechanism for Crossing Transactions

1. Single-Leg PIM

The Exchange proposes to amend MRX Options 3, Sections 13(c)(5) and (d)(4), relating to the termination of a single-leg PIM auction.

Incoming Interest That Will Not Cause an Early Termination

The Exchange proposes to amend MRX Options 3, Section 13(d)(4) to provide that unrelated market or marketable interest (against the MRX BBO) on the opposite side of the market from the Agency Order received during the exposure period for a single-leg PIM auction will not cause the exposure period to end early and will execute against interest outside of the Crossing Transaction. The Commission believes that allowing the single-leg PIM exposure period to continue despite the receipt of unrelated market or marketable interest on the opposite side of the market from the Agency Order will benefit investors by providing the Agency Order with additional time to receive price improvement and allowing the unrelated interest to seek an execution against interest outside of the Crossing Transaction, including against interest on the Exchange's order book. If contracts remain from the unrelated order at the time the exposure period ends, they will be considered for participation in the single-leg PIM allocation process described in MRX Options 3, Section 13(d)(3).[101] Other options exchanges do not terminate their price improvement auctions upon receipt of unrelated interest on the opposite side of the market from an agency order.[102]

The Exchange proposes to delete current MRX Options 3, Section 13(c)(5)(ii), which states that the PIM exposure period will automatically terminate ''upon the receipt of a market or marketable limit order on the Exchange in the same series.'' As discussed above, proposed MRX Options 3, Section 13(d)(4) states that unrelated market or marketable interest on the opposite side of the market from the Agency Order will not cause the exposure period to end early. The Commission believes that allowing the single-leg PIM to continue after the receipt of a market or marketable limit order in the series on the same side of the market as the Agency Order, unless the incoming order causes the Exchange's best bid or offer to improve beyond the price of the Crossing Transaction on the same side, as provided in proposed MRX Options 3, Section 13(c)(5)(ii), will benefit investors by providing the Agency Order with additional time to receive price improvement. In addition, the Exchange states that the proposed change is consistent with BX's PRISM Auction and Phlx's PIXL, which do not terminate early when the exchange receives an unrelated market or marketable limit order in the same series on the same side of the market as the Agency Order, unless the exchange's best bid or offer improves beyond the price of the Crossing Transaction on the same side.[103]

Same-Side Interest That Will Cause an Early Termination

The proposal replaces current Options 3, Section 13(c)(5)(iii), which provides that the exposure period will automatically terminate ''upon the receipt of a non-marketable limit order in the same series on the same side of the market as the Agency Order that would cause the Crossing Transaction to be outside of the best bid of offer on the Exchange,'' with proposed Options 3, Section 13(c)(5)(ii), which states that the exposure period will automatically terminate ''any time the Exchange best bid or offer improves beyond the price of the Crossing Transaction on the same side of the market as the Agency Order.'' The Exchange states that new Section 13(c)(5)(ii) is designed to remove any ambiguity that a market or marketable limit order priced more aggressively than the Agency Order could improve the Exchange's best bid or offer beyond the price of the Crossing Transaction and cause the PIM to terminate early.[104] The Exchange states that termination of the exposure period is necessary under these circumstances because the price of the single-leg PIM would no longer be at the Exchange's best price and would

[96] *See id.*

[97] *See* Phlx Options 3, Section 14(f)(iii)(C)(2).

[98] *See* SR–MRX–2022–16, *supra* note 6.

[99] Qualified Contingent Cross and Complex Qualified Contingent Cross Orders also must satisfy other requirements, including not trading at the same price as resting Priority Customer Orders. *See* MRX Options 3, Sections 12(c) and (d).

[100] *See* proposed MRX Options 3, Sections 12(c) and (d). As discussed below, MRX also proposes to include a reference to the internal BBO in its proposed rules providing for Complex Preferenced Orders.

[101] *See* proposed MRX Rule Options 3, Section 13(d)(4).

[102] *See, e.g.,* Phlx Options 3, Section 13(b)(4) (providing that an unrelated market or marketable Limit Order (against the PBBO) on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction); and BX Options 3, Section 13(ii)(D) (providing that unrelated market or marketable interest (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction).

[103] *See* Amendment No. 1 at 14.

[104] *See id.* at 16.

not have execution priority with respect to responses or unrelated interest that arrives.[105] In addition, the Exchange states that termination of the exposure period would permit the execution of responses received prior to the improvement in the Exchange's best bid or offer.[106] The Commission believes that terminating the exposure period when the Exchange's best bid or offer improves beyond the price of the Crossing Transaction on the same side as the Agency Order will protect investors and the public interest by preserving the priority of the better-priced incoming interest. In addition, another options exchange terminates its price improvement auction under these circumstances.[107]

Termination Following a Trading Halt

The Exchange proposes to amend Options 3, Section 13(c)(5) to state that the exposure period for a single-leg PIM will terminate any time there is a trading halt on the Exchange in the affected series.[108] The Commission believes that terminating the PIM exposure period after a trading halt is consistent with current MRX Options 3, Section 13(d)(5), which states that a PIM auction will terminate automatically if a trading halt is initiated after an order is entered into the PIM. Other options exchanges also terminate their price improvement auctions following a trading halt.[109]

2. Complex PIM

MRX Options 3, Section 13(e)(4)(vi) describes the processing of orders when an incoming Complex Order that causes the early termination of a Complex PIM auction is also marketable against a component leg(s) of the strategy that is the subject of a concurrent single-leg PIM auction or an exposure period pursuant to Supplementary Material .02 to MRX Options 5, Section 2. Supplementary Material .01(b)(iii) to MRX Options 3, Section 14 describes the processing of orders when an incoming Complex Order that causes the early termination of the Complex Order Exposure period is also marketable against a component leg(s) of the strategy that is the subject of a concurrent single-leg PIM auction or an exposure period pursuant to Supplementary Material .02 to MRX Options 5, Section 2. Because MRX has eliminated the flash functionality exposure period [110] and because a single-leg PIM will no longer terminate early due to the arrival of unrelated marketable interest on either side of the market, as discussed above, the circumstances and processing addressed in MRX Options 3, Section 13(e)(4)(vi) and Supplementary Material .01(b)(iii) to MRX Options 3, Section 14 will no longer occur. Accordingly, the Commission believes that deleting MRX Options 3, Section 13(e)(4)(vi) and Supplementary Material .01(b)(iii) to MRX Options 3, Section 14 from MRX's rulebook will protect investors and the public interest by helping to avoid confusion and maintain the clarity and accuracy of the Exchange's rules.

D. Delayed Functionalities

As described more fully above, the Exchange proposes to amend MRX Options 3, Sections 7, 11, 12, 13, and 14 to delay the implementation of Stock-Option Orders, Stock-Complex Orders, QCC with Stock Orders, and Complex QCC with Stock Orders, in connection with the migration to the Exchange's new trading platform. The Commission believes that delaying the implementation of these functionalities will benefit investors by providing the Exchange with additional time to code, test, and implement these functionalities. As stated above, the Exchange will issue Options Trader Alerts to ensure that Members are aware of when the Delayed Functionalities will be available on the Exchange.[111]

E. Complex Order Types

1. Opening Only Complex Orders

The Exchange proposes to amend MRX Options 3, Section 14(b)(10) to indicate that Opening Only Complex Orders may be submitted as market orders as well as limit orders. The Exchange's current Complex Opening Price Determination rules address the participation of Market Complex Orders in the opening process.[112] The Commission believes that the proposed change to MRX Options 3, Section 14(b)(10) will protect investors and the public interest by providing consistency to the Exchange's rules and making clear that an Opening Only Complex Order may be submitted as either a market order or a limit order. Allowing both Market and Limit Complex Orders to participate in the Complex Opening Process could result in better price discovery and help to ensure that the Opening Price incorporates all available trading interest.

2. Complex Preferenced Orders

The Exchange proposes to adopt rules to provide for Complex Preferenced Orders.[113] The proposed rules will allow a Preferred Market Maker that receives a Complex Preferenced Order to receive the allocation provided in current MRX Options 3, Section 10(c)(1)(C) (the Preferred Market Maker participation entitlement for single-leg orders) when the component legs of the Complex Preferenced Order execute against the Preferred Market Maker's single-leg market quotes, provided the Preferred Market Maker satisfies certain conditions.[114] As described more fully above, an Electronic Access Member designated as a Preferred Market Maker may receive the Preferred Market Maker allocation described in MRX Options 3, Section 10(c)(1)(C) when the component leg(s) of a Complex Preferenced Order execute against the Preferred Market Maker's single-leg market quotes, provided that the Preferred Market Maker is quoting at the better of the internal BBO or the NBBO for a component leg(s) of the Complex Preferenced Order at the time the Complex Preferenced Order is received.[115] The Commission has

[105] *See* Amendment No. 1 at 16.

[106] *See id.*

[107] *See* Nasdaq BX Options 3, Section 13(ii)(B)(2) (stating that the PRISM Auction will conclude any time the BX BBO crosses the PRISM Order stop price on the same side of the market as the PRISM Order).

[108] *See* proposed MRX Options 3, Section 13(c)(5)(iii).

[109] *See* BX Options 3, Section 13(ii)(B)(3) (stating that a PRISM Auction will conclude any time there is a trading halt on the exchange in the affected series); and Phlx Options 3, Section 13(b)(2)(D) (stating that a PIXL Auction will conclude any time there is a trading halt on the exchange in the affected series).

[110] *See* note 28 *supra.*

[111] *See* Amendment No. 1 at 29.

[112] *See* Supplementary Material .05(d)(3) and (5) to MRX Options 3, Section 14.

[113] *See* proposed MRX Options 3, Section 14(b)(19).

[114] MRX Options 3, Section 10(c)(1)(C) provides that after all Priority Customer orders have been fully executed, upon receipt of a Preferenced Order pursuant to Supplementary .01 to Options 3, Section 10, provided the Preferred Market Maker's quote is at the better of the internal BBO or the NBBO, the Preferred Market Maker will be afforded a participation entitlement. Preferred Market Maker participation entitlements will apply only after the Opening Process. When the Preferred Market Maker is at the same price as a non- Priority Customer Order or Market Maker quote, pursuant to the Preferred Market Maker participation entitlement, the Preferred Market Maker shall receive, with respect to a Preferenced Order, the greater of: (a) 60% of remaining interest if there is one other non-Priority Customer Order or Market Maker quote at that price; or 40% of remaining interest if there are two or more other non-Priority Customer Orders or Market Maker quotes at that price; (b) the Preferred Market Maker's Size Pro-Rata share under subparagraph (c)(1)(E); or (c) the entitlement for Orders of 5 Contracts or Fewer under subparagraph (c)(1)(D) if the Preferred Market Maker is also the Primary Market Maker and the incoming Order is for 5 Contracts or Fewer.

[115] *See* proposed MRX Options 3, Section 14(b)(19). The Commission notes that the proposed requirement that the Preferred Market Maker be quoting at the better of the internal BBO or the NBBO for the component leg(s) of a Complex Preferenced Order at the time the Complex

previously approved rules of national securities exchanges that provide for directed order participation entitlements for single-leg orders.[116] The Commission has closely scrutinized such exchange rule proposals where the percentage of enhanced participation would rise to a level that could have a material adverse impact on quote competition within a particular exchange.[117] Under the proposal, a Preferred Market Maker that is quoting at the better of the internal BBO or the NBBO for a component leg of a Complex Preferenced Order at the time the Complex Preferenced Order is received will receive the same participation entitlement for that leg—the participation entitlement provided in MRX Options 3, Section 10(c)(1)(C)—as a Preferred Market Maker that receives a single-leg Preferenced Order. The Commission has reviewed MRX Options 3, Section 10(c)(1)(C) previously.[118]

To receive the Preferred Market Maker allocation, a Preferred Market Maker must be quoting at the better of the internal BBO or the NBBO for a component leg(s) of the Complex Preferenced Order at the time the Complex Preferenced Order is received.[119] The Commission believes that it is critical that a Preferred Market Maker not be permitted to step up and match the better of the internal BBO or the NBBO for the component legs of a Complex Order after it receives a Complex Preferenced Order to receive the participation entitlement.[120] In this regard, the Exchange states that Supplementary Material .01 to MRX Options 9, Section 1 prohibits a Member from notifying a Preferred Market Maker of an intention to submit a Complex Preferenced Order so that the Preferred Market Maker could change its quotation to match the NBBO immediately prior to submission of the Complex Preferenced Order, and then fade its quote.[121] The Exchange further states that it proactively conducts surveillance for, and enforces against, violations of Supplementary Material .01 to MRX Options 9, Section 1.[122]

In addition, Preferred Market Makers will be subject to heightened quoting requirements. To receive the participation entitlement for a Complex Preferenced Order, Preferred Market Makers are required to quote 90% of the trading day as compared to Market Makers, who are required to quote 60% of the trading day.[123] Other options exchanges also have adopted heightened quoting obligations for market makers to be eligible to receive a participant entitlement as part of their directed order programs.[124]

The Commission emphasizes that approval of this proposal does not affect a broker-dealer's duty of best execution. The Commission has discussed the duty of best execution in previous orders approving proposals to implement participation entitlements, and hereby incorporates those discussions by reference into this order.[125]

F. Complex Opening Price Determination

The Commission believes that the proposed changes to the Complex Opening Price Determination process are designed to protect investors and the public interest by enhancing the Exchange's Complex Opening Process and facilitating the fair and orderly opening of trading in complex strategies. Under the proposal, the contra-side Boundary Price will be the limit price for Market Complex Orders.[126] Because the Boundary Prices for a strategy are calculated based on the NBBO for the individual component legs of a strategy, the Commission believes that making the contra-side Boundary Price the limit price for Market Complex Orders will help to ensure that the opening price for a complex strategy is within the broad market price for the strategy.[127] In addition, assigning a limit price to Market Complex Orders will allow the Exchange to use the Complex Opening Process, rather than the Uncrossing Process provided for in Supplementary Material .06(b) to MRX Options 3, Section 14, to open a strategy when there are only Market Complex Orders on both sides of the market for a strategy or if there are Market Complex Orders on the bid (offer) side of the market for greater than the total size of Complex Orders on the offer (bid) side of the market.[128] Because a change in market conditions between the time of the Complex Opening Price Determination process and the time of the Uncrossing Process could result in missed execution opportunities, allowing Market Complex Orders to execute in the Complex Opening Process could help to maximize the number of contracts that execute.[129] As discussed above, the proposal will allow MRX to calculate an Opening Price for a strategy utilizing a greater number of Market Complex Orders.[130] In addition, the proposed Opening Price Determination process will seek to distribute price improvement to both the bid and offer side of the transaction to the extent possible, rather than providing all of the price improvement to one side of the transaction.[131] The Commission believes that including additional liquidity in the Complex Opening Price Determination process could facilitate price discovery and result in more accurate pricing for complex strategies, which would benefit all market participants. The Commission believes that distributing price improvement to both sides of the transaction could encourage market participants to submit orders to participate in the Complex Opening Process.

G. Additional Changes

The Exchange proposes non-substantive changes to correct inaccurate cross-references in MRX Options 3, Sections 14(b)(15), 16(b), and Supplementary Material .05(d)(2) to MRX Options 3, Section 14; make a grammatical correction in Supplementary Material .02 to MRX Options 3, Section 14; provide a more accurate title for MRX Options 3, Section 16(c)(1); and correct an inaccurate reference to ISE in MRX Options 3, Section 14(c)(2). The

Preferenced Order is received is consistent with the requirements applicable to single-leg Preferenced Orders. MRX Options 3, Section 10(c)(1)(B) states that "After all Priority Customer orders have been fully executed, provided the Primary Market Maker's quote is at the better of the internal BBO or the NBBO, the Primary Market Maker shall be entitled to receive the allocation described in Options 3, Section 10(c)(1)(B)(i), unless the incoming order to be allocated is a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker, in which case allocation would be pursuant to (c)(1)(C)." *See* SR–MRX–2022–16.

[116] *See, e.g.,* Securities Exchange Act Release No. 74129 (January 23, 2015), 80 FR 4954 (January 29, 2015) (Order Approving File No. BX–2014–049) ("BX Order").

[117] *See id.*

[118] *See* Securities Exchange Act Release No. 86949 (September 12, 2019), 84 FR 49151 (September 18, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–MRX–2019–17).

[119] *See* proposed MRX Options 3, Section 14(b)(19).

[120] *See* BX Order, *supra* note 116, 80 FR at 4955.

[121] *See* Amendment No. 1 at 33.

[122] *See id.*

[123] *See* Amendment No. 1 at 65 and MRX Options 2, Section 5.

[124] *See, e.g.,* BX Order, *supra* note 116, 80 FR at 4955.

[125] *See id.* at 4955–6.

[126] *See* Amendment No. 1 at 42. *See also* proposed MRX Supplementary Material .05(d)(3)(B) to Options 3, Section 14 (stating that "Executable bids/offers will be bounded by the Boundary Price on the contra-side of the interest, for determination of the Potential Opening Price described above").

[127] *See* Supplementary Material .05(d)(1) to Options 3, Section 14 (describing the calculation of the Boundary Prices for a complex order strategy).

[128] *See* Amendment No. 1 at 35–6.

[129] *See id.* at 42.

[130] *See id.*

[131] *See* Amendment No. 1 at 40.

Commission believes that these proposed changes will protect investors and the public interest by helping to ensure the clarity and accuracy of the Exchange's rules.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2022–10 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–MRX–2022–10. 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–MRX–2022–10, and should be submitted on or before October 18, 2022.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of the notice of Amendment No. 1 in the **Federal Register**. As discussed more fully above, Amendment No. 1 revises MRX Options 3, Sections 7, 11, 12, and 13 to indicate that certain order types requiring stock-tied functionality will be implemented at a later date as part of the Exchange's technology migration. In addition, Amendment No. 1 corrects an error in the text of the proposed rules, replaces references to SR–MRX–2022–5P with references to SR–MRX–2022–16, and adds references to the ''internal BBO'' to the proposed Complex Preferenced Order rules and to the Qualified Contingent Cross Order and Complex Qualified Contingent Cross Order rules. The Commission believes that Amendment No. 1 raises no novel regulatory issues. Amending MRX's rules to note the delayed implementation of certain order types will help to provide members with notice regarding the order types that will not be available immediately following MRX's migration to its new trading platform. Adding references to the internal BBO to the Qualified Contingent Cross Order and Complex Qualified Contingent Cross Order rules will help to effectively maintain the existing pricing requirements currently applicable to the option leg(s) of those orders, and adding a reference to the internal BBO to the Complex Preferenced Order rules will provide consistency with MRX's single-leg Preferenced Order rules. The correction in the proposed rule text will help to ensure the accuracy of the Exchange's rules and the addition of references to SR–MRX–2022–16 will help to ensure the completeness and accuracy of the proposal. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[132] that the proposed rule change (SR–MRX–2022–10), as modified by Amendment No. 1, is approved on an accelerated basis.

[132] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[133]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20816 Filed 9–26–22; 8:45 am]

BILLING CODE 8011–01–P

[133] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95855]

Notice of Intention To Cancel Registrations of Certain Transfer Agents

Notice is hereby given that the Securities and Exchange Commission (''Commission'') intends to issue an order, pursuant to Section 17A(c)(4)(B) of the Securities Exchange Act of 1934 (''Act''),[1] cancelling the registrations of the transfer agents whose names appear in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Moshe Rothman, Assistant Director, or Catherine Whiting, Senior Counsel, at (202) 551–4990, U.S. Securities and Exchange Commission, Division of Trading and Markets, 100 F Street NE, Washington, DC 20549 or by email at *tradingandmarkets@sec.gov* with the phrase ''Notice of Intention to Cancel Transfer Agent Registration'' in the subject line.

Background: Section 17A(c)(4)(B) of the Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration.

Although the Commission has made efforts to locate and to determine the status of each of the transfer agents listed in the Appendix, based on the facts it has, the Commission believes that each of those transfer agents is no longer in existence or has ceased doing business as a transfer agent. Accordingly, at any time after November 1, 2022, the Commission intends to issue an order cancelling the registrations of the transfer agents listed in the Appendix.

The representative of any transfer agent listed in the Appendix who believes the registration of the transfer agent should not be cancelled must notify the Commission by email within 30 days after the notice date. Email notifications must be sent to *tradingandmarkets@sec.gov* with the phrase ''Notice of Intention to Cancel

[1] 15 U.S.C. 78q–1(c)(4)(B).

Transfer Agent Registration'' in the subject line.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[2]

Dated: September 21, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

APPENDIX

Transfer agent name	File No.
Advanced Fund Administration, LLC	084–06396
Ameritor Financial Corp	084–00018
Andesa Services, Inc	084–06233
Bank Of Commerce & Trust Co	084–06235
Colbent Corp	084–05927
Cronos Capital Corp	084–00977
Donald Rivers Goolsby Whfit	084–06560
Dynamic Transfer Services Corp	084–06394
Fidelity Transfer Services, Inc	084–06405
Financial Data Services Inc	084–01339
First National Bank In Sioux Falls	084–06228
Foresight Asset Management LLC	084–06051
Gartmore Investors Services, Inc	084–06229
Grohe Aktiengesellschaft	084–06022
Gulf Registrar And Transfer Corp	084–06136
Hartford Investor Services Co LLC	084–05882
Interstate Transfer Co	084–05573
M & K Produce Inc	084–06183
National Western Life Insurance Co	084–00693
Orbitex Fund Services Inc	084–01493
Orion Share Transfer LLC	084–06295
Patriot Stock Transfer LLC	084–06382
Portfolios Inc	084–05551
Preferred Partnership Services Inc	084–05747
Presidential Life Corp	084–00816
Pyxis Global Financial Services	084–06463
Republic Stock Transfer Inc	084–01124
Reserve Fund	084–00449
Reserve Management Corp	084–05838
Reserve Petroleum Co	084–00630
Reserve Short-Term Investment Trust	084–06156
Retirement System Consultants Inc	084–01972
SCC Transfer, LLC	084–06579
Seligman Common Stock Fund Inc	084–00503
Seligman Core Fixed Income Fund Inc	084–05921
Seligman High Income Fund Series	084–01266
Seligman New Jersey Municipal Fund Inc	084–01686
Seligman Pennsylvania Municipal Fund Series Inc	084–01486
Seligman Select Municipal Fund Inc	084–01896
Seligman Tax-Aware Fund, Inc	084–05894
Tass LLC	084–06115
The Provo Group, Inc	084–05890
Travelers Rest Resort Inc	084–06056
Truman Stock Transfer LLC	084–06320
Universal Stock Transfer Co., Inc	084–06308
Wall Street Transfer Agents Inc	084–06203
West Coast Stock Transfer, Inc	084–06138
American Heritage Stock Transfer, Inc	084–06137
Dominion Filing And Transfer Inc	084–06514
European Fund Services S.A	084–06182
Pioneer Global Investments Ltd	084–05682
Law Debenture Trust Co Of New York	084–06087

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BILLING CODE 8011–01–P

[2] 17 CFR 200.30–3(a)(22).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95849; File No. S7–24–89]

Joint Industry Plan; Order Disapproving the Fifty-Second Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

September 21, 2022.

I. Introduction

On November 5, 2021,[1] certain participants in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq/UTP Plan'' or ''Plan'') [2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [3] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[4] a proposal (the ''Proposed Amendment'') to amend the Nasdaq/UTP Plan.[5] The Proposed Amendment was published for comment in the **Federal Register** on November 26, 2021.[6]

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[7] to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[8] On May 19, 2022, the Commission designated a longer period within which to conclude proceedings regarding the Proposed Amendment.[9] On July 21, 2022, the Commission again designated a longer period within which to conclude proceedings regarding the Proposed Amendment.[10]

The Proposed Amendment seeks to set fees for the data content underlying consolidated market data offerings pursuant to the Commission's Market Data Infrastructure Rules (''MDI Rules''),[11] which expand the content of consolidated market data and require the introduction of a competitive decentralized consolidation model. The Filing Participants propose what they characterize as ''value-based'' fees for top-of-book data, depth-of-book data, auction data, professional and non-professional users, non-display use, access, and redistribution. Below, the Commission provides an overview of the MDI Rules requirement pursuant to which the Proposed Amendment was filed and then examines the proposed ''value-based'' methodology underlying the proposed fees and each of the proposed fees in turn, finding that, in each case, the Filing Participants have not demonstrated that the proposed fees are fair, reasonable, and not unreasonably discriminatory.

This order disapproves the Proposed Amendment.[12]

II. Overview

Pursuant to Regulation NMS and the Equity Data Plans,[13] the national securities exchanges and national securities association (''self-regulatory organizations'' or ''SROs'') must provide certain information with respect to quotations for and transactions in for each NMS stock (''NMS information'') to an exclusive plan securities information processor (''exclusive SIP''), which consolidates this information and makes it available to market participants on the consolidated tapes. The purpose of the Equity Data Plans is to facilitate the collection and dissemination of SIP data so that the public has ready access to a ''comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock at any time during the trading day.'' [14] Because the infrastructure for the collection, consolidation, and dissemination of this data had not been significantly updated since its initial implementation in the 1970s, the Commission adopted amendments to Regulation NMS that increase the content of NMS information and amend the manner in which such NMS information is collected, consolidated, and disseminated by the Equity Data Plans.[15] In the MDI Rules Release, the

[1] *See* Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021) (''Cover Letter''), *available at https://utpplan.com/DOC/UTP_PlanAmendment52.pdf.*

[2] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (Apr. 19, 2007), 72 FR 20891 (Apr. 26, 2007).

[3] 15 U.S.C 78k–1.

[4] 17 CFR 242.608.

[5] The Proposed Amendment was, as required by the Plan, approved and executed by at least two-thirds of the self-regulatory organizations (''SROs'') that are participants of the Nasdaq/UTP Plan. The participants that approved and executed the amendment (the ''Filing Participants'') are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; Nasdaq ISE, LLC; Nasdaq PHLX LLC.; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc. The other SROs that are participants in the Nasdaq/UTP Plan and that did not approve or execute the amendment are (the ''Non-Supporting Participants''): Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX LLC; MIAX PEARL, LLC; and Nasdaq BX, Inc.

[6] *See* Securities Exchange Act Release No. 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) (''Notice''). Comments received in response to the Proposed Amendment are available at *https://www.sec.gov/comments/s7-24-89/s72489.htm.*

[7] 17 CFR 242.608(b)(2)(i).

[8] *See* Securities Exchange Act Release No. 94307 (Feb. 24, 2022), 87 FR 11787 (Mar. 2, 2022).

[9] *See* Securities Exchange Act Release No. 94953 (May 19, 2022), 87 FR 31921 (May 25, 2022).

[10] *See* Securities Exchange Act Release No. 95348 (July 21, 2022), 87 FR 45137 (July 27, 2022).

[11] The ''MDI Rules'' as used in this Order, and as relevant to the Proposed Amendments, are Rules 600, 603, and 614 of Regulation NMS. 17 CFR 242.600, 603, 614. *See also* Securities Exchange Act Release No. 90610 (Dec. 9 2020), 86 FR 18596 (Apr. 9, 2021) (File No. S7–03–20) (''MDI Rules Release''); Securities Exchange Act Release No. 90610A (May 24, 2021), 86 FR 29195 (June 1, 2021) (File No. S7–03–20) (technical correction to MDI Rules Release). Several exchanges filed petitions for review challenging the MDI Rules Release in the U.S. Court of Appeals for the District of Columbia Circuit, which were denied on May 24, 20 22. *See The Nasdaq Stock Market LLC, et al.* v. *SEC,* No. 21–1100 (D.C. Cir. May 24, 2022).

[12] The Filing Participants have filed similar amendments to the Consolidated Tape Association (''CTA'') Plan and Restated Consolidated Quotation (''CQ'') Plan (collectively ''CTA/CQ Plans''), which the Commission is also disapproving. *See* Securities Exchange Act Release No. 95851 (Sep. 21, 2022) (File No. SR–CTA/CQ–2021–03). Further the participants of the Nasdaq/UTP Plan and the CTA/CQ Plans have also filed amendments to implement the non-fee-related aspects of the Commission's MDI Rules. *See* Securities Exchange Act Release Nos. 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021) (File No. S7–24–89); 93615 (Nov. 19, 2021), 86 FR 67800 (Nov. 29, 2021) (File No. SR–CTA/CQ–2021–02) (collectively, ''Proposed Non-Fee Amendments''). The Commission is, by separate orders, also disapproving the Proposed Non-Fee Amendments. *See* Securities Exchange Act Release Nos. 95848 (Sep. 21, 2022) (File No. S7–24–89); 95850 (Sep. 21, 2022) (File No. SR–CTA/CQ–2021–02).

[13] The three effective national market system plans that govern the collection, consolidation, processing, and dissemination of certain NMS information are: (1) the CTA Plan; (2) the CQ Plan; and (3) the Nasdaq/UTP Plan (collectively, the ''Equity Data Plans''). Each of the Equity Data Plans is an effective national market system plan under 17 CFR 242.608 (Rule 608) of Regulation NMS. *See also* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order approving the Nasdaq/UTP Plan).

[14] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3593 (Jan. 21, 2010).

[15] *See* MDI Rules Release, *supra* note 11, 86 FR at 18598–600.

Commission stated, ''[w]idespread availability of timely market information promotes fair and efficient markets and facilitates the ability of brokers and dealers to provide best execution to their customers.'' [16]

The adoption of the MDI Rules increases the content of NMS information and modifies the manner in which NMS information is collected, consolidated, and disseminated by the Plans. Significantly, under the MDI Rules, the Commission required the introduction of a competitive decentralized consolidation model under which competing consolidators and self-aggregators will replace the exclusive SIPs that collect, consolidate, and disseminate equity market data under the existing NMS plans for equity market data. Although the exclusive SIPs will no longer disseminate all consolidated information for an individual NMS stock, the Plans will continue to play an important role—they will develop and propose fees for the data content underlying consolidated market data, collect and allocate revenues collected for this data, develop the monthly performance metrics for competing consolidators, and provide an annual assessment of the competing consolidator model.

Rule 614(e)(1) directs the participants of the effective national market system plan(s) for NMS stocks to file an amendment pursuant to Rule 608 of Regulation NMS to conform the Plans to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the SROs to competing consolidators and self-aggregators. As the MDI Rules Release states, this means that the operating committees of the plan(s) will ''need to propose the new fees that will be charged for the quotation and transaction information that is necessary to generate consolidated market data that is required to be made available by the SROs under Rule 603(b) to competing consolidators and self-aggregators.'' [17] The Proposed Amendment was filed by the Filing Participants pursuant to this requirement.[18]

As explained below, the Filing Participants have not demonstrated that the proposed ''value-based'' fee methodology, or the specific proposed fees themselves, meet the statutory standard of being fair, reasonable, and not unreasonably discriminatory.[19] The Commission is thus disapproving the Proposed Amendment under Rule 608(b)(2) of Regulation NMS because it cannot find that the proposed fees are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[20]

III. Summary of the Proposed Amendment [21]

Under the Proposed Amendment, the Filing Participants propose to amend the Plan to adopt fees for the data content underlying consolidated market data offerings pursuant to the Commission's MDI Rules. All of the SROs that are participants in the Plan have also filed a separate amendment to implement the non-fee-related aspects of the MDI Rules.[22]

The Filing Participants propose a fee structure for the following three categories of data content underlying consolidated market data offerings, which would collectively constitute the amended definition of core data, as that term is defined in Rule 600(b)(21) of Regulation NMS: [23]

(1) Level 1 Service, which would include Top of Book Quotations, Last Sale Price Information, and odd-lot information (as defined in Rule 600(b)(59)).[24] Currently, Plan fees for Level 1 Service include the provision of Top of Book Quotations and Last Sale Price Information, as well as administrative data (as defined in Rule 600(b)(2)),[25] regulatory data (as defined in Rule 600(b)(78)),[26] and SRO-specific program data (as defined in Rule 600(b)(85)).[27] The Filing Participants propose that Level 1 Service would include all information that subscribers currently receive via the exclusive SIP and would add odd-lot quotation information to that content; [28]

(2) Depth of book data (as defined in Rule 600(b)(26)); [29] and

(3) Auction information (as defined in Rule 600(b)(5)).[30]

Professional and Nonprofessional Fee Structure

For each of the three categories of data described above, the Filing Participants propose a Professional Subscriber Charge and a Nonprofessional Subscriber Charge.[31]

With respect to Level 1 Service, the Filing Participants propose to apply the Professional Subscriber and Nonprofessional Subscriber fees currently set forth in the Nasdaq/UTP Plan to the data content underlying Level 1 Service under the distributed consolidation model. Access to odd-lot information would be made available to Level 1 Service Professional and Nonprofessional Subscribers at no additional charge.

With respect to depth-of-book data, Professional Subscribers would pay $99.00 per device per month, and Nonprofessional Subscribers would pay $4.00 per device per month. The Filing Participants do not propose to offer per-quote packet charges or enterprise rates for the use of depth-of-book data by either Professional Subscribers or Nonprofessional Subscribers.

Finally, with respect to auction information, the Filing Participants propose that both Professional Subscribers and Nonprofessional Subscribers would pay $10.00 per device per month.

[16] *See id.* at 18599.

[17] *See* MDI Rules Release, *supra* note 11, 86 FR at 18682.

[18] Rule 614(e) requires the participants to ''the effective national market system plan(s) for NMS stocks'' to file an amendment to implement the MDI Rules. 17 CFR 242.614(e). The Filing Participants have filed the required amendment under the existing CTA/CQ Plans and the Nasdaq/UTP Plan. *See supra* note 12. While the Commission issued an order on August 6, 2020, approving, as modified, a new national market system plan regarding equity market data—the CT Plan—to replace the existing CTA/CQ Plans and Nasdaq/UTP Plan, that order was stayed on October 13, 2021, *see Nasdaq Stock Mkt. LLC* v. *SEC,* No. 21–1167 (D.C. Cir. Oct. 13, 2021), which was before the Filing Participants filed this amendment. The Commission's order approving the CT Plan was subsequently vacated. *See The Nasdaq Stock Market LLC, et al.* v. *Securities and Exchange Commission,* Nos. 21–1167, 21–1168, 21–1169 (D.C. Cir., July 5, 2022) (vacating Securities Exchange Act Release No. 92586 (Aug. 6, 2021), 86 FR 44142 (Aug. 11, 2021) (Order Approving, as Modified, a National Market System Plan Regarding Consolidated Market Data)).

[19] *See* Sections 11A(c)(1)(C)–(D) of the Act, 15 U.S.C 78k-1(c)(1)(C)–(D); *see also* Rule 603(a) of Regulation NMS, 17 CFR 242.603.

[20] 17 CFR 242.608(b)(2).

[21] The full text of the Proposed Amendment appears as Attachment A to the Notice. *See* Notice, *supra* note 6, 86 FR 67566–68.

[22] *See* Proposed Non-Fee Amendments, *supra* note 12.

[23] 17 CFR 242.600(b)(21).

[24] 17 CFR 242.600(b)(59).

[25] 17 CFR 242.600(b)(2).

[26] 17 CFR 242.600(b)(78).

[27] 17 CFR 242.600(b)(85).

[28] Transactions in odd-lots are already reported via the consolidated feeds.

[29] 17 CFR 242.600(b)(26).

[30] The Filing Participants state that they propose to price the three subsets of data that constitute core data separately so that data subscribers have flexibility to choose how much consolidated market data content they wish to purchase. For example, the Filing Participants state that they understand that certain data subscribers may not wish to add depth-of-book data or auction information, or may want to add only depth-of-book information but not auction information. The Filing Participants state, however, that they expect that competing consolidators would purchase all core data. *See* Notice, *supra* note 6, 86 FR at 67563 n.10.

[31] The terms Professional Subscriber and Nonprofessional Subscriber are currently defined in the Plan, and the Filing Participants do not propose to amend those definitions. *See* Notice, *supra* note 6, 86 FR at 67563.

Non-Display Use Fees

The Filing Participants propose to apply Non-Display Use Fees relating to the three categories of data described above: (1) Level 1 Service; (2) depth-of-book data; and (3) auction information.

With respect to Level 1 Service, the Filing Participants propose to apply the Non-Display Use fees currently set forth in the Nasdaq/UTP Plan.

With respect to non-display use of depth-of-book data, subscribers would pay Non-Display Use Fees of $12,477.00 per month for each type of Non-Display Use.[32]

With respect to non-display auction information, subscribers would pay Non-Display Use fees of $1,248.00 per month for each category of Non-Display Use.

Access Fees

Finally, in addition to the charges described above, the Filing Participants propose to charge Access Fees to all subscribers for the use of the three categories of data: (1) Level 1 Service; (2) depth-of-book data; and (3) auction information.

With respect to Level 1 Service, the Filing Participants propose to apply the Access Fees currently set forth in the Nasdaq/UTP Plan.

With respect to depth-of-book data, subscribers would pay a monthly Access Fee of $9,850.00.

With respect to auction information, subscribers would pay a monthly Access Fee of $985.00 per Network.

The Filing Participants also propose to add language to the fee schedule for UTP services regarding the applicability of various fees to the expanded market data content required by the MDI Rules.[33] First, the Filing Participants propose to specify that the Per Query Fee will not apply to the expanded content of core data and will only be available for the receipt and use of Level 1 Service. The Filing Participants state that, under the current Price List, the Per Query Fee serves as an alternative fee schedule to the normally applied Professional and Nonprofessional Subscriber Charges and, further, that the proposed changes to the fee schedule are designed to clarify that Per Query Fee is only available with respect to the use of Level 1 Service and that the fees for the use of depth-of-book data and auction information must be determined pursuant to the Professional and Nonprofessional fees described above.

Second, the Filing Participants propose to add language to the fee schedule to specify that Level 1 Service would include Top of Book Quotation Information, Last Sale Price Information, odd-lot information, administrative data, regulatory data, and SRO program data. The Filing Participants state that this proposed change would use terms defined in Rule 600(b) to reflect both data currently made available to subscribers and the additional odd-lot information that would be included at no additional charge.

Third, the Filing Participants propose to add language to the fee schedule to provide that the existing Redistribution Fees would apply to all three categories of core data (*i.e.,* Level 1, depth-of-book, and auction information), including any subset thereof. According to the Filing Participants, Redistribution Fees are currently charged to any entity that makes last-sale information or quotation information available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. The Filing Participants propose to amend this description to make it applicable to core data, as that term is defined in Rule 600(b)(21). The Filing Participants do not propose to change the amount of the existing Redistribution Fees. The Filing Participants also propose that the existing Redistribution Fees would be charged to competing consolidators.

Fourth, the Filing Participants state that the Nasdaq/UTP Plan fee schedule currently permits the redistribution of UTP Level 1 Service on a delayed basis for $250.00 per month. The Filing Participants propose to add a statement to the fee schedule that depth-of-book data and auction information may not be redistributed on a delayed basis.

Finally, the Filing Participants propose to make non-substantive changes to language in the fee schedule to take into account the expanded content of core data. For example, the Filing Participants propose updating various fee descriptions to either add or remove a reference to UTP Level 1 Service. Additionally, the Filing Participants state that, while FINRA OTC Data will not be provided to competing consolidators, it is still being provided to the UTP Processor for inclusion in the consolidated market data made available by the UTP Processor. Accordingly, the Filing Participants propose to add language to the fee schedule to make clear that UTP Level 1 Service obtained from the Processor will include FINRA OTC Data but will not include odd-lot information.

The Filing Participants state that the Proposed Amendment would be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission.

With respect to the method used to develop the proposed fees, the Filing Participants state that in the absence of cost information being available to the Operating Committee, fees for consolidated market data are fair and reasonable and not unreasonably discriminatory if they are related to the value of the data to subscribers. The Filing Participants state that the value of depth-of-book data and auction information is well established, as this content has been available to market participants directly from the exchanges for years, and in some cases decades, at prices constrained by direct and platform competition. According to the Filing Participants, exchanges have filed fees for this data pursuant to the standards specified in Section 6(b)(5) of the Act.

The Filing Participants state that, to determine the value of depth-of-book data, the Filing Participants considered a number of methodologies, based on the current fees charged for depth-of-book data products offered by exchanges, to determine the appropriate level at which to set fees for the expanded data content. The Filing Participants state they reviewed (1) an ISO Trade-Based Model;[34] (2) a Depth to Top-Of-Book Ratio Model (''Depth-to-TOB Model''); and (3) a Message-Based Model.[35] Ultimately, the Filing Participants selected a Depth-to-TOB Model to determine the appropriate fees for the expanded data content.

The Filing Participants state that they reviewed the depth to top-of-book ratios of Professional device rates on Nasdaq (Nasdaq TotalView compared to Nasdaq Basic), Cboe (Cboe Full Depth compared to Cboe One) and NYSE (NYSE Integrated compared to NYSE BQT). The Filing Participants state that they also reviewed the ratio proposed by IEX between its proposed fees for real-time

[32] The types of Non-Display Use are as follows: (a) Non-Display Use for Electronic Trading System; and (b) Non-Display Enterprise Licenses. With respect to Non-Display Enterprises Licenses: (i) the Non-Display Use fee for Internal Use applies when a datafeed recipient's Non-Display Use is on its own behalf, and (ii) the Non-Display Use fee for Internal Use applies when a datafeed recipient's Non-Display Use is on behalf of its customers. *See* Exhibit 2(i) to the Nasdaq/UTP Plan.

[33] *See* proposed Exhibit 2 to the Nasdaq/UTP Plan.

[34] According to the Filing Participants, the ISO-Based model analyzed the number of intermarket sweep orders executing through the NBBO, looking at the number of intermarket sweep orders executed in the first five levels of depth as compared to all ISOs executed. *See* Notice, *supra* note 6, 86 FR at 67565 n.18.

[35] According to the Filing Participants, the Message-based model looked at the total number of orders displayable in the first five levels of depth as compared to all displayable orders. *See* Notice, *supra* note 6, 86 FR at 67565 n.19.

top-of-book and depth feeds (TOPS compared to DEEP). The Filing Participants state that using the ratios calculated for Nasdaq, NYSE, and IEX resulted in an average ratio of 3.94x between the prices of depth-of-book and top-of-book feeds.[36] The Filing Participants then applied this 3.94x ratio to the current fees charged for consolidated market as more specifically described below.

With respect to the fees for auction information, the Filing Participants state that they looked to the number of trades that occur during the auction process as compared to the trading day and determined that roughly 10% of daily trading volume takes place during auctions. Consequently, the Filing Participants concluded that charging a fee that was 10% of the fee charged for depth-of-book data was an appropriate proxy for determining the value of auction information. As a result, the Filing Participants have proposed a $10.00 fee per Network for auction information, which the Filing Participants state is fair and reasonable and not unreasonably discriminatory.

With respect to the fees for Level 1 Service, the Filing Participants state that it is fair and reasonable and not unreasonably discriminatory to include access to odd-lot information at no charge in addition to the current fees, which the Filing Participants state they are not proposing to change.

Finally, as described above, the Filing Participants propose that the existing Redistribution Fees would apply to the amended core data and that Redistribution Fees would also apply to competing consolidators.

IV. Discussion

A. The Applicable Standard of Review

Under Rule 608(b)(2) of Regulation NMS, the Commission shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[37] The Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.[38] Furthermore, under Rule 700(b)(3)(ii) of the Commission's Rules of Practice,

> The burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans is on the plan participants that filed the NMS plan filing. Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that an NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans.[39]

In addition, the fees proposed in the Proposed Amendments for data content underlying consolidated market data offerings must be assessed against the statutory standard, including Sections 11A(c)(1)(C)–(D) of the Exchange Act and Rule 603(a) under Regulation NMS.[40] Such fees must satisfy the statutory standards of being fair and reasonable and not unreasonably discriminatory.[41] In making this assessment, the Commission must have ''sufficient information before it to satisfy its statutorily mandated review function'' to determine that the fees meet the standard.[42]

For the reasons discussed below, the Commission finds that the Filing Participants have not demonstrated that the Proposed Amendment is consistent with the Act.[43] Accordingly, the Commission cannot find that the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[44]

In the discussion that follows, the Commission analyzes the methodology selected by the Filing Participants to develop the proposed fees for data content underlying consolidated market data, as well as the implementation of that methodology, and discusses in turn each of the proposed fee categories for content underlying consolidated market data.

B. ''Cost-Based'' vs. ''Value-Based'' Fees for Data Content Underlying Consolidated Market Data

The ''value-based'' fee methodology proposed by the Filing Participants, and opposed by certain commenters, would apply to each of the specific proposed fees,[45] and the Commission therefore discusses this issue before addressing each of the proposed fees.

In the MDI Rules Release, the Commission stated that the Operating Committee of the Plan ''should continue to have an important role in the operation, development, and regulation of the national market system for the collection, consolidation, and dissemination of consolidated market data.''[46] The Commission further stated that ''the fees for data content underlying consolidated market data, as now defined, are subject to the national market system process that has been established,'' and that the ''Operating Committee(s) have plenty of experience in developing fees for SIP data.''[47]

The Filing Participants state that the Operating Committee has brought this experience to bear to determine the fees for the new core data elements.[48] In the Cover Letter,[49] the Filing Participants also acknowledge that the fees established for consolidated market data must be fair and reasonable and not unreasonably discriminatory, and they state that they are proposing fees that are fair and reasonable and not unreasonably discriminatory.

[36] The Filing Participants state that they also conducted alternative calculations by including a broader range of products or those products offering more robust depth fees. These alternative calculations resulted in ratios greater than 3.94x and were not selected by the Filing Participants. The Filing Participants state that the 3.94x ratio represents the difference in value between top-of-book and five levels of depth that would be required to be included in consolidated market data under Rule 603(b). Because the alternate methodologies, which focused on only the top five levels of depth, resulted in higher ratios, the Filing Participants state that the more conservative 3.94x ratio would be a fair and reasonable ratio between the proposed fees for depth-of-book data required to be included in the consolidated market data and the current fees for the existing Top of Book Quotation information. *See* Notice, *supra* note 6, 86 FR at 67565.

[37] 17 CFR 242.608(b)(2).

[38] *Id.*

[39] 17 CFR 201.700(b)(3)(ii).

[40] *See* Sections 11A(c)(1)(C)–(D) of the Exchange Act, 15 U.S.C. 78k–1(c)(1)(C)–(D); Rule 603(a) of Regulation NMS, 17 CFR 242.603. *See also* MDI Rules Release, *supra* note 11, 86 FR at 18650.

[41] *See* Sections 11A(c)(1)(C)–(D) of the Act, 15 U.S.C. 78k–1(c)(1)(C)–(D); Rule 603(a) of Regulation NMS, 17 CFR 242.603. *See also* MDI Rules Release, Section III.E.2(c), *supra* note 11, 86 FR at 18684–87 (discussing the statutory requirements applicable to consolidated market data and the standards the Commission has historically applied to assessing compliance with the statutory requirements).

[42] *See* MDI Rules Release, *supra* note 11, 86 FR at 18685 (citing to *In the Matter of the Application of Bloomberg L.P.,* Securities Exchange Act Release No. 83755 (July 31, 2018), 2018 WL 3640780, at *9 (''Bloomberg Order'')).

[43] 17 CFR 201.700(b)(3).

[44] 17 CFR 242.608(b)(2).

[45] *See* Notice, *supra* note 6, 86 FR at 67564–66.

[46] MDI Rules Release, *supra* note 11, 86 FR at 18682.

[47] MDI Rules Release, *supra* note 11, 86 FR at 18683.

[48] *See* Notice, *supra* note 6, 86 FR at 67564.

[49] *See* Cover Letter, *supra* note 1, at 6; *see also* Notice, *supra* note 6, 86 FR at 67564.

Additionally, the Filing Participants argue that, while the Commission has stated that one way to demonstrate that fees for consolidated market data are fair and reasonable is to show that they are reasonably related to costs, the Exchange Act does not require a showing of costs and historically the Plan has not demonstrated that its fees are fair and reasonable on the basis of cost data.[50]

The Filing Participants further represent that, under the decentralized competing consolidator model, the Operating Committee has no knowledge of any of the costs associated with consolidated market data.[51] According to the Filing Participants, under the current exclusive SIP model, the Operating Committee (1) specifies the technology that each Participant must use to provide the SIPs with data, and (2) contracts directly with a SIP to collect, consolidate, and disseminate consolidated market data, and the Operating Committee therefore has knowledge only of the costs associated with collecting and consolidating market data, as opposed to the costs associated with producing the data.[52] By contrast, the Filing Participants state, under the decentralized competing consolidator model, the Nasdaq/UTP Plan will no longer have a role either in specifying the technology associated with exchanges providing data or in contracting with a SIP. Rather, the Filing Participants state, each national securities exchange will be responsible, as specified in Rule 603(b), for determining the methods of access to and format of data necessary to generate consolidated market data.[53] Moreover, the Filing Participants argue, competing consolidators will be responsible for connecting to the exchanges to obtain data directly from each exchange, without any involvement of the Operating Committee, and the Operating Committee will not have access to information about how each exchange would generate the data it would be required to disseminate under Rule 603(b).[54] Accordingly, the Filing Participants argue, the Operating Committee does not and will not have access to any information about the cost of providing consolidated market data under the decentralized competing consolidator model.[55]

The Filing Participants state that, in light of the absence of cost information available to the Operating Committee, fees for consolidated market data are fair and reasonable and not unreasonably discriminatory if they are related to the value of the data to subscribers. The Filing Participants argue that the value of depth-of-book data and auction information is well-established, as this content has been available to market participants directly from the exchanges for years, and in some cases decades, at prices constrained by direct and platform competition. The Filing Participants further state that exchanges have filed fees for this data pursuant to the standards specified in Section 6(b)(5) of the Act and that the fees in the Proposed Amendment were filed using a value-based methodology.

Some commenters oppose the Proposed Amendment, arguing that the proposed fees are based on a flawed methodology that, inconsistent with the MDI Rules, fails to provide a cost-based justification.[56] These commenters state that the proposed fees should bear a reasonable relationship to the cost of producing the market data, which, they argue, is the primary basis the Commission has identified for justifying the fees for core data.[57]

Some commenters also state that the methodology used has resulted in proposed fees that are unreasonably high.[58] In making this argument, some commenters object to using the current prices for the exchanges' proprietary data products as the basis for calculating the proposed core data fees,[59] stating that such a method is inconsistent with the MDI Rules' goal of expanding access to consolidated data[60] and with statements in the MDI Rules Release that the proposed fees should bear a reasonable relationship to the cost of producing the data.[61] One commenter states that without fair and reasonable pricing for the underlying content of consolidated market data, implementation of the MDI Rules cannot proceed, nor can improvements to price transparency and best execution, because the use of top-of-book proprietary feeds provided by exchanges—often marketed as SIP

[50] *See* Notice, *supra* note 6, 86 FR at 67564.

[51] *See id.*

[52] *See id.*

[53] *See id.*

[54] *See id.*

[55] *See id.*

[56] *See* Letter from Christopher Solgan, Senior Counsel, MIAX Exchange Group, to Vanessa Countryman, Secretary, Commission, at 3 (Jan. 12, 2022) (''MIAX Letter'') (comment from a Non-Supporting Participant); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Secretary, Commission, at 2–3 (Dec. 17, 2021) (''IEX Letter'') (comment from a Non-Supporting Participant). *See also* Letter from Joe Wald, Managing Director, Co-Head of Electronic Trading, and Ray Ross, Managing Director, Co-Head of Electronic Trading, BMO Capital Markets Group, to Vanessa Countryman, Secretary, Commission, at 2–3 (Dec. 17, 2021) (''BMO Letter''); Letter from Ellen Greene, Managing Director, Equity & Options Market Structure, and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission, at 4–5 (Dec. 17, 2021) (''SIFMA Letter I'') (noting that the fees charged by monopolistic providers, such as exclusive SIPs, need to be tied to some type of cost-based standard in order to preclude excessive profits if fees are too high or underfunding or subsidization if fees are too low); Letter from Patrick Flannery, Chief Executive Officer, MayStreet, to Vanessa Countryman, Secretary, Commission, at 6 (Dec. 17, 2021) (''MayStreet Letter I''); Letter from Hubert De Jesus, Managing Director, Global Head of Market Structure and Electronic Trading, and Samantha DeZur, Director, Global Public Policy, BlackRock, to Vanessa Countryman, Secretary, Commission, at 2 (Dec. 16, 2021) (''BlackRock Letter''); Letter from Allison Bishop, President, Proof Services LLC, to Vanessa Countryman, Secretary, Commission, at 2–3 (Nov. 22, 2021) (''Proof Services Letter''); Letter from Adrian Griffiths, Head of Market Structure, MEMX LLC, to Vanessa Countryman, Secretary, Commission, at 18 (Nov. 8, 2021) (''MEMX Letter''); Letter from Ellen Greene, Managing Director, Equity & Options Market Structure, and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission, at 2 (Apr. 27, 2022) (''SIFMA Letter II'').

[57] *See* IEX Letter, *supra* note 56, at 1, 2–3 (stating that the proposal fails to establish that the fees for the data content underlying consolidated market data meet the statutory standards of being fair, reasonable, and not unreasonably discriminatory); MIAX Letter, *supra* note 56, at 3. *See also* BMO Letter, *supra* note 56, at 2–3; SIFMA Letter I, *supra* note 56, at 4–5 (stating that the fees charged by monopolistic providers, such as exclusive SIPs, need to be tied to some type of cost-based standard in order to preclude excessive profits if fees are too high or underfunding or subsidization if fees are too low); MayStreet Letter I, *supra* note 56, at 6; BlackRock Letter, *supra* note 56, at 2; Proof Services Letter, *supra* note 56, at 2, 3; MEMX Letter, *supra* note 56, at 18; Letter from Manisha Kimmel, Chief Policy Officer, MayStreet, Inc., to Vanessa Countryman, Secretary, Commission, at 13 (''MayStreet Letter II'') (stating that fees based on cost are the best approach to achieve robust competition for consolidated market data and meet Regulation NMS and other standards under the Exchange Act); SIFMA Letter II, *supra* note 56, at 2.

[58] *See* MIAX Letter, *supra* note 56, at 3; MayStreet Letter I, *supra* note 56, at 6; BlackRock Letter, *supra* note 56, at 2, 4–5; IEX Letter, *supra* note 56, at 4; Proof Services Letter, *supra* note 56, at 3; MEMX Letter, *supra* note 56, at 8, 11–12.

[59] *See* MIAX Letter, *supra* note 56, at 4; SIFMA Letter I, *supra* note 56, at 4–5 (stating that the exchanges' ''platform competition'' argument—that competition for order flow constrains pricing for market data—does not demonstrate that the fees are reasonable and that studies the commenter has submitted to the Commission in the past bolster the commenter's argument); IEX Letter, *supra* note 56, at 4; SIFMA Letter II, *supra* note 56, at 2.

[60] *See* MIAX Letter, *supra* note 56, at 4.

[61] *See id.* at 3 (stating ''the [p]roposals do not provide a cost based justification to support that the fees are reasonable despite the Commission directly stating in the MDI Rule[s Release] that any proposed fees must be reasonably related to cost''); SIFMA Letter I, *supra* note 56, at 4, 5 (citing the statement in the MDI Rules Release that ''a reasonable relation to cost has . . . been the principal method discussed by the Commission for assessing the fairness and reasonableness of . . . fees for core data''); IEX Letter, *supra* note 56, at 1, 2–3 (arguing that the methodology used to set fees is faulty and inconsistent with MDI Rules Release).

alternatives and widely used in place of the SIP due to both direct and administrative costs—deprives retail investors of a complete view of the NMS marketplace, which is required to fulfill the Congressional mandate in the 1975 amendments to the Act.[62]

Some commenters also disagree with the Filing Participants' statements in the Proposed Amendment that a cost-based justification is not required because the Act does not require a showing of costs and that cost analysis has not been provided in past equity market data plan proposals.[63] These commenters state that the Commission has stated that a reasonable relation to cost is a primary basis for justifying core data fees.[64] One commenter states that specific information, including quantitative information, should be provided to support the Filing Participants' claims that the proposed fees are fair and reasonable because they will permit the recovery of SRO costs or will not result in excessive pricing or profits.[65] Additionally, some commenters disagree with the Filing Participants' statement in the proposal that the Plan's Operating Committee ''has no knowledge of any costs associated with consolidated market data,'' stating that the Filing Participants know how much it costs to collect and disseminate market data because they already perform this function, including in connection with proprietary feeds.[66]

One commenter states that a cost-based approach is best for achieving robust competition for consolidated market data and reducing administrative plan costs.[67] According to the commenter, pricing of the underlying content for the creation of consolidated market data should be based on the marginal cost of supporting competing consolidators, a cost that the commenter states is quantifiable and fixed for each participant. The commenter states that the lowest cost approach would be for each Participant to offer competing consolidators and self-aggregators a depth-of-book feed at their current proprietary feed prices, with added access fees and redistribution fees but not usage fees.[68] The commenter states that a comparison of total annual revenues that the plans would receive under a cost-based model (using current depth-of-book proprietary feeds pricing as a proxy for costs of supplying proprietary feeds to a single entity) to total annual revenues currently received by the plans would serve to demonstrate that current fees for consolidated market data are unrelated to cost.[69]

One Filing Participant states that a demonstration of costs is not required because neither the Exchange Act nor Commission rules require market data fees to be supported by a showing of costs.[70] This commenter states that the Commission's standard for evaluating consolidated market data fees has not required a showing of the relationship between the proposed fees and the cost of producing the data, as illustrated by past equity market data plan proposals for consolidated market data fees that were not justified on the basis of cost.[71] This commenter argues that it is not clear how the Plan could support the fee proposals based on costs, because the Operating Committee plays no role in the creation or dissemination of core data under Rule 603(b) and thus has no information about how each exchange would generate core data under that rule.[72] The commenter argues that it remains impossible to separate the costs of producing market data from other costs of operating an exchange.[73]

Another Filing Participant also opposes the use of cost as a basis for setting the proposed fees.[74] This commenter dismisses other commenters' suggestions that fees should be based on costs, rather than value, because, according to the commenter, the Commission has not offered guidance with respect to such a cost-based ratemaking system,[75] and because any cost allocation between joint products would therefore be unworkable, inherently arbitrary, and inconsistent with the Congressional mandate that the Commission rely on competition whenever possible in meeting its regulatory responsibilities.[76] The commenter states that the proposed fees have been tested by competition and that ''Commission staff have indicated that they would look at factors beyond the competitive environment, such as cost, only if a 'proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.' '' [77]

Some commenters oppose the use of the value-based methodology used to determine the fees under the Proposed Amendment.[78] One commenter states that comments suggesting that a cost-based approach is not possible or not supported by precedent should take into account that introducing competition to consolidated market data is also without precedent and that to rely on past interpretations of the Exchange Act with respect to what is fair and reasonable will threaten the viability of establishing a vibrant competing consolidator

[62] *See* MayStreet Letter II, *supra* note 57, at 2–4.

[63] *See* MIAX Letter, *supra* note 56, at 3; SIFMA Letter I, *supra* note 56, at 5.

[64] *See* IEX Letter, *supra* note 56, at 1, 2–3; SIFMA Letter I, *supra* note 56, at 5; MIAX Letter, *supra* note 56, at 3 (stating that the vast majority of equity market data plan fees were adopted prior to issuance of the Commission's staff fee guidance and that multiple SROs have more recently included cost based analysis when proposing fees for a market data product).

[65] *See* MIAX Letter, *supra* note 56, at 3.

[66] *See* SIFMA Letter I, *supra* note 56, at 5; MIAX Letter, *supra* note 56, at 3; MayStreet Letter I, *supra* note 56, at 6; Letter from Katie Adams, Chief Product Officer, Polygon.io, Inc., to Vanessa Countryman, Secretary, Commission, at 1–2 (Mar. 22, 2022) (''Polygon.io Letter II'').

[67] *See* MayStreet Letter II, *supra* note 57, at 10–14.

[68] The commenter states that depth-of-book feed pricing is an adequate proxy for the cost of supplying a proprietary feed to a single entity since it is unlikely that the Filing Participants lose money on supplying their proprietary depth of book feeds to subscribers. *See id.*

[69] *See* MayStreet Letter II, *supra* note 57, at 10–13.

[70] *See* Letter from Hope M. Jarkowski, General Counsel, NYSE Group, Inc., to Vanessa Countryman, Secretary, Commission, at 3 (Jan. 22, 2022) (''NYSE Letter'') (stating that the legislative history of the 1975 amendments to the Exchange Act, and particularly Section 11A, reflects that Congress's principal concern was promoting competition between exchanges, not regulating market data pricing, and that economic studies have demonstrated that separating out the costs of producing market data from the other costs of operating an SRO is an impossible task that would enmesh the Commission in a continuous ratemaking process that would produce arbitrary results).

[71] *See id.* at 3–4.

[72] *See id.* at 4.

[73] *See id.*

[74] *See* Letter from Erika Moore, Vice President and Corporate Secretary, Nasdaq Stock Market LLC, to Vanessa Countryman, Secretary, Commission, at 3 (Dec. 17, 2021) (''Nasdaq Letter I''); Letter from Erika Moore, Vice President and Corporate Secretary, Nasdaq Stock Market LLC, to Vanessa Countryman, Secretary, Commission, at 4 (Mar. 29, 2022) (''Nasdaq Letter II'').

[75] *See* Nasdaq Letter I, *supra* note 74, at 3; Nasdaq Letter II, *supra* note 74, at 4.

[76] *See* Nasdaq Letter I, *supra* note 74, at 3; Nasdaq Letter II, *supra* note 74, at 4.

[77] *See* Nasdaq Letter I, *supra* note 74, at 5–6 (citing to ''Staff Guidance on SRO Rule Filings Relating to Fees'' (May 19, 2019)). The Staff Guidance on SRO Rule Filings Relating to Fees in fact states: ''If a Fee Filing proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces, the SRO must provide a substantial basis, other than competitive forces, demonstrating that the fee is consistent with the Exchange Act. One such basis may be the production of related revenue and cost data, as discussed further below.'' *See* ''Staff Guidance on SRO Rule Filings Relating to Fees'' (May 19, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.* Staff documents represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of this staff document and, like all staff statements, it has no legal force or effect, does not alter or amend applicable law, and creates no new or additional obligations for any person.

[78] *See* Proof Services Letter, *supra* note 56; Letter from Emil Framnes and Simon Emrich, Norges Bank Investment Management, to Vanessa Countryman, Secretary, Commission (Jan. 5, 2022) (''NBIM Letter''); MayStreet Letter I, *supra* note 56; MayStreet Letter II, *supra* note 57, at 1; SIFMA Letter II, *supra* note 56, at 2.

marketplace.[79] One commenter states that, if the objective is to have the SIPs provide a service that is more affordable and accessible than the data products offered by individual exchanges, then the ''value to subscribers'' should not be sole determinant of SIP fees, because the current fees for exchange proprietary data products are not a reasonable gauge of the value of core data offered under the Plan.[80]

Another commenter states that basing the proposed fees on value instead of cost does not work because the mandate under the Exchange Act is to price SIP data at levels that maximize its availability.[81] One commenter states that there can be no fair and reasonable fee structure with value-based pricing of core data because certain market participants are required by regulation to display consolidated data, which requires having core data from all exchanges.[82] Because those participants will always be required to obtain this data regardless of the cost, this commenter argues, a value-based approach will never lead to fees that are fair, reasonable, and not unreasonably discriminatory.[83]

One commenter states that if value-based pricing is the only feasible approach, value should be assessed based on the value of the data to competing consolidators—specifically, the ability of competing consolidators to compete against comparable proprietary feed offerings.[84] The commenter states that a value-based approach to pricing the underlying content associated with consolidated top-of-book market data must work backwards and first consider the prices that competing consolidators will charge for Level 1 data and then the value of the underlying content to the competing consolidator.[85]

Two Filing Participants argue that the proposed fees are fair and reasonable and not unreasonably discriminatory because they are reasonably related to the value that subscribers gain from the data, and that the proposed fees achieve the Commission's objective in Regulation NMS that prices for consolidated market data be set by market forces.[86] One Filing Participant argues that the pricing for exchange proprietary data feeds—including the depth-of-book data, top-of-book data, and auction information on which the proposed fees are based—is constrained by competitive forces, in that they have a history of being constrained by direct competition and by platform competition among the exchanges.[87] This commenter states that pricing for exchange proprietary data feeds is constrained by the highly competitive markets for exchange trading and exchange market data,[88] and that the proposed fees meet the Commission's objective for market forces to determine the overall level of fees.[89]

Another Filing Participant also argues that basing fees on the value of the underlying data is the fairest and most economically efficient method for setting fees, because setting fees according to the value of the data leads to optimal consumption: fees that are too low do not allow for producers to remain profitable, while fees that are too high lead to underutilization.[90] The commenter states that NMS Plans have historically used value as a fair and efficient basis for setting fees.[91] The commenter argues that the best basis for determining the value of core data are the fees currently charged for proprietary data fees, which, according to the commenter, have been ''tested by market competition'' and therefore provide a good starting point for estimating the value of new core data and for setting fees at efficient levels.[92] The commenter states that exchanges cannot overprice the total price of their services without potentially losing order flow and damaging their overall ability to compete.[93] According to this commenter, exchanges that produce more valuable market data generally charge higher fees, and those with less valuable data charge lower fees,[94] so fees vary according to the underlying value of the data, as measured by the liquidity available at the exchange.[95]

This commenter also argues that 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 discriminatory.[96] The commenter argues that, because they are tested by market competition, proprietary data fees provide a good and indicative starting point for estimating the value of new core data and setting fees at their efficient level.[97] This, according to the commenter, provides a substantial basis for showing that current proprietary fees—and, by extension, the proposed fees for new core data—are equitable, fair, reasonable, and not unreasonably discriminatory.[98]

Under Section 11A of the Act and Rule 603(a) of Regulation NMS, the Commission must assess whether the fees for content underlying consolidated data are offered on terms that are ''fair and reasonable'' and ''not unreasonably discriminatory.'' [99] And a threshold issue presented by the Proposed Amendment—and debated by many of the commenters, including Filing Participants, Non-Supporting Participants, and others—is whether the fees for consolidated data *must* be cost-based or whether they may be based on the value of the data to subscribers.

Several commenters, including Non-Supporting Participants, have argued that cost-based pricing must be used with respect to the fees in the Proposed Amendment.[100] While the Commission has stated that a ''reasonable relation to costs'' has been the ''principal method discussed by the Commission for assessing the fairness and reasonableness'' of fees for core data,[101] the Commission has also acknowledged that ''[t]his does not preclude the Commission from considering in the future the appropriateness of another guideline to assess the fairness and reasonableness of core data fees in a manner consistent with the Exchange

[79] *See* MayStreet Letter II, *supra* note 57, at 14.

[80] *See* Proof Services Letter, *supra* note 56, at 3.

[81] *See* MayStreet Letter I, *supra* note 56, at 6.

[82] *See* Polygon.io Letter II, *supra* note 66, at 1.

[83] *See id.*

[84] *See* MayStreet Letter II, *supra* note 57, at 15–16.

[85] *See id.*

[86] *See* NYSE Letter, *supra* note 70, at 5; Nasdaq Letter I, *supra* note 74, at 5.

[87] *See* NYSE Letter, *supra* note 70, at 5.

[88] *See id.* The commenter further argues that exchanges compete against each other as platforms and that, as such, no exchange can raise its prices to supracompetitive levels on one side of the platform, such as market data, without losing sales on the other, such as trading volume. The commenter argues that given this inter-exchange platform competition, the exchanges' filed prices for depth-of-book data and auction information are constrained by market forces. *See id.* at 6–7.

[89] *See id.* at 5. The commenter states that by applying that established ratio to the current prices for consolidated top-of-book data, the fee proposals thus reflect the market forces that drive the pricing of depth-of-book information in relation to top-of book information and the value that the data has to market participants. *Id.* This commenter argues that the ratio between these filed proprietary depth-of-book fees and proprietary top-of-book data therefore provides the Commission with a benchmark for evaluating the proposed fees, which are fair, reasonable, and not unreasonably discriminatory because they are based on this ratio, which is reflective of market forces. *See id.* at 7.

[90] *See* Nasdaq Letter I, *supra* note 74, at 2; Nasdaq Letter II, *supra* note 74, at 2.

[91] *See* Nasdaq Letter I, *supra* note 74, at 2; Nasdaq Letter II, *supra* note 74, at 2.

[92] Nasdaq Letter I, *supra* note 74, at 6.

[93] *See id.* at 4.

[94] *See id.*

[95] *See id.*

[96] *See id.* at 5–6.

[97] *See id.* at 6.

[98] *See id.*

[99] Sections 11A(c)(1)(C)–(D) of the Act, 15 U.S.C. 78k–1(c)(1)(C)–(D); Rule 603(a) of Regulation NMS, 17 CFR 242.603.

[100] *See supra* notes 56–69 and accompanying text.

[101] MDI Rules Release, *supra* note 11, 86 FR at 18685 (citing Bloomberg Order, *supra* note 42, 2018 WL 3640780, at *9).

Act.'' [102] The Commission, therefore, does not believe that a cost-based methodology is the only acceptable method for setting the fees for consolidated data under the MDI Rules.

It does not follow, however, that cost-based pricing could not be used here. The Proposed Amendment, supported by comments from Filing Participants, argues that using cost-based pricing is not required by statute, has not been used historically for consolidated data, and, further, is not possible because the Operating Committee of the Plan has no knowledge of any of the costs associated with consolidated market data.[103] Further, a Filing Participant argues that, because the Commission has not offered guidance for cost-based pricing, allocating costs would be unworkable, arbitrary, and inconsistent with relying on competition when possible, and states that, according to Staff Guidance, cost factors are relevant only in the absence of persuasive evidence that prices are constrained by significant competition.[104]

While cost-based pricing is not *required* by statute, a ''reasonable relation to costs'' is, as stated above, the principal method discussed by the Commission for assessing the fairness and reasonableness of fees for core data.[105] Moreover, the argument that the Operating Committee of the Plan cannot use cost-based pricing because it has no knowledge of relevant costs [106] rests on the questionable proposition that a group of exchanges acting jointly lacks information that each of the exchanges would possess individually. If cost information is unavailable, that is because the exchanges on the Operating Committee have not shared it. And while one Filing Participant argues that the Commission has failed to provide guidance on cost-based pricing,[107] the Filing Participants have not attempted to show that the proposed fees are reasonably related to those costs, and they have not demonstrated that a cost-based approach is infeasible.

Instead, the Filing Participants have elected to file the proposed fees for the content underlying consolidated market data using what they term a ''value-based'' methodology, and in Section IV.C. below the Commission examines whether the fees proposed by the Filing Participants through the application of this methodology meet the requirement of being fair, reasonable, and not unreasonably discriminatory.[108] As an initial matter, however, the Filing Participants have failed to demonstrate that value-based pricing is appropriate for content underlying consolidated market data offerings. The Filing Participants argue that the value of the data to subscribers is a fair and reasonable basis for setting the fees for consolidated data. They calculate that value by comparison to the prices of certain proprietary data feeds,[109] and they argue that the prices for those proprietary data feeds are constrained by both direct competition and ''platform'' competition (*i.e.,* the theory that the exchanges compete as unified platforms for both order flow and data revenue).[110]

In authorizing the Commission to establish a national market system for the trading of securities, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[111] In furtherance of these purposes, the Commission has sought through its rules and regulations to ensure that certain core data is widely available for reasonable fees.[112] And as the Commission has recognized, core data differ from proprietary data feeds in a critical way: ''[B]ecause core data must be purchased, their fees are less sensitive to competitive forces.'' [113]

Here, the Filing Participants propose to base prices for the data content underlying consolidated market data on an estimate of the value of the data to subscribers, and to estimate that value from the prices for selected proprietary market data products, which they argue are constrained by competitive forces. The Filing Participants, however, have not demonstrated that prices for core data that are based on an estimated value of the data to subscribers are consistent with the statutory standard of being fair, reasonable, and not unreasonably discriminatory.[114] Additionally, as discussed in detail below, the proprietary market data products used by the Filing Participants to derive their ''value based'' pricing are not comparable to consolidated market data offerings pursuant to the MDI Rules.[115] And while one Filing Participant argues that value-based fees are the most economically efficient,[116] this argument too does not address whether basing prices for core data on an estimated value of the data to the subscribers is consistent with the statutory standard. Moreover, even if value-based prices were efficient, the Filing Participants have not established that they would not be unreasonably discriminatory.

With respect to the specific proposed fees for various categories of data, in Section IV.C. below, this Order discusses how the Filing Participants have failed to demonstrate that those fees are fair, reasonable, and not unreasonably discriminatory.

C. The Plan's Proposed Fees for Data Content Underlying Consolidated Market Data

As described above, the Filing Participants propose to amend the Plan to adopt fees for the receipt of the expanded content of consolidated market data pursuant to the Commission's MDI Rules.[117] Specifically, the Filing Participants propose to charge separately for each of the three categories of consolidated equity market data that collectively constitute the amended definition of core data under Rule 600(b)(21) of Regulation NMS: [118] Level 1 Service (Top-of-book Data), Depth of Book Service, and Auction Information. In addition to the fees for the receipt of the three categories of data, the Filing Participants propose to charge subscribers certain additional fees, including, as applicable, Professional and Non Professional Charges, Non-

[102] MDI Rules Release, *supra* note 11, 86 FR at 18685 (citing Bloomberg Order, *supra* note 42, 2018 WL 3640780, at *9 n.63).

[103] *See* Notice, *supra* note 6, 86 FR at 67564–65.

[104] *See supra* notes 76–77 and accompanying text.

[105] *See supra* note 101 and accompanying text.

[106] *See* Notice, *supra* note 6, 86 FR at 67564.

[107] *See* Nasdaq Letter I, *supra* note 74, at 3.

[108] *See* Sections 11A(c)(1)(C)–(D) of the Act; Rule 603(a) of Regulation NMS.

[109] As discussed throughout Section IV.C, *infra,* the proprietary data feeds differ in material ways from consolidated depth-of-book data under the MDI Rules.

[110] *See* NYSE Letter, *supra* note 70, at 5–7; Nasdaq Letter I, *supra* note 74, at 4–6; Nasdaq Letter II, *supra* note 74, at 1, 2.

[111] 15 U.S.C. 78k–1(a)(1)(C); *see also* MDI Rules Release, *supra* note 11, 86 FR at 18598.

[112] *See* MDI Rules Release, *supra* note 11, 86 FR at 18598; *see also, e.g.,* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37560 (June 29, 2005) (Regulation NMS Adopting Release) (''In the Proposing Release, the Commission emphasized that one of its primary goals with respect to market data is to assure reasonable fees that promote the wide public availability of consolidated market data.'').

[113] Securities Exchange Act Release No. 59039 (Dec. 2, 2008), 73 FR 74770, 74782 (Dec. 9, 2008) (File No. SR–NYSEArca–2006–21); *see also* MDI Rules Release, *supra* note 11, 86 FR at 18685.

[114] *See* Sections 11A(c)(1)(C)–(D) of the Act; Rule 603(a) of Regulation NMS.

[115] *See infra* Section IV.C.2 (discussing, among other things, the ways in which the data content of proprietary depth-of-book feeds differs from the data content underlying consolidated market data offerings pursuant to the MDI Rules).

[116] *See supra* note 90, and accompanying text.

[117] *See, e.g.,* MDI Rules Release, *supra* note 11, 86 FR at 18680; Rule 614(e) of Regulation NMS, 17 CFR 242.614(e).

[118] 17 CFR 242.600(b)(26).

Display Use Fees, Access Fees, and Redistribution Fees.[119]

1. Fees for Top-of-Book Data

As noted above, the Filing Participants propose to apply the current fees for UTP Level 1 Service to the data content underlying consolidated market data in the new Level 1 Service offering and to add odd-lot information (as defined in Rule 600(b)(59)) to the data provided.[120] Accordingly the Filing Participants propose to amend the fee schedule to provide that the new Level 1 Service would include Top of Book Quotation Information, Last Sale Price Information, odd-lot information, administrative data, regulatory data, and self-regulatory organization program data.[121] The Filing Participants state they are not proposing to change the following fees for the UTP Level 1 Service currently set forth in the Nasdaq/UTP Plan: the Professional Subscriber and Nonprofessional Subscriber fees, the Non-Display Use Fees, and Access Fees.[122] The Filing Participants are proposing that the existing Redistribution Fees [123] would apply to all three categories of core data, including the new Level 1 Service, and any subset thereof. The Filing Participants are also proposing that the existing Redistribution Fees would apply to competing consolidators.[124]

Several commenters, including certain Non-Supporting Participants, state that the proposed fees for the new Level 1 Service are too high.[125] Several commenters also argue that the proposed fees do not account for the transfer of costs from the SROs to market participants under the decentralized consolidation model.[126] With respect to comments that the proposal should ''back out'' fees for the current Processors from the proposed fee structure, however, one Filing Participant states that the MDI Rules require the current Processors to continue operating for at least several more years and that, therefore, there are no savings to back out of any proposed fee structure at this time.[127]

One commenter states that the Proposed Amendment conflates the prices that competing consolidators and self-aggregators pay the SROs for the underlying NMS information with the prices that competing consolidators would charge for the consolidated data they generate.[128] This commenter states that the proposals do not make clear that the proposed fees are for the content underlying the consolidated market data, as opposed to the consolidated market data itself.[129] The commenter argues that the Filing Participants confuse the content of consolidated market data with the consolidated market data itself,[130] and states that the Proposed Amendment sets prices at levels that the SIPs currently charge for consolidated market data.[131]

One commenter states that the proposed fees for top-of-book data should be substantially lower to allow competing consolidators to operate their business.[132] This commenter states that the proposed fees should be lower in the new decentralized model because exchanges will no longer have to pay for the current processors and will not have the burden of maintaining custom feeds in specific formats.[133] Another commenter opposes the proposal and asks the Commission to disapprove it because it represents an overall increase in costs, including access fees, to end users as well as competing consolidators, thereby making market data less accessible and putting competing consolidators at a disadvantage.[134] One commenter states that any value-based approach must acknowledge that competing consolidators will be competing against exchange-provided top-of-book feeds that are marketed as SIP alternatives.[135] The commenter states that fees for competing consolidators would need to be a fraction of the amounts currently charged to allow for a sustainable profit margin for competing consolidators.[136]

One commenter supports certain aspects of the proposal, including its *a la carte* fee structure and the inclusion of odd-lot quotations free of charge.[137] Moreover, some commenters, including a Non-Supporting Participant, express support for the proposed inclusion of odd-lot information free of charge in the expanded Level 1 core data,[138] with one commenter stating that this would result in top-of-book information that is more comprehensive, which should, in turn, strengthen best execution and enhance transparency and price discovery.[139]

The Commission finds that the Filing Participants have not demonstrated that the proposed fees for Level 1 core data are fair, reasonable, and not unreasonably discriminatory. Including in the new Level 1 Service the odd-lot quotation data that would be of the most interest to investors and other market participants—namely, odd-lot quotations that offer pricing at or superior to the NBBO—will help investors and other market participants to trade in a more informed and effective manner and to achieve better executions and reduce the information asymmetries that currently exist between subscribers to SIP data and

[119] In the Proposed Amendment, the Filing Participants also propose to make certain other changes to the Plan's fee schedules in connection with the expanded data content. *See* Notice, *supra* note 6, 86 FR at 67563–64. The Commission agrees that these changes are non-substantive.

[120] The Filing Participants state that current Plan fees for Level 1 Service are for Top of Book Quotations and Last Sale Price Information, as well as administrative data (as defined in Rule 600(b)(2)), regulatory data (as defined in Rule 600(b)(78)), and self-regulatory organization-specific program data (as defined in Rule 600(b)(85)). The Filing Participants propose that the new Level 1 Service under the distributed consolidation model would continue to include all information that subscribers receive for current fees and would add odd lot information. *See* Notice, *supra* note 6, 86 FR at 67562–63.

[121] The Filing Participants state that the Proposed Amendment would use terms defined in Rule 600(b) to reflect both current data made available to data subscribers and the additional odd-lot information that would be included at no additional charge. *See* Notice, *supra* note 6, 86 FR at 67563.

[122] The Filing Participants propose that access to odd-lot information would be made available to Level 1 Service Professional and Nonprofessional Subscribers at no additional charge. *See* Notice, *supra* note 6, 86 FR at 67563.

[123] *See infra* Section IV.C.8 discussing the proposed Redistribution Fees with respect to the proposed Auction Data and all other categories of data underlying consolidated market data.

[124] The Filing Participants also propose to add language to the Plan's fee schedule to specify that (1) while the Nasdaq/UTP Plan fee schedule currently permits the redistribution of UTP Level 1 Service on a delayed basis for $250.00 per month, depth of book data and auction information may not be redistributed on a delayed basis; and (2) UTP Level 1 Service obtained from the Processor will include FINRA OTC Data but will not include Odd-lot information. *See* Notice, *supra* note 6, 86 FR at 67564.

[125] *See* Letter from Luc Burgun, President and CEO, NovaSparks S.A.S., to Vanessa Countryman, Secretary, Commission, at 1 (Dec. 17, 2021) (''NovaSparks Letter''); IEX Letter, *supra* note 56; MayStreet Letter I, *supra* note 56; MEMX Letter, *supra* note 56, at 7; BlackRock Letter, *supra* note 56; MIAX Letter, *supra* note 56; MayStreet Letter II, *supra* note 57.

[126] *See* MEMX Letter, *supra* note 56, at 18; MIAX Letter, *supra* note 56, at 2; BlackRock Letter, *supra* note 56, at 2–3; Letter from Quinton Pike, CEO, Polygon.io, Inc., to Vanessa Countryman, Secretary, Commission, at 1 (Nov. 30, 2021) (''Polygon.io Letter I''); MayStreet Letter II, *supra* note 57, at 1–2, 4–5.

[127] *See* NYSE Letter, *supra* note 70, at 7.

[128] *See* MayStreet Letter I, *supra* note 56, at 2.

[129] *See id.* at 2.

[130] *See id.* at 3.

[131] *See id.* at 6.

[132] *See* NovaSparks Letter, *supra* note 125, at 1.

[133] *See id.*

[134] *See* Letter from Jonathan Hill, CEO, Anand Prakash, CTO, Nader Sharabati, CFO, and Doug Patterson, CCO, Cutler Group, LP, to Vanessa Countryman, Secretary, Commission, at 1–2 (Dec. 16, 2021) (''Cutler Group Letter'').

[135] *See* MayStreet Letter II, *supra* note 57, at 15.

[136] *See id.* at 16–17.

[137] *See* BlackRock Letter, *supra* note 56, at 1, 3.

[138] *See* MIAX Letter, *supra* note 56, at 2; BlackRock Letter, *supra* note 56, at 1, 3; MayStreet Letter I, *supra* note 56, at 2, 3, 6; Polygon.io Letter II, *supra* note 66, at 2.

[139] *See* BlackRock Letter, *supra* note 56, at 1, 3.

subscribers to proprietary data,[140] consistent with the objectives of the MDI Rules. But the Filing Participants have not demonstrated how their approach for pricing the new Level 1 Service (which consists of data content underlying consolidated market data for several elements of core data under the decentralized consolidator model[141]) based on fees for the current UTP Level 1 Service (which consists solely of already consolidated data content[142]) can be reconciled with the new Level 1 Service the Filing Participants are purporting to price.

The fees proposed by the Filing Participants are for a product independent from, and differing in content and function from, the current UTP Level 1 Service under the Plan. Unlike the current UTP Level 1 Service, the new Level 1 Service would include, in addition to top-of-book information, expanded data elements that form part of the definition of ''core data,'' such as information about better priced quotations in higher-priced stocks (implemented through a new definition of ''round lot'' and the inclusion of certain odd-lot information). In addition, and unlike the current UTP Level 1 Service, the data content underlying consolidated data for the new Level 1 Service would not be collected, consolidated, or disseminated by the exclusive SIP for the Plan, but instead by competing consolidators and self-aggregators. And unlike current UTP Level 1 Service, which bundles several consolidated data elements into one product, the core data elements contained in the new Level 1 Service could have been, in a manner not inconsistent with the MDI Rules, unbundled and offered as separate data underlying consolidated data offerings by the Filing Participants. Moreover, the proposed enhanced data content underlying consolidated data for the new Level 1 Service would not be implemented upon approval of the Proposed Amendment, nor would it be implemented under the current centralized model, but rather would be implemented in accordance with the phased implementation of the new decentralized consolidation model, as required by the Commission.[143] The Filing Participants do not analyze or otherwise justify the proposed fees for the new Level 1 Service in a manner that is consistent with these facts.

In addition, the Filing Participants have not demonstrated how, if at all, the proposed fees have taken into account the transfer of costs for collection, consolidation, and dissemination of data content underlying consolidated market data in the new Level 1 Service to other market participants under the decentralized consolidation model. Similarly, the Filing Participants do not justify or otherwise explain how the proposed fees have been adjusted so as to exclude other operating costs or profits of the exclusive SIPs, as some commenters, including a Non-Supporting Participant, point out.[144] Though one Filing Participant argues that, because the MDI Rules require the current Processors to continue operating for at least several more years, there are no savings to back out of any proposed fee structure at this time,[145] this argument presents a false choice. This commenter ignores that the Plan could retain one price for the existing Level 1 service, for as long as the current Processors continue to operate, and propose new fees that would apply only to the data content underlying consolidated data in the new Level 1 Service under the decentralized model.

The Filing Participants have not demonstrated that the proposed fees for the new Level 1 Service are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[146]

2. Fees for Depth-of-Book Data

The Filing Participants propose to set fees for depth-of-book data, as that term is defined in Rule 600(b)(26) of Regulation NMS.[147] With respect to depth-of-book data, the Filing Participants propose that Professional Subscribers would pay $99.00 per device per month and that Nonprofessional Subscribers would pay $4.00 per device per month.[148] The Filing Participants are also proposing a monthly charge for Non-Display Use of depth-of-book data of $12,477 for each of three types of Non-Display Use,[149] as well as an Access Fee of $9,850.00 per month.[150] The Filing Participants

[140] *See* MDI Rules Release, *supra* note 11, 86 FR at 18612.

[141] The Filing Participants propose that Level 1 Service would include Top of Book Quotation Information, Last Sale Price Information, odd-lot information, administrative data, regulatory data, and self-regulatory organization program data. See Notice, *supra* note 6, 86 FR at 67562.

[142] For each NMS stock, the Equity Data Plans currently provide for the dissemination of top-of-book data and transaction information, generally defining consolidated market information (or ''core data'') as consisting of: (1) the price, size, and exchange of the last sale; (2) each exchange's current highest bid and lowest offer and the shares available at those prices; and (3) the national best bid and national best offer (''NBBO'') (*i.e.,* the highest bid and lowest offer currently available on any exchange). In addition to disseminating core data, the exclusive SIPs collect, calculate, and disseminate certain regulatory data—including information required by the National Market System Plan to Address Extraordinary Market Volatility (''LULD Plan''), information relating to regulatory halts and market-wide circuit breakers, and information regarding the short-sale price test pursuant to Rule 201 of Regulation SHO. They also collect and disseminate other NMS information and disseminate certain administrative messages. Together with core data, the Commission refers to this broader set of data for purposes of this release as ''SIP data.'' *See* MDI Rules Release, *supra* note 11, 86 FR at 18599.

[143] *See* MDI Rules Release, *supra* note 11, 86 FR at 18698–701.

[144] *See* BlackRock Letter, *supra* note 56, at 2, 3–4; MayStreet Letter II, *supra* note 57, at 8–9; NovaSparks Letter, *supra* note 125, at 1; MEMX Letter, *supra* note 56, at 15–17.

[145] *See* NYSE Letter, *supra* note 70, at 7.

[146] *See* 17 CFR 242.608(b)(2).

[147] *See* 17 CFR 242.600(b)(26) (''Depth of book data means all quotation sizes at each national securities exchange and on a facility of a national securities association at each of the next five prices at which there is a bid that is lower than the national best bid and offer that is higher than the national best offer. For these five prices, the aggregate size available at each price, if any, at each national securities exchange and national securities association shall be attributed to such exchange or association.'').

[148] The Filing Participants state they applied the 3.94x ratio described in the Proposed Amendment to the current fees charged to Professional Subscribers taking all three Networks ($75.00). This resulted in the total fee level for depth of book data for Professional Subscribers equaling $296.00 (*i.e.,* $75.00 × 3.94 = $295.50, rounded to $296.00). This fee was then split evenly among the three Networks, resulting in a proposed Professional Subscriber fee of $99.00 per Network. The Filing Participants applied the 3.94x ratio to the current fees charged for Nonprofessional Subscribers taking all three Networks ($3.00). This resulted in the total fee level for depth of book data for Nonprofessional Subscribers equaling $12.00 (*i.e.,* $3.00 × 3.94 = $11.82, rounded to $12.00). This fee was then split evenly among the three Networks, resulting in a proposed Nonprofessional Subscriber fee of $4.00 per Network. *See* Notice, *supra* note 6, 86 FR at 67565.

[149] *See supra* note 32 (describing the three types of Non-Display Use recognized under Exhibit 2(i) to the Nasdaq/UTP Plan). The Filing Participants applied the 3.94x ratio described in the Proposed Amendment to the current fees charged for Non-Display Use for all three Networks ($9,500.00). This resulted in the total fee level for depth-of-book data for Non-Display Use equaling $37,430.00 (*i.e.,* $9,500.00 × 3.94 = $37,430.00). This fee was then split evenly among the three Networks, resulting in a proposed Non-Display Use Fee of $12,477.00 per Network (including rounding). *See* Notice, *supra* note 6, 86 FR at 67565.

[150] The Filing Participants applied the 3.94x ratio described in the Proposed Amendment to the current fees charged for direct Data Access for all three Networks ($7,500.00). This resulted in the total fee level for depth of book data for Data Access Fees equaling $29,550.00 (*i.e.,* $7,500.00 × 3.94 = $29,550.00). This fee was then split evenly among the three Networks, resulting in a proposed Data

Continued

further propose to add language to the Plan's fee schedule in connection with the expanded content, including: (1) that the existing Redistribution Fees [151] would apply to all three categories of core data, including Depth-of-Book Data, and any subset thereof, (2) that the existing Redistribution Fees would apply to competing consolidators; and (3) that while the Nasdaq/UTP Plan fee schedule currently permits the redistribution of UTP Level 1 Service on a delayed basis for $250.00 per month, depth-of-book data and auction information may not be redistributed on a delayed basis.[152]

While one commenter supports the methodology selected by the Filing Participants, arguing that pricing for proprietary data feeds is a reasonable gauge of value because those fees are constrained by competition,[153] another commenter disagrees with that view,[154] and several commenters, including Non-Supporting Participants, have expressed concern about the use of prices for exchange proprietary data products as the basis for setting the proposed fees on several grounds.[155] Commenters state that the method used presupposes that fees for proprietary data products are fair and reasonable and not unreasonably discriminatory,[156] and they state that Filing Participants have not shown that pricing for proprietary data feeds are a reasonable gauge of value or that proprietary data feeds are appropriate proxies for data content underlying consolidated market data [157]

Some commenters, including Non-Supporting Participants, argue that the calculation used by the Filing Participants to determine the proposed depth-of-book fees is flawed and inconsistent with the MDI Rules Release because the proprietary data feeds used by the Filing Participants were inappropriate references for the calculation.[158] These commenters point out that while the proprietary market data depth-of-book feeds used to calculate fees for the depth-of-book information include top-of-book data as part of those offerings, the depth-of-book data product under the Proposed Amendment does not include top-of-book data.[159] Consequently, some of these commenters argue, subscribers to the new core data would need to pay an additional fee to receive top-of-book data at current rates to obtain the same data content that is available today through proprietary feeds.[160]

Some commenters, including Non-Supporting Participants, state that an additional problem with the proposed approach is that the proprietary depth-of-book products used in the calculation are primarily structured as comprehensive order-by-order feeds, which do not aggregate orders at each price level.[161] According to these commenters, the depth-of-book elements prescribed by the MDI Rules warrant a lower price because they would contain only the aggregated quotes available at the next five price levels away from the NBBO and would thus include less content than the proprietary feeds.[162] One commenter states that complete, disaggregated order-by-order depth-of-book feeds, such as those used in the calculation, are likely to be associated with ''additional operational costs because of increased message traffic with order by order data at all price levels.'' [163] Accordingly, the commenter argues that an aggregated feed with only five levels of depth should have been priced at a discount relative to the corresponding exchange offerings to compensate for differences in both information content and costs.[164]

A Non-Supporting Participant argues that the proposal fails to consider pricing for other proprietary depth-of-book feeds that are aggregated by price level and would therefore serve as a more logical proxy for setting core data fees.[165] Another commenter states that while the Proposed Amendment compared the aggregated depth-of-book data set with order-by-order data, the more appropriate comparison would be with Cboe One Premium, which offers top-of-book, last sale, and five levels of depth.[166] This commenter states that the proposed user fees for underlying market data content are not in line either with Cboe One Premium on its own or with a scaled charge based on Cboe's market share, even though the Cboe charges are for a product sold to end users, whereas the proposed Plan fees are only for underlying content.[167] One Non-Supporting Participant states that the proposal fails to acknowledge or account for the fact that the proposed methodology relies on this commenter's equity market data fees as one of the comparison points, notwithstanding that, unlike the other exchanges' market data prices, the commenter's proprietary data fees do not include individual per user fees but apply only on a per firm basis for firms subscribing to ''real time data.'' [168]

Some commenters, including Non-Supporting Participants, question the determination of the ratio (or multiplier) used by the Filing Participants to set the depth-of-book feeds.[169] Several commenters state that the ratio used by the Filing Participants to determine the fees for accessing depth-of-book data is

Access Fees of $9,850.00 per Network. *See* Exhibit A to the Notice, *supra* note 6, 86 FR at 67567.

[151] *See infra* Section IV.C.7 discussing the proposed Redistribution Fees with respect to the proposed Auction Data and all other categories of data underlying consolidated market data.

[152] *See* Notice, *supra* note 6, 86 FR at 67564. The Filing Participants further propose to clarify that the Per Query Fee is not applicable to the expanded content, and applies only to the receipt of Level 1. *See id.*

[153] *See* Nasdaq Letter I, *supra* note 74, at 2.

[154] *See* SIFMA Letter I, *supra* note 56, at 6.

[155] *See* MIAX Letter, *supra* note 56, at 4; SIFMA Letter I, *supra* note 56, at 4, 5; IEX Letter, *supra* note 56, at 4; SIFMA Letter II, *supra* note 56, at 2; NBIM Letter, *supra* note 78, at 1–2.

[156] *See* SIFMA Letter I, *supra* note 56, at 5.

[157] *See* IEX Letter, *supra* note 56, at 3–4; MEMX Letter, *supra* note 56, at 11–12; BlackRock Letter, *supra* note 56, at 4–5; Letter from Marcia E. Asquith, Executive Vice President, Board and External Relations, Financial Industry Regulatory Authority, Inc., to Vanessa Countryman, Secretary, Commission, at 6 (Dec. 17, 2021) (''FINRA Letter''); MayStreet Letter II, *supra* note 57, at 17; Proof Services Letter, *supra* note 56, at 3.

[158] *See* IEX Letter, *supra* note 56, at 3–4; MEMX Letter, *supra* note 56, at 11–12; BlackRock Letter, *supra* note 56, at 4–5; FINRA Letter, *supra* note 157, at 6; MayStreet Letter II, *supra* note 57, at 17.

[159] *See* IEX Letter, *supra* note 56, at 3–4; MEMX Letter, *supra* note 56, at 11–12; BlackRock Letter, *supra* note 56, at 4–5; FINRA Letter, *supra* note 157, at 6; MayStreet Letter II, *supra* note 57, at 17.

[160] *See* IEX Letter, *supra* note 56, at 4; MEMX Letter, *supra* note 56, at 6, 11–12; BlackRock Letter, *supra* note 56, at 4–5.

[161] *See* IEX Letter, *supra* note 56, at 4; MEMX Letter, *supra* note 56, at 11–12; BlackRock Letter, *supra* note 56, at 4–5; FINRA Letter, *supra* note 157, at 6.

[162] *See* IEX Letter, *supra* note 56, at 4; MEMX Letter, *supra* note 56, at 11–12; BlackRock Letter, *supra* note 56, at 4–5.

[163] *See* BlackRock Letter, *supra* note 56, at 4–5.

[164] *See* BlackRock Letter, *supra* note 56, at 4–5. *See also* IEX Letter, *supra* note 56, at 4; MEMX Letter, *supra* note 56, at 11–12.

[165] *See* IEX Letter, *supra* note 56, at 4.

[166] *See* MayStreet Letter II, *supra* note 57, at 17.

[167] *See id.* at 18.

[168] *See* IEX Letter, *supra* note 56, at 4. The commenter also points out that its proprietary market data fees do not vary depending on the type of use made by those firms, do not apply to data that is redistributed with a delay of as little as 15 milliseconds (whereas other exchanges typically require a 15-minute delay to avoid charges for real-time data), and were determined and justified based on costs. The commenter further states that, to the extent the commenter's fees are relevant at all, a more consistent approach would have been to reflect the commenter's fees as zero, since the commenter does not charge any fees on an individual per user basis for either of its two proprietary market data products. According to the commenter, the latter approach would substantially reduce the average ratio and multiplier, and thus substantially reduce the fees proposed to be charged for core data. *See id.*

[169] *See* IEX Letter, *supra* note 56; MEMX Letter, *supra* note 56; MIAX Letter, *supra* note 56; BlackRock Letter, *supra* note 56; FINRA Letter, *supra* note 157; Letter from James Angel, Ph.D., CFP, CFA, Associate Professor of Finance, Georgetown University, to Vanessa Countryman, Secretary, Commission, at 9–10 (Dec. 21, 2021) (''Angel Letter''); NovaSparks Letter, *supra* note 125; SIFMA Letter I, *supra* note 56; SIFMA Letter II, *supra* note 56.

too high.[170] One commenter states that fees for depth-of-book information ''should be adjusted to use a multiplier of 2.94x to eliminate the overcharging from double counting top-of-book data''; otherwise, those who subscribe to both the new Level 1 Service and depth-of-book data offering ''would be paying twice for top of book content.'' [171] Another commenter states that the Filing Participants have created a completely unreasonable standard to justify the proposed fees and that the ratio used to calculate the proposed fees, ''is completely arbitrary and in no way shows that the proposed fees are fair, reasonable, and not unreasonably discriminatory as required under the Exchange Act.'' [172]

Several commenters state that, while the Filing Participants sought to demonstrate that the proposed fees were related to the value of the data, the method employed by the Filing Participants does not align the proposed fees for the new depth-of-book data to the value of that data to subscribers.[173] One Non-Supporting Participant states that calculating the proposed fee levels based on prices charged by the exchanges for their existing market data product is not the right starting point for setting the proposed fees and is inconsistent with the MDI Rules' goal of expanding access to consolidated data.[174]

Two Filing Participants state that the proposed fees are fair and reasonable and not unreasonably discriminatory because they are reasonably related to the value that subscribers gain from the data and because they achieve the Commission's objective in Regulation NMS that prices for consolidated market data be set by market forces.[175] One Filing Participant argues that the pricing for exchange proprietary data feeds—including the depth-of-book data, top-of-book data, and auction information on which the proposed fees are based—is constrained by competitive forces, in that they have a history of being constrained by direct competition and by platform competition among the exchanges.[176] This commenter argues that, because they are tested by market competition, proprietary data fees provide a good and indicative starting point for estimating the value of new core data and for setting fees at their efficient level.[177] This, according to the commenter, provides a substantial basis for showing that current proprietary fees—and, by extension, the proposed fees for new core data—are equitable, fair, reasonable, and not unreasonably discriminatory.[178]

The Filing Participants' methodology to justify the proposed fees is flawed, and the Commission concludes that, as a result, the Filing Participants have failed to demonstrate that the proposed fees are fair, reasonable, and not unreasonably discriminatory. The Filing Participants have chosen to justify the proposed fees by multiplying the existing fees for SIP data (which is top-of-book data) by a number derived from the ratio of the fees of several exchanges' proprietary depth-of-book feeds to the fees for the exchanges' proprietary top-of-book feeds. As a number of commenters, including Non-Supporting Participants, point out,[179] however, the proprietary depth-of-book products used as part of this methodology are materially different products from the new data content underlying consolidated data offerings, making the proprietary products an inappropriate simple benchmark for pricing. Unlike the new data content underlying consolidated data offerings, the proprietary depth-of-book data products typically include: (1) top-of-book data, for which the Filing Participants propose to charge separately; (2) auction data, for which the Filing Participants also propose to charge separately; (3) comprehensive order-by-order depth information, rather than just aggregated orders at each price level; [180] and (4) full depth information at all price levels, rather than just the five price levels outside the NBBO as prescribed under the MDI Rules. Notably, the Commission considered but declined to expand the definition of depth-of-book data to include complete, order-by-order depth of book information at all price levels, noting that the objectives of providing useful additional information to a broad cross-section of market participants and reducing informational asymmetries between users of proprietary data and SIP data must be balanced against the risk of, among other things, ''additional operational costs and latency because of increased message traffic with order by order data at all price levels.'' [181]

While the Filing Participants have described the methodology used to set the proposed fees and have made certain arguments about their consistency with statutory standards for assessing fees for NMS Plans, they have not adequately explained: (1) how setting the proposed fees based on the ratio of fees for depth-of-book and top-of-book proprietary data is an appropriate method for setting the proposed fees; (2) how the ratio used in the calculation adequately represents the difference in value between top-of-book data and the five levels of additional depth that would be required under the MDI Rules; (3) how calculating the ratio based on proprietary depth-of-book data products that include content that would not be part of the consolidated depth-of-book product prescribed under the MDI Rules did not result in a ratio that is excessively high; or (4) how the fees generated by applying that ratio to the fees for current consolidated market data resulted in proposed depth-of-book fees that are fair, reasonable, and not unreasonably discriminatory. And while the Filing Participants state that alternative methodologies resulted in ratios greater than 3.94x and were thus not selected by the Filing Participants, the Filing Participants do not specify which other data feeds were considered in those methodologies or how feeds other than those considered—such as a proprietary feed with aggregated, rather than the more comprehensive order-by-order depth-of-book information—might have served as better proxies for the data content required under the MDI Rules.

Several commenters, including Non-Supporting Participants, state that the proposed fees, including the proposed fees for depth-of-book data, are too high.[182] One commenter states that retail investors should get free or very-low-cost depth-of-book data because it is in the best interest of retail investors,

[170] *See* NovaSparks Letter, *supra* note 125, at 1; BlackRock Letter, *supra* note 56, at 4–5; FINRA Letter, *supra* note 157, at 5–6; MayStreet Letter II, *supra* note 57, at 3, 19.

[171] BlackRock Letter, *supra* note 56, at 4–5. *See also* IEX Letter, *supra* note 56, at 4; MEMX Letter, *supra* note 56, at 6, 11–12.

[172] SIFMA Letter II, *supra* note 56, at 5.

[173] *See* BlackRock Letter, *supra* note 56, at 4. *See also* IEX Letter, *supra* note 56, at 4; MEMX Letter, *supra* note 56, at 6, 11–12; BlackRock Letter, *supra* note 56, at 4–5.

[174] *See* MIAX Letter, *supra* note 56, at 4.

[175] *See* NYSE Letter, *supra* note 70, at 5; Nasdaq Letter I, *supra* note 74, at 5.

[176] *See* NYSE Letter, *supra* note 70, at 5.

[177] *See id.* at 6.

[178] *See id.*

[179] *See* IEX Letter, *supra* note 56, at 3–4; MEMX Letter, *supra* note 56, at 11–12; BlackRock Letter, *supra* note 56, at 4–5; FINRA Letter, *supra* note 157, at 6; MayStreet Letter II, *supra* note 57, at 17.

[180] *See supra* notes 161–164 and accompanying text.

[181] *See* MDI Rules Release, *supra* note 11, 86 FR at 18627.

[182] *See* FINRA Letter, *supra* note 157, at 5–6; BlackRock Letter, *supra* note 56, at 1–5; MIAX Letter, *supra* note 56, at 2; Angel Letter, *supra* note 169, at 9; NovaSparks Letter, *supra* note 125, at 1; BMO Letter, *supra* note 56, at 2–3; IEX Letter, *supra* note 56, at 1, 5; SIFMA Letter I, *supra* note 56, at 1, 4–5; IEX Letter, *supra* note 56, at 4; MEMX Letter, *supra* note 56, at 11–12. *See also* MayStreet Letter II, *supra* note 57, at 18.

the industry, and the Commission.[183] This commenter states that displaying depth-of-book data can give investors a better understanding of how prices are formed.[184] The commenter states that the ability for an investor to see buying and selling interest at various price levels makes it easier for the investor to understand what determines the price of a particular security by seeing the interaction of market and limit orders.[185] The commenter argues that making depth-of-book data ''cheap'' would allow brokers to give the data to retail clients for no or low cost and that this, in turn, would increase retail participation in the securities markets because investors will not only understand markets better, but they will participate more in the markets.[186] According to this commenter, if depth-of-book data is expensive, it will not help most retail investors because they will not be able to afford to see it.[187] One commenter states that depth-of-book data should be priced higher than top-of-book data, but adds that charges for depth-of-book data from the Plans should be much lower than charges for consuming the market data directly from the exchanges, because the information provided under the Plan would still be a subset of what is provided by the proprietary data feeds.[188]

One commenter opposes the proposed depth-of book data fees, because they, as well as the other proposed fees, represent an overall increase in costs to end users, making market data less accessible, contrary to ''the core precept of the'' MDI Rules.[189] Another commenter states that the value of the depth-of-book data should focus on greater access and availability of this kind of data, and that the Operating Committee should thus consider what price point would increase availability of depth-of-book information, rather than charging a multiple of proprietary data feeds.[190] One commenter expresses support for the proposed and ''moderately priced'' non-professional rate for depth-of-book information, because, in the commenter's view, this aspect of the proposal ''levels the playing field'' for retail investors by providing them with access to the same information that is available to professionals traders at an affordable price, which will help broaden adoption of this new category of data.[191] One commenter states that it is concerning that the Proposed Amendment, without explanation, precludes the redistribution of delayed depth-of-book data, adding that it sees no reason for prohibiting the redistribution of depth-of-book data on a delayed basis and that it does not object to offering snapshot pricing.[192]

The Commission acknowledges the concerns raised by some commenters that the proposed fees for depth-of-book data are too high and thus do not serve the goals of Section 11A of the Exchange Act or help to ensure broad availability to brokers, dealers, and investors of information with respect to quotations for and transactions in NMS stocks that is prompt, accurate, reliable, and fair. Here, however, as discussed above, the Commission has concluded that the Filing Participants have not demonstrated that the proposed fees for depth-of-book data are fair, reasonable, and not unreasonably discriminatory. Because the Filing Participants have not justified either the proposed fees or the methodology behind them, the Commission does not have a basis to make a finding in this Order as to what fair, reasonable, and not unreasonably discriminatory level of fees would be.

The Filing Participants have not demonstrated that the proposed fees for the content underlying consolidated depth-of-book data provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[193]

3. Fees for Auction Data

The Filing Participants have proposed fees for Auction information (as defined in Rule 600(b)(5)).[194] The Filing Participants propose that, with respect to auction information, both Professional Subscribers and Nonprofessional Subscribers would pay $10.00 per device per month.[195]

The Filing Participants state that, with respect to the fees for auction information, the Filing Participants looked to the number of trades that occur during the auction process as compared to the trading day and determined that roughly 10% of daily trading volume is concentrated in auctions.[196] The Filing Participants state that, consequently, a fee that is 10% of the fee charged for depth-of-book data is an appropriate proxy for determining the value of auction information. As a result, the Filing Participants have proposed a $10.00 fee per Network for auction information, which the Filing Participants state is fair and reasonable and not unreasonably discriminatory.[197]

Three commenters, including a Non-Supporting Participant, state that information about auction order imbalances is included with the proprietary depth-of-book data products that the Filing Participants used to calculate the consolidated depth-of-book fees. Therefore, these commenters argue, the proposed consolidated depth-of-book fees already incorporate the fees for auction imbalance data, and the proposed auction information fees would result in double charging consumers who purchase both auction information and depth-of-book products from competing consolidators.[198] One commenter states that proprietary depth-of-book product pricing is also inappropriately used to derive the value of auction data, because auction information is more closely aligned with top-of-book content, which provides only high-level information about aggregate order imbalances and does not include the order-by-order details or the data about multiple price levels that proprietary depth-of-book feeds include.[199] One commenter states that,

[183] *See* Angel Letter, *supra* note 169, at 3.

[184] *See id.* at 7.

[185] *See id.*

[186] *See id.* at 8.

[187] *See id.*

[188] *See* NovaSparks Letter, *supra* note 125, at 1.

[189] *See* Cutler Group Letter, *supra* note 134, at 1. This commenter further states that the level of the proposed fees would make it difficult for competing consolidators to offer products at prices competitive to those of proprietary feeds thereby placing competing consolidators at a disadvantage. *See id.*

[190] *See* MayStreet Letter I, *supra* note 56, at 7.

[191] *See* BlackRock Letter, *supra* note 56, at 3, 5.

[192] *See* MayStreet Letter II, *supra* note 57, at 3, 19.

[193] *See* 17 CFR 242.608(b)(2).

[194] The Filing Participants state that they propose to price subsets of data that constitute core data separately so that data subscribers have flexibility in how much consolidated market data content they wish to purchase. For example, the Filing Participants state that they understand that certain data subscribers may not wish to add depth-of-book data or auction information, or may want to add only depth-of-book information, but not auction information. Accordingly, the Filing Participants are proposing to price subsets of data to provide flexibility to data subscribers. However, the Filing Participants state that they expect that competing consolidators would purchase all core data. *See* Notice, *supra* note 6, 86 FR at 67563 n.10.

[195] *See id.* at 67563.

[196] *See id.* at 67565.

[197] *See id.*

[198] *See* BlackRock Letter, *supra* note 56, at 4–5; MEMX Letter, *supra* note 56, at 11–13; FINRA Letter, *supra* note 157, at 6.

[199] *See* BlackRock Letter, *supra* note 56, at 5.

while the pricing rationale in the proposal uses the ratio of auction volume to total trading volume to price the auction information feed, the Filing Participants incorrectly apply this ratio to the fees for the depth-of-book feed, which conveys information about displayed liquidity, not trading activity. According to this commenter, (1) it would have been more congruent with the Filing Participants' proposition to use Level 1 core data as the basis for pricing auction content, as this feed is more closely associated with trade volume, and (2) the fees for auction information should be set to 10% of Level 1 core data prices.[200]

One commenter states that the best proxy for the value of auction data is the NYSE Order Imbalance feed, given that NYSE has the biggest auction market share.[201] The commenter recommends eliminating auction usage fees from the proposal because the most valuable auction data available today does not have such usage charges.[202] The commenter also states that it sees no reason for prohibiting the redistribution of auction data on a historical basis.[203]

The Filing Participants have not shown that the proposed fees for auction data meet the statutory standard that fees for consolidated market data must be fair, reasonable, and not unreasonably discriminatory. The Filing Participants state that, to determine the proposed fees for auction data, they looked to the number of trades that occur during the auction process as compared to the trading day and determined that roughly 10% of the trading volume is concentrated in auctions. The Filing Participants then applied the 10% figure to the fees charged for depth-of-book data to determine the value of auction information. However, as several commenters, including Non-Supporting Participants, have pointed out, because information about auction order imbalances is included with the proprietary depth-of-book data products used as a benchmark for both the proposed depth-of-book fees and the proposed auction information fees,[204] the proposed auction information fee would essentially result in double charging subscribers who purchase both auction and depth-of-book information. Moreover, the Filing Participants have failed to respond to criticisms raised by a commenter that proprietary depth-of-book pricing was inappropriately used as a benchmark to derive the value of auction data because auction information is more closely aligned with top-of-book content, which only provides high-level information about aggregate order imbalances and does not include the order-by-order details or data about multiple price levels typically included in proprietary depth-of-book information products.[205] The Filing Participants, who have argued that their proposed fees are based on the value of the data products to subscribers, have failed to justify the assumption that the relative value of two materially different data products is based on the relative volume of trades during different periods of the day, without reference to the content of the two feeds. Because the rationale offered by the Filing Participants to support their methodology with respect to auction information fees is arbitrary, and because the methodology uses as a benchmark proprietary depth-of-book products that contain auction data along with a significant amount of other data, the Commission cannot find that the proposed fees are fair, reasonable, and not unreasonably discriminatory.

Some commenters argue that the fees for auction information under the Proposed Amendment should be lower.[206] One commenter states that retail investors should get free or moderately priced auction data because it is in the interest of retail investors, the industry, and the Commission.[207] The commenter states that opening and closing auction data is important in the securities markets and that providing auction data to retail investors will increase retail investor participation in the market.[208] Another commenter states that the filing should not be approved because the price levels do not contribute to a level playing field between competing consolidators and the current plan administrators, such that competing consolidators will be at a disadvantage because they will not be able to offer products at prices competitive with those of proprietary feeds.[209]

As noted above, the Commission has found that the Filing Participants have not justified the rationale they have used to set the proposed fees for auction information, and therefore it is not necessary for the Commission to make a finding about the absolute level of the proposed fees.

The Filing Participants have not demonstrated that the proposed fees for Auction Data provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[210]

4. Fees for Professional and Non-Professional Users

For each of the three categories of data described above, the Filing Participants propose a Professional Subscriber Charge and a Nonprofessional Subscriber Charge. With respect to Level 1 Service, the Filing Participants propose to charge the same Professional Subscriber and Nonprofessional Subscriber fees for the new Level 1 Service product under the distributed consolidation model as are charged for the existing UTP Level 1 Service SIP data product that the Nasdaq/UTP Plan generates and disseminates. With respect to depth-of-book data, Professional Subscribers would pay $99.00 per device per month,[211] and Nonprofessional Subscribers would pay $4.00 per device per month.[212] With respect to auction information, both Professional Subscribers and Nonprofessional Subscribers would pay $10.00 per device per month.[213]

Some commenters, including a Non-Supporting Participant, question the classification of fees by professional or non-professional user type under the

[200] *See id.*

[201] *See* MayStreet Letter II, *supra* note 57, at19.

[202] *See id.* at 4, 19.

[203] *See id.* at 19.

[204] *See* MEMX Letter, *supra* note 56, at 11–12. BlackRock Letter, *supra* note 56, at 4–5; FINRA Letter, *supra* note 157, at 6.

[205] *See* BlackRock Letter, *supra* note 56, at 5 (arguing that it would have been more congruent to use Level 1 core data fees as the benchmark). One commenter also argues that certain proprietary auction imbalance feeds, rather that the proprietary depth-of-book products selected, are a better proxy for the value of auction data. *See* MayStreet Letter II, *supra* note 57, at 19.

[206] *See* Angel Letter, *supra* note 169; Cutler Group Letter, *supra* note 134; BlackRock Letter, *supra* note 56.

[207] *See* Angel Letter, *supra* note 169, at 3.

[208] *See id.* at 9.

[209] *See* Cutler Group Letter, *supra* note 134, at 1–2.

[210] *See* 17 CFR 242.608(b)(2).

[211] *See* Notice, *supra* note 6, 86 FR at 67563.

[212] *See id.* The Filing Participants applied the 3.94x ratio to the current fees charged for Nonprofessional Subscribers taking all three Networks ($3.00). This resulted in the total fee level for depth-of-book data for Nonprofessional Subscribers equaling $12.00 (*i.e.,* $3.00 × 3.94 = $11.82, rounded to $12.00). This fee was then split evenly among the three Networks, resulting in a proposed Nonprofessional Subscriber fee of $4.00 per Network. *See id.* at 67565.

[213] *See id.* at 67563.

Proposed Amendment.[214] One commenter states that it is unreasonably discriminatory to charge non-professional users the same fees as professional users for auction data because professionals make far more use of the data,[215] and that the filing contains no justification as to why the Filing Participants propose to charge professionals the same as non-professionals for auction data.[216] One commenter opposes non-professional and professional user classifications on the grounds that they prevent competing consolidators from being able to offer products at competitive prices compared to the proprietary data feeds.[217] One commenter states that the inclusion of multiple tiers, user types with bespoke definitions, and high compliance costs does not amount to fair and reasonable terms and in fact unreasonably discriminates against competing consolidators who seek to bring competition, innovation, and broader access to consolidated market data.[218] According to the commenter, simplifying the pricing structure to allow for enterprise caps at multiple tiers should be considered, along with easier-to-track proxies for usage based on data already reported by firms or other existing regulatory reporting.[219] Another commenter suggests slowing down the data feeds by 15 milliseconds to mitigate the risk of professionals ''masquerading'' as non-professionals utilizing the cheaper data.[220]

Some commenters support moderately priced or free non-professional user fees. Two Non-Supporting Participants support the proposed low fees for non-professional users.[221] One commenter supports the proposed ''moderately priced'' non-professional rate for depth-of-book information because this aspect of the proposal ''levels the playing field'' for retail investors by providing them with access to the same information that is available to professionals traders at an affordable price, which will help broaden adoption of this new category of data.[222] Another commenter states that free or moderately priced non-professional data, including depth-of-book and auction data, is in the best interest of brokers and exchanges because it may increase retail order flow and thus profits into the industry.[223] The commenter further states that free or moderately priced non-professional data is in the best interest of the Commission as well, because providing ''better data to retail investors at low cost will reduce the amount of SEC resources devoted to dealing with complaints based on misunderstandings of market function.'' [224]

One Filing Participant states that distinguishing between professional and non-professional subscribers is fair, as well as efficient.[225] According to this commenter, professional fees are higher than those for non-professionals because professionals realize greater value from the data than non-professionals.[226] The commenter states that applying the same fees to both categories would result either in low-value users subsidizing high-value users, or in fees that are not economically sustainable for producers.[227] According to the commenter, setting professional and non-professional fees based on the value of the data is efficient, fair, and well established by the industry, and setting those fees based on cost is likely to be unworkable.[228] Another Filing Participant states that it is fair, reasonable, and not unreasonable discriminatory for ''Wall Street to pay higher fees than Main Street.'' [229]

With respect to the specific fees proposed, one Non-Supporting Participant states that the proposed professional user fees are based on a flawed methodology that results in excessive fee levels that would discourage firms from registering as competing consolidators and would hinder the formation of the decentralized consolidation model that the MDI Rules seeks to create.[230] Another Non-Supporting Participant states that the proposed fees are ''plagued by double counting and other significant issues'' that raise questions about the process used to design the Proposed Amendments.[231] For example, this commenter states that, as proposed, the $70 Professional User fee for depth-of-book information comes with access only to aggregated depth-of-book information and does not include top-of-book information, even though the calculation of that fee is based on a depth-of book product that includes top-of-book information.[232] This, the commenter states, ''is straightforward double counting, plain and simple.'' [233] The commenter also states that while auction information is included in the depth-of-book feed used to calculate the proposed fees, the proposal also charges additional fees, including Professional and Non-Professional Fees, for auction information.[234] The commenter states that even exchanges that offer separate feeds for auction information generally do not charge Professional user fees.[235]

One Non-Supporting Participant states that the proposed non-professional user fees were a step in the right direction, but points out that, while the proposed fees would be lower for the limited subset of Non-Professional users that consume depth-of-book quotation information, the proposed fees are higher than the fees currently charged for proprietary data products that offer similar information.[236] This commenter adds that, even where the proposed fees are lower than the fees charged for comparable proprietary data—as is the case for Non-Professional users—the fact that the other fees are higher than proprietary offerings is likely to reduce incentives for competing consolidators to actually offer that data content to their customers.[237] According to the commenter, there is unlikely to be any demand for the new data elements included in consolidated market data at prices that exceed the fees charged for proprietary data feeds today.[238] In response to this commenter, a Filing Participant argues that this analysis does not account for the fact that purchasers of the new data would be receiving a consolidated data product that aggregates all exchanges' data together to determine an NBBO and the five best levels of depth among all the exchanges and that the analysis disregards that the Proposed

[214] *See* Angel Letter, *supra* note 169; BlackRock Letter, *supra* note 56; MIAX Letter, *supra* note 56; Polygon.io Letter I, *supra* note 126, at 2–3; MayStreet Letter I, *supra* note 56.

[215] *See* Angel Letter, *supra* note 169, at 9–10.

[216] *See id.* at 10.

[217] *See* Polygon.io Letter I, *supra* note 126, at 2–3.

[218] *See* MayStreet Letter I, *supra* note 56, at 8.

[219] *See id.*

[220] *See* Angel Letter, *supra* note 169, at 11.

[221] *See* MIAX Letter, *supra* note 56, at 2; MEMX Letter, *supra* note 56, at 3.

[222] BlackRock Letter, *supra* note 56, at 1, 3.

[223] *See* Angel Letter, *supra* note 169, at 11.

[224] *Id.*

[225] *See* Nasdaq Letter II, *supra* note 74, at 3.

[226] *See id.* The commenter further states that Non-Professionals are provided a discount to encourage their use of the data. *See id.*

[227] *See* Nasdaq Letter II, *supra* note 74 at 3.

[228] *See id.*

[229] NYSE Letter, *supra* note 70, at 8.

[230] *See* MIAX Letter, *supra* note 56, at 4.

[231] *See* MEMX Letter, *supra* note 56, at 10.

[232] *See id.* at 12. According to the commenter, the value of top-of-book information is therefore already embedded in the cost proposed for depth-of-book information. *See id.*

[233] *See id.*

[234] *See id.* at 13–14.

[235] *See id.*

[236] *See id.* at 7.

[237] *See id.* at 9.

[238] *See id.* at 17. The commenter further states that the Operating Committees should analyze whether it is fair and reasonable to continue to charge professional and non-professional user fees that exceed the fees charges for similar proprietary market data. *See id.*

Amendment includes much lower fees for non-professionals.[239]

The Commission finds that the Filing Participants have not demonstrated that the proposed fees for professional and non-professional subscribers are fair, reasonable, and not unreasonably discriminatory. With respect to Level 1 Service, the Filing Participants state they are not proposing to change the Professional Subscriber and Nonprofessional Subscriber fees currently set forth in the Nasdaq/UTP Plan. But, as discussed above,[240] in the context of the MDI Rules, the Proposed Amendment is in fact proposing fees applicable to a new data product—the data content underlying the top-of-book data product to be collected, consolidated, and disseminated by competing consolidators—that differs both with respect to content and administrative expense from the existing top-of-book product generated and disseminated by the exclusive SIP. In taking the position that they are not proposing to do more than add content to the existing UTP Level 1 Service product offered by the exclusive SIP, however, the Filing Participants have not even attempted to explain or justify how the proposed Professional and Non Professional Fees for the new Level 1 Service satisfy the statutory standard of being fair, reasonable and not unreasonably discriminatory.'' [241] Significantly, the Filing Participants have not taken into account that the current consolidation, processing, and dissemination expenses incurred by the Equity Data Plans would be inapplicable to the data content underlying consolidated data offered through the new Level 1 Service product to be collected, consolidated, and disseminated by competing consolidators.[242]

With respect to depth-of-book data, the Filing Participants have not demonstrated that the proposed Professional and Non Professional depth-of-book fees are fair, reasonable, and not unreasonably discriminatory. The Filing Participants have attempted to justify the proposed Professional and Non-Professional fees for depth-of-book data by using the same multiplier (*i.e.,* 3.94x) employed to calculate the proposed fees for data content underlying consolidated depth-of-book offerings,[243] but, as explained in detail above, the Filing Participants have not demonstrated that the use of this multiplier is appropriate in the first place because, among other things, the proprietary depth-of-book feeds contain top-of-book data and auction information, which the data content underlying consolidated depth-of-book feed would lack, leading to ''double-counting,'' as several commenters have pointed out.[244] In addition, with respect to auction information, other than describing the proposal, explaining the methodology used to generate the proposed fees,[245] and arguing that the resulting fees are fair, reasonable, and not unreasonably discriminatory, the Filing Participants have not attempted to explain or otherwise justify why it is fair, reasonable, and not unreasonably discriminatory to set both the Professional Subscribers and Nonprofessional Subscribers fee at the same rate of $10.00 per device per month.

The Filing Participants have not demonstrated that the proposed fees for professional and non-professional users provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[246]

5. Fees for Non-Display Use

The Filing Participants propose Non-Display Use fees relating to the three categories of data described above: (1) Level 1 Service; (2) depth-of-book data; and (3) auction information. With respect to Level 1 Service, the Filing Participants propose to apply the Non-Display Use fees currently set forth in the Nasdaq/UTP Plan to the data content underlying consolidated market data in the new Level 1 Service data product to be offered by the competing consolidators, namely $3,500 per month,[247] for each of the three types of Non-Display Use.[248] With respect to depth-of-book data, Subscribers would pay Non-Display Use Fees of $12,477.00 per month for each type of Non-Display Use.[249] With respect to auction information, Subscribers would pay Non-Display Use fees of $1,248.00 per month for each type of Non-Display Use.[250]

Some commenters, including a Non-Supporting Participant, state that the proposed Non-Display Use fees result in excessive fee levels that would discourage firms from registering as competing consolidators, thereby hindering the formation of the decentralized consolidation model that the MDI Rules seeks to create.[251] One commenter states that the fees in the Proposed Amendment, including the non-display fees, would place competing consolidators at a disadvantage because they will not be able to offer products at prices competitive with those of proprietary feeds.[252] One commenter asks that the Commission reject the Proposed Amendment and any future proposal that maintains display/non-display classifications.[253] The commenter states that, if the Proposed Amendment is not rejected, competing consolidators will not be able to offer products at competitive prices to proprietary data feeds.[254]

One Filing Participant states that distinguishing between Display and Non-Display use is fair, as well as efficient.[255] According to this commenter, algorithms, dark pools, and electronic traders pay higher fees than human professionals because they realize greater value from the data.[256] The commenter argues that, because Non-Display users realize greater value from the use of market data than Display users, applying the same fees to both

[239] *See* NYSE Letter, *supra* note 70, at 8.

[240] *See supra* Section IV.C.1.

[241] *See* MDI Rules Release, *supra* note 11, 86 FR at 18684.

[242] *See id.* at 18682 (stating that ''the proposed new fees [filed pursuant to Rule 614(e)] will need to reflect . . . that the effective national market system plan(s) is no longer operating the exclusive SIPs and is no longer performing collection, consolidation, and dissemination functions'').

[243] *See supra* note 213.

[244] *See supra* Section IV.C.2 for a discussion on issues associated with the application of the multiplier used by the Filing Participants to generate certain proposed fees.

[245] *See* Notice, *supra* note 6, 86 FR at 67563–65.

[246] *See* 17 CFR 242.608(b)(2).

[247] *See* Exhibit 2(i) to the Nasdaq/UTP Plan.

[248] The Filing Participants propose that access to odd-lot information would be made available to Level 1 Service subscribers for the same fees currently charged for Level 1 Service provided by the exclusive SIP. *See* Notice, *supra* note 6, 86 FR at 67563. *See also supra* note 32 (describing the three types of Non-Display Use recognized under Exhibit 2(i) to the Nasdaq/UTP Plan).

[249] *See* Notice, *supra* note 6, 86 FR at 67563.

[250] The Filing Participants state that, as is the case today, Subscribers would be charged for each category of use of depth-of-book data and auction information. *See* Notice, *supra* note 6, 86 FR at 67563.

[251] *See* MIAX Letter, *supra* note 56, at 3; Polygon.io Letter I, *supra* note 126, at 2–3.

[252] *See* Cutler Group Letter, *supra* note 134, at 1–2.

[253] *See* Polygon.io Letter I, *supra* note 126, at 2.

[254] *See id.*

[255] *See* Nasdaq Letter II, *supra* note 74, at 3.

[256] *See id.*

categories would result either in low-value users subsidizing high-value users or fees that are not economically sustainable for producers.[257] The commenter states that the Proposed Amendment thus sets the Display Fee and Non-Display Fee according to the value of the data, which is efficient, fair, and well-established in the industry both nationally and globally.[258] According to the commenter, any alternative based solely on cost is likely to be unworkable.[259]

The Filing Participants have not explained or justified how the proposed Non-Display Fees are fair, reasonable, and not unreasonably discriminatory. With respect to the new Level 1 Service, the Filing Participants state they are proposing to charge the same fees for Non-Display Use of Level 1 data that are currently set forth in the Nasdaq/UTP Plan with respect to data disseminated by the exclusive SIP. But, as discussed above,[260] in the context of the MDI Rules the Proposed Amendment is in fact proposing fees applicable to a new data product—the top-of-book data product to be collected, consolidated, and disseminated by competing consolidators—that differs both with respect to content and administrative expense from the existing top-of-book product generated and disseminated by the exclusive SIP. In taking the position that they have not proposed to do more than add content to the existing Level 1 product offered by the exclusive SIP, however, the Filing Participants have not even attempted to explain how the proposed Non-Display Use fees for Level 1 Service satisfy the statutory standard of being fair, reasonable, and not unreasonably discriminatory.[261] Significantly, the Filing Participants have not taken into account that the current consolidation, processing, and dissemination expenses incurred by the Equity Data Plans would be inapplicable to the data content underlying the new Level 1 products to be offered by competing consolidators.[262]

With respect to the content underlying depth-of-book data, the Filing Participants state that they applied the 3.94x multiplier to the current fees charged for Non-Display Use for all three Networks, resulting in a proposed Non-Display Use fee of $12.477.00 per network.[263] With respect to depth-of-book data, the Filing Participants have not demonstrated that the proposed Non-Display Use fees are fair, reasonable, and not unreasonably discriminatory. The Filing Participants have attempted to justify the proposed Non-Display Use fees for depth-of-book data by using the same multiplier (*i.e.,* 3.94x) employed to calculate the proposed fees for the data underlying the consolidated depth-of-book feed, but, as explained in detail above, the Filing Participants have not demonstrated that the use of this multiplier is appropriate in the first place because, among other things, the proprietary depth-of-book feeds contain top-of-book data and auction information, which the consolidated depth-of-book feed would lack, leading to "double-counting," as several commenters have pointed out.[264]

With respect to auction information, Filing Participants propose that Subscribers would pay Non-Display Use fees of $1,248.00 per month for each category of Non-Display Use.[265] The Filing Participants state that, as is the case today, Subscribers would be charged for each type of non-display use of auction information.[266] The Filing Participants, however, have not explained the basis for the proposed Non-Display Use fees for auction information, and the Commission therefore has no basis on which it can find that the proposed fees are fair, reasonable, and not unreasonably discriminatory. And even if the unstated rationale is that the proposed fees are 10% of the proposed Non-Display Use fees for depth-of-book data—consistent with the derivation of auction information fees from the fees for the content underlying depth-of-book data—that rationale would suffer from the same weaknesses as the rationale underlying the proposed fees for Non-Display Use of depth-of-book data and for the content underlying depth-of-book data. The Filing Participants have not demonstrated that is fair, reasonable, and not unreasonably discriminatory to calculate the fees by comparison to the current charges for proprietary depth-of-book products, which are substantially different products than those at issue in the Proposed Amendment.[267]

The Filing Participants have not demonstrated that the proposed fees for Non-Display Use provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[268]

6. Access Fees

The Filing Participants propose to charge Access Fees to all subscribers for the use of the three categories of data: (1) Level 1 Service; (2) depth-of-book data; and (3) auction information. With respect to Level 1 Service, the Filing Participants to apply the same Access Fees that currently set forth in the Nasdaq/UTP Plan with respect to data disseminated by the exclusive SIP. With respect to depth-of-book data, the Filing Participants propose to charge Subscribers a monthly Access Fee of $9,850.00 per Network. With respect to auction information, the Filing Participants propose to charge Subscribers a monthly Access Fee of $985.00 per Network.

Some commenters oppose the access fees in the proposed fee schedule. One Non-Supporting Participant states that the proposed access fees result in excessive fee levels that would discourage firms from registering as competing consolidators and would hinder the formation of the decentralized consolidation model that the MDI Rules seeks to create.[269] Another Non-Supporting Participant states that the proposed access fees are not fair and reasonable because they are more expensive than those charged by exchanges for their proprietary products.[270]

The Filing Participants have not demonstrated that the proposed access fees for depth-of-book information are fair, reasonable, and not unreasonably discriminatory. With respect to Level 1

[257] *See id.*

[258] *See id.* at 2.

[259] *See id.*

[260] *See supra* Section IV.C.1.

[261] *See* MDI Rules Release, *supra* note 11, 86 FR at 18684.

[262] *See supra* note 243 and accompanying text.

[263] *See* Notice, *supra* note 6, 86 FR at 67565.

[264] *See supra* Section IV.C.2.

[265] The Filing Participants state that, as is the case today, Subscribers would be charged for each category of use of depth-of-book data and auction information. *See* Notice, *supra* note 6, 86 FR at 67563.

[266] *See supra* note 32 (describing the types of Non-Display Uses recognized under Exhibit 2(i) to the Nasdaq/UTP Plan).

[267] *See supra* Section IV.C.2 for a discussion on issues associated with the application of the multiplier used by the Filing Participants to generate certain proposed fees.

[268] *See* 17 CFR 242.608(b)(2).

[269] *See* MIAX Letter, *supra* note 56, at 3.

[270] *See* MEMX Letter, *supra* note 56, at 6, 8. *See also* Cutler Group Letter, *supra* note 134, at 1–2 (noting that it supports the comment letter written by MEMX and that the Proposed Amendment makes market data less accessible).

Service, the Filing Participants are proposing to charge the same Access Fees for Non-Display Use of Level 1 data that are currently set forth in the Nasdaq/UTP Plan with respect to data disseminated by the exclusive SIP. But, as discussed above,[271] in the context of the MDI Rules, the Proposed Amendment is in fact proposing fees applicable to a new data product—the top-of-book data product to be generated and disseminated by competing consolidators—that differs both with respect to content and administrative expense from the existing top-of-book product generated and disseminated by the exclusive SIP. In taking the position that they have not proposed to do more than add content to the existing Level 1 product offered by the exclusive SIP, however, the Filing Participants have not even attempted to explain or justify how the proposed Access Fees for Level 1 Service satisfy the statutory standard of being fair, reasonable and not unreasonably discriminatory.'' [272] Significantly, the Filing Participants have not taken into account that the current consolidation, processing, and dissemination expenses incurred by the Equity Data Plans would be inapplicable to the data content underlying the new Level 1 products to be offered by competing consolidators.

With respect to Access Fees for the content underlying depth-of-book data, the Filing Participants have attempted to justify the proposed Access Fees by using the same multiplier (*i.e.,* 3.94x) to the Access Fees charged for all three Networks, resulting in a proposed Access Fee of $9,850.00 per Network.[273] But, as explained in detail above, the Filing Participants have not demonstrated that the use of this multiplier is appropriate in the first place because, among other things, the proprietary depth-of-book feeds contain top-of-book data and auction information, which the consolidated depth-of-book feed would lack, leading to ''double-counting,'' as several commenters have pointed out.[274]

Finally, with respect to auction information, the Filing Participants have not explained the basis for the proposed Access Fees for auction information, and the Commission therefore has no basis on which it can find that the proposed fees are fair, reasonable, and not unreasonably discriminatory. And even if the unstated rationale is that the proposed fees are 10% of the proposed Access Fees for depth-of-book data, consistent with the derivation of auction information fees from the fees for the content underlying depth-of-book data, that rationale would suffer from the same weaknesses as the rationale for Non-Display Use of depth-of-book data and for the content underlying depth-of-book data. The Filing Participants have not demonstrated that is fair, reasonable, and not unreasonably discriminatory to calculate the fees by comparison to the current charges for proprietary depth-of-book products, which are substantially different products than those at issue in the Proposed Amendment.[275]

The Filing Participants have not demonstrated that the proposed Access Fees provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[276]

7. Redistribution Fees

The Filing Participants propose that the existing Redistribution Fees would apply to all three categories of core data (*i.e.,* Level 1, depth-of-book, and auction information), including any subset thereof.[277] The Filing Participants are not proposing to change the amount of the Redistribution Fees. The Filing Participants also specify that Redistribution Fees would be charged to competing consolidators.

In support of their proposal to charge Redistribution Fees to competing consolidators, the Filing Participants argue: (1) that the comparison the Commission made in the MDI Rules Release between self-aggregators (which would not pay Redistribution Fees) and competing consolidators is not appropriate in determining whether a redistribution fee is not unreasonably discriminatory; and (2) that the Commission's comparison is not consistent with the current long-standing practice of the Plan that redistribution fees are charged to any entity that distributes data externally.[278] The Filing Participants state that a self-aggregator, by definition, would not be distributing data externally and would therefore not be subject to such fees, which, according to the Filing Participants, is consistent with current Plan practice that a subscriber to consolidated data that only uses data for internal use is not charged a Redistribution Fee.

The Filing Participants argue that the more appropriate comparison would be between competing consolidators and downstream vendors, both of which would be selling consolidated market data directly to market data subscribers. The Filing Participants state that vendors are and would still be subject to Redistribution Fees when redistributing data to market data subscribers and argue that it would be unreasonably discriminatory and would impose a burden on competition if competing consolidators—which would be competing with downstream market data vendors for the same data subscriber customers—are not charged a Redistribution Fee for exactly the same activity.

One commenter states that the Proposed Amendment should treat competing consolidators as replacements to the exclusive SIPs, not as data vendors.[279] The commenter states that subjecting competing consolidators to the same fees as data

[271] *See supra* Section IV.C.1.

[272] *See* MDI Rules Release, *supra* note 11, 86 FR at 18684.

[273] *See* Notice, *supra* note 6, 86 FR at 67565.

[274] *See supra* Section IV.C.2 (discussing issues associated with the application of the multiplier used by the Filing Participants to generate certain proposed fees).

[275] *See id.*

[276] *See* 17 CFR 242.608(b)(2).

[277] The Filing Participants state that, currently, Redistribution Fees are charged to any entity that makes last sale information or quotation information available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. The Filing Participants propose to amend this description to make it applicable to core data, as that term is defined in Rule 600(b)(21). *See* Notice, *supra* note 6, 86 FR at 67566.

[278] *See, e.g.,* Cover Letter, *supra* note 1, at 4; Notice, *supra* note 6, 86 FR at 67563. The Filing Participants state that the current exclusive SIP is not charged a Redistribution Fee. The Filing Participants state, however, that unlike competing consolidators, the processor has been retained by the Nasdaq/UTP Plan to serve as an exclusive SIP, is subject to oversight by both the Nasdaq/UTP Plan and the Commission, and neither pays for the data nor engages with data subscriber customers. The Filing Participants state that, by contrast, under the competing consolidator model: The Nasdaq/UTP Plan would have no role in either overseeing or determining which entities choose to be a competing consolidator; a competing consolidator would need to purchase consolidated market data just as any other vendor would; and competing consolidators would be responsible for competing for data subscriber clients. Accordingly, the Filing Participants argue, competing consolidators would be more akin to vendors than to the current exclusive SIPs. The Filing Participants state that if any entity that is currently an exclusive SIP chooses to register as a competing consolidator, that entity would be subject to the Redistribution Fee. *See* Cover Letter, *supra* note 1, at 4 n.7; Notice, *supra* note 6, 86 FR at 67563 n.12.

[279] *See* MayStreet Letter I, *supra* note 56, at 3.

vendors and subscribers that receive consolidated market data from the exclusive SIP fails to recognize that competing consolidators are SIPs and are not similarly situated to today's data vendors.[280] This commenter further states that competing consolidators should not be charged redistribution fees because they are not redistributing consolidated market data, but are instead generating and distributing consolidated data for the first time.[281] According to this commenter, redistribution fees should not be charged by the Plan because the Plan would no longer govern the distribution of consolidated market data.[282] The commenter states that not recognizing competing consolidators as SIPs places competing consolidators at a competitive disadvantage relative to data vendors, given that they take on expenses and risks that data vendors do not, such as the costs for generating consolidated market data, disclosing operational and performance metrics, registering with the Commission, and complying with Rule 614 of Regulation NMS.[283]

One Non-Supporting Participant states that the redistribution fee for competing consolidators is inconsistent with the MDI Rules, is not fair and reasonable, and is unreasonably discriminatory.[284] This commenter states that the proposal's attempt to justify the redistribution fee based on the current centralized model that charges fees to downstream vendors is unsound because, under the decentralized MDI Rules, competing consolidators would be ''stepping into the role that the SIPs hold today as the primary sources of consolidated market data.'' [285] According to this commenter, to charge a redistribution fee on top of the other proposed fees would ''unquestionably put competing consolidators at a further competitive disadvantage as compared to aggregated proprietary data products offered by exchanges,'' thus targeting them in an unfair and unreasonable manner.[286]

One commenter states the Proposed Amendment directly contradicts the Commission's directive in the MDI Rules that competing consolidators not be treated the same as market data vendors.[287] The commenter states that the Filing Participants are ''engaged in a strategy to undermine the Commission's authority over market data as enumerated in the CT Plan and MDI Rule[s] in order to preserve their current revenues from proprietary and SIP data.'' [288] The commenter further states that the Filing Participants' position that the competing consolidators should be charged redistribution fees just like any market data vendor undermines the efforts of the MDI Rules.[289] The commenter cites the Commission's statement in the MDI Rules Release that the fees for the data content underlying consolidated market data should not include redistribution fees for competing consolidators.'' [290] The commenter argues that by treating competing consolidators differently than the exclusive SIPs, the Filing Participants are acting in an unreasonably discriminatory manner, effectively disregarding the Exchange Act mandates in addition to the Commission's directive in the MDI Rules.[291] The commenter argues that imposing redistribution fees on competing consolidators imposes an undue burden on competition.[292]

Other commenters also suggest that the imposition of redistribution fees on competing consolidators would place competing consolidators at a competitive disadvantage.[293] One commenter states that by charging redistribution fees to competing consolidators, the Proposed Amendment creates a barrier to entry to technology solution vendors becoming competing consolidators.[294] Two other commenters, including a Non-Supporting Participant, also argue that the redistribution fees charged to competing consolidators are in contravention of the Commission's express direction in the MDI Rules.[295] Another Non-Supporting Participant states that the proposed redistribution fee that would be charged to competing consolidators is inconsistent with the purposes and structure of the MDI Rules, and that this aspect of the proposal represents a ''further indication that the intent of the majority [of the exchanges] was to subvert the purpose of the Commission's order.'' [296]

One Filing Participant states that, although the Commission in the MDI Rules Release compared competing consolidators to self-aggregators, a more appropriate comparison would be between competing consolidators and downstream vendors.[297] According to this commenter, because these vendors would be subject to redistribution fees when redistributing data to their subscribers, it would impose a burden on competition and be unfair to vendors not to charge a redistribution fee for exactly the same activity by competing consolidators.[298]

As the Commission stated in the MDI Rules Release, ''the fees for the data content underlying consolidated data should not include redistribution fees for competing consolidators,'' [299] and imposing redistribution fees on competing consolidators ''would be difficult to reconcile with statutory standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model.'' [300] The Filing Participants' attempt to justify the Redistribution Fee—basing it on the long-standing practice within a centralized model that charges fees to ''any entity that distributes data''—is misplaced. Unlike current vendors that take consolidated data generated by the exclusive SIP, distribute it, and pay redistribution fees, the competing consolidators will ''take the place of the exclusive SIP, which is not charged a redistribution fee.'' [301] The competing consolidators will take underlying data content from the exchanges and will themselves generate the consolidated data. Thus, there is no ''redistribution'' when a competing consolidator sells consolidated data—at fees set forth in the Plan—to a subscriber. Moreover, like the exclusive SIPs, competing consolidators will take on expenses, risks, and obligations that data vendors do not, such as the costs for collecting, consolidating, generating, and disseminating consolidated equity

[280] *See id.* at 3–4.

[281] *See id.*

[282] *See id.* at 5.

[283] *See id.*

[284] *See* MIAX Letter, *supra* note 56, at 2 (citing the MDI Rules Release statements that ''imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with the standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model,'' and that ''fees proposed by the SROs should not contain redistribution fees for competing consolidators because this would hinder their ability to compete.'').

[285] *Id.*

[286] *Id.*

[287] *See* SIFMA Letter I, *supra* note 56, at 4–5.

[288] *Id.* at 6; *see also* SIFMA Letter II, *supra* note 56, at 3.

[289] *See* SIFMA Letter I, *supra* note 56, at 7; SIFMA Letter II, *supra* note 56, at 2.

[290] *See* SIFMA Letter I, *supra* note 56, at 7; SIFMA Letter II, *supra* note 56, at 2.

[291] *See* SIFMA Letter I, *supra* note 56, at 7; SIFMA Letter II, *supra* note 56, at 2.

[292] *See* SIFMA Letter I, *supra* note 56, at 7; SIFMA Letter II, *supra* note 56, at 2.

[293] *See* NBIM Letter, *supra* note 78, at 2; Cutler Group Letter, *supra* note 134, at 1–2.

[294] *See* NovaSparks Letter, *supra* note 125, at 1.

[295] *See* FINRA Letter, *supra* note 157, at 5; MEMX Letter, *supra* note 56, at 21.

[296] IEX Letter, *supra* note 56, at 5.

[297] *See* NYSE Letter, *supra* note 70, at 7.

[298] *See id.*

[299] MDI Rules Release, *supra* note 11, 86 FR at 18685.

[300] *Id.*

[301] *Id.*

market data.[302] Additionally, like the exclusive SIPs and unlike vendors, competing consolidators will be subject to the registration, disclosure, and other regulatory requirements under Rule 614 and Form CC of Regulation NMS,[303] as well as to the requirements of Regulation SCI.[304]

Thus, the Filing Participants have not adequately explained or justified how the proposal to impose Redistribution Fees reflects, consistent with the MDI Rules, that ''that the effective national market system plan(s) is no longer operating the exclusive SIPs and is no longer performing collection, consolidation, and dissemination functions.'' [305] The Filing Participants have not explained how keeping the proposed Redistribution Fees unchanged from the current fees under the Nasdaq/UTP Plan is an appropriate means of establishing the proposed fees, or how the resulting fee levels are fair and reasonable and not unreasonably discriminatory. Additionally, the Filing Participants have not explained how charging Redistribution Fees—layered atop the other fees described above—to competing consolidators (thus subjecting them to the same fees as vendors and subscribers) is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[306]

The Filing Participants have not demonstrated that the proposed Redistribution Fees provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[307]

8. *Other Comments Regarding the Proposed Fees* [308]

One commenter states that the proposed fees for the content underlying consolidated market data would be too high whether a cost-basis or value-basis were used as a justification by the Filing Participants.[309] A Non-Supporting Participant states that any analysis of current SIP fees should include a discussion of what structural changes could be made to SIP fees to eliminate or reduce the incentives that firms have today to avoid providing SIP data to their customers.[310] One commenter favors expanding the broker-dealer enterprise cap that is part of the current fee schedule of the Plan, stating that the Proposed Amendment provides no depth-of-book enterprise cap and that the Level 1 enterprise caps are out of reach for most market participants.[311] Another commenter states that it supports the proposed *a la carte* fee structure for the expanded elements of consolidated data because, in the commenter's view, market participants should be able to select from a variety of market data products and pay only for the content they consume.[312]

One Non-Supporting Participant compares the proposed fees for content underlying consolidated data to fees currently charged for proprietary data fees and argues that at any given price a subscriber would be better off subscribing to the proprietary data fees listed instead of purchasing data from the Plan, given the additional information included on those feeds.[313] This commenter states that, because the proposed fees are generally more expensive than current proprietary data offerings, the Proposed Amendments clearly fail the ''fair and reasonable'' test required by the Exchange Act.[314] This commenter further argues that it is unlikely that there will be any demand for the new data elements included in consolidated market data at prices that exceed the fees charged for proprietary data feeds today.[315]

The Commission in this Order is not taking a position on what structure or level of fees—either on an absolute basis or in comparison to existing proprietary data products—would be appropriate, but finds that the Filing Participants have failed to demonstrate that the proposed fees provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair and reasonable and not unreasonably discriminatory.[316]

Some commenters, including Non-Supporting Participants, also argue that the proposed fees would have an adverse impact on competition, and on competing consolidators in particular.[317] One Non-Supporting Participant states that, even where the proposed fees are lower than the fees charged for comparable proprietary data, the fact that other fees are higher than proprietary offerings is likely to reduce incentives for competing consolidators to actually offer that data content to their customers and would limit the potential customer base for competing consolidators and inappropriately impede the viability of competing consolidators under the infrastructure rule.[318] Another commenter expresses concern that if the Proposed Amendment were approved, the exchanges would entrench a high cost for market data that has no relation to underlying expenses, is not subject to effective competitive forces, and serves as a formidable barrier to entry for newer firms.[319] One commenter states that the current proposal will favor current market data vendors who already pay for these fees and have large customer bases, but will not necessarily use the most efficient data consolidation solutions.[320] This commenter states that all of the equity market data plans should have a unified feed and price list because most end users today consume all of the plans' feeds.[321]

The Commission has considered these comments regarding the competitive challenges of the current market

[302] *See id.* at 18603–04, 18662–76 (discussing registration and responsibilities of competing consolidators).

[303] *See id.* at 18603–04, 18662–76 (discussing registration and responsibilities competing consolidators).

[304] In the MDI Rules Release, the Commission amended Regulation SCI to expand the definition of ''SCI entities'' to include ''SCI competing consolidators'' that are subject to the requirements of Regulation SCI after an initial transition period if they meet a threshold based on certain share of gross consolidated market data revenues. *See id.* at 18604–05.

[305] *Id.* at 18682.

[306] *See* 17 CFR 242.608(b)(2).

[307] *See* 17 CFR 242.608(b)(2).

[308] In addition to the other comments discussed in this Order, the Commission also received a letter in the comment file that is not germane to the Proposed Amendment. *See* Letter from Charles L. Groothoff (Apr. 13, 2022).

[309] *See* MayStreet Letter I, *supra* note 56, at 6.

[310] *See* MEMX Letter, *supra* note 56, at 20.

[311] *See* MayStreet Letter I, *supra* note 56, at 8.

[312] *See* BlackRock Letter, *supra* note 56, at 2–3.

[313] *See* MEMX Letter, *supra* note 56, at 7.

[314] *See id.* at 8.

[315] *See id.* at 17.

[316] *See* Sections 11A(c)(1)(C)–(D) of the Exchange Act, 15 U.S.C 78k–1(c)(1)(C)–(D); Rule 603(a) of Regulation NMS, 17 CFR 242.603.

[317] *See* MIAX Letter, *supra* note 56, at 1, 3; MEMX Letter, *supra* note 56, at 2, 9, 10–17, 21–22, 25; NBIM Letter, *supra* note 78, at 2; NovaSparks Letter, *supra* note 125, at 1; IEX Letter, *supra* note 56, at 5; SIFMA Letter I, *supra* note 56, at 8; FINRA Letter, *supra* note 157, at 5; MayStreet Letter I, *supra* note 56, at 5; BlackRock Letter, *supra* note 56, at 1–4; Polygon.io Letter I, *supra* note 126, at 3; Proof Services Letter, *supra* note 56, at 3; Cutler Group Letter, *supra* note 134, at 1.

[318] *See* MEMX Letter, *supra* note 56, at 9, 17.

[319] *See* Proof Services Letter, *supra* note 56, at 1.

[320] *See* NovaSparks Letter, *supra* note 125, at 1.

[321] *See id.* at 1–2.

environment and the role the Plan and these proposed fees would play under the competing consolidator regime. As discussed above, the Commission has found that the Filing Participants have not demonstrated that the proposed fees for content underlying consolidated market data are fair, reasonable and not unreasonably discriminatory. The Commission agrees that unfair, unreasonable, or unreasonably discriminatory fees for this data content would decrease the likelihood that it would be economically feasible for firms to become competing consolidators. That in turn would undermine the Commission's goals in ''fostering a competitive environment for the provision and dissemination of critical market data to investors and other market participants'' that will ''better achieve the goals of Section 11A of the Exchange Act and help to ensure broad availability to brokers, dealers, and investors of information with respect to quotations for and transactions in NMS stocks that is prompt, accurate, reliable, and fair.'' [322]

D. NMS Plan Governance

Some commenters, including Non-Supporting Participants, state that the MDI Rules should be implemented through the new CT Plan,[323] rather than through the existing equity market data plans (*i.e.,* the CTA/CQ Plans and the Nasdaq/UTP Plan).[324] One commenter reiterated its continued support for the provisions of the CT Plan overall.[325] The commenter states that the real and potential conflicts of interest that currently exist relating to the provision of market data directly relate to the decision-making problems at the Plan's Operating Committee.[326] One commenter states that the conflicts of interest that led to the creation of the Proposed Amendment are apparent from the resounding lack of support it has received from anyone but the exchange groups that stand to benefit from creating a system where competing consolidators are not viable.[327] According to this commenter, the exchange groups are disincentivized to create a fair and reasonable fee structure, so additional attempts under the same system are unlikely to create better results.[328]

Another commenter supports expanding the voting representation under the CT Plan to non-SROs and having them participate as full voting members of the Operating Committee.[329] The commenter states that the Commission cannot approve the Proposed Amendment given the inherent conflicts of interests of the Filing Participants that developed the proposals.[330] The commenter states that, if the Commission approves the Proposed Amendment, it would be giving tacit approval to the shortcomings in the governance structure of the current Plans.[331] This commenter also states that the proposed fee amendments are explicitly stated by the Filing Participants to be unrelated to the cost of providing the data, but instead related to subscriber value.[332] The commenter states that this is a clear example of the Plan's Operating Committee failing to ensure that the public service mandates of the SIPs are achieved and is a failure in governance through the unmitigated conflicts of interest by voting members who just want to maximize profits.[333] The commenter states that further evidence of the failure of the governance structure of the Operating Committee is that the fee proposals have been proposed while the remaining reforms of the CT Plan are stayed pending resolution of challenges in federal court.[334] The commenter states that it is ''somewhat shocking'' that the Proposed Amendment was filed notwithstanding that other members of the Operating Committee ''have stated publicly that the proposals contradict the Exchange Act standards for consolidated data, which require that the fees be fair, reasonable, and not unreasonably discriminatory.'' [335]

A Non-Supporting Participant also encourages the Commission to consider whether the CT Plan is a more appropriate body for setting fees for consolidated market data.[336] This commenter states that placing the responsibility for setting fees in the hands of the CT Plan would allow SIP fees to be set by an operating committee that better reflects the constituencies affected by the Proposed Amendment, including non-SRO representatives.[337] Another Non-Supporting Participant states that the fee proposals are ''the result of a conflicted and unbalanced voting process,'' adding that it agrees with the recommendation that the responsibility for setting the proposed fees should be placed on the CT Plan.[338] Another Non-Supporting Participant recommends that the Commission disapprove the proposal and reassign responsibility for the filing to the operating committee for the CT Plan, which the commenter states would have a ''broader set of voting stakeholders and a fairer and less conflicted governance structure,'' and argues that the Proposed Amendment shows that this change is ''badly'' needed.[339]

One commenter asks the Commission to reevaluate the process that led to the creation of the Proposed Amendment and to make substantive changes to avoid the amendment process being used to derail timely implementation of the MDI Rules.[340]

While some commenters suggest that the CT Plan is the appropriate mechanism for implementing the changes required by the MDI Rules, that mechanism is not available at this time because the D.C. Circuit has vacated the Commission order approving the CT Plan.[341] And additional discussion on this topic in this Order is unnecessary, as it does not bear on the basis for the Commission's decision to disapprove the Proposed Amendment. On the record before us, for the independently sufficient reasons discussed in more detail above, we have concluded that the Filing Participants have not demonstrated that approval of the proposed NMS plan amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

E. Consideration of Other Actions Under Rule 608 of Regulation NMS

In connection with recommending disapproval of the Proposed Amendment, one commenter states the Commission could consider potential action under Rule 608(a)(2) of Regulation NMS, which allows the Commission to directly propose amendments to effective national market system plans.[342] The commenter

[322] MDI Rules Release, *supra* note 11, 86 FR at 18605–06.

[323] *See supra* note 18 (describing CT Plan).

[324] *See* BMO Letter, *supra* note 56; MEMX Letter, *supra* note 56; MIAX Letter, *supra* note 56; IEX Letter, *supra* note 56; and Polygon.io Letter I, *supra* note 126; Polygon.io Letter II, *supra* note 66.

[325] *See* BMO Letter, *supra* note 56, at 1.

[326] *See id.* at 2.

[327] *See id.*

[328] *See* Polygon.io Letter II, *supra* note 66, at 2.

[329] *See* BMO Letter, *supra* note 56, at 2.

[330] *See id.*

[331] *See id.*

[332] *See id.*

[333] *See id.* at 2–3.

[334] *See id.* at 3.

[335] *Id.*

[336] *See* MEMX Letter, *supra* note 56, at 23–24.

[337] *See id.*

[338] MIAX Letter, *supra* note 56, at 5.

[339] IEX Letter, *supra* note 56, at 5.

[340] *See* Polygon.io Letter I, *supra* note 126, at 3.

[341] *See The Nasdaq Stock Market LLC, et al.* v. *Securities and Exchange Commission, supra* note 18.

[342] *See* SIFMA Letter I, *supra* note 56, at 2.

states that in connection with a Commission disapproval of the Proposed Amendment, it would ''support the Commission's efforts to ensure that the newly expanded consolidated market data (*i.e.,* new core data) under the Commission's Infrastructure Rule is disseminated in a manner consistent with the Exchange Act standards to ensure the investing public and all market participants have fair and reasonable access to it.'' [343]

One Filing Commenter states that it would be inconsistent with the Exchange Act and Rule 608 of Regulation NMS for the Commission to change *sua sponte* any or all of the proposed fees, as any such change would be material to the Proposed Amendment.[344] This commenter states that, if the Commission intends to revise the Proposed Amendment in any material way, it must do so through rulemaking under Rule 608(b)(2) of Regulation NMS, by providing public notice of the specific changes it proposes and giving the Plan's participants and the general public an opportunity to comment.[345]

One commenter states that the Commission should provide guidance in terms of the requirements of the MDI Rules as well as the application of the terms ''fair and reasonable'' and ''not unfairly discriminatory'' in the context of supplying competing consolidators with the underlying content of consolidated market data, adding that, without such guidance, any refiling of the amendments will result in proposals that do not meet standards under the Exchange Act.[346]

To the extent that these comments bear on potential future Commission action, rather than on the basis for the Commission's decision to disapprove the Proposed Amendment, further discussion on these topics is unnecessary in this Order.

V. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 11A of the Act, and Rule 608(b)(2) thereunder, that the Proposed Amendment is consistent with the requirements of the Act and the rules and regulations thereunder applicable to an NMS plan amendment.

It is therefore ordered, pursuant to Section 11A of the Act, and Rule 608(b)(2) thereunder, that the Proposed Amendment (File No. S7–24–89) be, and hereby is, disapproved.

[343] *Id.*

[344] *See* NYSE Letter, *supra* note 70, at 8.

[345] *See id.*

[346] *See* MayStreet Letter II, *supra* note 57, at 1–2, 4, 20.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95851; File No. SR–CTA/CQ–2021–03]

Consolidated Tape Association; Order Disapproving the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan

September 21, 2022.

I. Introduction

On November 5, 2021,[1] certain participants in the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and Restated Consolidated Quotation (''CQ'') Plan (collectively ''CTA/CQ Plans'' or ''Plans'') [2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [3] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[4] a proposal (the ''Proposed Amendments'') to amend the Plans.[5] The Proposed Amendments were published for comment in the **Federal Register** on November 26, 2021.[6]

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[7] to determine whether to disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[8] On May 19, 2022, the Commission designated a longer period within which to conclude proceedings regarding the Proposed Amendments.[9] On July 21, 2022, the Commission again designated a longer period within which to conclude proceedings regarding the Proposed Amendments.[10]

The Proposed Amendment seeks to set fees for the data content underlying consolidated market data offerings pursuant to the Commission's Market Data Infrastructure Rules (''MDI Rules''),[11] which expand the content of consolidated market data and require the introduction of a competitive decentralized consolidation model. The Filing Participants propose what they characterize as ''value-based'' fees for top-of-book data, depth-of-book data, auction data, professional and non-professional users, non-display use, access, and redistribution. Below, the Commission provides an overview of the MDI Rules requirement pursuant to which the Proposed Amendment was

[1] *See* Letter from Robert Books, Chair, CTA/CQ Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021) (''Cover Letter''), *available at https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/110000392367/CTA%20MDIR%20Fee%20Filing%20-%2011.5.21.pdf.*

[2] The CTA Plan, pursuant to which markets collect and disseminate last-sale price information for non-Nasdaq-listed securities, is a ''transaction reporting plan'' under Rule 601 of Regulation NMS, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for non-Nasdaq-listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (Aug. 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (Jan. 22, 1980), 45 FR 6521 (Jan. 28, 1980) (permanently authorizing the CQ Plan).

[3] 15 U.S.C 78k–1.

[4] 17 CFR 242.608.

[5] The Proposed Amendments were, as required by the Plans, approved and executed by at least two-thirds of the self-regulatory organizations (''SROs'') that are participants of the Plans. The participants that approved and executed the amendments (the ''Filing Participants'') are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; Nasdaq ISE, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc. The other SROs that are participants in the Plans and that did not approve or execute the amendments are (the ''Non-Supporting Participants''): Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX LLC; MIAX PEARL, LLC; and Nasdaq BX, Inc.

[6] *See* Securities Exchange Act Release No. 93625 (Nov. 19, 2021), 86 FR 67517 (Nov. 26, 2021) (''Notice''). Comments received in response to the Proposed Amendments are available at *https://www.sec.gov/comments/sr-ctacq-2021-03/srctacq202103.htm.*

[7] 17 CFR 242.608(b)(2)(i).

[8] *See* Securities Exchange Act Release No. 94309 (Feb. 24, 2022), 87 FR 11763 (Mar. 2, 2022).

[9] *See* Securities Exchange Act Release No. 94952 (May 19, 2022), 87 FR 31921 (May 25, 2022).

[10] *See* Securities Exchange Act Release No. 95346 (July 21, 2022), 87 FR 45142 (July 27, 2022).

[11] The ''MDI Rules'' as used in this Order, and as relevant to the Proposed Amendments, are Rules 600, 603, and 614 of Regulation NMS. 17 CFR 242.600, 603, 614. *See also* Securities Exchange Act Release No. 90610 (Dec. 9 2020), 86 FR 18596 (Apr. 9, 2021) (File No. S7–03–20) (''MDI Rules Release''); Securities Exchange Act Release No. 90610A (May 24, 2021), 86 FR 29195 (June 1, 2021) (File No. S7–03–20) (technical correction to MDI Rules Release). Several exchanges filed petitions for review challenging the MDI Rules Release in the U.S. Court of Appeals for the District of Columbia Circuit, which were denied on May 24, 2022. *See The Nasdaq Stock Market LLC, et al.* v. *SEC,* No. 21–1100 (D.C. Cir. May 24, 2022).

filed and then examines the proposed ''value-based'' methodology underlying the proposed fees and each of the proposed fees in turn, finding that, in each case, the Filing Participants have not demonstrated that the proposed fees are fair, reasonable, and not unreasonably discriminatory.

This order disapproves the Proposed Amendments.[12]

II. Overview

Pursuant to Regulation NMS and the Equity Data Plans,[13] the national securities exchanges and national securities association (''self-regulatory organizations'' or ''SROs'') must provide certain information with respect to quotations for and transactions in for each NMS stock (''NMS information'') to an exclusive plan securities information processor (''exclusive SIP''), which consolidates this information and makes it available to market participants on the consolidated tapes. The purpose of the Equity Data Plans is to facilitate the collection and dissemination of SIP data so that the public has ready access to a ''comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock at any time during the trading day.'' [14] Because the infrastructure for the collection, consolidation, and dissemination of this data had not been significantly updated since its initial implementation in the 1970s, the Commission adopted amendments to Regulation NMS that increase the content of NMS information and amend the manner in which such NMS information is collected, consolidated, and disseminated by the Equity Data Plans.[15] In the MDI Rules Release, the Commission stated, ''[w]idespread availability of timely market information promotes fair and efficient markets and facilitates the ability of brokers and dealers to provide best execution to their customers.'' [16]

The adoption of the MDI Rules increases the content of NMS information and modifies the manner in which NMS information is collected, consolidated, and disseminated by the Plans. Significantly, under the MDI Rules, the Commission required the introduction of a competitive decentralized consolidation model under which competing consolidators and self-aggregators will replace the exclusive SIPs that collect, consolidate, and disseminate equity market data under the existing NMS plans for equity market data. Although the exclusive SIPs will no longer disseminate all consolidated information for an individual NMS stock, the Plans will continue to play an important role—they will develop and propose fees for the data content underlying consolidated market data, collect and allocate revenues collected for this data, develop the monthly performance metrics for competing consolidators, and provide an annual assessment of the competing consolidator model.

Rule 614(e)(1) directs the participants of the effective national market system plan(s) for NMS stocks to file an amendment pursuant to Rule 608 of Regulation NMS to conform the Plans to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the SROs to competing consolidators and self-aggregators. As the MDI Rules Release states, this means that the operating committees of the plan(s) will ''need to propose the new fees that will be charged for the quotation and transaction information that is necessary to generate consolidated market data that is required to be made available by the SROs under Rule 603(b) to competing consolidators and self-aggregators.'' [17] The Proposed Amendment was filed by the Filing Participants pursuant to this requirement.[18]

As explained below, the Filing Participants have not demonstrated that the proposed ''value-based'' fee methodology, or the specific proposed fees themselves, meet the statutory standard of being fair, reasonable, and not unreasonably discriminatory.[19] The Commission is thus disapproving the Proposed Amendment under Rule 608(b)(2) of Regulation NMS because it cannot find that the proposed fees are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[20]

III. Summary of the Proposed Amendments [21]

Under the Proposed Amendments, the Filing Participants propose to amend the Plans to adopt fees for the data content underlying consolidated market data offerings pursuant to the Commission's MDI Rules. All of the SROs that are participants in the Plans have also filed a separate amendment to implement the non-fee-related aspects of the MDI Rules.[22]

The Filing Participants propose a fee structure for the following three categories of data content underlying consolidated market data offerings, which would collectively constitute the amended definition of core data, as that

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[12] The Filing Participants have filed similar amendments to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq/UTP Plan''), which the Commission is also disapproving. *See* Securities Exchange Act Release No. 95849 (Sep. 21, 2022) (File No. S7–24–89). Further, the participants of the CTA/CQ Plans and the Nasdaq/UTP Plan have also filed amendments to implement the non-fee-related aspects of the Commission's MDI Rules. *See* Securities Exchange Act Release Nos. 93615 (Nov. 19, 2021), 86 FR 67800 (Nov. 29, 2021) (File No. SR–CTA/CQ–2021–02); 93620 (Nov. 19, 2021), 86 FR 67541(File No. S7–24–89) (''Proposed Non-Fee Amendments''). The Commission is, by separate orders, also disapproving the Proposed Non-Fee Amendments. *See* Securities Exchange Act Release Nos. 95848 (Sep. 21, 2022) (File No. S7–24–89); 95850 (Sep. 21, 2022) (File No. SR–CTA/CQ–2021–02).

[13] The three effective national market system plans that govern the collection, consolidation, processing, and dissemination of certain NMS information are: (1) the CTA Plan; (2) the CQ Plan; and (3) the Nasdaq/UTP Plan (collectively, the ''Equity Data Plans''). Each of the Equity Data Plans is an effective national market system plan under 17 CFR 242.608 (Rule 608) of Regulation NMS. *See also* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (Aug. 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (Jan. 22, 1980), 45 FR 6521 (Jan. 28, 1980) (permanently authorizing the CQ Plan).

[14] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3593 (Jan. 21, 2010).

[15] *See* MDI Rules Release, *supra* note 11, 86 FR at 18598–600.

[16] *See id.* at 18599.

[17] *See* MDI Rules Release, *supra* note 11, 86 FR at 18682.

[18] Rule 614(e) requires the participants to ''the effective national market system plan(s) for NMS stocks'' to file an amendment to implement the MDI Rules. 17 CFR 242.614(e). The Filing Participants have filed the required amendment under the existing CTA/CQ Plans and the Nasdaq/UTP Plan. *See supra* note 12. While the Commission issued an order on August 6, 2020, approving, as modified, a new national market system plan regarding equity market data—the CT Plan—to replace the existing CTA/CQ Plans and Nasdaq/UTP Plan, that order was stayed on October 13, 2021, *see Nasdaq Stock Mkt. LLC* v. *SEC,* No. 21–1167 (D.C. Cir. Oct. 13, 2021), which was before the Filing Participants filed this amendment. The Commission's order approving the CT Plan was subsequently vacated. *See The Nasdaq Stock Market LLC, et al.* v. *Securities and Exchange Commission,* Nos. 21–1167, 21–1168, 21–1169 (D.C. Cir., July 5, 2022) (vacating Securities Exchange Act Release No. 92586 (Aug. 6, 2021), 86 FR 44142 (Aug. 11, 2021) (Order Approving, as Modified, a National Market System Plan Regarding Consolidated Market Data)).

[19] *See* Sections 11A(c)(1)(C)–(D) of the Act, 15 U.S.C 78k–1(c)(1)(C)–(D); *see also* Rule 603(a) of Regulation NMS, 17 CFR 242.603.

[20] 17 CFR 242.608(b)(2).

[21] The full text of the Proposed Amendments appear as Attachment A to the Notice. *See* Notice, *supra* note 6, 86 FR 67521–23.

[22] *See* Proposed Non-Fee Amendments, *supra* note 12.

term is defined in Rule 600(b)(21) of Regulation NMS: [23]

(1) Level 1 Core Data, which would include Top of Book Quotations, Last Sale Price Information, and odd-lot information (as defined in Rule 600(b)(59)).[24] Currently, Plan fees for Level 1 Core Data include the provision of Top of Book Quotations and Last Sale Price Information, as well as administrative data (as defined in Rule 600(b)(2)),[25] regulatory data (as defined in Rule 600(b)(78)),[26] and SRO-specific program data (as defined in Rule 600(b)(85)).[27] The Filing Participants propose that Level 1 Core Data would include all information that subscribers currently receive via the exclusive SIP and would add odd-lot quotation information to that content; [28]

(2) Depth of book data (as defined in Rule 600(b)(26)); [29] and

(3) Auction information (as defined in Rule 600(b)(5)).[30]

Professional and Nonprofessional Fee Structure

For each of the three categories of data described above, the Filing Participants propose a Professional Subscriber Charge and a Nonprofessional Subscriber Charge.[31]

With respect to Level 1 Core Data, the Filing Participants propose to apply the Professional Subscriber and Nonprofessional Subscriber fees currently set forth in the Plans to the data content underlying Level 1 Service under the distributed consolidation model. Access to odd-lot information would be made available to Level 1 Core Data Professional and Nonprofessional Subscribers at no additional charge.

With respect to depth-of-book data, Professional Subscribers would pay $99.00 per device per month for each Network's data, and Nonprofessional Subscribers would pay $4.00 per subscriber per month for each Network's depth-of-book data. The Filing Participants do not propose to offer per-quote packet charges or enterprise rates for the use of depth-of-book data by either Professional Subscribers or Nonprofessional Subscribers.

Finally, with respect to auction information, the Filing Participants propose that both Professional Subscribers and Nonprofessional Subscribers would pay $10.00 per device/subscriber per month for each Network's auction information data.

Non-Display Use Fees

The Filing Participants propose to apply Non-Display Use Fees relating to the three categories of data described above: (1) Level 1 Core Data; (2) depth-of-book data; and (3) auction information.

With respect to Level 1 Core Data, the Filing Participants propose to apply the Non-Display Use fees currently set forth in the Plans.

With respect to non-display use of depth-of-book data, subscribers would pay Non-Display Use Fees of $12,477.00 per month for each category of Non-Display Use per Network.[32]

With respect to non-display auction information, subscribers would pay Non-Display Use fees of $1,248.00 per month for each category of Non-Display Use per Network.

Access Fees

Finally, in addition to the charges described above, the Filing Participants propose to charge Access Fees to all subscribers for the use of the three categories of data: (1) Level 1 Core Data; (2) depth-of-book data; and (3) auction information.

With respect to Level 1 Core Data, the Filing Participants propose to apply the Access Fees currently set forth in the Plans.

With respect to depth-of-book data, subscribers would pay a monthly Access Fee of $9,850.00 per Network.

With respect to auction information, subscribers would pay a monthly Access Fee of $985.00 per Network.

The Filing Participants also propose to add language to the fee schedules for the Plans regarding the applicability of various fees to the expanded market data content required by the MDI Rules.[33] First, the Filing Participants propose to specify that the Per-Quote-Packet Charges and the Broker-Dealer Enterprise Cap will not apply to the expanded content of core data, and will only be available for the receipt and use of Level 1 Core Data. The Filing Participants state that, under the current Price List, the Per-Quote-Packet Charges and Enterprise Cap serve as alternative fee schedules to the normally applied Professional and Nonprofessional Subscriber Charges, and, further, that the proposed changes to the fee schedules are designed to clarify that these alternative fee schedules are only available with respect to the use of Level 1 Core Data, and that the fees for the use of depth-of-book data and auction information must be determined pursuant to the Professional and Nonprofessional fees described above.

Second, the Filing Participants propose to add language to the fee schedule to specify that Level 1 Core Data would include Top of Book Quotation Information, Last Sale Price Information, odd-lot information, administrative data, regulatory data, and SRO program data. The Filing Participants state that this proposed change would use terms defined in Rule 600(b) to reflect both data currently made available to subscribers and the additional odd-lot information that would be included at no additional charge.

Third, the Filing Participants propose to add language to the fee schedule to provide that the existing Redistribution Fees would apply to all three categories of core data (*i.e.,* Level 1 Core Data, depth-of-book, and auction information), including any subset thereof. According to the Filing Participants, Redistribution Fees are currently charged to any entity that makes last-sale information or quotation information available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. The Filing Participants propose to amend this description to make it applicable to core data, as that term is defined in Rule 600(b)(21). The Filing Participants do not propose to change the amount of the existing Redistribution Fees. The Filing Participants also propose that the existing Redistribution Fees would be charged to competing consolidators.

[23] 17 CFR 242.600(b)(21).

[24] 17 CFR 242.600(b)(59).

[25] 17 CFR 242.600(b)(2).

[26] 17 CFR 242.600(b)(78).

[27] 17 CFR 242.600(b)(85).

[28] Transactions in odd-lots are already reported via the consolidated feeds.

[29] 17 CFR 242.600(b)(26).

[30] The Filing Participants state that they propose to price the three subsets of data that constitute core data separately so that data subscribers have flexibility to choose how much consolidated market data content they wish to purchase. For example, the Filing Participants state that they understand that certain data subscribers may not wish to add depth-of-book data or auction information, or may want to add only depth-of-book information but not auction information. The Filing Participants state, however, that they expect that competing consolidators would purchase all core data. *See* Notice, *supra* note 6, 86 FR at 67517 n.10.

[31] The terms Professional Subscriber and Nonprofessional Subscriber are currently defined in the Plan, and the Filing Participants do not propose to amend those definitions. *See* Notice, *supra* note 6, 86 FR at 67518.

[32] The three categories of Non-Display Use are as follows: Category 1 applies when a datafeed recipient's Non-Display Use is on its own behalf. Category 2 applies when a datafeed recipient's Non-Display Use is on behalf of its clients. Category 3 applies when a datafeed recipient's Non-Display Use is for the purpose of internally matching buy and sell orders within an organization. Matching buy and sell orders includes matching customer orders on the data recipient's own behalf and/or on behalf of its clients. Category 3 includes, but is not limited to, use in trading platform(s), such as exchanges, alternative trading systems (''ATS''), broker crossing networks, broker crossing systems not filed as ATS's, dark pools, multilateral trading facilities, and systematic internalization systems. *See* Exhibit E (Schedule of Market Data Charges) to the CTA Plan; Section IX(b)(ii) to the CQ Plan.

[33] *See* proposed Exhibit E to the CTA Plan; proposed Section IX(b)(ii) of the CQ Plan.

Finally, the Filing Participants propose to make non-substantive changes to language in the fee schedules to take into account the expanded content of core data. For example, the Filing Participants are proposing to add headings referencing Level 1 Core Data. Additionally, under Data Access Charges and Multiple Feed Charges, the Participants are proposing to amend ''Bid-Ask'' to refer to ''Top of Book and odd-lot information.'' [34]

The Filing Participants state that the Proposed Amendments would be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission.

With respect to the method used to develop the proposed fees, the Filing Participants state that in the absence of cost information being available to the Operating Committee, fees for consolidated market data are fair and reasonable and not unreasonably discriminatory if they are related to the value of the data to subscribers. The Filing Participants state that the value of depth-of-book data and auction information is well established, as this content has been available to market participants directly from the exchanges for years, and in some cases decades, at prices constrained by direct and platform competition. According to the Filing Participants, exchanges have filed fees for this data pursuant to the standards specified in Section 6(b)(5) of the Act.

The Filing Participants state that, to determine the value of depth-of-book data, the Filing Participants considered a number of methodologies, based on the current fees charged for depth-of-book data products offered by exchanges, to determine the appropriate level at which to set fees for the expanded data content. The Filing Participants state they reviewed (1) an ISO Trade-Based Model; [35] (2) a Depth to Top-Of-Book Ratio Model (''Depth-to-TOB Model''); and (3) a Message-Based Model.[36] Ultimately, the Filing Participants selected a Depth-to-TOB Model to determine the appropriate fees for the expanded data content.

The Filing Participants state that they reviewed the depth to top-of-book ratios of Professional device rates on Nasdaq (Nasdaq TotalView compared to Nasdaq Basic), Cboe (Cboe Full Depth compared to Cboe One) and NYSE (NYSE Integrated compared to NYSE BQT). The Filing Participants state that they also reviewed the ratio proposed by IEX between its proposed fees for real-time top-of-book and depth feeds (TOPS compared to DEEP). The Filing Participants state that using the ratios calculated for Nasdaq, NYSE, and IEX resulted in an average ratio of 3.94x between the prices of depth-of-book and top-of-book feeds.[37] The Filing Participants then applied this 3.94x ratio to the current fees charged for consolidated market as more specifically described below.

With respect to the fees for auction information, the Filing Participants state that they looked to the number of trades that occur during the auction process as compared to the trading day and determined that roughly 10% of daily trading volume takes place during auctions. Consequently, the Filing Participants concluded that charging a fee that was 10% of the fee charged for depth-of-book data was an appropriate proxy for determining the value of auction information. As a result, the Filing Participants have proposed a $10.00 fee per Network for auction information, which the Filing Participants state is fair and reasonable and not unreasonably discriminatory.

With respect to the fees for Level 1 Core Data, the Filing Participants state that it is fair and reasonable and not unreasonably discriminatory to include access to odd-lot information at no charge in addition to the current fees, which the Filing Participants state they are not proposing to change.

Finally, as described above, the Filing Participants propose that the existing Redistribution Fees would apply to the amended core data and that Redistribution Fees would also apply to competing consolidators.

IV. Discussion

A. The Applicable Standard of Review

Under Rule 608(b)(2) of Regulation NMS, the Commission shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[38] The Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.[39] Furthermore, under Rule 700(b)(3)(ii) of the Commission's Rules of Practice,

> The burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans is on the plan participants that filed the NMS plan filing. Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that an NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans.[40]

In addition, the fees proposed in the Proposed Amendments for data content underlying consolidated market data offerings must be assessed against the statutory standard, including Sections 11A(c)(1)(C)–(D) of the Exchange Act and Rule 603(a) under Regulation NMS.[41] Such fees must satisfy the statutory standards of being fair and reasonable and not unreasonably discriminatory.[42] In making this assessment, the Commission must have

[34] The Filing Participants further state that they are not proposing any changes to the Multiple Feed Charges, Late/Clearly Erroneous Reporting Charges, and Consolidated Volume Data Non-Compliance Fee. According to the Participants, these current fees are administrative fees and would continue to apply to any data usage. *See* Notice, *supra* note 6, 86 FR at 67519.

[35] According to the Filing Participants, the ISO-Based model analyzed the number of intermarket sweep orders executing through the NBBO, looking at the number of intermarket sweep orders executed in the first five levels of depth as compared to all ISOs executed. *See* Notice, *supra* note 6, 86 FR at 67520 n.18.

[36] According to the Filing Participants, the Message-based model looked at the total number of orders displayable in the first five levels of depth as compared to all displayable orders. See Notice, *supra* note 6, 86 FR at 67520 n.19.

[37] The Filing Participants state that they also conducted alternative calculations by including a broader range of products or those products offering more robust depth fees. These alternative calculations resulted in ratios greater than 3.94x and were not selected by the Filing Participants. The Filing Participants state that the 3.94x ratio represents the difference in value between top-of-book and five levels of depth that would be required to be included in consolidated market data under Rule 603(b) Because the alternate methodologies, which focused on only the top five levels of depth, resulted in higher ratios, the Filing Participants state that the more conservative 3.94x ratio would be a fair and reasonable ratio between the proposed fees for depth-of-book data required to be included in the consolidated market data and the current fees for the existing Top of Book Quotation information. *See* Notice, *supra* note 6, 86 FR at 67520.

[38] 17 CFR 242.608(b)(2).

[39] *Id.*

[40] 17 CFR 201.700(b)(3)(ii).

[41] *See* Sections 11A(c)(1)(C)–(D) of the Exchange Act, 15 U.S.C 78k–1(c)(1)(C)–(D); Rule 603(a) of Regulation NMS, 17 CFR 242.603. *See also* MDI Rules Release, *supra* note 11, 86 FR at 18650.

[42] *See* Sections 11A(c)(1)(C)–(D) of the Act, 15 U.S.C 78k–1(c)(1)(C)–(D); Rule 603(a) of Regulation NMS, 17 CFR 242.603. *See also* MDI Rules Release, Section III.E.2(c), *supra* note 11, 86 FR at 18684–87 (discussing the statutory requirements applicable to consolidated market data and the standards the Commission has historically applied to assessing compliance with the statutory requirements).

''sufficient information before it to satisfy its statutorily mandated review function'' to determine that the fees meet the standard.[43]

For the reasons discussed below, the Commission finds that the Filing Participants have not demonstrated that the Proposed Amendment is consistent with the Act.[44] Accordingly, the Commission cannot find that the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[45]

In the discussion that follows, the Commission analyzes the methodology selected by the Filing Participants to develop the proposed fees for data content underlying consolidated market data, as well as the implementation of that methodology, and discusses in turn each of the proposed fee categories for content underlying consolidated market data.

B. ''Cost-Based'' vs. ''Value-Based'' Fees for Data Content Underlying Consolidated Market Data

The ''value-based'' fee methodology proposed by the Filing Participants, and opposed by certain commenters, would apply to each of the specific proposed fees,[46] and the Commission therefore discusses this issue before addressing each of the proposed fees.

In the MDI Rules Release, the Commission stated that the Operating Committee of the Plan ''should continue to have an important role in the operation, development, and regulation of the national market system for the collection, consolidation, and dissemination of consolidated market data.'' [47] The Commission further stated that ''the fees for data content underlying consolidated market data, as now defined, are subject to the national market system process that has been established,'' and that the ''Operating Committee(s) have plenty of experience in developing fees for SIP data.'' [48]

The Filing Participants state that the Operating Committee has brought this experience to bear to determine the fees for the new core data elements.[49] In the Cover Letter,[50] the Filing Participants also acknowledge that the fees established for consolidated market data must be fair and reasonable and not unreasonably discriminatory, and they state that they are proposing fees that are fair and reasonable and not unreasonably discriminatory. Additionally, the Filing Participants argue that, while the Commission has stated that one way to demonstrate that fees for consolidated market data are fair and reasonable is to show that they are reasonably related to costs, the Exchange Act does not require a showing of costs and historically the Plan has not demonstrated that its fees are fair and reasonable on the basis of cost data.[51]

The Filing Participants further represent that, under the decentralized competing consolidator model, the Operating Committee has no knowledge of any of the costs associated with consolidated market data.[52] According to the Filing Participants, under the current exclusive SIP model, the Operating Committee (1) specifies the technology that each Participant must use to provide the SIPs with data, and (2) contracts directly with a SIP to collect, consolidate, and disseminate consolidated market data, and the Operating Committee therefore has knowledge only of the costs associated with collecting and consolidating market data, as opposed to the costs associated with producing the data.[53] By contrast, the Filing Participants state, under the decentralized competing consolidator model, the Plans will no longer have a role either in specifying the technology associated with exchanges providing data or in contracting with a SIP. Rather, the Filing Participants state, each national securities exchange will be responsible, as specified in Rule 603(b), for determining the methods of access to and format of data necessary to generate consolidated market data.[54] Moreover, the Filing Participants argue, competing consolidators will be responsible for connecting to the exchanges to obtain data directly from each exchange, without any involvement of the Operating Committee, and the Operating Committee will not have access to information about how each exchange would generate the data it would be required to disseminate under Rule 603(b).[55] Accordingly, the Filing Participants argue, the Operating Committee does not and will not have access to any information about the cost of providing consolidated market data under the decentralized competing consolidator model.[56]

The Filing Participants state that, in light of the absence of cost information available to the Operating Committee, fees for consolidated market data are fair and reasonable and not unreasonably discriminatory if they are related to the value of the data to subscribers. The Filing Participants argue that the value of depth-of-book data and auction information is well-established, as this content has been available to market participants directly from the exchanges for years, and in some cases decades, at prices constrained by direct and platform competition. The Filing Participants further state that exchanges have filed fees for this data pursuant to the standards specified in Section 6(b)(5) of the Act and that the fees in the Proposed Amendment were filed using a value-based methodology.

Some commenters oppose the Proposed Amendment, arguing that the proposed fees are based on a flawed methodology that, inconsistent with the MDI Rules, fails to provide a cost-based justification.[57] These commenters state

[43] *See* MDI Rules Release, *supra* note 11, 86 FR at 18685 (citing to *In the Matter of the Application of Bloomberg L.P.,* Securities Exchange Act Release No. 83755 (July 31, 2018), 2018 WL 3640780, at *9 (''Bloomberg Order'')).

[44] 17 CFR 201.700(b)(3).

[45] 17 CFR 242.608(b)(2).

[46] *See* Notice, *supra* note 6, 86 FR at 67519–21.

[47] MDI Rules Release, *supra* note 11, 86 FR at 18682.

[48] MDI Rules Release, *supra* note 11, 86 FR at 18683.

[49] *See* Notice, *supra* note 6, 86 FR at 67519.

[50] *See* Cover Letter, *supra* note 1, at 6; *see also* Notice, *supra* note 6, 86 FR at 67519.

[51] *See* Notice, *supra* note 6, 86 FR at 67519.

[52] *See id.*

[53] *See id.*

[54] *See id.*

[55] *See id.*

[56] *See id.*

[57] *See* Letter from Christopher Solgan, Senior Counsel, MIAX Exchange Group, to Vanessa Countryman, Secretary, Commission, at 3 (Jan. 12, 2022) (''MIAX Letter'') (comment from a Non-Supporting Participant); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Secretary, Commission, at 2–3 (Dec. 17, 2021) (''IEX Letter'') (comment from a Non-Supporting Participant). *See also* Letter from Joe Wald, Managing Director, Co-Head of Electronic Trading, and Ray Ross, Managing Director, Co-Head of Electronic Trading, BMO Capital Markets Group, to Vanessa Countryman, Secretary, Commission, at 2–3 (Dec. 17, 2021) (''BMO Letter''); Letter from Ellen Greene, Managing Director, Equity & Options Market Structure, and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission, at 4–5 (Dec. 17, 2021) (''SIFMA Letter I'') (noting that the fees charged by monopolistic providers, such as exclusive SIPs, need to be tied to some type of cost-based standard in order to preclude excessive profits if fees are too high or underfunding or subsidization if fees are too low); Letter from Patrick Flannery, Chief Executive Officer, MayStreet, to Vanessa Countryman, Secretary, Commission, at 6 (Dec. 17, 2021) (''MayStreet Letter I''); Letter from Hubert De Jesus, Managing Director, Global Head of Market Structure and Electronic Trading, and Samantha DeZur, Director, Global Public Policy, BlackRock, to Vanessa Countryman, Secretary, Commission, at 2 (Dec. 16, 2021) (''BlackRock Letter''); Letter from Allison Bishop, President, Proof Services LLC, to Vanessa Countryman, Secretary, Commission, at 2–

Continued

that the proposed fees should bear a reasonable relationship to the cost of producing the market data, which, they argue, is the primary basis the Commission has identified for justifying the fees for core data.[58]

Some commenters also state that the methodology used has resulted in proposed fees that are unreasonably high.[59] In making this argument, some commenters object to using the current prices for the exchanges' proprietary data products as the basis for calculating the proposed core data fees,[60] stating that such a method is inconsistent with the MDI Rules' goal of expanding access to consolidated data[61] and with statements in the MDI Rules Release that the proposed fees should bear a reasonable relationship to the cost of producing the data.[62] One commenter states that without fair and reasonable pricing for the underlying content of consolidated market data, implementation of the MDI Rules cannot proceed, nor can improvements to price transparency and best execution, because the use of top-of-book proprietary feeds provided by exchanges—often marketed as SIP alternatives and widely used in place of the SIP due to both direct and administrative costs—deprives retail investors of a complete view of the NMS marketplace, which is required to fulfill the Congressional mandate in the 1975 amendments to the Act.[63]

Some commenters also disagree with the Filing Participants' statements in the Proposed Amendment that a cost-based justification is not required because the Act does not require a showing of costs and that cost analysis has not been provided in past equity market data plan proposals.[64] These commenters state that the Commission has stated that a reasonable relation to cost is a primary basis for justifying core data fees.[65] One commenter states that specific information, including quantitative information, should be provided to support the Filing Participants' claims that the proposed fees are fair and reasonable because they will permit the recovery of SRO costs or will not result in excessive pricing or profits.[66] Additionally, some commenters disagree with the Filing Participants' statement in the proposal that the Plan's Operating Committee ''has no knowledge of any costs associated with consolidated market data,'' stating that the Filing Participants know how much it costs to collect and disseminate market data because they already perform this function, including in connection with proprietary feeds.[67]

One commenter states that a cost-based approach is best for achieving robust competition for consolidated market data and reducing administrative plan costs.[68] According to the commenter, pricing of the underlying content for the creation of consolidated market data should be based on the marginal cost of supporting competing consolidators, a cost that the commenter states is quantifiable and fixed for each participant. The commenter states that the lowest cost approach would be for each Participant to offer competing consolidators and self-aggregators a depth-of-book feed at their current proprietary feed prices, with added access fees and redistribution fees but not usage fees.[69] The commenter states that a comparison of total annual revenues that the plans would receive under a cost-based model (using current depth-of-book proprietary feeds pricing as a proxy for costs of supplying proprietary feeds to a single entity) to total annual revenues currently received by the plans would serve to demonstrate that current fees for consolidated market data are unrelated to cost.[70]

One Filing Participant states that a demonstration of costs is not required because neither the Exchange Act nor Commission rules require market data fees to be supported by a showing of costs.[71] This commenter states that the Commission's standard for evaluating consolidated market data fees has not required a showing of the relationship between the proposed fees and the cost of producing the data, as illustrated by past equity market data plan proposals for consolidated market data fees that were not justified on the basis of cost.[72] This commenter argues that it is not clear how the Plan could support the fee proposals based on costs, because the

3 (Nov. 22, 2021) (''Proof Services Letter''); Letter from Adrian Griffiths, Head of Market Structure, MEMX LLC, to Vanessa Countryman, Secretary, Commission, at 18 (Nov. 8, 2021) (''MEMX Letter''); Letter from Ellen Greene, Managing Director, Equity & Options Market Structure, and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission, at 2 (Apr. 27, 2022) (''SIFMA Letter II'').

[58] *See* IEX Letter, *supra* note 57, at 1, 2–3 (stating that the proposal fails to establish that the fees for the data content underlying consolidated market data meet the statutory standards of being fair, reasonable, and not unreasonably discriminatory); MIAX Letter, *supra* note 57, at 3. *See also* BMO Letter, *supra* note 57, at 2–3; SIFMA Letter I, *supra* note 57, at 4–5 (stating that the fees charged by monopolistic providers, such as exclusive SIPs, need to be tied to some type of cost-based standard in order to preclude excessive profits if fees are too high or underfunding or subsidization if fees are too low); MayStreet Letter I, *supra* note 57, at 6; BlackRock Letter, *supra* note 57, at 2; Proof Services Letter, *supra* note 57, at 2, 3; MEMX Letter, *supra* note 57, at 18; Letter from Manisha Kimmel, Chief Policy Officer, MayStreet, Inc., to Vanessa Countryman, Secretary, Commission, at 13 (''MayStreet Letter II'') (stating that fees based on cost are the best approach to achieve robust competition for consolidated market data and meet Regulation NMS and other standards under the Exchange Act); SIFMA Letter II, *supra* note 57, at 2.

[59] *See* MIAX Letter, *supra* note 57, at 3; MayStreet Letter I, *supra* note 57, at 6; BlackRock Letter, *supra* note 57, at 2, 4–5; IEX Letter, *supra* note 57, at 4; Proof Services Letter, *supra* note 57, at 3; MEMX Letter, *supra* note 57, at 8, 11–12.

[60] *See* MIAX Letter, *supra* note 57, at 4; SIFMA Letter I, *supra* note 57, at 4–5 (stating that the exchanges' ''platform competition'' argument—that competition for order flow constrains pricing for market data—does not demonstrate that the fees are reasonable and that studies the commenter has submitted to the Commission in the past bolster the commenter's argument); IEX Letter, *supra* note 57, at 4; SIFMA Letter II, *supra* note 57, at 2.

[61] *See* MIAX Letter, *supra* note 57, at 4.

[62] *See id.* at 3 (stating ''the [p]roposals do not provide a cost based justification to support that the fees are reasonable despite the Commission directly stating in the MDI Rule[s Release] that any proposed fees must be reasonably related to cost''); SIFMA Letter I, *supra* note 57, at 4, 5 (citing the statement in the MDI Rules Release that ''a reasonable relation to cost has . . . been the principal method discussed by the Commission for assessing the fairness and reasonableness of . . . fees for core data.''); IEX Letter, *supra* note 57, at 1, 2–3 (arguing that the methodology used to set fees is faulty and inconsistent with MDI Rules Release).

[63] *See* MayStreet Letter II, *supra* note 58, at 2–4.

[64] *See* MIAX Letter, *supra* note 57, at 3; SIFMA Letter I, *supra* note 57, at 5.

[65] *See* IEX Letter, *supra* note 57, at 1, 2–3; SIFMA Letter I, *supra* note 57, at 5; MIAX Letter, *supra* note 57, at 3 (stating that the vast majority of equity market data plan fees were adopted prior to issuance of the Commission's staff fee guidance and that multiple SROs have more recently included cost based analysis when proposing fees for a market data product).

[66] *See* MIAX Letter, *supra* note 57, at 3.

[67] *See* SIFMA Letter I, *supra* note 57, at 5; MIAX Letter, *supra* note 57, at 3; MayStreet Letter I, *supra* note 57, at 6; Letter from Katie Adams, Chief Product Officer, Polygon.io, Inc., to Vanessa Countryman, Secretary, Commission, at 1–2 (Mar. 22, 2022) (''Polygon.io Letter II'').

[68] *See* MayStreet Letter II, *supra* note 58, at 10–14.

[69] The commenter states that depth-of-book feed pricing is an adequate proxy for the cost of supplying a proprietary feed to a single entity since it is unlikely that the Filing Participants lose money on supplying their proprietary depth of book feeds to subscribers. *See id.*

[70] *See* MayStreet Letter II, *supra* note 58, at 10–13.

[71] *See* Letter from Hope M. Jarkowski, General Counsel, NYSE Group, Inc., to Vanessa Countryman, Secretary, Commission, at 3 (Jan. 22, 2022) (''NYSE Letter'') (stating that the legislative history of the 1975 amendments to the Exchange Act, and particularly Section 11A, reflects that Congress's principal concern was promoting competition between exchanges, not regulating market data pricing, and that economic studies have demonstrated that separating out the costs of producing market data from the other costs of operating an SRO is an impossible task that would enmesh the Commission in a continuous ratemaking process that would produce arbitrary results).

[72] *See id.* at 3–4.

Operating Committee plays no role in the creation or dissemination of core data under Rule 603(b) and thus has no information about how each exchange would generate core data under that rule.[73] The commenter argues that it remains impossible to separate the costs of producing market data from other costs of operating an exchange.[74]

Another Filing Participant also opposes the use of cost as a basis for setting the proposed fees.[75] This commenter dismisses other commenters' suggestions that fees should be based on costs, rather than value, because, according to the commenter, the Commission has not offered guidance with respect to such a cost-based ratemaking system,[76] and because any cost allocation between joint products would therefore be unworkable, inherently arbitrary, and inconsistent with the Congressional mandate that the Commission rely on competition whenever possible in meeting its regulatory responsibilities.[77] The commenter states that the proposed fees have been tested by competition and that ''Commission staff have indicated that they would look at factors beyond the competitive environment, such as cost, only if a 'proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.' ''[78]

Some commenters oppose the use of the value-based methodology used to determine the fees under the Proposed Amendment.[79] One commenter states that comments suggesting that a cost-based approach is not possible or not supported by precedent should take into account that introducing competition to consolidated market data is also without precedent and that to rely on past interpretations of the Exchange Act with respect to what is fair and reasonable will threaten the viability of establishing a vibrant competing consolidator marketplace.[80] One commenter states that, if the objective is to have the SIPs provide a service that is more affordable and accessible than the data products offered by individual exchanges, then the ''value to subscribers'' should not be sole determinant of SIP fees, because the current fees for exchange proprietary data products are not a reasonable gauge of the value of core data offered under the Plan.[81]

Another commenter states that basing the proposed fees on value instead of cost does not work because the mandate under the Exchange Act is to price SIP data at levels that maximize its availability.[82] One commenter states that there can be no fair and reasonable fee structure with value-based pricing of core data because certain market participants are required by regulation to display consolidated data, which requires having core data from all exchanges.[83] Because those participants will always be required to obtain this data regardless of the cost, this commenter argues, a value-based approach will never lead to fees that are fair, reasonable, and not unreasonably discriminatory.[84]

One commenter states that if value-based pricing is the only feasible approach, value should be assessed based on the value of the data to competing consolidators—specifically, the ability of competing consolidators to compete against comparable proprietary feed offerings.[85] The commenter states that a value-based approach to pricing the underlying content associated with consolidated top-of-book market data must work backwards and first consider the prices that competing consolidators will charge for Level 1 data and then the value of the underlying content to the competing consolidator.[86]

Two Filing Participants argue that the proposed fees are fair and reasonable and not unreasonably discriminatory because they are reasonably related to the value that subscribers gain from the data, and that the proposed fees achieve the Commission's objective in Regulation NMS that prices for consolidated market data be set by market forces.[87] One Filing Participant argues that the pricing for exchange proprietary data feeds—including the depth-of-book data, top-of-book data, and auction information on which the proposed fees are based—is constrained by competitive forces, in that they have a history of being constrained by direct competition and by platform competition among the exchanges.[88] This commenter states that pricing for exchange proprietary data feeds is constrained by the highly competitive markets for exchange trading and exchange market data,[89] and that the proposed fees meet the Commission's objective for market forces to determine the overall level of fees.[90]

Another Filing Participant also argues that basing fees on the value of the underlying data is the fairest and most economically efficient method for setting fees, because setting fees according to the value of the data leads to optimal consumption: fees that are too low do not allow for producers to remain profitable, while fees that are too high lead to underutilization.[91] The commenter states that NMS Plans have historically used value as a fair and

[73] *See id.* at 4.

[74] *See id.*

[75] *See* Letter from Erika Moore, Vice President and Corporate Secretary, Nasdaq Stock Market LLC, to Vanessa Countryman, Secretary, Commission, at 3 (Dec. 17, 2021) (''Nasdaq Letter I''); Letter from Erika Moore, Vice President and Corporate Secretary, Nasdaq Stock Market LLC, to Vanessa Countryman, Secretary, Commission, at 4 (Mar. 29, 2022) (''Nasdaq Letter II'').

[76] *See* Nasdaq Letter I, *supra* note 75, at 3; Nasdaq Letter II, *supra* note 75, at 4.

[77] *See* Nasdaq Letter I, *supra* note 75, at 3; Nasdaq Letter II, *supra* note 75, at 4.

[78] *See* Nasdaq Letter I, *supra* note 75, at 5–6 (citing to ''Staff Guidance on SRO Rule Filings Relating to Fees'' (May 19, 2019)). The Staff Guidance on SRO Rule Filings Relating to Fees in fact states: ''If a Fee Filing proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces, the SRO must provide a substantial basis, other than competitive forces, demonstrating that the fee is consistent with the Exchange Act. One such basis may be the production of related revenue and cost data, as discussed further below.'' *See* ''Staff Guidance on SRO Rule Filings Relating to Fees'' (May 19, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.* Staff documents represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of this staff document and, like all staff statements, it has no legal force or effect, does not alter or amend applicable law, and creates no new or additional obligations for any person.

[79] *See* Proof Services Letter, *supra* note 57; Letter from Emil Framnes and Simon Emrich, Norges Bank Investment Management, to Vanessa Countryman, Secretary, Commission (Jan. 5, 2022) (''NBIM Letter''); MayStreet Letter I, *supra* note 57; MayStreet Letter II, *supra* note 58, at 1; SIFMA Letter II, *supra* note 57, at 2.

[80] *See* MayStreet Letter II, *supra* note 58, at 14.

[81] *See* Proof Services Letter, *supra* note 57, at 3.

[82] *See* MayStreet Letter I, *supra* note 57, at 6.

[83] *See* Polygon.io Letter II, *supra* note 67, at 1.

[84] *See id.*

[85] *See* MayStreet Letter II, *supra* note 58, at 15–16.

[86] *See id.*

[87] *See* NYSE Letter, *supra* note 71, at 5; Nasdaq Letter I, *supra* note 75, at 5.

[88] *See* NYSE Letter, *supra* note 71, at 5.

[89] *See id.* The commenter further argues that exchanges compete against each other as platforms and that, as such, no exchange can raise its prices to *supra* competitive levels on one side of the platform, such as market data, without losing sales on the other, such as trading volume. The commenter argues that given this inter-exchange platform competition, the exchanges' filed prices for depth-of-book data and auction information are constrained by market forces. *See id.* at 6–7.

[90] *See id.* at 5. The commenter states that by applying that established ratio to the current prices for consolidated top-of-book data, the fee proposals thus reflect the market forces that drive the pricing of depth-of-book information in relation to top-of book information and the value that the data has to market participants. *Id.* This commenter argues that the ratio between these filed proprietary depth-of-book fees and proprietary top-of-book data therefore provides the Commission with a benchmark for evaluating the proposed fees, which are fair, reasonable, and not unreasonably discriminatory because they are based on this ratio, which is reflective of market forces. *See id.* at 7.

[91] *See* Nasdaq Letter I, *supra* note 75, at 2; Nasdaq Letter II, *supra* note 75, at 2.

efficient basis for setting fees.[92] The commenter argues that the best basis for determining the value of core data are the fees currently charged for proprietary data fees, which, according to the commenter, have been ''tested by market competition'' and therefore provide a good starting point for estimating the value of new core data and for setting fees at efficient levels.[93] The commenter states that exchanges cannot overprice the total price of their services without potentially losing order flow and damaging their overall ability to compete.[94] According to this commenter, exchanges that produce more valuable market data generally charge higher fees, and those with less valuable data charge lower fees,[95] so fees vary according to the underlying value of the data, as measured by the liquidity available at the exchange.[96]

This commenter also argues that 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 discriminatory.[97] The commenter argues that, because they are tested by market competition, proprietary data fees provide a good and indicative starting point for estimating the value of new core data and setting fees at their efficient level.[98] This, according to the commenter, provides a substantial basis for showing that current proprietary fees—and, by extension, the proposed fees for new core data—are equitable, fair, reasonable, and not unreasonably discriminatory.[99]

Under Section 11A of the Act and Rule 603(a) of Regulation NMS, the Commission must assess whether the fees for content underlying consolidated data are offered on terms that are ''fair and reasonable'' and ''not unreasonably discriminatory.'' [100] And a threshold issue presented by the Proposed Amendment—and debated by many of the commenters, including Filing Participants, Non-Supporting Participants, and others—is whether the fees for consolidated data *must* be cost-based or whether they may be based on the value of the data to subscribers.

Several commenters, including Non-Supporting Participants, have argued that cost-based pricing must be used with respect to the fees in the Proposed Amendment.[101] While the Commission has stated that a ''reasonable relation to costs'' has been the ''principal method discussed by the Commission for assessing the fairness and reasonableness'' of fees for core data,[102] the Commission has also acknowledged that ''[t]his does not preclude the Commission from considering in the future the appropriateness of another guideline to assess the fairness and reasonableness of core data fees in a manner consistent with the Exchange Act.'' [103] The Commission, therefore, does not believe that a cost-based methodology is the only acceptable method for setting the fees for consolidated data under the MDI Rules.

It does not follow, however, that cost-based pricing could not be used here. The Proposed Amendment, supported by comments from Filing Participants, argues that using cost-based pricing is not required by statute, has not been used historically for consolidated data, and, further, is not possible because the Operating Committee of the Plan has no knowledge of any of the costs associated with consolidated market data.[104] Further, a Filing Participant argues that, because the Commission has not offered guidance for cost-based pricing, allocating costs would be unworkable, arbitrary, and inconsistent with relying on competition when possible, and states that, according to Staff Guidance, cost factors are relevant only in the absence of persuasive evidence that prices are constrained by significant competition.[105]

While cost-based pricing is not *required* by statute, a ''reasonable relation to costs'' is, as stated above, the principal method discussed by the Commission for assessing the fairness and reasonableness of fees for core data.[106] Moreover, the argument that the Operating Committee of the Plan cannot use cost-based pricing because it has no knowledge of relevant costs [107] rests on the questionable proposition that a group of exchanges acting jointly lacks information that each of the exchanges would possess individually. If cost information is unavailable, that is because the exchanges on the Operating Committee have not shared it. And while one Filing Participant argues that the Commission has failed to provide guidance on cost-based pricing,[108] the Filing Participants have not attempted to show that the proposed fees are reasonably related to those costs, and they have not demonstrated that a cost-based approach is infeasible.

Instead, the Filing Participants have elected to file the proposed fees for the content underlying consolidated market data using what they term a ''value-based'' methodology, and in Section IV.C. below the Commission examines whether the fees proposed by the Filing Participants through the application of this methodology meet the requirement of being fair, reasonable, and not unreasonably discriminatory.[109] As an initial matter, however, the Filing Participants have failed to demonstrate that value-based pricing is appropriate for content underlying consolidated market data offerings. The Filing Participants argue that the value of the data to subscribers is a fair and reasonable basis for setting the fees for consolidated data. They calculate that value by comparison to the prices of certain proprietary data feeds,[110] and they argue that the prices for those proprietary data feeds are constrained by both direct competition and ''platform'' competition (*i.e.,* the theory that the exchanges compete as unified platforms for both order flow and data revenue).[111]

In authorizing the Commission to establish a national market system for the trading of securities, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[112] In furtherance of these purposes, the Commission has sought through its rules and regulations to ensure that certain core data is widely available for reasonable fees.[113] And as

[92] *See* Nasdaq Letter I, *supra* note 75, at 2; Nasdaq Letter II, *supra* note 75, at 2.

[93] Nasdaq Letter I, *supra* note 75 at 6.

[94] *See id.* at 4.

[95] *See id.*

[96] *See id.*

[97] *See id.* at 5–6.

[98] *See id.* at 6.

[99] *See id.*

[100] Sections 11A(c)(1)(C)–(D) of the Act, 15 U.S.C. 78k–1(c)(1)(C)–(D); Rule 603(a) of Regulation NMS, 17 CFR 242.603.

[101] *See supra* notes 57–70 and accompanying text.

[102] MDI Rules Release, *supra* note 11, 86 FR at 18685 (citing Bloomberg Order, *supra* note 43, 2018 WL 3640780, at *9).

[103] MDI Rules Release, *supra* note 11, 86 FR at 18685 (citing Bloomberg Order, *supra* note 43, 2018 WL 3640780, at *9 n.63).

[104] *See* Notice, *supra* note 6, 86 FR at 67519.

[105] *See supra* notes 77–78 and accompanying text.

[106] *See supra* note 102 and accompanying text.

[107] *See* Notice, *supra* note 6, 86 FR at 67519.

[108] *See* Nasdaq Letter I, *supra* note 75, at 3.

[109] *See* Sections 11A(c)(1)(C)–(D) of the Act; Rule 603(a) of Regulation NMS.

[110] As discussed throughout Section IV.C, *infra,* the proprietary data feeds differ in material ways from consolidated depth-of-book data under the MDI Rules.

[111] *See* NYSE Letter, *supra* note 71, at 5–7; Nasdaq Letter I, *supra* note 75, at 4–6; Nasdaq Letter II, *supra* note 75, at 1, 2.

[112] 15 U.S.C. 78k–1(a)(1)(C); *see also* MDI Rules Release, *supra* note 11, 86 FR at 18598.

[113] *See* MDI Rules Release, *supra* note 11, 86 FR at 18598; *see also, e.g.,* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496,

the Commission has recognized, core data differ from proprietary data feeds in a critical way: ''[B]ecause core data must be purchased, their fees are less sensitive to competitive forces.'' [114]

Here, the Filing Participants propose to base prices for the data content underlying consolidated market data on an estimate of the value of the data to subscribers, and to estimate that value from the prices for selected proprietary market data products, which they argue are constrained by competitive forces. The Filing Participants, however, have not demonstrated that prices for core data that are based on an estimated value of the data to subscribers are consistent with the statutory standard of being fair, reasonable, and not unreasonably discriminatory.[115] Additionally, as discussed in detail below, the proprietary market data products used by the Filing Participants to derive their ''value based'' pricing are not comparable to consolidated market data offerings pursuant to the MDI Rules.[116] And while one Filing Participant argues that value-based fees are the most economically efficient,[117] this argument too does not address whether basing prices for core data on an estimated value of the data to the subscribers is consistent with the statutory standard. Moreover, even if value-based prices were efficient, the Filing Participants have not established that they would not be unreasonably discriminatory.

With respect to the specific proposed fees for various categories of data, in Section IV.C. below, this Order discusses how the Filing Participants have failed to demonstrate that those fees are fair, reasonable, and not unreasonably discriminatory.

C. The Plan's Proposed Fees for Data Content Underlying Consolidated Market Data

As described above, the Filing Participants propose to amend the Plan to adopt fees for the receipt of the expanded content of consolidated market data pursuant to the Commission's MDI Rules.[118] Specifically, the Filing Participants propose to charge separately for each of the three categories of consolidated equity market data that collectively constitute the amended definition of core data under Rule 600(b)(21) of Regulation NMS: [119] Level 1 Core Data (Top-of-book Data), Depth of Book Service, and Auction Information. In addition to the fees for the receipt of the three categories of data, the Filing Participants propose to charge subscribers certain additional fees, including, as applicable, Professional and Non Professional Charges, Non-Display Use Fees, Access Fees, and Redistribution Fees.[120]

1. Fees for Top-of-Book Data

As noted above, the Filing Participants propose to apply the current fees for Level 1 Core Data to the data content underlying consolidated market data in the new Level 1 Core Data offering and to add odd-lot information (as defined in Rule 600(b)(59)) to the data provided.[121] Accordingly the Filing Participants propose to amend the fee schedule to provide that the new Level 1 Core Data would include Top of Book Quotation Information, Last Sale Price Information, odd-lot information, administrative data, regulatory data, and self-regulatory organization program data.[122] The Filing Participants state they are not proposing to change the following fees for the Level 1 Core Data currently set forth in the CTA/CQ Plans: the Professional Subscriber and Nonprofessional Subscriber fees, the Non-Display Use Fees, and Access Fees.[123] The Filing Participants are proposing that the existing Redistribution Fees [124] would apply to all three categories of core data, including the new Level 1 Core Data, and any subset thereof. The Filing Participants are also proposing that the existing Redistribution Fees would apply to competing consolidators.

Several commenters, including certain Non-Supporting Participants, state that the proposed fees for the new Level 1 Core Data are too high.[125] Several commenters also argue that the proposed fees do not account for the transfer of costs from the SROs to market participants under the decentralized consolidation model.[126] With respect to comments that the proposal should ''back out'' fees for the current Processors from the proposed fee structure, however, one Filing Participant states that the MDI Rules require the current Processors to continue operating for at least several more years and that, therefore, there are no savings to back out of any proposed fee structure at this time.[127]

One commenter states that the Proposed Amendment conflates the prices that competing consolidators and self-aggregators pay the SROs for the underlying NMS information with the prices that competing consolidators would charge for the consolidated data they generate.[128] This commenter states that the proposals do not make clear that the proposed fees are for the content underlying the consolidated market data, as opposed to the consolidated market data itself.[129] The commenter argues that the Filing Participants confuse the content of consolidated market data with the

37560 (June 29, 2005) (Regulation NMS Adopting Release) (''In the Proposing Release, the Commission emphasized that one of its primary goals with respect to market data is to assure reasonable fees that promote the wide public availability of consolidated market data.'').

[114] Securities Exchange Act Release No. 59039 (Dec. 2, 2008), 73 FR 74770, 74782 (Dec. 9, 2008) (File No. SR–NYSEArca–2006–21); *see also* MDI Rules Release, *supra* note 11, 86 FR at 18685.

[115] *See* Sections 11A(c)(1)(C)–(D) of the Act; Rule 603(a) of Regulation NMS.

[116] *See infra* Section IV.C.2 (discussing, among other things, the ways in which the data content of proprietary depth-of-book feeds differs from the data content underlying consolidated market data offerings pursuant to the MDI Rules).

[117] *See supra* note 91, and accompanying text.

[118] *See, e.g.,* MDI Rules Release, *supra* note 11, 86 FR at 18680; Rule 614(e) of Regulation NMS, 17 CFR 242.614(e).

[119] 17 CFR 242.600(b)(26).

[120] In the Proposed Amendments, the Filing Participants also propose to make certain other changes to the Plan's fee schedules in connection with the expanded data content. *See* Notice, *supra* note 6, 86 FR at 67518–19. The Commission agrees that these changes are non-substantive.

[121] The Filing Participants state that current Plan fees for Level 1 Core Data are for Top of Book Quotations and Last Sale Price Information, as well as administrative data (as defined in Rule 600(b)(2)), regulatory data (as defined in Rule 600(b)(78)), and self-regulatory organization-specific program data (as defined in Rule 600(b)(85)). The Filing Participants propose that the new Level 1 Core Data under the distributed consolidation model would continue to include all information that subscribers receive for current fees and would add odd lot information. *See* Notice, *supra* note 6, 86 FR at 67517.

[122] The Filing Participants state that the Proposed Amendments would use terms defined in Rule 600(b) to reflect both current data made available to data subscribers and the additional odd-lot information that would be included at no additional charge. *See* Notice, *supra* note 6, 86 FR at 67518.

[123] The Filing Participants propose that access to odd-lot information would be made available to Level 1 Core Data Professional and Nonprofessional Subscribers at no additional charge. *See* Notice, *supra* note 6, 86 FR at 67518.

[124] *See infra* Section IV.C.8. discussing the proposed Redistribution Fees with respect to the proposed Auction Data and all other categories of data underlying consolidated market data.

[125] *See* Letter from Luc Burgun, President and CEO, NovaSparks S.A.S., to Vanessa Countryman, Secretary, Commission, at 1 (Dec. 17, 2021) (''NovaSparks Letter''); IEX Letter, *supra* note 57; MayStreet Letter I, *supra* note 57; MEMX Letter, *supra* note 57, at 7; BlackRock Letter, *supra* note 57; MIAX Letter, *supra* note 57; MayStreet Letter II, *supra* note 58.

[126] *See* MEMX Letter, *supra* note 57, at 18; MIAX Letter, *supra* note 57, at 2; BlackRock Letter, *supra* note 57, at 2–3; Letter from Quinton Pike, CEO, Polygon.io, Inc., to Vanessa Countryman, Secretary, Commission, at 1 (Nov. 30, 2021) (''Polygon.io Letter I''); MayStreet Letter II, *supra* note 58, at 1–2, 4–5.

[127] *See* NYSE Letter, *supra* note 71, at 7.

[128] *See* MayStreet Letter I, *supra* note 57, at 2.

[129] *See id.* at 2.

consolidated market data itself,[130] and states that the Proposed Amendment sets prices at levels that the SIPs currently charge for consolidated market data.[131]

One commenter states that the proposed fees for top-of-book data should be substantially lower to allow competing consolidators to operate their business.[132] This commenter states that the proposed fees should be lower in the new decentralized model because exchanges will no longer have to pay for the current processors and will not have the burden of maintaining custom feeds in specific formats.[133] Another commenter opposes the proposal and asks the Commission to disapprove it because it represents an overall increase in costs, including access fees, to end users as well as competing consolidators, thereby making market data less accessible and putting competing consolidators at a disadvantage.[134] One commenter states that any value-based approach must acknowledge that competing consolidators will be competing against exchange-provided top-of-book feeds that are marketed as SIP alternatives.[135] The commenter states that fees for competing consolidators would need to be a fraction of the amounts currently charged to allow for a sustainable profit margin for competing consolidators.[136]

One commenter supports certain aspects of the proposal, including its *a la carte* fee structure and the inclusion of odd-lot quotations free of charge.[137] Moreover, some commenters, including a Non-Supporting Participant, express support for the proposed inclusion of odd-lot information free of charge in the expanded Level 1 Core Data,[138] with one commenter stating that this would result in top-of-book information that is more comprehensive, which should, in turn, strengthen best execution and enhance transparency and price discovery.[139]

The Commission finds that the Filing Participants have not demonstrated that the proposed fees for Level 1 core data are fair, reasonable, and not unreasonably discriminatory. Including in the new Level 1 Service the odd-lot quotation data that would be of the most interest to investors and other market participants—namely, odd-lot quotations that offer pricing at or superior to the NBBO—will help investors and other market participants to trade in a more informed and effective manner and to achieve better executions and reduce the information asymmetries that currently exist between subscribers to SIP data and subscribers to proprietary data,[140] consistent with the objectives of the MDI Rules. But the Filing Participants have not demonstrated how their approach for pricing the new Level 1 Core Data (which consists of data content underlying consolidated market data for several elements of core data under the decentralized consolidator model [141]) based on fees for the current Level 1 Core Data (which consists solely of already consolidated data content [142]) can be reconciled with the new Level 1 Core Data the Filing Participants are purporting to price.

The fees proposed by the Filing Participants are for a product independent from, and differing in content and function from, the current Level 1 Core Data under the Plan. Unlike the current Level 1 Core Data, the new Level 1 Core Data would include, in addition to top-of-book information, expanded data elements that form part of the definition of ''core data,'' such as information about better priced quotations in higher-priced stocks (implemented through a new definition of ''round lot'' and the inclusion of certain odd-lot information). In addition, and unlike the current Level 1 Core Data, the data content underlying consolidated data for the new Level 1 Core Data would not be collected, consolidated, or disseminated by the exclusive SIP for the Plan, but instead by competing consolidators and self-aggregators. And unlike current Level 1 Core Data, which bundles several consolidated data elements into one product, the core data elements contained in the new Level 1 Core Data could have been, in a manner not inconsistent with the MDI Rules, unbundled and offered as separate data underlying consolidated data offerings by the Filing Participants. Moreover, the proposed enhanced data content underlying consolidated data for the new Level 1 Core Data would not be implemented upon approval of the Proposed Amendments, nor would it be implemented under the current centralized model, but rather would be implemented in accordance with the phased implementation of the new decentralized consolidation model, as required by the Commission.[143] The Filing Participants do not analyze or otherwise justify the proposed fees for the new Level 1 Core Data in a manner that is consistent with these facts.

In addition, the Filing Participants have not demonstrated how, if at all, the proposed fees have taken into account the transfer of costs for collection, consolidation, and dissemination of data content underlying consolidated market data in the new Level 1 Core Data to other market participants under the decentralized consolidation model. Similarly, the Filing Participants do not justify or otherwise explain how the proposed fees have been adjusted so as to exclude other operating costs or profits of the exclusive SIPs, as some commenters, including a Non-Supporting Participant, point out.[144] Though one Filing Participant argues that, because the MDI Rules require the current Processors to continue operating for at least several more years, there are no savings to back out of any proposed fee structure at this time,[145] this argument presents a false choice. This commenter ignores that the Plan could retain one price for the existing Level 1 Core Data, for as long as the current Processors continue to operate, and

[130] *See id.* at 3.

[131] *See id.* at 6.

[132] *See* NovaSparks Letter, *supra* note 125, at 1.

[133] *See id.*

[134] *See* Letter from Jonathan Hill, CEO, Anand Prakash, CTO, Nader Sharabati, CFO, and Doug Patterson, CCO, Cutler Group, LP, to Vanessa Countryman, Secretary, Commission, at 1–2 (Dec. 16, 2021) (''Cutler Group Letter'').

[135] *See* MayStreet Letter II, *supra* note 58, at 15.

[136] *See id.* at 16–17.

[137] *See* BlackRock Letter, *supra* note 57, at 1, 3.

[138] *See* MIAX Letter, *supra* note 57, at 2; BlackRock Letter, *supra* note 57, at 1, 3; MayStreet Letter I, *supra* note 57, at 2, 3, 6; Polygon.io Letter II, *supra* note 67, at 2.

[139] *See* BlackRock Letter, *supra* note 57, at 1, 3.

[140] *See* MDI Rules Release, *supra* note 11, 86 FR at 18612.

[141] The Filing Participants propose that Level 1 Core Data would include Top of Book Quotation Information, Last Sale Price Information, odd-lot information, administrative data, regulatory data, and self-regulatory organization program data. See Notice, *supra* note 6, 86 FR at 67517.

[142] For each NMS stock, the Equity Data Plans currently provide for the dissemination of top-of-book data and transaction information, generally defining consolidated market information (or '''core data''') as consisting of: (1) the price, size, and exchange of the last sale; (2) each exchange's current highest bid and lowest offer and the shares available at those prices; and (3) the national best bid and national best offer (''NBBO'') (*i.e.,* the highest bid and lowest offer currently available on any exchange). In addition to disseminating core data, the exclusive SIPs collect, calculate, and disseminate certain regulatory data—including information required by the National Market System Plan to Address Extraordinary Market Volatility (''LULD Plan''), information relating to regulatory halts and market-wide circuit breakers, and information regarding the short-sale price test pursuant to Rule 201 of Regulation SHO. They also collect and disseminate other NMS information and disseminate certain administrative messages. Together with core data, the Commission refers to this broader set of data for purposes of this release as ''SIP data.'' *See* MDI Rules Release, *supra* note 11, 86 FR at 18599.

[143] *See* MDI Rules Release, *supra* note 11, 86 FR at 18698–701.

[144] *See* BlackRock Letter, *supra* note 57, at 2, 3–4; MayStreet Letter II, *supra* note 58, at 8–9; NovaSparks Letter, *supra* note 125, at 1; MEMX Letter, *supra* note 57, at 15–17.

[145] *See* NYSE Letter, *supra* note 71, at 7.

propose new fees that would apply only to the data content underlying consolidated data in the new Level 1 Core Data under the decentralized model.

The Filing Participants have not demonstrated that the proposed fees for the new Level 1 Core Data are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[146]

2. Fees for Depth-of-Book Data

The Filing Participants propose to set fees for depth-of-book data, as that term is defined in Rule 600(b)(26) of Regulation NMS.[147] With respect to depth-of-book data, the Filing Participants propose that Professional Subscribers would pay $99.00 per device per month for each Network's data, and that Nonprofessional Subscribers would pay $4.00 per subscriber per month for each Network's depth of book data.[148] The Filing Participants are also proposing a monthly charge for Non-Display Use of depth-of-book data of $12,477 for each of three types of Non-Display Use,[149] as well as an Access Fee of $9,850.00 per month.[150] The Filing Participants further propose to add language to the Plan's fee schedule in connection with the expanded content, including: (1) that the existing Redistribution Fees[151] would apply to all three categories of core data, including Depth-of-Book Data, and any subset thereof, and (2) that the existing Redistribution Fees would apply to competing consolidators.

While one commenter supports the methodology selected by the Filing Participants, arguing that pricing for proprietary data feeds is a reasonable gauge of value because those fees are constrained by competition,[152] another commenter disagrees with that view,[153] and several commenters, including Non-Supporting Participants, have expressed concern about the use of prices for exchange proprietary data products as the basis for setting the proposed fees on several grounds.[154] Commenters state that the method used presupposes that fees for proprietary data products are fair and reasonable and not unreasonably discriminatory,[155] and they state that Filing Participants have not shown that pricing for proprietary data feeds are a reasonable gauge of value or that proprietary data feeds are appropriate proxies for data content underlying consolidated market data[156]

Some commenters, including Non-Supporting Participants, argue that the calculation used by the Filing Participants to determine the proposed depth-of-book fees is flawed and inconsistent with the MDI Rules Release because the proprietary data feeds used by the Filing Participants were inappropriate references for the calculation.[157] These commenters point out that while the proprietary market data depth-of-book feeds used to calculate fees for the depth-of-book information include top-of-book data as part of those offerings, the depth-of-book data product under the Proposed Amendment does not include top-of-book data.[158] Consequently, some of these commenters argue, subscribers to the new core data would need to pay an additional fee to receive top-of-book data at current rates to obtain the same data content that is available today through proprietary feeds.[159]

Some commenters, including Non-Supporting Participants, state that an additional problem with the proposed approach is that the proprietary depth-of-book products used in the calculation are primarily structured as comprehensive order-by-order feeds, which do not aggregate orders at each price level.[160] According to these commenters, the depth-of-book elements prescribed by the MDI Rules warrant a lower price because they would contain only the aggregated quotes available at the next five price levels away from the NBBO and would thus include less content than the proprietary feeds.[161] One commenter states that complete, disaggregated order-by-order depth-of-book feeds, such as those used in the calculation, are likely to be associated with ''additional operational costs because of increased message traffic with order by order data at all price levels.''[162] Accordingly, the commenter argues that an aggregated feed with only five levels of depth should have been priced at a discount relative to the corresponding

[146] *See* 17 CFR 242.608(b)(2).

[147] *See* 17 CFR 242.600(b)(26) (''Depth of book data means all quotation sizes at each national securities exchange and on a facility of a national securities association at each of the next five prices at which there is a bid that is lower than the national best bid and offer that is higher than the national best offer. For these five prices, the aggregate size available at each price, if any, at each national securities exchange and national securities association shall be attributed to such exchange or association.'').

[148] The Filing Participants state they applied the 3.94x ratio described in the Proposed Amendments to the current fees charged to Professional Subscribers taking all three Networks ($75.00). This resulted in the total fee level for depth of book data for Professional Subscribers equaling $296.00 (*i.e.,* $75.00 × 3.94 = $295.50, rounded to $296.00). This fee was then split evenly among the three Networks, resulting in a proposed Professional Subscriber fee of $99.00 per Network. The Filing Participants applied the 3.94x ratio to the current fees charged for Nonprofessional Subscribers taking all three Networks ($3.00). This resulted in the total fee level for depth of book data for Nonprofessional Subscribers equaling $12.00 (*i.e.,* $3.00 × 3.94 = $11.82, rounded to $12.00). This fee was then split evenly among the three Networks, resulting in a proposed Nonprofessional Subscriber fee of $4.00 per Network. *See* Notice, *supra* note 6, 86 FR at 67520.

[149] *See supra* note 32 (describing the three types of Non-Display Use recognized under Exhibit E to the CTA Plan). The Filing Participants applied the 3.94x ratio described in the Proposed Amendments to the current fees charged for Non-Display Use for all three Networks ($9,500.00). This resulted in the total fee level for depth-of-book data for Non-Display Use equaling $37,430.00 (*i.e.,* $9,500.00 × 3.94 = $37,430.00). This fee was then split evenly among the three Networks, resulting in a proposed Non-Display Use Fee of $12,477.00 per Network (including rounding). *See* Notice, *supra* note 6, 86 FR at 67520.

[150] The Filing Participants applied the 3.94x ratio described in the Proposed Amendments to the current fees charged for direct Data Access for all three Networks ($7,500.00). This resulted in the total fee level for depth of book data for Data Access Fees equaling $29,550.00 (*i.e.,* $7,500.00 × 3.94 = $29,550.00). This fee was then split evenly among the three Networks, resulting in a proposed Data Access Fees of $9,850.00 per Network. *See* Exhibit A to the Notice, *supra* note 6, 86 FR at 67521.

[151] *See infra* Section IV.C.7. discussing the proposed Redistribution Fees with respect to the proposed Auction Data and all other categories of data underlying consolidated market data.

[152] *See* Nasdaq Letter I, *supra* note 75, at 2.

[153] *See* SIFMA Letter I, *supra* note 57, at 6.

[154] *See* MIAX Letter, *supra* note 57, at 4; SIFMA Letter I, *supra* note 57, at 4, 5; IEX Letter, *supra* note 57, at 4; SIFMA Letter II, *supra* note 57, at 2; NBIM Letter, *supra* note 79, at 1–2.

[155] *See* SIFMA Letter I, *supra* note 57, at 5.

[156] *See* IEX Letter, *supra* note 57, at 3–4; MEMX Letter, *supra* note 57, at 11–12; BlackRock Letter, *supra* note 57, at 4–5; Letter from Marcia E. Asquith, Executive Vice President, Board and External Relations, Financial Industry Regulatory Authority, Inc., to Vanessa Countryman, Secretary, Commission, at 6 (Dec. 17, 2021) (''FINRA Letter''); MayStreet Letter II, *supra* note 58, at 17; Proof Services Letter, *supra* note 57, at 3.

[157] *See* IEX Letter, *supra* note 57, at 3–4; MEMX Letter, *supra* note 57, at 11–12; BlackRock Letter, *supra* note 57, at 4–5; FINRA Letter, *supra* note 156, at 6; MayStreet Letter II, *supra* note 58, at 17.

[158] *See* IEX Letter, *supra* note 57, at 3–4; MEMX Letter, *supra* note 57, at 11–12; BlackRock Letter, *supra* note 57, at 4–5; FINRA Letter, *supra* note 156, at 6; MayStreet Letter II, *supra* note 58, at 17.

[159] *See* IEX Letter, *supra* note 57, at 4; MEMX Letter, *supra* note 57, at 6, 11–12; BlackRock Letter, *supra* note 57, at 4–5.

[160] *See* IEX Letter, *supra* note 57, at 4; MEMX Letter, *supra* note 57, at 11–12; BlackRock Letter, *supra* note 57, at 4–5; FINRA Letter, *supra* note 156, at 6.

[161] *See* IEX Letter, *supra* note 57, at 4; MEMX Letter, *supra* note 57, at 11–12; BlackRock Letter, *supra* note 57, at 4–5.

[162] *See* BlackRock Letter, *supra* note 57, at 4–5.

exchange offerings to compensate for differences in both information content and costs.[163]

A Non-Supporting Participant argues that the proposal fails to consider pricing for other proprietary depth-of-book feeds that are aggregated by price level and would therefore serve as a more logical proxy for setting core data fees.[164] Another commenter states that while the Proposed Amendment compared the aggregated depth-of-book data set with order-by-order data, the more appropriate comparison would be with Cboe One Premium, which offers top-of-book, last sale, and five levels of depth.[165] This commenter states that the proposed user fees for underlying market data content are not in line either with Cboe One Premium on its own or with a scaled charge based on Cboe's market share, even though the Cboe charges are for a product sold to end users, whereas the proposed Plan fees are only for underlying content.[166] One Non-Supporting Participant states that the proposal fails to acknowledge or account for the fact that the proposed methodology relies on this commenter's equity market data fees as one of the comparison points, notwithstanding that, unlike the other exchanges' market data prices, the commenter's proprietary data fees do not include individual per user fees but apply only on a per firm basis for firms subscribing to ''real time data.'' [167]

Some commenters, including Non-Supporting Participants, question the determination of the ratio (or multiplier) used by the Filing Participants to set the depth-of-book feeds.[168] Several commenters state that the ratio used by the Filing Participants to determine the fees for accessing depth-of-book data is too high.[169] One commenter states that fees for depth-of-book information ''should be adjusted to use a multiplier of 2.94x to eliminate the overcharging from double counting top-of-book data''; otherwise, those who subscribe to both the new Level 1 Core Data and depth-of-book data offering ''would be paying twice for top of book content.'' [170] Another commenter states that the Filing Participants have created a completely unreasonable standard to justify the proposed fees and that the ratio used to calculate the proposed fees, ''is completely arbitrary and in no way shows that the proposed fees are fair, reasonable, and not unreasonably discriminatory as required under the Exchange Act.'' [171]

Several commenters state that, while the Filing Participants sought to demonstrate that the proposed fees were related to the value of the data, the method employed by the Filing Participants does not align the proposed fees for the new depth-of-book data to the value of that data to subscribers.[172] One Non-Supporting Participant states that calculating the proposed fee levels based on prices charged by the exchanges for their existing market data product is not the right starting point for setting the proposed fees and is inconsistent with the MDI Rules' goal of expanding access to consolidated data.[173]

Two Filing Participants state that the proposed fees are fair and reasonable and not unreasonably discriminatory because they are reasonably related to the value that subscribers gain from the data and because they achieve the Commission's objective in Regulation NMS that prices for consolidated market data be set by market forces.[174] One Filing Participant argues that the pricing for exchange proprietary data feeds—including the depth-of-book data, top-of-book data, and auction information on which the proposed fees are based—is constrained by competitive forces, in that they have a history of being constrained by direct competition and by platform competition among the exchanges.[175] This commenter argues that, because they are tested by market competition, proprietary data fees provide a good and indicative starting point for estimating the value of new core data and for setting fees at their efficient level.[176] This, according to the commenter, provides a substantial basis for showing that current proprietary fees—and, by extension, the proposed fees for new core data—are equitable, fair, reasonable, and not unreasonably discriminatory.[177]

The Filing Participants' methodology to justify the proposed fees is flawed, and the Commission concludes that, as a result, the Filing Participants have failed to demonstrate that the proposed fees are fair, reasonable, and not unreasonably discriminatory. The Filing Participants have chosen to justify the proposed fees by multiplying the existing fees for SIP data (which is top-of-book data) by a number derived from the ratio of the fees of several exchanges' proprietary depth-of-book feeds to the fees for the exchanges' proprietary top-of-book feeds. As a number of commenters, including Non-Supporting Participants, point out,[178] however, the proprietary depth-of-book products used as part of this methodology are materially different products from the new data content underlying consolidated data offerings, making the proprietary products an inappropriate simple benchmark for pricing. Unlike the new data content underlying consolidated data offerings, the proprietary depth-of-book data products typically include: (1) top-of-book data, for which the Filing Participants propose to charge separately; (2) auction data, for which the Filing Participants also propose to charge separately; (3) comprehensive order-by-order depth information, rather than just aggregated orders at each price level;[179] and (4) full depth information at all price levels, rather than just the five price levels outside the NBBO as prescribed under the MDI Rules. Notably, the Commission considered but declined to expand the definition of depth-of-book data to include complete,

[163] *See* BlackRock Letter, *supra* note 57, at 4–5. *See also* IEX Letter, *supra* note 57, at 4; MEMX Letter, *supra* note 57, at 11–12.

[164] *See* IEX Letter, *supra* note 57, at 4.

[165] *See* MayStreet Letter II, *supra* note 58, at 17.

[166] *See id.* at 18.

[167] *See* IEX Letter, *supra* note 57, at 4. The commenter also points out that its proprietary market data fees do not vary depending on the type of use made by those firms, do not apply to data that is redistributed with a delay of as little as 15 milliseconds (whereas other exchanges typically require a 15-minute delay to avoid charges for real-time data), and were determined and justified based on costs. The commenter further states that, to the extent the commenter's fees are relevant at all, a more consistent approach would have been to reflect the commenter's fees as zero, since the commenter does not charge any fees on an individual per user basis for either of its two proprietary market data products. According to the commenter, the latter approach would substantially reduce the average ratio and multiplier, and thus substantially reduce the fees proposed to be charged for core data. *See id.*

[168] *See* IEX Letter, *supra* note 57; MEMX Letter, *supra* note 57; MIAX Letter, *supra* note __; BlackRock Letter, *supra* note 57; FINRA Letter, *supra* note 156; Letter from James Angel, Ph.D., CFP, CFA, Associate Professor of Finance, Georgetown University, to Vanessa Countryman, Secretary, Commission, at 9–10 (Dec. 21, 2021) (''Angel Letter''); NovaSparks Letter, *supra* note 125; SIFMA Letter I, *supra* note 57; SIFMA Letter II, *supra* note 57.

[169] *See* NovaSparks Letter, *supra* note 125, at 1; BlackRock Letter, *supra* note 57, at 4–5; FINRA Letter, *supra* note 156, at 5–6; MayStreet Letter II, *supra* note 58, at 3, 19.

[170] BlackRock Letter, *supra* note 57, at 4–5. *See also* IEX Letter, *supra* note 57, at 4; MEMX Letter, *supra* note 57, at 6, 11–12.

[171] SIFMA Letter II, *supra* note 57, at 5.

[172] *See* BlackRock Letter, *supra* note 57, at 4. *See also* IEX Letter, *supra* note 57, at 4; MEMX Letter, *supra* note 57, at 6, 11–12; BlackRock Letter, *supra* note 57, at 4–5.

[173] *See* MIAX Letter, *supra* note 57, at 4.

[174] *See* NYSE Letter, *supra* note 71, at 5; Nasdaq Letter I, *supra* note 75, at 5.

[175] *See* NYSE Letter, *supra* note 71, at 5.

[176] *See id.* at 6.

[177] *See id.*

[178] *See* IEX Letter, *supra* note 57, at 3–4; MEMX Letter, *supra* note 57, at 11–12; BlackRock Letter, *supra* note 57, at 4–5; FINRA Letter, *supra* note 156, at 6; MayStreet Letter II, *supra* note 58, at 17.

[179] *See supra* notes 160–163 and accompanying text.

order-by-order depth of book information at all price levels, noting that the objectives of providing useful additional information to a broad cross-section of market participants and reducing informational asymmetries between users of proprietary data and SIP data must be balanced against the risk of, among other things, ''additional operational costs and latency because of increased message traffic with order by order data at all price levels.'' [180]

While the Filing Participants have described the methodology used to set the proposed fees and have made certain arguments about their consistency with statutory standards for assessing fees for NMS Plans, they have not adequately explained: (1) how setting the proposed fees based on the ratio of fees for depth-of-book and top-of-book proprietary data is an appropriate method for setting the proposed fees; (2) how the ratio used in the calculation adequately represents the difference in value between top-of-book data and the five levels of additional depth that would be required under the MDI Rules; (3) how calculating the ratio based on proprietary depth-of-book data products that include content that would not be part of the consolidated depth-of-book product prescribed under the MDI Rules did not result in a ratio that is excessively high; or (4) how the fees generated by applying that ratio to the fees for current consolidated market data resulted in proposed depth-of-book fees that are fair, reasonable, and not unreasonably discriminatory. And while the Filing Participants state that alternative methodologies resulted in ratios greater than 3.94x and were thus not selected by the Filing Participants, the Filing Participants do not specify which other data feeds were considered in those methodologies or how feeds other than those considered—such as a proprietary feed with aggregated, rather than the more comprehensive order-by-order depth-of-book information—might have served as better proxies for the data content required under the MDI Rules.

Several commenters, including Non-Supporting Participants, state that the proposed fees, including the proposed fees for depth-of-book data, are too high.[181] One commenter states that retail investors should get free or very-low-cost depth-of-book data because it is in the best interest of retail investors, the industry, and the Commission.[182] This commenter states that displaying depth-of-book data can give investors a better understanding of how prices are formed.[183] The commenter states that the ability for an investor to see buying and selling interest at various price levels makes it easier for the investor to understand what determines the price of a particular security by seeing the interaction of market and limit orders.[184] The commenter argues that making depth-of-book data ''cheap'' would allow brokers to give the data to retail clients for no or low cost and that this, in turn, would increase retail participation in the securities markets because investors will not only understand markets better, but they will participate more in the markets.[185] According to this commenter, if depth-of-book data is expensive, it will not help most retail investors because they will not be able to afford to see it.[186] One commenter states that depth-of-book data should be priced higher than top-of-book data, but adds that charges for depth-of-book data from the Plans should be much lower than charges for consuming the market data directly from the exchanges, because the information provided under the Plan would still be a subset of what is provided by the proprietary data feeds.[187]

One commenter opposes the proposed depth-of book data fees, because they, as well as the other proposed fees, represent an overall increase in costs to end users, making market data less accessible, contrary to ''the core precept of the'' MDI Rules.[188] Another commenter states that the value of the depth-of-book data should focus on greater access and availability of this kind of data, and that the Operating Committee should thus consider what price point would increase availability of depth-of-book information, rather than charging a multiple of proprietary data feeds.[189] One commenter expresses support for the proposed and ''moderately priced'' non-professional rate for depth-of-book information, because, in the commenter's view, this aspect of the proposal ''levels the playing field'' for retail investors by providing them with access to the same information that is available to professionals traders at an affordable price, which will help broaden adoption of this new category of data.[190] One commenter states that it is concerning that the Proposed Amendment, without explanation, precludes the redistribution of delayed depth-of-book data, adding that it sees no reason for prohibiting the redistribution of depth-of-book data on a delayed basis and that it does not object to offering snapshot pricing.[191]

The Commission acknowledges the concerns raised by some commenters that the proposed fees for depth-of-book data are too high and thus do not serve the goals of Section 11A of the Exchange Act or help to ensure broad availability to brokers, dealers, and investors of information with respect to quotations for and transactions in NMS stocks that is prompt, accurate, reliable, and fair. Here, however, as discussed above, the Commission has concluded that the Filing Participants have not demonstrated that the proposed fees for depth-of-book data are fair, reasonable, and not unreasonably discriminatory. Because the Filing Participants have not justified either the proposed fees or the methodology behind them, the Commission does not have a basis to make a finding in this Order as to what fair, reasonable, and not unreasonably discriminatory level of fees would be.

The Filing Participants have not demonstrated that the proposed fees for the content underlying consolidated depth-of-book data provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[192]

[180] *See* MDI Rules Release, *supra* note 11, 86 FR at 18627.

[181] *See* FINRA Letter, *supra* note 156, at 5–7; BlackRock Letter, *supra* note 57, at 1–5; MIAX Letter, *supra* note 57, at 2; Angel Letter, *supra* note 168, at 9; NovaSparks Letter, *supra* note 125, at 1; BMO Letter, *supra* note 57, at 2–3; IEX Letter, *supra* note 57, at 1, 5; SIFMA Letter I, *supra* note 57, at 1, 4–5; IEX Letter, *supra* note 57, at 4; MEMX Letter, *supra* note 57, at 11–12. *See also* MayStreet Letter II, *supra* note 58, at 18.

[182] *See* Angel Letter, *supra* note 168, at 3.

[183] *See id.* at 7.

[184] *See id.*

[185] *See id.* at 8.

[186] *See id.*

[187] *See* NovaSparks Letter, *supra* note 125, at 1.

[188] *See* Cutler Group Letter, *supra* note 134, at 1. This commenter further states that the level of the proposed fees would make it difficult for competing consolidators to offer products at prices competitive to those of proprietary feeds thereby placing competing consolidators at a disadvantage. *See id.*

[189] *See* MayStreet Letter I, *supra* note 57, at 7.

[190] *See* BlackRock Letter, *supra* note 57, at 3, 5.

[191] *See* MayStreet Letter II, *supra* note 58, at 3, 19.

[192] *See* 17 CFR 242.608(b)(2).

3. Fees for Auction Data

The Filing Participants have proposed fees for Auction information (as defined in Rule 600(b)(5)).[193] The Filing Participants propose that, with respect to auction information, both Professional Subscribers and Nonprofessional Subscribers would pay $10.00 per device/subscriber per month for each Network's auction information.[194]

The Filing Participants state that, with respect to the fees for auction information, the Filing Participants looked to the number of trades that occur during the auction process as compared to the trading day and determined that roughly 10% of daily trading volume is concentrated in auctions.[195] The Filing Participants state that, consequently, a fee that is 10% of the fee charged for depth-of-book data is an appropriate proxy for determining the value of auction information. As a result, the Filing Participants have proposed a $10.00 fee per Network for auction information, which the Filing Participants state is fair and reasonable and not unreasonably discriminatory.[196]

Three commenters, including a Non-Supporting Participant, state that information about auction order imbalances is included with the proprietary depth-of-book data products that the Filing Participants used to calculate the consolidated depth-of-book fees. Therefore, these commenters argue, the proposed consolidated depth-of-book fees already incorporate the fees for auction imbalance data, and the proposed auction information fees would result in double charging consumers who purchase both auction information and depth-of-book products from competing consolidators.[197] One commenter states that proprietary depth-of-book product pricing is also inappropriately used to derive the value of auction data, because auction information is more closely aligned with top-of-book content, which provides only high-level information about aggregate order imbalances and does not include the order-by-order details or the data about multiple price levels that proprietary depth-of-book feeds include.[198] One commenter states that, while the pricing rationale in the proposal uses the ratio of auction volume to total trading volume to price the auction information feed, the Filing Participants incorrectly apply this ratio to the fees for the depth-of-book feed, which conveys information about displayed liquidity, not trading activity. According to this commenter, (1) it would have been more congruent with the Filing Participants' proposition to use Level 1 core data as the basis for pricing auction content as this feed is more closely associated with trade volume, and (2) the fees for auction information should be set to 10% of Level 1 core data prices.[199]

One commenter states that the best proxy for the value of auction data is the NYSE Order Imbalance feed, given that NYSE has the biggest auction market share.[200] The commenter recommends eliminating auction usage fees from the proposal because the most valuable auction data available today does not have such usage charges.[201] The commenter also states that it sees no reason for prohibiting the redistribution of auction data on a historical basis.[202]

The Filing Participants have not shown that the proposed fees for auction data meet the statutory standard that fees for consolidated market data must be fair, reasonable, and not unreasonably discriminatory. The Filing Participants state that, to determine the proposed fees for auction data, they looked to the number of trades that occur during the auction process as compared to the trading day and determined that roughly 10% of the trading volume is concentrated in auctions. The Filing Participants then applied the 10% figure to the fees charged for depth-of-book data to determine the value of auction information. However, as several commenters, including Non-Supporting Participants, have pointed out, because information about auction order imbalances is included with the proprietary depth-of-book data products used as a benchmark for both the proposed depth-of-book fees and the proposed auction information fees,[203] the proposed auction information fee would essentially result in double charging subscribers who purchase both auction and depth-of-book information. Moreover, the Filing Participants have failed to respond to criticisms raised by a commenter that proprietary depth-of-book pricing was inappropriately used as a benchmark to derive the value of auction data because auction information is more closely aligned with top-of-book content, which only provides high-level information about aggregate order imbalances and does not include the order-by-order details or data about multiple price levels typically included in proprietary depth-of-book information products.[204] The Filing Participants, who have argued that their proposed fees are based on the value of the data products to subscribers, have failed to justify the assumption that the relative value of two materially different data products is based on the relative volume of trades during different periods of the day, without reference to the content of the two feeds. Because the rationale offered by the Filing Participants to support their methodology with respect to auction information fees is arbitrary, and because the methodology uses as a benchmark proprietary depth-of-book products that contain auction data along with a significant amount of other data, the Commission cannot find that the proposed fees are fair, reasonable, and not unreasonably discriminatory.

Some commenters argue that the fees for auction information under the Proposed Amendment should be lower.[205] One commenter states that retail investors should get free or moderately priced auction data because it is in the interest of retail investors, the industry, and the Commission.[206] The commenter states that opening and closing auction data is important in the securities markets and that providing auction data to retail investors will increase retail investor participation in the market.[207] Another commenter states that the filing should not be

[193] The Filing Participants state that they propose to price subsets of data that constitute core data separately so that data subscribers have flexibility in how much consolidated market data content they wish to purchase. For example, the Filing Participants state that they understand that certain data subscribers may not wish to add depth-of-book data or auction information, or may want to add only depth-of-book information, but not auction information. Accordingly, the Filing Participants are proposing to price subsets of data to provide flexibility to data subscribers. However, the Filing Participants state that they expect that competing consolidators would purchase all core data. *See* Notice, *supra* note 6, 86 FR at 67517 n.10.

[194] *See id.* at 67518.

[195] *See id.* at 67520.

[196] *See id.*

[197] *See* BlackRock Letter, *supra* note 57, at 4–5; MEMX Letter, *supra* note 57, at 11–13; FINRA Letter, *supra* note 156, at 6.

[198] *See* BlackRock Letter, *supra* note 57, at 5.

[199] *See id.*

[200] *See* MayStreet Letter II, *supra* note 58, at 19.

[201] *See id.* at 4, 19.

[202] *See id.* at 19.

[203] *See* MEMX Letter, *supra* note 57, at 11–12. BlackRock Letter, *supra* note 57, at 4–5; FINRA Letter, *supra* note 156, at 6.

[204] *See* BlackRock Letter, *supra* note 57, at 5 (arguing that it would have been more congruent to use Level 1 core data fees as the benchmark). One commenter also argues that certain proprietary auction imbalance feeds, rather that the proprietary depth-of-book products selected, are a better proxy for the value of auction data. *See* MayStreet Letter II, *supra* note 58, at 19.

[205] *See* Angel Letter, *supra* note 168; Cutler Group Letter, *supra* note 134; BlackRock Letter, *supra* note 57.

[206] *See* Angel Letter, *supra* note 168, at 3.

[207] *See id.* at 9.

approved because the price levels do not contribute to a level playing field between competing consolidators and the current plan administrators, such that competing consolidators will be at a disadvantage because they will not be able to offer products at prices competitive with those of proprietary feeds.[208]

As noted above, the Commission has found that the Filing Participants have not justified the rationale they have used to set the proposed fees for auction information, and therefore it is not necessary for the Commission to make a finding about the absolute level of the proposed fees.

The Filing Participants have not demonstrated that the proposed fees for Auction Data provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[209]

4. Fees for Professional and Non-Professional Users

For each of the three categories of data described above, the Filing Participants propose a Professional Subscriber Charge and a Nonprofessional Subscriber Charge. With respect to Level 1 Core Data, the Filing Participants propose to charge the same Professional Subscriber and Nonprofessional Subscriber fees for the new Level 1 Core Data product under the distributed consolidation model as are charged for the existing Level 1 Core Data SIP data product that the Plans generate and disseminate. With respect to depth-of-book data, Professional Subscribers would pay $99.00 per device per month for each Network's data,[210] and Nonprofessional Subscribers would pay $4.00 per subscriber per month for each Network's depth-of-book data.[211] The Filing Participants are not proposing per-quote packet charges or enterprise rates for either Professional Subscribers or Nonprofessional Subscribers use of depth-of-book data.[212]

With respect to auction information, both Professional Subscribers and Nonprofessional Subscribers would pay $10.00 per device/subscriber per month for each Network's auction information data.[213]

Some commenters, including a Non-Supporting Participant, question the classification of fees by professional or non-professional user type under the Proposed Amendments.[214] One commenter states that it is unreasonably discriminatory to charge non-professional users the same fees as professional users for auction data because professionals make far more use of the data,[215] and that the filing contains no justification as to why the Filing Participants propose to charge professionals the same as non-professionals for auction data.[216] One commenter opposes non-professional and professional user classifications on the grounds that they prevent competing consolidators from being able to offer products at competitive prices compared to the proprietary data feeds.[217] One commenter states that the inclusion of multiple tiers, user types with bespoke definitions, and high compliance costs does not amount to fair and reasonable terms and in fact unreasonably discriminates against competing consolidators who seek to bring competition, innovation, and broader access to consolidated market data.[218] According to the commenter, simplifying the pricing structure to allow for enterprise caps at multiple tiers should be considered, along with easier-to-track proxies for usage based on data already reported by firms or other existing regulatory reporting.[219] Another commenter suggests slowing down the data feeds by 15 milliseconds to mitigate the risk of professionals ''masquerading'' as non-professionals utilizing the cheaper data.[220]

Some commenters support moderately priced or free non-professional user fees. Two Non-Supporting Participants support the proposed low fees for non-professional users.[221] One commenter supports the proposed ''moderately priced'' non-professional rate for depth-of-book information because this aspect of the proposal ''levels the playing field'' for retail investors by providing them with access to the same information that is available to professionals traders at an affordable price, which will help broaden adoption of this new category of data.[222] Another commenter states that free or moderately priced non-professional data, including depth-of-book and auction data, is in the best interest of brokers and exchanges because it may increase retail order flow and thus profits into the industry.[223] The commenter further states that free or moderately priced non-professional data is in the best interest of the Commission as well, because providing ''better data to retail investors at low cost will reduce the amount of SEC resources devoted to dealing with complaints based on misunderstandings of market function.'' [224]

One Filing Participant states that distinguishing between professional and non-professional subscribers is fair, as well as efficient.[225] According to this commenter, professional fees are higher than those for non-professionals because professionals realize greater value from the data than non-professionals.[226] The commenter states that applying the same fees to both categories would result either in low-value users subsidizing high-value users, or in fees that are not economically sustainable for producers.[227] According to the commenter, setting professional and non-professional fees based on the value of the data is efficient, fair, and well established by the industry, and setting those fees based on cost is likely to be unworkable.[228] Another Filing Participant states that it is fair, reasonable, and not unreasonable discriminatory for ''Wall Street to pay higher fees than Main Street.'' [229]

With respect to the specific fees proposed, one Non-Supporting

[208] *See* Cutler Group Letter, *supra* note 134, at 1–2.

[209] *See* 17 CFR 242.608(b)(2).

[210] *See* Notice, *supra* note 6, 86 FR at 67518.

[211] *See id.* The Filing Participants applied the 3.94x ratio to the current fees charged for Nonprofessional Subscribers taking all three Networks ($3.00). This resulted in the total fee level for depth-of-book data for Nonprofessional Subscribers equaling $12.00 (*i.e.,* $3.00 × 3.94 = $11.82, rounded to $12.00). This fee was then split evenly among the three Networks, resulting in a proposed Nonprofessional Subscriber fee of $4.00 per Network. *See id.* at 67520.

[212] *See id.* at 67518.

[213] *See id.*

[214] *See* Angel Letter, *supra* note 168; BlackRock Letter, *supra* note 57; MIAX Letter, *supra* note 57; Polygon.io Letter I, *supra* note 126, at 2–3; MayStreet Letter I, *supra* note 57.

[215] *See* Angel Letter, *supra* note 168, at 9–10.

[216] *See id.* at 10.

[217] *See* Polygon.io Letter I, *supra* note 126, at 2–3.

[218] *See* MayStreet Letter I, *supra* note 57, at 8.

[219] *See id.*

[220] *See* Angel Letter, *supra* note 168, at 11.

[221] *See* MIAX Letter, *supra* note 57, at 2; MEMX Letter, *supra* note 57, at 3.

[222] BlackRock Letter, *supra* note 57, at 1, 3.

[223] *See* Angel Letter, *supra* note 168, at 11.

[224] *Id.*

[225] *See* Nasdaq Letter II, *supra* note 75, at 3.

[226] *See id.* The commenter further states that Non-Professionals are provided a discount to encourage their use of the data. *See id.*

[227] *See* Nasdaq Letter II, *supra* note 75, at 3.

[228] *See id.*

[229] NYSE Letter, *supra* note 71, at 8.

Participant states that the proposed professional user fees are based on a flawed methodology that results in excessive fee levels that would discourage firms from registering as competing consolidators and would hinder the formation of the decentralized consolidation model that the MDI Rules seeks to create.[230] Another Non-Supporting Participant states that the proposed fees are ''plagued by double counting and other significant issues'' that raise questions about the process used to design the Proposed Amendments.[231] For example, this commenter states that, as proposed, the $70 Professional User fee for depth-of-book information comes with access only to aggregated depth-of-book information and does not include top-of-book information, even though the calculation of that fee is based on a depth-of book product that includes top-of-book information.[232] This, the commenter states, ''is straightforward double counting, plain and simple.''[233] The commenter also states that while auction information is included in the depth-of-book feed used to calculate the proposed fees, the proposal also charges additional fees, including Professional and Non-Professional Fees, for auction information.[234] The commenter states that even exchanges that offer separate feeds for auction information generally do not charge Professional user fees.[235]

One Non-Supporting Participant states that the proposed non-professional user fees were a step in the right direction, but points out that, while the proposed fees would be lower for the limited subset of Non-Professional users that consume depth-of-book quotation information, the proposed fees are higher than the fees currently charged for proprietary data products that offer similar information.[236] This commenter adds that, even where the proposed fees are lower than the fees charged for comparable proprietary data—as is the case for Non-Professional users—the fact that the other fees are higher than proprietary offerings is likely to reduce incentives for competing consolidators to actually offer that data content to their customers.[237] According to the commenter, there is unlikely to be any demand for the new data elements included in consolidated market data at prices that exceed the fees charged for proprietary data feeds today.[238] In response to this commenter, a Filing Participant argues that this analysis does not account for the fact that purchasers of the new data would be receiving a consolidated data product that aggregates all exchanges' data together to determine an NBBO and the five best levels of depth among all the exchanges and that the analysis disregards that the Proposed Amendment includes much lower fees for non-professionals.[239]

The Commission finds that the Filing Participants have not demonstrated that the proposed fees for professional and non-professional subscribers are fair, reasonable, and not unreasonably discriminatory. With respect to Level 1 Core Data, the Filing Participants state they are not proposing to change the Professional Subscriber and Nonprofessional Subscriber fees currently set forth in the Plans. But, as discussed above,[240] in the context of the MDI Rules, the Proposed Amendment is in fact proposing fees applicable to a new data product—the data content underlying the top-of-book data product to be collected, consolidated, and disseminated by competing consolidators—that differs both with respect to content and administrative expense from the existing top-of-book product generated and disseminated by the exclusive SIP. In taking the position that they are not proposing to do more than add content to the existing Level 1 Core Data product offered by the exclusive SIP, however, the Filing Participants have not even attempted to explain or justify how the proposed Professional and Non Professional Fees for the new Level 1 Core Data satisfy the statutory standard of being fair, reasonable and not unreasonably discriminatory.''[241] Significantly, the Filing Participants have not taken into account that the current consolidation, processing, and dissemination expenses incurred by the Equity Data Plans would be inapplicable to the data content underlying consolidated data offered through the new Level 1 Core Data product to be collected, consolidated, and disseminated by competing consolidators.[242]

With respect to depth-of-book data, the Filing Participants have not demonstrated that the proposed Professional and Non Professional depth-of-book fees are fair, reasonable, and not unreasonably discriminatory. The Filing Participants have attempted to justify the proposed Professional and Non-Professional fees for depth-of-book data by using the same multiplier (*i.e.,* 3.94x) employed to calculate the proposed fees for data content underlying consolidated depth-of-book offerings,[243] but, as explained in detail above, the Filing Participants have not demonstrated that the use of this multiplier is appropriate in the first place because, among other things, the proprietary depth-of-book feeds contain top-of-book data and auction information, which the data content underlying consolidated depth-of-book feed would lack, leading to ''double-counting,'' as several commenters have pointed out.[244] In addition, with respect to auction information, other than describing the proposal, explaining the methodology used to generate the proposed fees,[245] and arguing that the resulting fees are fair, reasonable, and not unreasonably discriminatory, the Filing Participants have not attempted to explain or otherwise justify why it is fair, reasonable, and not unreasonably discriminatory to set both the Professional Subscribers and Nonprofessional Subscribers fee at the same rate of $10.00 per device per month.

The Filing Participants have not demonstrated that the proposed fees for professional and non-professional users provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and

[230] *See* MIAX Letter, *supra* note 57, at 4.

[231] *See* MEMX Letter, *supra* note 57, at 10.

[232] *See id.* at 12. According to the commenter, the value of top-of-book information is therefore already embedded in the cost proposed for depth-of-book information. *See id.*

[233] *See id.*

[234] *See id.* at 13–14.

[235] *See id.*

[236] *See id.* at 7.

[237] *See id.* at 9.

[238] *See id.* at 17. The commenter further states that the Operating Committees should analyze whether it is fair and reasonable to continue to charge professional and non-professional user fees that exceed the fees charges for similar proprietary market data. *See id.*

[239] *See* NYSE Letter, *supra* note 71, at 8.

[240] *See supra* Section IV.C.1.

[241] *See* MDI Rules Release, *supra* note 11, 86 FR at 18684.

[242] *See id.* at 18682 (stating that ''the proposed new fees [filed pursuant to Rule 614(e)] will need to reflect . . . that the effective national market system plan(s) is no longer operating the exclusive SIPs and is no longer performing collection, consolidation, and dissemination functions'').

[243] *See supra* note 211.

[244] *See supra* Section IV.C.2 for a discussion on issues associated with the application of the multiplier used by the Filing Participants to generate certain proposed fees.

[245] *See* Notice, *supra* note 6, 86 FR at 67517–18, 67520–21.

perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[246]

5. Fees for Non-Display Use

The Filing Participants propose Non-Display Use fees relating to the three categories of data described above: (1) Level 1 Core Data; (2) depth-of-book data; and (3) auction information. With respect to Level 1 Core Data, the Filing Participants propose to apply the Non-Display Use fees currently set forth in the Plans to the data content underlying consolidated market data in the new Level 1 Core Data data product to be offered by the competing consolidators [247] for each of the three categories of Non-Display Use.[248] With respect to depth-of-book data, Subscribers would pay Non-Display Use Fees of $12,477.00 per month for each category of Non-Display Use per Network.[249] With respect to auction information, Subscribers would pay Non-Display Use fees of $1,248.00 per month for each category of Non-Display Use per Network.[250]

Some commenters, including a Non-Supporting Participant, state that the proposed Non-Display Use fees result in excessive fee levels that would discourage firms from registering as competing consolidators, thereby hindering the formation of the decentralized consolidation model that the MDI Rules seeks to create.[251] One commenter states that the fees in the Proposed Amendment, including the non-display fees, would place competing consolidators at a disadvantage because they will not be able to offer products at prices competitive with those of proprietary feeds.[252] One commenter asks that the Commission reject the Proposed Amendment and any future proposal that maintains display/non-display classifications.[253] The commenter states that, if the Proposed Amendment is not rejected, competing consolidators will not be able to offer products at competitive prices to proprietary data feeds.[254]

One Filing Participant states that distinguishing between Display and Non-Display use is fair, as well as efficient.[255] According to this commenter, algorithms, dark pools, and electronic traders pay higher fees than human professionals because they realize greater value from the data.[256] The commenter argues that, because Non-Display users realize greater value from the use of market data than Display users, applying the same fees to both categories would result either in low-value users subsidizing high-value users or fees that are not economically sustainable for producers.[257] The commenter states that the Proposed Amendment thus sets the Display Fee and Non-Display Fee according to the value of the data, which is efficient, fair, and well-established in the industry both nationally and globally.[258] According to the commenter, any alternative based solely on cost is likely to be unworkable.[259]

The Filing Participants have not explained or justified how the proposed Non-Display Fees are fair, reasonable, and not unreasonably discriminatory. With respect to the new Level 1 Core Data, the Filing Participants state they are proposing to charge the same fees for Non-Display Use of Level 1 data that are currently set forth in the Plans with respect to data disseminated by the exclusive SIP. But, as discussed above,[260] in the context of the MDI Rules the Proposed Amendment is in fact proposing fees applicable to a new data product—the top-of-book data product to be collected, consolidated, and disseminated by competing consolidators—that differs both with respect to content and administrative expense from the existing top-of-book product generated and disseminated by the exclusive SIP. In taking the position that they have not proposed to do more than add content to the existing Level 1 product offered by the exclusive SIP, however, the Filing Participants have not even attempted to explain how the proposed Non-Display Use fees for Level 1 Core Data satisfy the statutory standard of being fair, reasonable, and not unreasonably discriminatory.[261] Significantly, the Filing Participants have not taken into account that the current consolidation, processing, and dissemination expenses incurred by the Equity Data Plans would be inapplicable to the data content underlying the new Level 1 products to be offered by competing consolidators.[262]

With respect to the content underlying depth-of-book data, the Filing Participants state that they applied the 3.94x multiplier to the current fees charged for Non-Display Use for all three Networks, resulting in a proposed Non-Display Use fee of $12.477.00 per Network.[263] With respect to depth-of-book data, the Filing Participants have not demonstrated that the proposed Non-Display Use fees are fair, reasonable, and not unreasonably discriminatory. The Filing Participants have attempted to justify the proposed Non-Display Use fees for depth-of-book data by using the same multiplier (*i.e.,* 3.94x) employed to calculate the proposed fees for the data underlying the consolidated depth-of-book feed, but, as explained in detail above, the Filing Participants have not demonstrated that the use of this multiplier is appropriate in the first place because, among other things, the proprietary depth-of-book feeds contain top-of-book data and auction information, which the consolidated depth-of-book feed would lack, leading to ''double-counting,'' as several commenters have pointed out.[264]

With respect to auction information, Filing Participants propose that Subscribers would pay Non-Display Use fees of $1,248.00 per month for each category of Non-Display Use per Network.[265] The Filing Participants state that, as is the case today, Subscribers would be charged for each category of non-display use of auction information.[266] The Filing Participants, however, have not explained the basis for the proposed Non-Display Use fees for auction information, and the Commission therefore has no basis on which it can find that the proposed fees are fair, reasonable, and not unreasonably discriminatory. And even if the unstated rationale is that the

[246] *See* 17 CFR 242.608(b)(2).

[247] *See* Exhibit E to the CTA Plan; Section IX(b)(ii) of the CQ Plan.

[248] The Filing Participants propose that access to odd-lot information would be made available to Level 1 Core Data subscribers for the same fees currently charged for Level 1 Core Data provided by the exclusive SIP. *See* Notice, *supra* note 6, 86 FR at 67518. *See also supra* note 35 (describing the three categories of Non-Display Use recognized under Exhibit E to the CTA Plan).

[249] *See* Notice, *supra* note 6, 86 FR at 67518.

[250] The Filing Participants state that, as is the case today, Subscribers would be charged for each category of use of depth-of-book data and auction information. *See* Notice, *supra* note 6, 86 FR at 67518.

[251] *See* MIAX Letter, *supra* note 57, at 3; Polygon.io Letter I, *supra* note 126, at 2–3.

[252] *See* Cutler Group Letter, *supra* note 134, at 1–2.

[253] *See* Polygon.io Letter I, *supra* note 126, at 2.

[254] *See id.*

[255] *See* Nasdaq Letter II, *supra* note 75, at 3.

[256] *See id.*

[257] *See id.*

[258] *See id.* at 2.

[259] *See id.*

[260] *See supra* Section IV.C.1.

[261] *See* MDI Rules Release, *supra* note 11, 86 FR at 18684.

[262] *See supra* note 242 and accompanying text.

[263] *See* Notice, *supra* note 6, 86 FR at 67520.

[264] *See supra* Section IV.C.2.

[265] The Filing Participants state that, as is the case today, Subscribers would be charged for each category of use of depth-of-book data and auction information. *See* Notice *supra* note 6, 86 FR at 67518.

[266] *See supra* note 35 (describing the categories of Non-Display Uses recognized under Exhibit E to the CTA Plan).

proposed fees are 10% of the proposed Non-Display Use fees for depth-of-book data—consistent with the derivation of auction information fees from the fees for the content underlying depth-of-book data—that rationale would suffer from the same weaknesses as the rationale underlying the proposed fees for Non-Display Use of depth-of-book data and for the content underlying depth-of-book data. The Filing Participants have not demonstrated that is fair, reasonable, and not unreasonably discriminatory to calculate the fees by comparison to the current charges for proprietary depth-of-book products, which are substantially different products than those at issue in the Proposed Amendment.[267]

The Filing Participants have not demonstrated that the proposed fees for Non-Display Use provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[268]

6. Access Fees

The Filing Participants propose to charge Access Fees to all subscribers for the use of the three categories of data: (1) Level 1 Core Data; (2) depth-of-book data; and (3) auction information. With respect to Level 1 Core Data, the Filing Participants to apply the same Access Fees that currently set forth in the Plans with respect to data disseminated by the exclusive SIP. With respect to depth-of-book data, the Filing Participants propose to charge Subscribers a monthly Access Fee of $9,850.00 per Network. With respect to auction information, the Filing Participants propose to charge Subscribers a monthly Access Fee of $985.00 per Network.

Some commenters oppose the access fees in the proposed fee schedule. One Non-Supporting Participant states that the proposed access fees result in excessive fee levels that would discourage firms from registering as competing consolidators and would hinder the formation of the decentralized consolidation model that the MDI Rules seeks to create.[269] Another Non-Supporting Participant states that the proposed access fees are not fair and reasonable because they are more expensive than those charged by exchanges for their proprietary products.[270]

The Filing Participants have not demonstrated that the proposed access fees for depth-of-book information are fair, reasonable, and not unreasonably discriminatory. With respect to Level 1 Core Data, the Filing Participants are proposing to charge the same Access Fees for Non-Display Use of Level 1 Core Data that are currently set forth in the Plans with respect to data disseminated by the exclusive SIP. But, as discussed above,[271] in the context of the MDI Rules, the Proposed Amendment is in fact proposing fees applicable to a new data product—the top-of-book data product to be generated and disseminated by competing consolidators—that differs both with respect to content and administrative expense from the existing top-of-book product generated and disseminated by the exclusive SIP. In taking the position that they have not proposed to do more than add content to the existing Level 1 Core Data product offered by the exclusive SIP, however, the Filing Participants have not even attempted to explain or justify how the proposed Access Fees for Level 1 Core Data satisfy the statutory standard of being fair, reasonable and not unreasonably discriminatory.'' [272] Significantly, the Filing Participants have not taken into account that the current consolidation, processing, and dissemination expenses incurred by the Equity Data Plans would be inapplicable to the data content underlying the new Level 1 Core Data products to be offered by competing consolidators.

With respect to Access Fees for the content underlying depth-of-book data, the Filing Participants have attempted to justify the proposed Access Fees by using the same multiplier (*i.e.,* 3.94x) to the Access Fees charged for all three Networks, resulting in a proposed Access Fee of $9,850.00 per Network.[273] But, as explained in detail above, the Filing Participants have not demonstrated that the use of this multiplier is appropriate in the first place because, among other things, the proprietary depth-of-book feeds contain top-of-book data and auction information, which the consolidated depth-of-book feed would lack, leading to ''double-counting,'' as several commenters have pointed out.[274]

Finally, with respect to auction information, the Filing Participants have not explained the basis for the proposed Access Fees for auction information, and the Commission therefore has no basis on which it can find that the proposed fees are fair, reasonable, and not unreasonably discriminatory. And even if the unstated rationale is that the proposed fees are 10% of the proposed Access Fees for depth-of-book data, consistent with the derivation of auction information fees from the fees for the content underlying depth-of-book data, that rationale would suffer from the same weaknesses as the rationale for Non-Display Use of depth-of-book data and for the content underlying depth-of-book data. The Filing Participants have not demonstrated that is fair, reasonable, and not unreasonably discriminatory to calculate the fees by comparison to the current charges for proprietary depth-of-book products, which are substantially different products than those at issue in the Proposed Amendment.[275]

The Filing Participants have not demonstrated that the proposed Access Fees provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[276]

7. Redistribution Fees

The Filing Participants propose that the existing Redistribution Fees would apply to all three categories of core data (*i.e.,* Level 1 Core Data, depth-of-book, and auction information), including any

[267] *See supra* Section IV.C.2 for a discussion on issues associated with the application of the multiplier used by the Filing Participants to generate certain proposed fees.

[268] *See* 17 CFR 242.608(b)(2).

[269] *See* MIAX Letter, *supra* note 57, at 3.

[270] *See* MEMX Letter, *supra* note 57, at 6, 8. *See also* Cutler Group Letter, *supra* note 134, at 1–2 (noting that it supports the comment letter written by MEMX and that the Proposed Amendments make market data less accessible).

[271] *See supra* Section IV.C.1.

[272] *See* MDI Rules Release, *supra* note 11, 86 FR at 18684.

[273] *See* Notice, *supra* note 6, 86 FR at 67520.

[274] *See supra* Section IV.C.2 (discussing issues associated with the application of the multiplier used by the Filing Participants to generate certain proposed fees).

[275] *See id.*

[276] *See* 17 CFR 242.608(b)(2).

subset thereof.[277] The Filing Participants are not proposing to change the amount of the Redistribution Fees. The Filing Participants also specify that Redistribution Fees would be charged to competing consolidators.

In support of their proposal to charge Redistribution Fees to competing consolidators, the Filing Participants argue: (1) that the comparison the Commission made in the MDI Rules Release between self-aggregators (which would not pay Redistribution Fees) and competing consolidators is not appropriate in determining whether a redistribution fee is not unreasonably discriminatory; and (2) that the Commission's comparison is not consistent with the current long-standing practice of the Plan that redistribution fees are charged to any entity that distributes data externally.[278] The Filing Participants state that a self-aggregator, by definition, would not be distributing data externally and would therefore not be subject to such fees, which, according to the Filing Participants, is consistent with current Plan practice that a subscriber to consolidated data that only uses data for internal use is not charged a Redistribution Fee.

The Filing Participants argue that the more appropriate comparison would be between competing consolidators and downstream vendors, both of which would be selling consolidated market data directly to market data subscribers. The Filing Participants state that vendors are and would still be subject to Redistribution Fees when redistributing data to market data subscribers and argue that it would be unreasonably discriminatory and would impose a burden on competition if competing consolidators—which would be competing with downstream market data vendors for the same data subscriber customers—are not charged a Redistribution Fee for exactly the same activity.

One commenter states that the Proposed Amendment should treat competing consolidators as replacements to the exclusive SIPs, not as data vendors.[279] The commenter states that subjecting competing consolidators to the same fees as data vendors and subscribers that receive consolidated market data from the exclusive SIP fails to recognize that competing consolidators are SIPs and are not similarly situated to today's data vendors.[280] This commenter further states that competing consolidators should not be charged redistribution fees because they are not redistributing consolidated market data, but are instead generating and distributing consolidated data for the first time.[281] According to this commenter, redistribution fees should not be charged by the Plan because the Plan would no longer govern the distribution of consolidated market data.[282] The commenter states that not recognizing competing consolidators as SIPs places competing consolidators at a competitive disadvantage relative to data vendors, given that they take on expenses and risks that data vendors do not, such as the costs for generating consolidated market data, disclosing operational and performance metrics, registering with the Commission, and complying with Rule 614 of Regulation NMS.[283]

One Non-Supporting Participant states that the redistribution fee for competing consolidators is inconsistent with the MDI Rules, is not fair and reasonable, and is unreasonably discriminatory.[284] This commenter states that the proposal's attempt to justify the redistribution fee based on the current centralized model that charges fees to downstream vendors is unsound because, under the decentralized MDI Rules, competing consolidators would be ''stepping into the role that the SIPs hold today as the primary sources of consolidated market data.'' [285] According to this commenter, to charge a redistribution fee on top of the other proposed fees would ''unquestionably put competing consolidators at a further competitive disadvantage as compared to aggregated proprietary data products offered by exchanges,'' thus targeting them in an unfair and unreasonable manner.[286]

One commenter states the Proposed Amendment directly contradicts the Commission's directive in the MDI Rules that competing consolidators not be treated the same as market data vendors.[287] The commenter states that the Filing Participants are ''engaged in a strategy to undermine the Commission's authority over market data as enumerated in the CT Plan and MDI Rule[s] in order to preserve their current revenues from proprietary and SIP data.'' [288] The commenter further states that the Filing Participants' position that the competing consolidators should be charged redistribution fees just like any market data vendor undermines the efforts of the MDI Rules.[289] The commenter cites the Commission's statement in the MDI Rules Release that the fees for the data content underlying consolidated market data should not include redistribution fees for competing consolidators.'' [290] The commenter argues that by treating competing consolidators differently than the exclusive SIPs, the Filing Participants are acting in an unreasonably discriminatory manner, effectively disregarding the Exchange Act mandates in addition to the Commission's directive in the MDI Rules.[291] The commenter argues that imposing redistribution fees on competing consolidators imposes an undue burden on competition.[292]

Other commenters also suggest that the imposition of redistribution fees on

[277] The Filing Participants state that, currently, Redistribution Fees are charged to any entity that makes last sale information or quotation information available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. The Filing Participants propose to amend this description to make it applicable to core data, as that term is defined in Rule 600(b)(21). *See* Notice, *supra* note 6, 86 FR at 67518.

[278] *See, e.g.,* Cover Letter, *supra* note 1, at 4; Notice, *supra* note 6, 86 FR at 67518. The Filing Participants state that the current exclusive SIP is not charged a Redistribution Fee. The Filing Participants state, however, that unlike competing consolidators, the processor has been retained by the Plans to serve as an exclusive SIP, is subject to oversight by both the Plans and the Commission, and neither pays for the data nor engages with data subscriber customers. The Filing Participants state that, by contrast, under the competing consolidator model: The Plans would have no role in either overseeing or determining which entities choose to be a competing consolidator; a competing consolidator would need to purchase consolidated market data just as any other vendor would; and competing consolidators would be responsible for competing for data subscriber clients. Accordingly, the Filing Participants argue, competing consolidators would be more akin to vendors than to the current exclusive SIPs. The Filing Participants state that if any entity that is currently an exclusive SIP chooses to register as a competing consolidator, that entity would be subject to the Redistribution Fee. *See* Cover Letter, *supra* note 1, at 4 n.7; Notice, *supra* note 6, 86 FR at 67518 n.12.

[279] *See* MayStreet Letter I, *supra* note 57, at 3.

[280] *See id.* at 3–4.

[281] *See id.*

[282] *See id.* at 5.

[283] *See id.*

[284] *See* MIAX Letter, *supra* note 57, at 2 (citing the MDI Rules Release statements that ''imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with the standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model,'' and that ''fees proposed by the SROs should not contain redistribution fees for competing consolidators because this would hinder their ability to compete.'').

[285] *Id.*

[286] *Id.*

[287] *See* SIFMA Letter I, *supra* note 57, at 4–5.

[288] *Id.* at 6; *see also* SIFMA Letter II, *supra* note 57, at 3.

[289] *See* SIFMA Letter I, *supra* note 57, at 7; SIFMA Letter II, *supra* note 57, at 2.

[290] *See* SIFMA Letter I, *supra* note 57, at 7; SIFMA Letter II, *supra* note 57, at 2.

[291] *See* SIFMA Letter I, *supra* note 57, at 7; SIFMA Letter II, *supra* note 57, at 2.

[292] *See* SIFMA Letter I, *supra* note 57, at 7; SIFMA Letter II, *supra* note 57, at 2.

competing consolidators would place competing consolidators at a competitive disadvantage.[293] One commenter states that by charging redistribution fees to competing consolidators, the Proposed Amendment creates a barrier to entry to technology solution vendors becoming competing consolidators.[294] Two other commenters, including a Non-Supporting Participant, also argue that the redistribution fees charged to competing consolidators are in contravention of the Commission's express direction in the MDI Rules.[295] Another Non-Supporting Participant states that the proposed redistribution fee that would be charged to competing consolidators is inconsistent with the purposes and structure of the MDI Rules, and that this aspect of the proposal represents a ''further indication that the intent of the majority [of the exchanges] was to subvert the purpose of the Commission's order.'' [296]

One Filing Participant states that, although the Commission in the MDI Rules Release compared competing consolidators to self-aggregators, a more appropriate comparison would be between competing consolidators and downstream vendors.[297] According to this commenter, because these vendors would be subject to redistribution fees when redistributing data to their subscribers, it would impose a burden on competition and be unfair to vendors not to charge a redistribution fee for exactly the same activity by competing consolidators.[298]

As the Commission stated in the MDI Rules Release, ''the fees for the data content underlying consolidated data should not include redistribution fees for competing consolidators,'' [299] and imposing redistribution fees on competing consolidators ''would be difficult to reconcile with statutory standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model.'' [300] The Filing Participants' attempt to justify the Redistribution Fee—basing it on the long-standing practice within a centralized model that charges fees to ''any entity that distributes data''—is misplaced. Unlike current vendors that take consolidated data generated by the exclusive SIP, distribute it, and pay redistribution fees, the competing consolidators will ''take the place of the exclusive SIP, which is not charged a redistribution fee.'' [301] The competing consolidators will take underlying data content from the exchanges and will themselves generate the consolidated data. Thus, there is no ''redistribution'' when a competing consolidator sells consolidated data—at fees set forth in the Plan—to a subscriber. Moreover, like the exclusive SIPs, competing consolidators will take on expenses, risks, and obligations that data vendors do not, such as the costs for collecting, consolidating, generating, and disseminating consolidated equity market data.[302] Additionally, like the exclusive SIPs and unlike vendors, competing consolidators will be subject to the registration, disclosure, and other regulatory requirements under Rule 614 and Form CC of Regulation NMS,[303] as well as to the requirements of Regulation SCI.[304]

Thus, the Filing Participants have not adequately explained or justified how the proposal to impose Redistribution Fees reflects, consistent with the MDI Rules, that ''that the effective national market system plan(s) is no longer operating the exclusive SIPs and is no longer performing collection, consolidation, and dissemination functions.'' [305] The Filing Participants have not explained how keeping the proposed Redistribution Fees unchanged from the current fees under the Plans is an appropriate means of establishing the proposed fees, or how the resulting fee levels are fair and reasonable and not unreasonably discriminatory. Additionally, the Filing Participants have not explained how charging Redistribution Fees—layered atop the other fees described above—to competing consolidators (thus subjecting them to the same fees as vendors and subscribers) is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[306]

The Filing Participants have not demonstrated that the proposed Redistribution Fees provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair, reasonable, and not unreasonably discriminatory consistent with Rule 603(a) of Regulation NMS. Thus, the Commission cannot find that, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[307]

8. Other Comments Regarding the Proposed Fees [308]

One commenter states that the proposed fees for the content underlying consolidated market data would be too high whether a cost-basis or value-basis were used as a justification by the Filing Participants.[309] A Non-Supporting Participant states that any analysis of current SIP fees should include a discussion of what structural changes could be made to SIP fees to eliminate or reduce the incentives that firms have today to avoid providing SIP data to their customers.[310] One commenter favors expanding the broker-dealer enterprise cap that is part of the current fee schedule of the Plan, stating that the Proposed Amendment provides no depth-of-book enterprise cap and that the Level 1 enterprise caps are out of reach for most market participants.[311] Another commenter states that it supports the proposed *a la carte* fee structure for the expanded elements of consolidated data because, in the commenter's view, market participants should be able to select from a variety of market data products and pay only for the content they consume.[312]

One Non-Supporting Participant compares the proposed fees for content underlying consolidated data to fees currently charged for proprietary data fees and argues that at any given price

[293] *See* NBIM Letter, *supra* note 79, at 2; Cutler Group Letter, *supra* note 134, at 1–2.

[294] *See* NovaSparks Letter, *supra* note 125, at 1.

[295] *See* FINRA Letter, *supra* note 156, at 5; MEMX Letter, *supra* note 57, at 21.

[296] IEX Letter, *supra* note 57, at 5.

[297] *See* NYSE Letter, *supra* note 71, at 7.

[298] *See id.*

[299] MDI Rules Release, *supra* note 11, 86 FR at 18685.

[300] *Id.*

[301] *Id.*

[302] *See id.* at 18603–04, 18662–76 (discussing registration and responsibilities of competing consolidators).

[303] *See id.* at 18603–04, 18662–76 (discussing registration and responsibilities competing consolidators).

[304] In the MDI Rules Release, the Commission amended Regulation SCI to expand the definition of ''SCI entities'' to include ''SCI competing consolidators'' that are subject to the requirements of Regulation SCI after an initial transition period if they meet a threshold based on certain share of gross consolidated market data revenues. *See id.* at 18604–05.

[305] *Id.* at 18682.

[306] *See* 17 CFR 242.608(b)(2).

[307] *See* 17 CFR 242.608(b)(2).

[308] In addition to the other comments discussed in this Order, the Commission also received a letter in the comment file that is not germane to the Proposed Amendments. *See* Letter from Charles L. Groothoff (Apr. 13, 2022).

[309] *See* MayStreet Letter I, *supra* note 57, at 6.

[310] *See* MEMX Letter, *supra* note 57, at 20.

[311] *See* MayStreet Letter I, *supra* note 57, at 8.

[312] *See* BlackRock Letter, *supra* note 57, at 2–3.

a subscriber would be better off subscribing to the proprietary data fees listed instead of purchasing data from the Plan, given the additional information included on those feeds.[313] This commenter states that, because the proposed fees are generally more expensive than current proprietary data offerings, the Proposed Amendments clearly fail the ''fair and reasonable'' test required by the Exchange Act.[314] This commenter further argues that it is unlikely that there will be any demand for the new data elements included in consolidated market data at prices that exceed the fees charged for proprietary data feeds today.[315]

The Commission in this Order is not taking a position on what structure or level of fees—either on an absolute basis or in comparison to existing proprietary data products—would be appropriate, but finds that the Filing Participants have failed to demonstrate that the proposed fees provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair and reasonable and not unreasonably discriminatory.[316]

Some commenters, including Non-Supporting Participants, also argue that the proposed fees would have an adverse impact on competition, and on competing consolidators in particular.[317] One Non-Supporting Participant states that, even where the proposed fees are lower than the fees charged for comparable proprietary data, the fact that other fees are higher than proprietary offerings is likely to reduce incentives for competing consolidators to actually offer that data content to their customers and would limit the potential customer base for competing consolidators and inappropriately impede the viability of competing consolidators under the infrastructure rule.[318] Another commenter expresses concern that if the Proposed Amendment were approved, the exchanges would entrench a high cost for market data that has no relation to underlying expenses, is not subject to effective competitive forces, and serves as a formidable barrier to entry for newer firms.[319] One commenter states that the current proposal will favor current market data vendors who already pay for these fees and have large customer bases, but will not necessarily use the most efficient data consolidation solutions.[320] This commenter states that all of the equity market data plans should have a unified feed and price list because most end users today consume all of the plans' feeds.[321]

The Commission has considered these comments regarding the competitive challenges of the current market environment and the role the Plan and these proposed fees would play under the competing consolidator regime. As discussed above, the Commission has found that the Filing Participants have not demonstrated that the proposed fees for content underlying consolidated market data are fair, reasonable and not unreasonably discriminatory. The Commission agrees that unfair, unreasonable, or unreasonably discriminatory fees for this data content would decrease the likelihood that it would be economically feasible for firms to become competing consolidators. That in turn would undermine the Commission's goals in ''fostering a competitive environment for the provision and dissemination of critical market data to investors and other market participants'' that will ''better achieve the goals of Section 11A of the Exchange Act and help to ensure broad availability to brokers, dealers, and investors of information with respect to quotations for and transactions in NMS stocks that is prompt, accurate, reliable, and fair.'' [322]

D. NMS Plan Governance

Some commenters, including Non-Supporting Participants, state that the MDI Rules should be implemented through the new CT Plan,[323] rather than through the existing equity market data plans (*i.e.,* the CTA/CQ Plans and the Nasdaq/UTP Plan).[324] One commenter reiterated its continued support for the provisions of the CT Plan overall.[325] The commenter states that the real and potential conflicts of interest that currently exist relating to the provision of market data directly relate to the decision-making problems at the Plan's Operating Committee.[326] One commenter states that the conflicts of interest that led to the creation of the Proposed Amendment are apparent from the resounding lack of support it has received from anyone but the exchange groups that stand to benefit from creating a system where competing consolidators are not viable.[327] According to this commenter, the exchange groups are disincentivized to create a fair and reasonable fee structure, so additional attempts under the same system are unlikely to create better results.[328]

Another commenter supports expanding the voting representation under the CT Plan to non-SROs and having them participate as full voting members of the Operating Committee.[329] The commenter states that the Commission cannot approve the Proposed Amendment given the inherent conflicts of interests of the Filing Participants that developed the proposals.[330] The commenter states that, if the Commission approves the Proposed Amendment, it would be giving tacit approval to the shortcomings in the governance structure of the current Plans.[331] This commenter also states that the proposed fee amendments are explicitly stated by the Filing Participants to be unrelated to the cost of providing the data, but instead related to subscriber value.[332] The commenter states that this is a clear example of the Plan's Operating Committee failing to ensure that the public service mandates of the SIPs are achieved and is a failure in governance through the unmitigated conflicts of interest by voting members who just want to maximize profits.[333] The commenter states that further evidence of the failure of the governance structure of the Operating Committee is that the fee proposals have been proposed while the remaining reforms of the CT Plan are stayed pending resolution of challenges in federal court.[334] The commenter states that it is ''somewhat shocking'' that the Proposed Amendment was filed notwithstanding that other members of the Operating Committee ''have stated publicly that the proposals contradict

[313] *See* MEMX Letter, *supra* note 57, at 7.

[314] *See id.* at 8.

[315] *See id.* at 17.

[316] *See* Sections 11A(c)(1)(C)–(D) of the Exchange Act, 15 U.S.C 78k–1(c)(1)(C)–(D); Rule 603(a) of Regulation NMS, 17 CFR 242.603.

[317] *See* MIAX Letter, *supra* note 57, at 1, 3; MEMX Letter, *supra* note 57, at 2, 9, 10–17, 21–22, 25; NBIM Letter, *supra* note 79, at 2; NovaSparks Letter, *supra* note 125, at 1; IEX Letter, *supra* note 57, at 5; SIFMA Letter I, *supra* note 57, at 8; FINRA Letter, *supra* note 156, at 5; MayStreet Letter I, *supra* note 57, at 5; BlackRock Letter, *supra* note 57, at 1–4; Polygon.io Letter I, *supra* note 126, at 3; Proof Services Letter, *supra* note 57, at 3; Cutler Group Letter, *supra* note 134, at 1.

[318] *See* MEMX Letter, *supra* note 57, at 9, 17.

[319] *See* Proof Services Letter, *supra* note 57, at 1.

[320] *See* NovaSparks Letter, *supra* note 125, at 1.

[321] *See id.* at 1–2.

[322] MDI Rules Release, *supra* note 11, 86 FR at 18605–06.

[323] *See supra* note 18 (describing CT Plan).

[324] *See* BMO Letter, *supra* note 57; MEMX Letter, *supra* note 57; MIAX Letter, *supra* note 57; IEX Letter, *supra* note 57; and Polygon.io Letter I, *supra* note 126; Polygon.io Letter II, *supra* note 67.

[325] *See* BMO Letter, *supra* note 57, at 1.

[326] *See id.* at 2.

[327] *See id.*

[328] *See* Polygon.io Letter II, *supra* note 67, at 2.

[329] *See* BMO Letter, *supra* note 57, at 2.

[330] *See id.*

[331] *See id.*

[332] *See id.*

[333] *See id.* at 2–3.

[334] *See id.* at 3.

the Exchange Act standards for consolidated data, which require that the fees be fair, reasonable, and not unreasonably discriminatory.'' [335]

A Non-Supporting Participant also encourages the Commission to consider whether the CT Plan is a more appropriate body for setting fees for consolidated market data.[336] This commenter states that placing the responsibility for setting fees in the hands of the CT Plan would allow SIP fees to be set by an operating committee that better reflects the constituencies affected by the Proposed Amendment, including non-SRO representatives.[337] Another Non-Supporting Participant states that the fee proposals are ''the result of a conflicted and unbalanced voting process,'' adding that it agrees with the recommendation that the responsibility for setting the proposed fees should be placed on the CT Plan.[338] Another Non-Supporting Participant recommends that the Commission disapprove the proposal and reassign responsibility for the filing to the operating committee for the CT Plan, which the commenter states would have a ''broader set of voting stakeholders and a fairer and less conflicted governance structure,'' and argues that the Proposed Amendment shows that this change is ''badly'' needed.[339]

One commenter asks the Commission to reevaluate the process that led to the creation of the Proposed Amendment and to make substantive changes to avoid the amendment process being used to derail timely implementation of the MDI Rules.[340]

While some commenters suggest that the CT Plan is the appropriate mechanism for implementing the changes required by the MDI Rules, that mechanism is not available at this time because the D.C. Circuit has vacated the Commission order approving the CT Plan.[341] And additional discussion on this topic in this Order is unnecessary, as it does not bear on the basis for the Commission's decision to disapprove the Proposed Amendment. On the record before us, for the independently sufficient reasons discussed in more detail above, we have concluded that the Filing Participants have not demonstrated that approval of the proposed NMS plan amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

E. Consideration of Other Actions Under Rule 608 of Regulation NMS

In connection with recommending disapproval of the Proposed Amendment, one commenter states the Commission could consider potential action under Rule 608(a)(2) of Regulation NMS, which allows the Commission to directly propose amendments to effective national market system plans.[342] The commenter states that in connection with a Commission disapproval of the Proposed Amendment, it would ''support the Commission's efforts to ensure that the newly expanded consolidated market data (*i.e.,* new core data) under the Commission's Infrastructure Rule is disseminated in a manner consistent with the Exchange Act standards to ensure the investing public and all market participants have fair and reasonable access to it.'' [343]

One Filing Commenter states that it would be inconsistent with the Exchange Act and Rule 608 of Regulation NMS for the Commission to change *sua sponte* any or all of the proposed fees, as any such change would be material to the Proposed Amendment.[344] This commenter states that, if the Commission intends to revise the Proposed Amendment in any material way, it must do so through rulemaking under Rule 608(b)(2) of Regulation NMS, by providing public notice of the specific changes it proposes and giving the Plan's participants and the general public an opportunity to comment.[345]

One commenter states that the Commission should provide guidance in terms of the requirements of the MDI Rules as well as the application of the terms ''fair and reasonable'' and ''not unfairly discriminatory'' in the context of supplying competing consolidators with the underlying content of consolidated market data, adding that, without such guidance, any refiling of the amendments will result in proposals that do not meet standards under the Exchange Act.[346]

To the extent that these comments bear on potential future Commission action, rather than on the basis for the Commission's decision to disapprove the Proposed Amendment, further discussion on these topics is unnecessary in this Order.

V. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 11A of the Act, and Rule 608(b)(2) thereunder, that the Proposed Amendment is consistent with the requirements of the Act and the rules and regulations thereunder applicable to an NMS plan amendment.

It is therefore ordered, pursuant to Section 11A of the Act, and Rule 608(b)(2) thereunder, that the Proposed Amendment (File No. S7–24–89) be, and hereby is, disapproved.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20833 Filed 9–26–22; 8:45 am]

BILLING CODE 8011–01–P

[335] *Id.*

[336] *See* MEMX Letter, *supra* note 57, at 23–24.

[337] *See id.*

[338] MIAX Letter, *supra* note 57, at 5.

[339] IEX Letter, *supra* note 57, at 5.

[340] *See* Polygon.io Letter I, *supra* note 126, at 3.

[341] *See The Nasdaq Stock Market LLC, et al.* v. *Securities and Exchange Commission, supra* note 18.

[342] *See* SIFMA Letter I, *supra* note 57, at 2.

[343] *Id.*

[344] *See* NYSE Letter, *supra* note 71, at 8.

[345] *See id.*

[346] *See* MayStreet Letter II, *supra* note 58, at 1–2, 4, 20.

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before October 27, 2022.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov;* (202) 205–7030, or

from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: Under its Surety Bond Guarantee Program (SBG Program), the U.S. Small Business Administration is authorized to guarantee a bid bond, payment bond, performance bond, as well as any required related ancillary bonds, on a contract issued to a small business contractor up to $6.5 million or up to $10 million if a Federal contracting officer certifies that SBA's guarantee is necessary. *See* Title IV of the Small Business Investment Act (SBIA), Part B, 15 U.S.C. 694a *et seq.* The SBG Program was created to encourage surety companies to issue bonds for small business contractors. The SBIA authorizes SBA to establish the terms and conditions for providing surety bond guarantee assistance and for paying claims resulting from any contractor defaults. This information collection consists of forms relating to the application process for an SBA-guaranteed bond and claims for the reimbursement of losses, including SBA Forms 990, 991, 994, 994B, 994F, and 994H. Except in the case of SBA Form 994H, SBA uses the information to evaluate whether the small business applicant meets the eligibility requirements for a surety bond, as well as the likelihood that the small business will successfully complete the bonded contract. The information collected for this purpose includes: demographics on all owners of the bond applicant, which has no bearing on the credit decision; the status of any current or past SBA financial assistance provided to the applicant; NAICS code for applicant's industry; financial statements; contract amount and nature of contract performance; and in the event performance has begun, evidence that applicant has paid all suppliers and subcontractors. With respect to SBA Form 994H, SBA uses the information collected to evaluate the surety's claim for reimbursement of losses. Surety is required to provide information regarding the date the small business defaulted on the contract; the reason for the default, the amount of any recoveries, and any additional information that would support the surety's claim for reimbursement.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control Number: 3245–0007.

Title: Surety Bond Guarantee Assistance.

Description of Respondents: Surety Companies.

Form Number: SBA Form 990, 991, 994B, 994H.

Total Estimated Annual Responses: 30,866.

Total Estimated Annual Hour Burden: 8,647.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2022–20899 Filed 9–26–22; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2022–0048]

Charging Standard Administrative Fees for Non-Program Information

AGENCY: Social Security Administration.

ACTION: Notice of updated schedule of standard administrative fees.

SUMMARY: On August 22, 2012, we announced in the **Federal Register** a schedule of standard administrative fees we charge to the public. When authorized, we charge these fees to recover our full costs when we provide information and related services for non-program purposes. We are announcing an update to the previously published schedule of standard administrative fees. The updated standard fee schedule is part of our continued effort to standardize fees for non-program information requests. Standard fees provide consistency and ensure we recover the full cost of supplying information when we receive a request for a purpose not directly related to the administration of a program under the Social Security Act (Act).

DATES: The changes described above are applicable for requests we receive on or after October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Karen Hunter, Social Security Administration, Office of Finance, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–5861. For information on eligibility or filing for benefits, visit our website, *socialsecurity.gov*, or call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: Section 1106 of the Act and the Privacy Act [1] authorize the Commissioner of Social Security to promulgate regulations regarding the fees related to providing information. Our regulations and operating instructions identify when we will charge fees for information.[2] Under section 1106(c) of the Act, whenever we determine a request for information is for any purpose not directly related to the administration of the Social Security programs, we may require the requester to pay the full cost of providing the information.[3] The agency may also charge fees in response to records requests when otherwise authorized by law, such as when authorized for certain program requests under section 1106(b) of the Act. To inform the public of the standard fees we charge to recover our costs, we announced in the **Federal Register** a schedule of standard administrative fees we charge to the public on August 22, 2012.[4] We last updated the schedule of standard fees on September 29, 2020.[5]

New Information: We are required to review and update standard administrative fees at least every two years.[6] Based on the most recent cost analysis, the following table provides the new schedule of standard administrative fees [7] per request:

Copying an Electronic Folder: $49.

Copying a Paper Folder: $97.

Regional Office Certification: [8] $68.

Record Extract: [9] $40.

Third Party Manual SSN Verification: $42.

Office of Central Operations Certification: [10] $44.

W–2/W–3 Requests: [11] $126.

Form SSA–7050, Request for Social Security Earning Information: $100.

Requests for Copy of Original Form SS–5, Application for a Social Security Card: $30.

[1] 42 U.S.C. 1306 and 5 U.S.C. 552a(f)(5), respectively.

[2] See 20 CFR 401.95, 402.170, and 402.175; Program Operations Manual System (POMS) GN 03311.005.

[3] See 42 U.S.C. 1306(c) and 20 CFR 402.175.

[4] 77 FR 50757.

[5] 85 FR 61078.

[6] See the Office of Management and Budget Circular No. A–25, *User Charges.*

[7] Fees may differ for processing of records depending on applicable fee authorities and actions needed to respond to a records request, such as whether redactions are necessary and whether special services have been requested.

[8] Requests received in a field office, regional office, or headquarters component.

[9] Requests received and processed in a field office.

[10] Requests received in the Office of Central Operations.

[11] W–2/W–3 Fee is $126 per request, not dependent on the number of years or number of individuals within request.

Requests for Copy of Numident Record (Computer Extract of the SS–5): $28.

A requester can obtain certified and non-certified detailed yearly Social Security earnings information by completing Form SSA–7050, *Request for Social Security Earning Information.* We charge $100 for each Form SSA–7050 for detailed yearly Social Security earnings information. We will certify the detailed earnings information for an additional $44. Detailed earnings information includes the names and addresses of employers. Yearly earnings totals are available in two ways, depending on the requester's need for certification. A requester can continue to obtain non-certified yearly earnings totals (Form SSA–7004, *Request for Social Security Statement*) through our free online service, *my* Social Security, a personal online account for Social Security information and services. Online Social Security Statements display uncertified yearly earnings, free of charge, and do not show any employer information. A requester can obtain certified yearly Social Security earnings totals by completing the Form SSA–7050. The cost for certified yearly earnings totals is $144 ($100 plus an additional $44 for certification).

We will continue to evaluate all standard fees at least every two years to ensure we capture the full costs associated with providing information for non-program-related purposes. We require nonrefundable advance payment by check, money order, or credit card. We do not accept cash. We will accept only one form of payment in the full amount of the standard fee for each request, and will not divide the fee amount between more than one form of payment. If we revise any of the standard fees, we will publish another notice in the **Federal Register**. For other requests for information not addressed here or within the current schedule of standard administrative fees, we will continue to charge fees calculated on a case-by-case basis.

Additional Information

Additional information is available on our Business Services website at *https://www.ssa.gov/thirdparty/business.html* or by written request to: Social Security Administration, Office of Public Inquiries and Communications Support, 1100 West High Rise, 6401 Security Boulevard, Baltimore, MD 21235.

The Acting Commissioner of the Social Security Administration, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to William P. Gibson, who is a Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

William P. Gibson,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

[FR Doc. 2022–20863 Filed 9–26–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 11870]

30-Day Notice of Proposed Information Collection: Employee Self-Certification and Ability To Perform in Emergencies (ESCAPE) Posts, Pre-Deployment Physical Exam Acknowledgement Form

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 October 27, 2022.

ADDRESSES: Include any address that the public needs to know, such as: attending a public hearing or meeting, examining any material available for public inspection. For public comments, use the following text:

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: 1405–0224'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

• *Email: Yellandmj@state.gov.*

• *Regular Mail:* Send written comments to: Medical Director, Office of Medical Clearances, Bureau of Medical Services, 2401 E Street NW, SA–1, Room H–242, Washington, DC 20522–0101.

• *Fax:* 202–647–0292 Attention: Medical Clearance Director.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

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 Office of Medical Clearances, Bureau of Medical Services, 2401 E Street NW, SA–1, Room H–242, Washington, DC 20522–0101, and who may be reached at 202–663–1657 or at *Yellandmj@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Employee Self-Certification and Ability to Perform in Emergencies (ESCAPE) Posts, Pre-Deployment Physical Exam Acknowledgement Form.

• *OMB Control Number:* 1405–0224.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* Bureau of Medical Services; MED/CP/CL.

• *Form Number:* DS–6570.

• *Respondents:* Contractors deploying to ESCAPE Diplomatic Missions requesting access to the Department of State Medical Program (currently Afghanistan, Iraq, Libya Somalia, Syria, Yemen and Peshawar in Pakistan.

• *Estimated Number of Respondents:* 1900.

• *Estimated Number of Responses:* 1900.

• *Average Time per Response:* 40 minutes.

• *Total Estimated Burden Time:* 1266.

• *Frequency:* Annually for those deployed to an ESCAPE post.

• *Obligation to Respond:* Required to Obtain or Retain a 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–6570 is completed by an individual and their medical provider to declare that the individual has health concerns that may represent a safety hazard for the individual or others at an ESCAPE Diplomatic Mission. ESCAPE is an acronym used to describe Diplomatic Missions overseas that are in extremely high threat, potentially combat, areas. Current ESCAPE Missions are Iraq, Afghanistan, Somalia, Libya, Yemen, Syria and Peshawar, Pakistan. This program is authorized under the Foreign Service Act of 1980, as implemented by the Department in 13 FAM 301.4–5.

Methodology

The respondent will obtain the DS–6570 from his or her human resources representative or will download the form from a Department website. The respondent will complete and submit the form offline.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2022–20877 Filed 9–26–22; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent To Prepare Environmental Impact Statement (EIS): Hawaii County, Hawaii

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this notice to advise the public that it is rescinding its Notice of Intent (NOI) and will not be preparing an Environmental Impact Statement (EIS) for a proposed highway project in Hawaii County, Hawaii. A NOI to prepare an EIS was published in the **Federal Register** on March 18, 2014.

FOR FURTHER INFORMATION CONTACT: Richelle Takara, Division Administrator, Federal Highway Administration, 300 Ala Moana Boulevard, Box 50206, Honolulu, Hawaii 96850, Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Hawaii Department of Transportation (HDOT), initiated an EIS with an NOI published in the **Federal Register** on March 18, 2014, at 79 FR 15204. This notice revised an earlier notice for the same project published in the **Federal Register** on July 13, 1999, at 64 FR 37827.

The project intended to address the linkage between the Queen Kaahumanu Highway (State Highway 19) and the Mamalahoa Highway (State Highway 190) in the vicinity of the Daniel K. Inouye Highway (formerly Saddle Road [State Highway 200]). The purpose of the project was to further develop this inter-regional capacity and connectivity between the east and west regions on the island of Hawaii. The HDOT has determined continued preparation of the EIS for the Saddle Road Improvements (Project) is no longer feasible. The primary reason for this determination is the financial impact of the estimated right-of-way and construction costs of the Project. Therefore, the preparation of the EIS is being terminated.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139, 23 CFR 771, and 40 CFR 1500–1508.

Richelle Takara,

Division Administrator, Honolulu, HI.

[FR Doc. 2022–20854 Filed 9–26–22; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022–0023]

Agency Information Collection Activity Under OMB Review: All Stations Accessibility Program (ASAP)

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information collection. FTA began the All Stations Accessibility Program (ASAP) in June 2022 under OMB emergency approval and is seeking renewal of this approval through OMB's standard PRA clearance process: All Stations Accessibility Program (ASAP).

DATES: Comments must be submitted before November 28, 2022.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

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

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Osborn at *Kevin.Osborn@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) the necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to

enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: All Stations Accessibility Program (ASAP).

OMB Number: 2132–0582.

Background: The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58), established 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 will use 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, Office of Administration.

[FR Doc. 2022–20834 Filed 9–26–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022–0022]

Agency Information Collection Activity Under OMB Review: Passenger Ferry Grant Program, Electric or Low Emitting Ferry Pilot Program, and Ferry Service for Rural Communities Program

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information collection. FTA began the Passenger Ferry Grant Program, Electric or Low Emitting Ferry Pilot Program, and Ferry Service for Rural Communities Program in June 2022 under OMB emergency approval and is seeking renewal of this approval through OMB's standard PRA clearance process: Passenger Ferry Grant Program, Electric or Low Emitting Ferry Pilot Program, and Ferry Service for Rural Communities Program.

DATES: Comments must be submitted before November 28, 2022.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.
2. *Fax:* 202–366–7951.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments

received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: *ftaferryprograms@dot.gov,* or call Vanessa Williams at (202)-366–4818

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) the necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Passenger Ferry Grant Program, Electric or Low Emitting Ferry Pilot Program, and Ferry Service for Rural Communities Program.

OMB Number: 2132–0583.

Background: The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act, established two new grant programs Electric or Low-Emitting Ferry Pilot Program (IIJA § 71102) and Ferry Service for Rural Communities (IIJA § 71103). Funding for these two new programs was announced on July 11, 2022, in a joint Notice of Funding Opportunity (NOFO) with FTA's existing Passenger Ferry Grant Program (49 U.S.C. 5307(h)). The Passenger Ferry Grant Program provides competitive funding for projects that support passenger ferry systems in urbanized areas. The Electric or Low-Emitting Ferry Pilot Program makes Federal funds available competitively to projects that support the purchase of electric or low-emitting ferry vessels. The Ferry Service for Rural Communities Program makes Federal funds available competitively to States and territories to ensure basic essential ferry service is provided to rural areas. FTA will use an online, web-based 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 to include municipalities or community owned utilities excluding for-profit entities. Accordingly, DOT will require the applicant to identify which of these categories they meet, and how.
- Location where the applicant was legally established, created, or organized to do business. This information and supporting documentation will be required to demonstrate how the applicant meets the statutory requirement to be ''established, created, or organized in the United States or under the laws of the United States.''
- 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 the evaluation criteria and selection consideration statements as outlined in the NOFO.

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: Public transportation providers, local governmental entities, States, and federally recognized Tribes that operate a public ferry system.

Estimated Average Total Annual Respondents: 30.

Estimated Average Total Responses: 60.

Estimated Annual Burden Hours: 420.

Estimated Annual Burden per Respondent: 14 Hours.

Frequency: Annually.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2022–20835 Filed 9–26–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Information Collection and Request for Public Comment

ACTION: Notice and request for public comment.

SUMMARY: The U.S. Department of the Treasury, as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act (PRA) of 1995. Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the Bank Enterprise Award Program (BEA Program) Application (Application). The Application is an online form submitted through the CDFI Fund's Awards Management Information System (AMIS).

DATES: Written comments must be received on or before November 28, 2022 to be assured of consideration.

ADDRESSES: Submit your comments via email to Tanya McInnis, Program Manager for the Depository Institutions Initiatives, CDFI Fund at *bea@cdfi.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Tanya McInnis, BEA Program, Program Manager, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 653–0421 (not a toll-free number). Other information regarding the CDFI Fund and its programs may be obtained on the CDFI Fund website at *https://www.cdfifund.gov.* The BEA Program Application Template, which presents the questions that will comprise the online Application, may be obtained from the BEA Program page of the CDFI Fund website at *https://www.cdfifund.gov/bea.*

SUPPLEMENTARY INFORMATION:

Title: BEA Program Application.

OMB Number: 1559–0005.

Abstract: The purpose of the Bank Enterprise Award Program (BEA Program) is to provide an incentive to

Federal Deposit Insurance Corporation-insured (FDIC-insured) depository institutions to increase their lending, investment, and financial services to residents and businesses located in economically distressed communities, and provide assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. The CDFI Fund will make awards through the BEA Program to FDIC-insured depository institutions, based upon such institutions' demonstrated increase of qualified activities, as reported in the Application. The Application will solicit information concerning: applicants' eligibility to participate in the BEA Program; the increase in total dollar value of applicants' qualified activities; impact of qualified activities; and appropriate supporting documentation. The questions that the Application contains, and the information generated thereby, will enable the CDFI Fund to evaluate applicants' activities and determine the extent of applicants' eligibility for BEA Program Awards.

Current Actions: Extension without change of currently approved collection.

Type of Review: Regular.

Affected Public: Businesses or other for-profit institutions, non-profit entities, and State, local and Tribal entities participating in CDFI Fund programs.

Estimated Number of Respondents: 180.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 180.

Estimated Annual Time per Respondent including optional questions: 60 hours.

Estimated Total Annual Burden Hours: 10,800.

Request for Comments: Comments submitted in response to this Notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund website at *https://www.cdfifund.gov.*

The CDFI Fund is seeking: (a) specific input on the BEA Program Application; and (b) general input on other BEA Program-related topics and considerations. Commentators should ensure that their comments are clearly labeled in order to distinguish those related to: (a) the BEA Program Application or, (b) other BEA Program related topics and considerations. The Application may be obtained on BEA Program page of the CDFI Fund's website at *https://www.cdfifund.gov/programs-training/Programs/bank_enterprise_award/Pages/apply-step.aspx#step1.*

Commentators are encouraged to consider, at a minimum, the following topics:

A. BEA Program Application

Comments concerning the Application are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

In addition, the CDFI Fund requests comments in response to the following general questions about the BEA Program Application:

1. Is the data and information that is proposed to be collected by the BEA Program Application necessary and appropriate for the CDFI Fund to consider for the purpose of making award decisions?

2. In general, does the data and information requested in the BEA Program Application allow an applicant to demonstrate its lending, investment and service activities in BEA Program Distressed Communities or to CDFIs?

3. Are certain data fields, questions or tables redundant or unnecessary?

4. Should any data fields, questions or tables be added to ensure collection of relevant information?

5. Are there any data fields, questions or tables that are particularly difficult or burdensome to answer? If so, please be specific as to which questions or tables and describe why they are difficult or burdensome.

6. The CDFI Fund considers the safety and soundness of BEA Program Applicants in making award decisions. Currently, through Memorandums of Understanding with federal regulators, the CDFI Fund obtains safety and soundness information directly from the Federal Reserve Board, Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency. The CDFI Fund is considering requiring Applicants to report on their safety and soundness by requesting that they provide information on their most recent independent audit, their most recent Community Reinvestment Act (CRA) Rating, and information on any enforcement actions. The collection of this information from Applicants would be used to consider an Applicant's eligibility before the CDFI Fund receives information from federal regulators.

a. How much of a burden will the collection of this information be for Applicants?

b. Are there any reasons that the CDFI Fund should not request this information from Applicants? If yes, please describe.

c. Is there anything else the CDFI Fund should consider? If yes, please describe.

7. The CDFI Fund is considering adding the following text entry fields in order to improve the quality of impact data collected in the BEA Program Application. This information will allow the CDFI Fund to standardize and effectively report quantitative and qualitative social impacts of program related investments.

Business Description: Applicants will be required to provide a brief description of the entity or business that received the loan or investments. For example, for Commercial Loans and Investments, if an Applicant provided a commercial real estate loan to a widget manufacturing business so that it could purchase a warehouse in a distressed community, the Applicant would describe the business, using this text entry field as 'Commercial Real Estate Loan to Widget Manufacturing Business for Warehouse Purchase.' If implemented, there will be character limits and the CDFI Fund will provide additional examples.

Activity type	Abbreviation	Current impact reporting guidance	Proposed enhancement
Affordable Housing Development Loans and Project Investments.	AHD	Total number of affordable units developed or rehabilitated as part of the transaction.	Picklist: Single Family; Multi-Family.

Activity type	Abbreviation	Current impact reporting guidance	Proposed enhancement
Commercial Real Estate Loans and Project Investments.	CRE	Total number of commercial real estate properties acquired, developed or rehabilitated.	Picklist—Acquisition; Development; Rehabilitation.
Small Business Loans and Project Investments.	SBL	Total number of full-time equivalent jobs created or maintained by borrower.	Picklist—Working Capital; Business Expansion; Business Startup; Fixed Capital; Equipment; Other.
Financial Services	FS	Number of accounts opened, checks cashed, etc.	Picklist—Accounts Opened; Checks Cashed; New Branch, New ATM, Other.
Targeted Financial Services	TFS	Number of accounts opened, checks cashed, etc.	Picklist—Accounts Opened; Checks Cashed; Other.
Targeted Savings Products	TSP	Number of products developed, sold or opened.	Text box—Describe the Product Type.
Community Services	CS	Number of individuals who received the identified service.	Text box—Describe the Type of Community Services Provided.

Impact: A further description of the impact of the loan, investment or service activity would be required. This will help to contextualize the numerical impact data currently collected. Currently, Applicants are only required to provide numerical impact information for certain activity types. This new text entry field would add a picklist or text entry box which would depend on the activity type. Refer to the table below for examples of impact as it relates to specific BEA Qualified Activities.

Impact Reporting Enhancements:

a. Will reporting this information significantly increase the number of hours spent completing the BEA Program Application?

b. Are there any reasons that the CDFI Fund should not collect this information? If yes, what are they?

c. Is there any additional information or data that demonstrates the impact of program related investments that the CDFI Fund should consider? If yes, list and describe them.

8. The CDFI Fund is considering adding the following fields to collect basic information on the affordability of financial products reported to the CDFI Fund in the BEA Program Application for award consideration. This data will be used to perform future analyses to better understand the affordability of program related lending and may inform future policy considerations. For BEA Qualified Activities that are loans, Applicants will be asked to provide:

Interest Rate, Interest Type, and Term: Applicants will input the interest rate, select the interest type as either 'Fixed' or 'Variable,' and provide the Term as the number of months. These fields will provide important insight into the pricing and terms offered to borrowers that receive loans from BEA Program Applicants.

Origination Fees and Points: Applicants will input this numerically as basis points. This field will help the CDFI Fund to better understand the overall cost of loans made by BEA Program Applicants.

a. How much of a burden will the collection of this information be for Applicants?

b. Are there any reasons that the CDFI Fund should not collect this information? If yes, what are they?

For all BEA Qualified Activities:

c. Is there any additional information or data that demonstrates the affordability of program related loans or investments that the CDFI Fund should consider? If yes, list and describe them.

B. Other BEA Program-Related Topics and Considerations

Commentators should clearly distinguish their comments related to this section when providing their responses.

1. BEA Program Categories, Subcategories and Qualified Activities Definitions

The BEA Program defines the Qualified Activities, Categories and Subcategories in the BEA Program Interim Rule dated August 10, 2016 (12 CFR 1806). These definitions are also provided below:

Category, subcategory, activity type, and other related terms	Interim rule definition
CDFI Related Activities	Means Equity Investments, Equity-Like Loans, and CDFI Support Activities.
Equity Investment	Means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in the applicable NOFA, in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the CDFI Fund.
Equity-Like Loan	Means a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment that meets such criteria as set forth in the applicable NOFA.
CDFI Support Activity	Means assistance provided by an Applicant or its Subsidiary to a CDFI that meets criteria set forth by the CDFI Fund in the applicable NOFA and that is Integrally Involved in a Distressed Community, in the form of the origination of a loan, Technical Assistance, or deposits, as further specified in the applicable NOFA.
Distressed Community Financing Activities.	Means: (1) Consumer Loans; or (2) Commercial Loans and Investments.
Consumer Loans	Means the following lending activity types: Affordable Housing Loans; Education Loans; Home Improvement Loans; and Small Dollar Consumer Loans.

Category, subcategory, activity type, and other related terms	Interim rule definition
Affordable Housing Loan	Means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is an Eligible Resident who meets Low- and Moderate-Income requirements. Affordable Housing Loan may also refer to second (or otherwise subordinated) liens or "soft second" mortgages and other similar types of down payment assistance loans, but may not necessarily be secured by such property originated for the purpose of facilitating the purchase or improvement of the borrower's primary residence, where such borrower is an Eligible Resident who meets Low- and Moderate-Income requirements.
Education Loan	Means an advance of funds to a student who is an Eligible Resident who meets Low- and Moderate-Income requirements for the purpose of financing a college or vocational education.
Home Improvement Loan	Means an advance of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence, where such borrower is an Eligible Resident who meets Low- and Moderate-Income requirements.
Small Dollar Consumer Loan	Means affordable consumer lending products that serve as available alternatives in the marketplace for individuals who are Eligible Residents who meet Low- and Moderate-Income requirements and meet criteria further specified in the applicable NOFA.
Commercial Loans and Investments	Means the following lending types: Affordable Housing Development Loans and related Project Investments; Small Business Loans and related Project Investments, and Commercial Real Estate Loans and related Project Investments.
Affordable Housing Development Loan	Means origination of a loan to finance the acquisition, construction, and/or development of single- or multifamily residential real property, where at least 60% of the units in such property are affordable, as may be defined in the applicable NOFA, to Eligible Residents who meet Low- and Moderate-Income requirements.
Small Business Loan	Means an origination of a loan used for commercial or industrial activities (other than an Affordable Housing Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) and is located in a Distressed Community.
Commercial Real Estate Loan	Means an origination of a loan (other than an Affordable Housing Development Loan or Affordable Housing Loan) that is secured by real estate and used to finance the acquisition or rehabilitation of a building in a Distressed Community, or the acquisition, construction and or development of property in a Distressed Community, used for commercial purposes.
Service Activities	Means the following activities: Deposit Liabilities; Financial Services; Community Services; Targeted Financial Services; and Targeted Retail Savings/Investment Products.
Deposit Liabilities	Means time or savings deposits or demand deposits. Any such deposit must be accepted from Eligible Residents at the offices of the Applicant or of the Subsidiary of the Applicant and located in the Distressed Community. Deposit Liabilities may only include deposits held by individuals in transaction accounts (*e.g.,* demand deposits, negotiable order of withdrawal accounts, automated transfer service accounts, and telephone or preauthorized transfer accounts) or non-transaction accounts (*e.g.,* money market deposit accounts, other savings deposits, and all time deposits), as defined by the Appropriate Federal Banking Agency.
Financial Services	Means check cashing, providing money orders and certified checks, automated teller machines (ATM), safe deposit boxes, new branches, and other comparable services as may be specified by the CDFI Fund in the applicable NOFA, that are provided by the Applicant to Eligible Residents or enterprises that are Integrally Involved in the Distressed Community.
Community Services	Means the following forms of assistance provided by officers, employees or agents (contractual or otherwise) of the Applicant: (1) Provision of Technical Assistance and financial education to Eligible Residents regarding managing their personal finances; (2) Provision of Technical Assistance and consulting services to newly formed small businesses and nonprofit organizations located in the Distressed Community; (3) Provision of Technical Assistance and financial education to, or servicing the loans of, homeowners who are Eligible Residents and meet Low- and Moderate-Income requirements; and (4) Other services provided to Eligible Residents who meet Low- and Moderate-Income requirements or enterprises that are Integrally Involved in a Distressed Community, as deemed appropriate by the CDFI Fund, and other comparable services as may be specified by the CDFI Fund in the applicable NOFA.
Other Related Terms:	
Targeted Financial Services	Means ETAs, IDAs, and such other banking products targeted to Eligible Residents, as may be specified by the CDFI Fund in the applicable NOFA.
Targeted Retail Savings/Investment Products.	Means certificates of deposit, mutual funds, life insurance, and other similar savings or investment vehicles targeted to Eligible Residents, as may be specified by the CDFI Fund in the applicable NOFA.

Category, subcategory, activity type, and other related terms	Interim rule definition
Electronic Transfer Account (ETA) [1]	Means an account that meets the following requirements, and with respect to which the Applicant has satisfied the requirements: (1) Be an individually owned account at a Federally insured financial institution; (2) Be available to any individual who receives a Federal benefit, wage, salary, or retirement payment; (3) Accept electronic Federal benefit, wage, salary, and retirement payments and such other deposits as a financial institution agrees to permit; (4) Be subject to a maximum price of $3.00 per month; (5) Have a minimum of four cash withdrawals and four balance inquiries per month, to be included in the monthly fee, through: (i) The financial institution's proprietary (on-us) automated teller machines (ATMs); (ii) Over-the-counter transactions at the main office or a branch of the financial institution; or (iii) Any combination of on-us ATM access and over-the-counter access at the option of the financial institution; (6) Provide the same consumer protections that are available to other account holders at the financial institution, including, for accounts that provide electronic access, Regulation E (12 CFR part 205) protections regarding disclosure, limitations on liability, procedures for reporting lost or stolen cards, and procedures for error resolution; (7) For financial institutions that are members of an on-line point-of-sale (POS) network, allow on-line POS purchases, cash withdrawals, and cash back with purchases at no additional charge by the financial institution offering the ETA; (8) Require no minimum balance, except as required by Federal or State law; (9) At the option of the financial institution, be either an interest-bearing or a non-interest-bearing account; and (10) Provide a monthly statement.
Individual Development Account (or IDA) [2].	Means a special savings account that matches the deposits of Eligible Residents who meet Low- and Moderate-Income requirements individuals and that enables such individuals to save money for a particular financial goal including, but not limited to, and as determined by the CDFI Fund: buying a home, paying for post-secondary education, or starting or expanding a small business.
Technical Assistance [3]	Means the provision of consulting services, resources, training, and other nonmonetary support relating to an organization, individual, or operation of a trade or business, as may be specified by the CDFI Fund in the applicable NOFA.

[1] Included in the definition of *Targeted Financial Securities.*
[2] Ibid.
[3] Included in the definitions of: *CDFI Support Activity* and *Community Services.*

a. New Qualified Activities

(1) Are there any loan, investment or service activities not currently considered BEA Program Qualified Activities that the CDFI Fund should consider adding? If so, indicate what the activity is, describe it, and explain why the CDFI Fund should consider it. Also, describe the benefits of the activity to CDFIs, residents or businesses in Distressed Communities.

(2) The CDFI Fund does not currently have a specific Qualified Activity type for working capital or equipment loans. These types of loans are typically reported as Small Business Loans if the borrower meets the size eligibility standards. Should the CDFI Fund consider introducing a new Qualified Activity type specifically for working capital or equipment loans for businesses located in Distressed Communities that do not meet the criteria for a Small Business Loans? Please explain why or why not.

(3) The CDFI Fund does not currently have specific guidance for reverse mortgages. A reverse mortgage is a mortgage loan available to homeowners 62 years of age and older, usually secured over a residential property that enables the borrower to access the unencumbered value of the property. Should the CDFI Fund consider introducing reverse mortgages as a new Qualified Activity type or consider revising the definition of Affordable Housing Loan to include reverse mortgages? Please explain why or why not.

b. Existing Qualified Activities

(1) Are there any loans, investments, or service activities that are currently considered BEA Program Qualified Activities for which the CDFI Fund should consider updates to the definition? If so, indicate the Qualified Activity and explain why the CDFI Fund should consider revising the definition.

(2) Are there any loans, investments, or service activities that are currently considered BEA Program Qualified Activities that the CDFI Fund should consider eliminating? If so, indicate the Qualified Activity and explain why the CDFI Fund should consider eliminating it.

(3) For Small Business Loans, which are Qualified Activities in the Commercial Loans and Investments subcategory of the Distressed Community Financing Activities category, the CDFI Fund instructs Applicants to use the size eligibility standards adopted by the U.S. Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.01) for determining whether a loan to a borrower is eligible to be reported as this Qualified Activity. Is there any other criteria the CDFI Fund should consider for determining whether a loan to a borrower is eligible to be reported as a Small Business Loan? If yes, please describe the criteria and explain why the CDFI Fund should consider it.

(4) The CDFI Fund currently values the administrative cost of providing certain Financial Services using the following per unit values:

$100.00 per account for Targeted Financial Services, including safe transaction accounts, youth transaction accounts, Electronic Transfer Accounts and Individual Development Accounts; $50.00 per account for checking and savings accounts that do not meet the definition of Targeted Financial Services; $5.00 per check cashing transaction; $50,000 per new ATM installed at a location in a Distressed Community; and $500,000 per new retail bank branch office opened in a Distressed Community, including school-based bank branches approved by the Applicant's Federal bank regulator.

Should the CDFI Fund consider updates to the valuation of these administrative costs? If so, indicate the Financial Service, suggested value, and explain why the CDFI Fund should consider revising the value.

2. Award Selection Process

Section 1806.404 (b), (c), and (d) of the Interim Rule describes the award selection process if insufficient funds are available to cover estimated awards for which Applicants are eligible, priority of awards, and calculating

actual award amounts. Applicants are ranked based on whether the Applicant is a CDFI or a non-CDFI, and prioritized in each category of BEA Qualified Activities. Currently, one overall maximum award amount has been determined for an Applicant's single BEA Program award, despite the number of categories the Applicant is eligible to receive an award for. Award selections within each BEA category are based on an Applicant's relative ranking within each such category, subject to the availability of funds and any established maximum dollar amount of total awards that may be awarded for the Distressed Community Financing Activities category of Qualified Activities, as determined by the CDFI Fund.

a. Award Amount

(1) Should the CDFI Fund consider awarding eligible applicants who successfully demonstrate increases in more than one BEA category a higher single BEA Program award amount than Applicants who demonstrate an increase in only one BEA category, if both are eligible for the maximum award amount? If yes, explain what should be considered in determining the proportion of the increased award amount. If no, explain why not.

(2) Should the CDFI Fund establish a minimum dollar amount and/or a maximum dollar amount that may be awarded for the CDFI Related Activities category? Explain why or why not.

(3) Should the CDFI Fund establish a maximum dollar amount that may be awarded for Distressed Community Financing Activities category? Explain why or why not.

(4) Should the CDFI Fund establish a maximum dollar amount that may be awarded for the Service Activities category? Explain why or why not.

(5) Should the CDFI Fund determine actual award amounts by a method other than the existing formulaic award calculation? If yes, please describe the method and note what benefits are offered to Applicants, residents and businesses in Distressed Communities, and/or U.S. taxpayers by implementing this method. Also, indicate if/how the method addresses the following factors noted in Section 1834a(h)(1)(C) of the BEA Statute: degree of difficulty in carrying out activities, community impact, degree of innovative methods for meeting community needs, leverage of qualified activity amounts, total asset size of the Applicant, new entrance to providing services in a Distressed Community, need for subsidy, and extent of distress in a community.

b. Award Calculation

The estimated BEA Program award calculation is the year-over-year increase in Qualified Activities from the Baseline to the Assessment Period prioritized based on CDFI certification status and CRA asset size, and multiplied by an award percentage based on the Category, Sub-category and Qualified Activity type.

(1) Is there any additional criteria that the CDFI Fund should consider in the estimated BEA Program award calculation?

3. Cap on Qualified Activity Amount

Current policy states that the value of a Qualified Activity for purposes of determining a BEA Program Award shall not exceed $10 million in the case of Commercial Real Estate Loans or any CDFI Related Activities (*i.e.,* the total principal amount of the transaction must be $10 million or less to be considered a Qualified Activity). However, the CDFI Fund may consider transactions with a total principal value of over $10 million on a case by case basis. In such cases, Applicants must attach a Community Benefit Statement, which is a narrative statement that describes the community benefit of transactions over $10 million for the CDFI Fund's consideration.

a. What information should the Applicant provide to aid the CDFI Fund in assessing the community benefit of transactions over $10 million?

4. Integral Involvement

The Interim Rule defines CDFI Support Activity as assistance provided by an Applicant or its Subsidiary to a Certified CDFI that meets the Integral Involvement criteria set forth by the CDFI Fund in the applicable NOFA. Commenters should note that Integral Involvement is a statutory program requirement.

The most recent BEA Program NOFA defines Integrally Involved as:

Scenario I: Having provided at least 10% of the number of its financial transactions or dollars transacted (*e.g.,* loans or equity investments) in one or more Distressed Communities in each of the three calendar years preceding the date of the applicable NOFA; or 10% of the number of its Development Service Activities (as defined in 12 CFR 1805.104) or value of the administrative cost of providing such services in one or more Distressed Communities in each of the three calendar years preceding the date of the applicable NOFA;

Scenario II: Transacted at least 25% of the number of its financial transactions or dollars transacted (*e.g.,* loans or equity investments) in one or more Distressed Communities in at least one of the three calendar years preceding the date of the applicable NOFA or transacted at least 25% of the number of its Development Service Activities or value of the administrative cost of providing such services in one or more Distressed Communities in at least one of the three calendar years preceding the date of the applicable NOFA;

Scenario III: Demonstrating that it has attained at least 10% of market share for a particular product in one or more Distressed Communities in at least one of the three calendar years preceding the date of the applicable NOFA;

Scenario IV: At least 25% of the CDFI Partner's physical locations (*e.g.,* offices or branches) are located in one or more Distressed Communities where it provided financial transactions or Development Service Activities during the one calendar year preceding the date of the NOFA.

a. Should the current definition of Integrally Involved be revised or replaced? If yes, how should the CDFI Fund revise the Integrally Involved definition or what should the CDFI Fund replace the term with?

b. Are there any other factors the CDFI Fund should consider when determining an updated definition of Integrally Involved? If yes, what are they?

Authority: 12 U.S.C. 1834a, 4703, 4713, 4717; 12 CFR part 1806.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2022–20732 Filed 9–26–22; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Reverse Like-Kind Exchanges

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning reverse like-kind exchanges.

DATES: Written comments should be received on or before November 28, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB control number 1545–1701 or Reverse Like-Kind Exchanges, in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reverse Like-Kind Exchanges.

OMB Number: 1545–1701.

Revenue Procedure Number: 2000–37.

Abstract: Revenue Procedure 2000–37 provides a safe harbor for reverse like-kind exchanges in which a transaction using a ''qualified exchange accommodation arrangement'' will qualify for non-recognition treatment under section 1031 of the Internal Revenue Code. Revenue Procedure 2004–51 modifies sections 1 and 4 of Rev. Proc. 2000–37, 2000–2 C.B. 308, to provide that Rev. Proc. 2000–37 does not apply if the taxpayer owns the property intended to qualify as replacement property before initiating a qualified exchange accommodation arrangement (QEAA).

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 1,600.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 3,200 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2022.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2022–20861 Filed 9–26–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Financial Crimes Enforcement Network (FinCEN)

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Comments should be received on or before October 27, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Financial Crimes Enforcement Network (FinCEN)

Title: Information Sharing Between Government Agencies and Financial Institutions.

OMB Control Number: 1506–0049.

Abstract: FinCEN is issuing this notice to renew the OMB control number for regulations requiring information sharing between government agencies and financial institutions.

Affected Public: Businesses or other for-profit and non-profit institutions.

Type of Review: Extension of a currently approved collection.

Frequency: As required.

Estimated Number of Respondents: 14,960.

Estimated Annual Responses per Respondent: 365 searches/responses.

Estimated Reporting and Recordkeeping Burden: In general, FinCEN receives requests from law enforcement, reviews those requests, posts those requests on a secure internet website, and sends notifications to designated contacts within financial institutions across the United States once every two weeks. Financial institutions must query their records for data matches, including accounts maintained by the named subject during the preceding 12 months and transactions conducted within the last six months. Financial institutions have two weeks from the posting date of the request to respond with any positive matches. FinCEN estimates that it will take approximately 4 minutes to research and report, as necessary, each subject of a 314(a) request. FinCEN has been estimating a burden of 4 minutes per subject in PRA renewals since the expansion of the rule in 2010.

Estimated Burden Hours per Respondent: 24 hours annually.

Estimated Total Annual Burden Hours: 363,827.

Estimated Total Annual Cost: $34,563,565.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–20820 Filed 9–26–22; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status with Section 4(d) Rule for Florida Keys Mole Skink and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2022–0104; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BG24

Endangered and Threatened Wildlife and Plants; Threatened Species Status with Section 4(d) Rule for Florida Keys Mole Skink and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Florida Keys mole skink (*Plestiodon egregius egregius*), a lizard subspecies from the Florida Keys, Florida, as a threatened species and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the Florida Keys mole skink. After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the Florida Keys mole skink as a threatened species with a rule issued under section 4(d) of the Act (''4(d) rule''). If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species. We also propose to designate critical habitat for the Florida Keys mole skink under the Act. In total, approximately 7,068 acres (2,860 hectares) within Monroe County in the Florida Keys, Florida, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for the Florida Keys mole skink.

DATES: We will accept comments received or postmarked on or before November 28, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 14, 2022.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2022–0104, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2022–0104, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0104. For the proposed critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0104 and on the Service's website at *https://www.fws.gov/office/florida-ecological-services/library.* Additional supporting information that we developed for this critical habitat designation, including the conservation strategy, will be available on the Service's website, at *https://www.regulations.gov,* or both.

FOR FURTHER INFORMATION CONTACT: Lourdes Mena, Division Manager, Classification and Recovery, Florida Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256–7517; *lourdes_mena@fws.gov;* telephone 904–731–3134. 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:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Florida Keys mole skink meets the definition of a threatened species; therefore, we are proposing to list it as such and proposing a designation of its critical habitat. Both listing a species as an endangered or threatened species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*). Additionally, we are proposing a rule under section 4(d) of the Act because prohibitions of section 9 of the Act can be applied to threatened species only by issuing a section 4(d) rule.

What this document does. We propose the listing of the Florida Keys mole skink as a threatened species with a rule under section 4(d) of the Act, and we propose the designation of critical habitat.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or human-made factors affecting its continued existence. We have determined that the Florida Keys mole skink is facing threats associated with climate change, specifically sea level rise, increased high tide flooding, and increased intensity storm events (Factor E), as well as threats due to habitat loss and degradation that result from development, and habitat disturbance (Factor A).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii)

specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Section 4(d) of the Act states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened species and that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns, and the locations of any additional populations of this species;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or human-made factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status of this species.

(5) Information on regulations that are necessary and advisable to provide for the conservation of the Florida Keys mole skink and that we can consider in developing a 4(d) rule for the species. In particular, information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether we should consider any additional exceptions from the prohibitions in the 4(d) rule.

(6) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information regarding the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of "critical habitat."

(7) Specific information on:

(a) The amount and distribution of Florida Keys mole skink habitat;

(b) The importance, or role, of inland habitats, such as rockland hammocks and pine rocklands, and low-density development or disturbed areas to Florida Keys mole skink breeding, feeding, sheltering, or dispersal;

(c) Any additional areas occurring within the range of the species, the Upper Keys, Middle Keys, Lower Keys, and Distal Sand Keys Regions of the Florida Keys in Monroe County, Florida, that should be included in the designation because they are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or are unoccupied at the time of listing and are essential for the conservation of the species; and

(d) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change.

(8) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(10) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act, in particular for those based on a conservation program or plan, and why. These may include Federal, State, county, local, or private lands with permitted conservation plans covering the species in the area such as habitat conservation plans, safe harbor agreements, or conservation easements, or non-permitted conservation plans, agreements, or partnerships that would be encouraged by designation of, or exclusion from, critical habitat. Specific information we seek includes the effectiveness of the Monroe County Habitat Conservation Plan (HCP) on Big Pine Key and No Name Key in protecting pine rocklands and rockland hammock habitat and in providing for conservation of the Florida Keys mole skink. If you think we should exclude any additional areas, please provide information regarding the existence of an economic or other relevant impact supporting a benefit of exclusion.

(12) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any

species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific information available. You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the 4(d) rule if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On April 20, 2010, the Service received a petition from the Center for Biological Diversity to list 404 aquatic, riparian, and wetland species from the southeastern United States, including the Florida Keys mole skink, as endangered or threatened species under the Act. The subsequent 90-day finding (76 FR 59836, September 27, 2011) provided that the petition was substantial for 374 of the petitioned species including the Florida Keys mole skink. On October 5, 2017, the Service published a 12-month finding that the Florida Keys mole skink did not warrant listing under the Act (82 FR 46618).

On September 23, 2019, the Center for Biological Diversity filed suit against the Service, alleging the Service did not use the best available scientific data regarding sea level rise and its impacts to the Florida Keys mole skink habitat in its 12-month finding and challenged the adequacy of our significant portion of the range analysis. On September 16, 2020, the Court vacated and remanded the challenged 12-month finding for the Florida Keys mole skink. In April 2021, the Service was ordered, upon agreement with the Center for Biological Diversity, to submit a new finding to the **Federal Register** by September 15, 2022. This finding and proposed rule reflects the updated assessment of the status of the species based on the best available science, including an updated species status assessment for the Florida Keys mole skink (Service 2022, entire).

Supporting Documents

A species status assessment (SSA) team prepared a revised SSA report for the Florida Keys mole skink (Service 2022, entire). The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of nine appropriate specialists regarding the updated SSA report. We received two responses.

I. Proposed Listing Determination

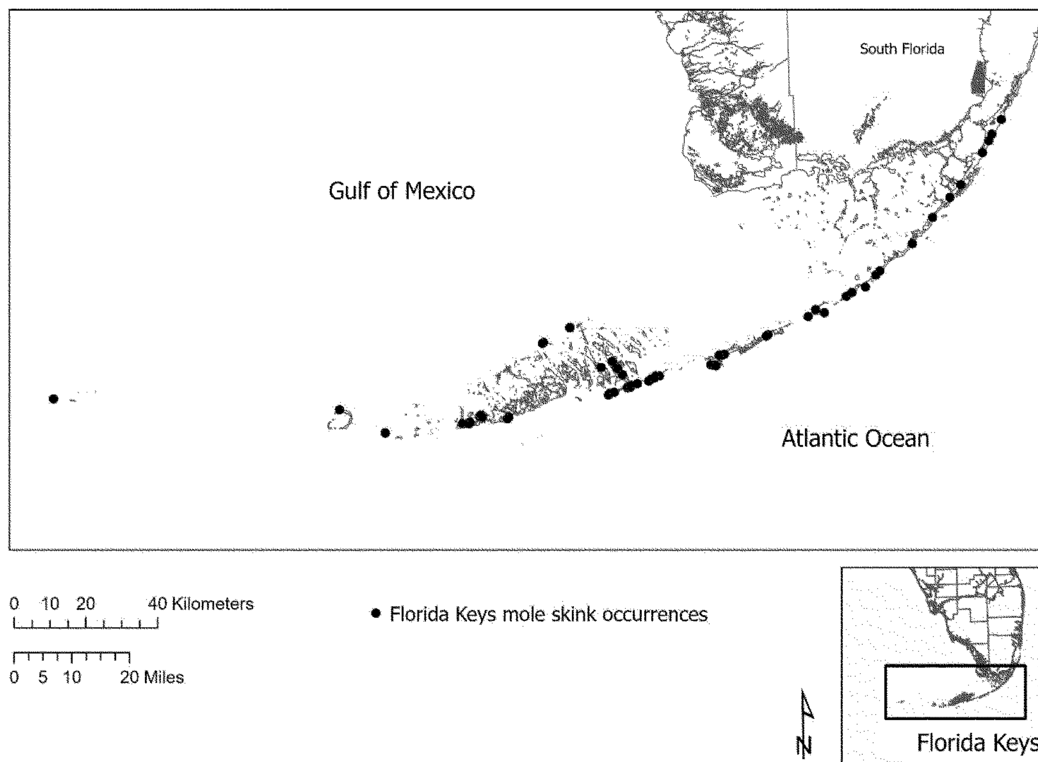
Background

A thorough review of the taxonomy, life history, and ecology of the Florida Keys mole skink (*Plestiodon egregius egregius*) is presented in the SSA report (Service 2022, pp. 8–22). The Florida Keys mole skink is one of five distinct subspecies of mole skinks in Florida, all in the genus *Plestiodon* (previously *Eumeces*) (Brandley *et al.* 2005, pp. 387–388) and is endemic to the Florida Keys. The Florida Keys mole skink is a small, slender lizard with a long, brilliantly colored tail (color variation from orange and red to faded pink) and short legs. Adults reach a total length of approximately 12.7 centimeters (cm) (5 inches (in)) (Florida Natural Areas Inventory (FNAI) 2001, p. 1). The age at first reproduction is estimated at 2 years, and generation time is approximately 4 years (McCoy 2010, p. 641).

The Florida Keys mole skink is semi-fossorial (adapted to digging and living underground) and cryptic in nature. The Florida Keys mole skink moves through sand and soil using a swimming motion and prefers loose soils that allow for easy mobility. Loose soils are also conducive for burrowing and nesting (Christman 1992, p. 179). Ground cover, such as leaf litter, debris, and tidal wrack (organic material and other debris deposited at high tide) provide shelter and a food resource (insects and arthropods that live under ground cover) for Florida Keys mole skink. Florida Keys mole skinks are found on low-lying islands with preferred habitats consisting of beaches, dunes, coastal berms, rockland hammocks, and pine rocklands. However, individuals have been detected in developed areas such as cemeteries, vacant lots, backyards, along roads, and golf courses (Mays and Enge 2016, p. 10; Emerick 2017a, pers. comm.; iNaturalist 2020,

entire). Home range distances for Florida Keys mole skink are estimated at a maximum of 100 m (328 ft) (Gianopulos 2001, p. 81; Mushinsky et al. 2001, p. 54; McCoy et al. 2020, p. 8), and dispersal between islands is limited (Mercier 2018, pp. 18–21).

The Florida Keys is a low-lying chain of small ancient coral reef islands extending 125 miles (mi) (201 kilometers (km)) southwest from the southeastern tip of the Florida peninsula. The Florida Keys are primarily mangrove islands composed of predominantly limestone substrate (ancient coral reef). The average elevation of the Florida Keys is less than 4.0 feet (ft) (1.2 meters (m)) above sea level (Service 2020, p. 9). Florida Keys mole skinks have been documented on 23 islands throughout the Florida Keys (see figure, below). Fifteen of these islands have had detections in the last two decades (years 2000 to 2021), four islands have relatively recent detections (years 1970 to 1999), and four islands have historical detections (before 1970). Systematic surveys have not been conducted for the Florida Keys mole skink across all of the Florida Keys; therefore, the true spatial distribution of populations throughout the Florida Keys is unknown. Consequently, Florida Keys mole skink may occur on Florida Keys other than those reported.



FIGURE—DISTRIBUTION AND OCCURRENCES OF THE FLORIDA KEYS MOLE SKINK

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. On July 5, 2022, the U.S. District Court for the Northern District of California vacated regulations that the Service (jointly with the National Marine Fisheries Service) promulgated in 2019 modifying how the Services add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (*Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (*CBD* v. *Haaland*). As a result of that vacatur, regulations that were in effect before those 2019 regulations now govern listing and critical habitat decisions. Our analysis for this proposal applied those pre-2019 regulations. However, given that litigation remains regarding the court's vacatur of those 2019 regulations, we also undertook an analysis of whether the proposal would be different if we were to apply the 2019 regulations. We concluded that the proposal would have been the same if we had applied the 2019 regulations. The analysis based on the 2019 regulations is included in the decision record for this proposal.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened subspecies because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or human-made factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Because the decision in *CBD* v. *Haaland* vacated our 2019 regulations regarding the foreseeable future, we refer to a 2009 Department of the Interior Solicitor's opinion entitled ''The Meaning of 'Foreseeable Future' in Section 3(20) of the Endangered Species Act'' (M–37021). That Solicitor's opinion states that the foreseeable future ''must be rooted in the best available data that allow predictions into the future'' and extends as far as those predictions are ''sufficiently reliable to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.'' *Id.* at 13.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the Florida Keys mole skink, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the Florida Keys mole skink should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R4–ES–2022–0104 on *https://www.regulations.gov.*

To assess Florida Keys mole skink viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the Florida Keys mole skink's ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the Florida Keys mole skink and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Species Needs

The SSA report contains a detailed discussion of the Florida Keys mole skink individual and population requirements (Service 2022, pp. 16–23); we provide a summary here. Based upon the best available scientific and commercial information, and acknowledging existing ecological uncertainties, the resource and demographic needs for breeding, feeding, sheltering, and dispersal of the Florida Keys mole are characterized as:

- Beach and dune, coastal berm, rockland hammock, and pine rockland habitats that provide ground cover in the form of leaf litter and wrack material Florida Keys mole skinks need for nesting, arthropod and insect food sources, and cover;
- Dry, loose, sandy, permeable, or friable (crumbly in texture) soils for digging of nest cavities and for their swimming movement;
- Ground cover such as leaf litter, debris, or tidal wrack (for thermoregulation, food sources, cover from predators, and breeding); and
- Arthropod and insect food sources (found within the ground cover and wrack).

Florida key mole skink abundance, distribution, and life history behaviors (nesting, breeding) are limited to (and defined by) the availability of these resources in the areas of beach and dune, coastal berm, rockland hammock, and pine rockland habitats. While ground cover and insect food sources appear sufficient and occur in adequate amounts, no ecological or quantitative studies have been completed on these factors.

Threats

The main threats affecting the Florida Keys mole skink are related to shifts in climate as a result of increasing greenhouse gas emissions. Sea level rise, more frequent tidal flooding (increase of tides above the mean high tide), and increasing intensity of storm events (such as hurricanes) are the predominant threats to the Florida Keys mole skink and its habitat. Other threats to the Florida Keys mole skink include habitat loss and degradation that result from development and habitat disturbance. We also evaluated existing regulatory mechanisms and ongoing conservation measures. In the SSA, we considered additional threats: overutilization due to recreational, educational, and scientific use; disease; and oil spills and nonnative species. We concluded that, as indicated by the best available scientific and commercial information that these additional threats are currently having little to no impact on the Florida Keys mole skink, and thus their overall effect now and into the future is expected to be minimal. For full descriptions of all threats and how they impact the Florida Keys mole skink, please see the SSA report (Service 2022, pp. 31–51).

Climate Change

The predominant threat currently affecting the Florida Keys mole skink and its habitat are the rapid and intense shifts in climate occurring as a result of increasing greenhouse gas emissions. The entire Florida Keys archipelago is being affected by sea level rise, more frequent high tide flooding, and increased intensity of storm events. In the SSA report and this proposed rule, we discuss the effects of climate change on the Florida Keys mole skink in terms of increasing sea level rise, more frequent tidal flooding, and increased intensity of storm events.

Sea level rise—Within Florida, sea level rise is increasing at a faster rate than globally, making this species especially vulnerable to impacts from sea level rise across its entire range (Carter et al. 2014, pp. 401–403; Park and Sweet 2015, entire; Sweet et al. 2017, p. 25). Accelerated sea level rise in Florida is attributed to shifts in the Florida Current due to added ocean mass brought on by the melting Antarctic and Greenland ice packs and thermal expansion from warming oceans (Park and Sweet 2015, entire; Rahmstorf et al. 2015, entire; Deconto and Pollard 2016, p. 596; Sweet et al. 2017, p. 14).

A majority of the Florida Keys are low-lying (average elevation less than 4.0 feet (ft) (1.2 meters (m)) (Service 2020, p. 9), making them highly susceptible to flooding, and at risk of inundation and saltwater intrusion (Florida Department of Environmental Protection (FDEP) 2012, p. 12; U.S. Geological Survey (USGS) 2017, n.p.). As sea level rises, existing Florida Keys mole skink habitats will become inundated and likely lost. As a result of sea level rise, higher tidal surges, coastal and inland flooding, and saltwater intrusion can further degrade and remove habitat (Carter et al. 2014, pp. 398–400, 403; Wadlow 2016, entire). Because the Florida Keys mole skink inhabits low-lying islands, the species is especially vulnerable to sea level rise across its entire range.

High Tide Flooding—One of the most noticeable impacts from sea level rise is the increased frequency of high tide flooding (Sweet et al. 2020, p. v). High tide flooding begins when coastal water levels exceed the mean higher high-water level (increase of tides above the mean high tide) (Sweet et al. 2014, entire). Frequent flooding above the high tide line is likely to cause flooded areas to become unusable to the Florida Keys mole skink (individuals cannot easily move through wet sand; individuals or nests will be washed away). Even prior to sea level rise inundation, Florida Keys mole skink habitats will likely undergo vegetation shifts triggered by changes to hydrology (wetter), salinity (higher), and more frequent storm surge and tidal flooding (that can result in beach erosion and salinization of soils), even if high tide or surge flooding is infrequent (Saha et al. 2011a, pp. 181–182; Saha et al. 2011b, pp. 82–84; Sweet et al. 2020, pp. 1–4). If high tide or surge flooding occurs frequently, habitat could be highly degraded or eliminated prior to sea level rise inundation. Thus, high tide flooding is likely to result in removal of habitat, displacement of individuals landward to less suitable habitat, and loss of individual Florida Keys mole skinks due to drowning.

Storm Events—Habitat for the Florida Keys mole skink can be degraded or removed by extreme storm events such as hurricanes, storm surges, and floods. Hurricane activity has been above normal since the Atlantic Multi-Decadal Oscillation (the natural variability of the sea surface temperature in the Atlantic Ocean) went into its warm phase around 1992 (National Oceanic and Atmospheric Administration (NOAA) 2019, p. 1). Currently, while the incidence of tropical storms in southeast Florida (including the Florida Keys) is above normal, this frequency is expected to decrease with climate change, but the intensity of the storms is expected to increase (Service 2017, p. 7). The increased intensity could result in larger tidal storm surges, flood events, and greater destruction than historically documented (Service 2017, p. 7).

Information on impacts of hurricanes to the Florida Keys mole skink and its habitat are lacking. However, there is information on impacts to habitat from hurricanes and other strong storms that have occurred in the region. In 2005, Hurricane Wilma (Category 3) passed just north of the Florida Keys causing maximum storm tides 5.0 ft to 6.0 ft (1.5 m to 1.8 m) above mean sea level in Key West and flooding in approximately 60 percent of the city, causing severe beach erosion (Kasper 2007, p. 6). On Boca Chica and Big Pine Key, Hurricane Wilma caused a storm surge of 5.0 ft to 8.0 ft (1.5 m to 2.4 m) (Kasper 2007, p. 9).

In September of 2017, Hurricane Irma (Category 4) caused a storm surge of up to 7.8 ft (2.4 m) in the Lower Keys and Middle Keys (NOAA 2018, pp. 3–4). Hurricane Irma altered whole dune ecosystems, removing sand, vegetation, and litter from these areas via wind and storm surge forces and uprooting many of the maritime hammock ecosystems (Emerick 2017b, p. 6). After Hurricane Irma, Florida Keys mole skink surveys found low numbers of skinks on Sawyer Key in 2018, Content Key in 2020, Big Pine Key in 2018, and Long Key in 2018 (Zambrano 2021, pers. comm.). However, we do not have survey data from before Hurricane Irma to compare how numbers of Florida mole skinks may have changed as a result of the hurricane.

Documented effects to habitat from past storm events can provide insight into the potential damage and loss to the Florida Keys mole skink habitat from future events. These storm events likely disturb and reduce the quantity and quality of Florida Keys mole skink resources (food, cover, nesting habitat), and such impacts may be significant depending upon the severity and proximity of the storm center. Conversely, when storms are not too destructive, vegetative material can be

deposited in localized areas high on the beach and ultimately provide habitat and increased insect food sources for skinks.

The severity and duration of hurricane impacts to the Florida Keys mole skink and its habitat vary based on the intensity and scale of storm events. Localized impacts can vary greatly depending upon not only the strength of the storm but the direction of its approach and how quickly it moves through the area. Storm surges and their intensity can also vary depending on location. The heavy inundation and even complete overwash of some islands during hurricanes may explain the lack of Florida Keys mole skinks detected during post-storm surveys, even when an island has recovered and again contains high-quality suitable habitat. For example, Ohio Key was surveyed between 2015 and 2017, and despite available high-quality suitable habitat and numerous searches, no Florida Keys mole skinks have been located on this island (Emerick 2017b, pers. comm.). However, we do not know if Ohio Key had Florida Keys mole skinks prior to these storm events, so it's possible that although the island contains suitable habitat, Florida Keys mole skinks were not present on the island. Heavy rainstorms, tropical storms, and hurricanes are part of this tropical island system. Over time, higher intensity storms may be a factor reducing the Florida Keys mole skink populations and thereby reducing overall population resiliency and the species' redundancy.

In summary, impacts from climate change have the potential to reduce survival of Florida Keys mole skink at the individual, population, and species level. Sea level rise can degrade existing habitat that supports the Florida Keys mole skink, reducing the habitat features the species needs, and thus reducing population resiliency. Increased high tide flooding and increased intensity of storm events have the potential to further degrade Florida Keys mole skink habitat. Increased high tide flooding and storm events also have the potential to kill skinks directly or to reduce individual survival, which could then lead to a reduction in population resiliency and the species' redundancy. An increase in the intensity and frequency of storms or a direct hit from a strong hurricane could significantly reduce species abundance (reducing population resiliency), and potentially extirpate populations (limiting redundancy), making the Florida Keys mole skink more vulnerable to all other threats. There are no regulatory mechanisms or conservation measures that address the impacts of sea level rise, high tide flooding, or increased intensity of storm events.

Development

Within the Florida Keys, human population growth and development has occurred at a high rate and much of the land available for development has been developed (Zwick and Carr 2006, p. 15; Carr and Zwick 2016, entire). The April 2020 human population census of Monroe County, Florida, was 82,874 individuals (U.S. Census Bureau 2021, n.p.), which is already higher than the 2060 population estimate of 77,038 individuals (Carr and Zwick 2016, p. 28). An assessment of climate change on the Florida Keys assumed that the human population is directly related to remaining land area (Hoegh-Guldberg 2010, p. 14). Consequently, as land area is further reduced due to coastal flooding, erosion, and sea level rise, the human population in the Florida Keys is expected to decline in order to accommodate the loss of land and consequential negative effects on property values and the economy (Zhang et al. 2011, pp. 9–17; Hino et al. 2017, entire).

The Florida Keys were designated as an Area of Critical State Concern in 1974 by the Florida Legislature (§ 380.0552 Florida Statutes) and local ordinances have been adopted to control development growth based on the Florida Keys' carrying capacity related to hurricane evacuation clearance time and to protect the natural environment (FDEO 2020, p. 1). A rate of growth ordinance has been adopted by Monroe County (MC–LDC Chapter 138) and building permit allocation system ordinances have been adopted by the municipalities within the Florida Keys: City of Key West (KW—Code of Ordinances Ch. 108, Art. X), Village of Islamorada (Islamorada—Code of Ordinances Chapter 30, Art. IV, Div. 11), City of Marathon (CM–LDC Chapter 107, Art. 1). These ordinances were adopted in order to provide for the safety of residents in the event of a hurricane evacuation, to protect the significant natural resources, and to acquire environmentally sensitive lands as guided by the State of Florida's Area of Critical State Concern designation. These ordinances guide new development toward areas with infrastructure and away from flood zones and environmentally sensitive areas such as habitat for threatened or endangered species. It is projected that carrying capacity will be reached in 2023 within the municipalities (FDEO 2020, p. 4) and 2026 in the unincorporated Monroe County (MCCPLA 2020, p. 8) and at such a time new building permits will no longer be issued as dictated by the State of Florida's Area of Critical State Concern designation.

Although much of the Florida Keys has been developed, land development ordinances are in place to guide the remaining new development away from environmentally sensitive areas, and land acquisition of environmentally sensitive lands are ongoing. We project new development will not pose a substantive threat to the Florida Keys mole skink. However, as they inhabit the same beaches, coastal berm, and hammock habitat that is desirable for residential and commercial development, activities related to conversion of remaining beach and coastal hammock habitat for new development and redevelopment can impact all of the Florida Keys mole skink's life stages.

In addition to direct impacts from loss of habitat, disturbance to these habitats can reduce groundcover that provides shelter and supports food resources. Additionally, loss of habitat connectivity can impact the Florida Keys mole skink's ability to find mates and disperse to new locations. Roads and human-made structures fragment habitat and Florida Keys mole skink populations, leading to a reduction in population health (resiliency) and genetic differentiation (representation) (Jochimsen et al. 2004, p. 40). Although past development activities have reduced Florida Keys mole skink habitat, individual skinks show some tolerance to habitat alteration and have been documented in developed areas (Mays and Enge 2016, p. 10; Emerick 2017a pers. comm.).

The effects of development have the potential to continue to reduce habitat and individual survival of Florida Keys mole skink and, therefore, may decrease population resiliency. Resiliency may be further reduced due to loss of habitat connectivity and a decrease of dispersal of individuals within populations as habitat becomes fragmented.

Habitat Disturbance From Recreational Activities

The Florida Keys are well known for their outdoor recreational activities, particularly waterfront and beachfront activities, which directly overlap with the habitats used by Florida Keys mole skinks. Hiking, camping, beach combing, and other activities in beach and dune, coastal berm, rockland hammock, and pine rockland habitats can cause direct disturbances to behavior and habitat of Florida Keys mole skink. Beach cleaning directly

removes wrack and vegetative material that act as shelter and a food resource for the Florida Keys mole skink. The behaviors (feeding, movement, and nesting) of individual skinks are likely disturbed by beach and inland recreational activities.

Increased road traffic is a direct consequence of visitors and tourists as is the need for parking. Off-road parking sites, gravel lots, and boat trailer parking can disturb the dry soils and other areas used by Florida Keys mole skinks. Smaller off-road vehicles and golf carts are also sometimes used in communities to get around locally. These small vehicles use non-paved areas that can displace, disturb, or cause direct mortality of individual skinks.

Summary of Threats

The primary threats impacting the Florida Keys mole skink and its habitat are related to climate change, specifically sea level rise, increased high tide flooding, and increased intensity of storm events. The effects of sea level rise, increased high tide flooding, and an increased intensity of storm events can degrade existing habitat that supports the Florida Keys mole skink, leading to reductions in the features that the species needs, and thus to population resiliency. The effects of sea level rise, increased high tide flooding, and an increased intensity of storm events are primarily habitat based, but some individual skinks could also be lost during high tide floods or large storms. Ongoing habitat degradation and loss associated with development and recreational activities will also continue to reduce available habitat for Florida Keys mole skink, thus decreasing population resiliency.

Even minor threats that impact just a few individuals in a population need to be considered for their additive effects. For example, threats such as collection, disease, pesticides, oil spills, and nonnative species may have low impacts on their own, but combined with impacts of other threats, they could further reduce the relatively low numbers of Florida Keys mole skinks. These minor threats (collection, disease, pesticides, oil spills, and nonnative species) were considered cumulatively for their effects to the Florida Keys mole skink, and, while they may reduce the numbers for some individual populations, we currently do not consider these minor threats to have negative effects at the population level (Service 2022, pp. 36–39).

The severity of threats may also be exacerbated by the Florida Keys mole skink's limited distribution. Currently, the existing regulatory mechanisms are not adequate to address the threats to the Florida Keys mole skink from sea level rise, high tide flooding, and increased intensity of storm events. However, regulatory mechanisms that address development or recreational activities provide some protections and conservation lands that overlap with some Florida Keys mole skink habitat provide a conservation benefit to the species (see *Conservation Efforts and Regulatory Mechanisms,* below).

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts and Regulatory Mechanisms

State Protections

The Florida Keys mole skink species was State listed as threatened by Florida in 1974 but was changed to a State of Florida species of concern in 1978. In 2010, after a species status review by the Florida Fish and Wildlife Conservation Commission (FWC), the Florida Keys mole skink was again found warranted for listing as a State threatened species. A Florida Keys Mole Skink State Action Plan was developed in 2013 (FWC 2013, entire). The goal of the plan is to secure the Florida Keys mole skink within its historical range (FWC 2013, pp. 8–19).

As a threatened species under State law, intentional take and some forms of incidental take of the Florida Keys mole skink are prohibited. The FWC lists several measures to avoid and minimize take during development and habitat management activities, including avoiding and minimizing impacts to coastal strand, coastal dune, pine rockland, and tropical hardwood hammock habitats within the range of the Florida Keys mole skink (FWC 2016, p. 5). Specifically, these measures recommend avoiding the removal of microhabitat features and the prevention of activities that cause soil compaction. Some of these land management activities may be beneficial (*e.g.,* beach habitat restoration activities) to the long-term quality of the natural habitats for the Florida Keys mole skink but can also result in local disturbance or direct mortality of individual skinks.

The Florida Coastal Management Plan designates the Florida Keys as an Area of Critical Concern (FDEP 2014, p. 25). Through the Florida Forever program (and the previous State of Florida Conservation and Recreation Lands and Preservation 2000 Programs), the Monroe County Land Authority and the State of Florida have purchased 5,205 ha (12,862 ac) of Florida Keys land for the protection of natural resources (Florida Department of Economic Opportunity 2020, p. 1, and FDEP 2020, pp. 199, 289). The protection of these lands from development provides direct and indirect conservation benefits for the Florida Keys mole skink.

Several local government plans provide conservation actions for the benefit of the Florida Keys mole skink or provide indirect conservation benefits to the species. The Village of Islamorada, the City of Marathon, Monroe County, and the City of Key West also have comprehensive plans that incorporate native habitat and species protections, although they do not mention the Florida Keys mole skink specifically (City of Marathon 2013, entire; City of Key West, 2013, entire; Monroe County 2016a, entire; Village of Islamorada 2017, entire).

The Florida Keys mole skink also occurs within numerous State Parks, including Zachary Taylor State Park (Key West), the Florida Keys Overseas Heritage Trail (Key West, Big Pine Key, Vaca Key, Long Key, Lower Matecumbe Key, Key Largo), Bahia Honda State Park (Bahia Honda Key), Long Key State Park (Long Key), Lignumvitae Key Botanical State Park (Lower Matecumbe Key), John Pennekamp Coral Reef State Park (Key Largo), and Dagny Johnson Key Largo Hammock Botanical State Park (Key Largo). Active management of these State Parks provides indirect benefits to the Florida Keys mole skinks by protecting and providing habitat through management of beach restoration and nourishment and providing nonnative plant and animal control.

National Wildlife Refuges and National Park Service Lands

The Florida Keys mole skink occurs within multiple National Wildlife

Refuges including the National Key Deer Refuge on Content Key and Big Pine Key, the Key West National Wildlife Refuge on Marquesas Key and Boca Grande Key, the Crocodile Lake National Wildlife Refuge on Key Largo, and the Great White Heron National Wildlife Refuge on Sawyer Key and Content Key. The Florida Keys mole skink also occurs within Dry Tortugas National Park on Loggerhead Key in the Dry Tortugas. Specific management or conservation objectives for the Florida Keys mole skink are not identified in the management plans for these National Wildlife Refuges and National Park Service Lands; however, ongoing management activities including habitat restoration and nonnative species control provide benefits to the Florida Keys mole skink and its habitat.

Department of Defense Integrated Natural Resources Management Plans

The Sikes Act Improvement Act (1997) led to Department of Defense (DoD) guidance regarding development of Integrated Natural Resources Management Plans (INRMPs) for promoting environmental conservation on military installations. There are occurrence records of Florida Keys mole skink on lands owned and managed by the DoD as part of the Naval Air Station Key West, on Boca Chica and Key West. The Naval Air Station Key West has a current and completed INRMP, covering land owned by the DoD on Boca Chica Key and Key West (Department of the Navy 2020). Though the Florida Keys mole skink is not specifically mentioned, the INRMP provides conservation and habitat management measures applicable to the species.

Current Condition

For the purposes of this assessment, we divided the Florida Keys into four geographically representative units including the Upper Keys, Middle Keys, Lower Keys, and Distal Sand Keys. The average elevation for the Upper Keys is 4.8 ft (1.5 m); for the Middle Keys, is 4.29 ft (1.3 m); and for the Lower Keys, is 3.17 ft (1.0 m) (Monroe County 2022b, p. 1). The Distal Sand Keys are low-lying (average less than 4.0 ft (1.2 m)) sand islands and mangrove islands with the exception of Loggerhead Key, which has a peak elevation of 10.0 ft (3.0 m) (Monroe County 2022b, p. 1). Range-wide, the majority of islands within the Florida Keys are low-lying with an average elevation less than 4.0 ft (1.2 m) (Service 2020, p. 9).

The current condition of the Florida Keys mole skink is described in terms of population resiliency, redundancy, and representation across the species. The analysis of these conservation principles to understand the species' current viability is described in more detail in the Florida Keys mole skink SSA report (Service 2022, pp. 43–51).

Resiliency

Islands contain genetically distinct lineages of the Florida Keys mole skink species (Mercier 2018, pp. 18–21). Thus, in order to analyze the species' resiliency, we delineated populations of Florida Keys mole skink by islands, where all detections on the same island represent a population (or groups of interbreeding individuals). We considered Key Largo to represent two different populations, based on the length of the island and distance between detection locations (greater than 4 mi (6.4 km)). Therefore, for our assessment of population resiliency, we considered everything north of U.S. Route 1 as the North Key Largo population and everything south of U.S. Route 1 as the Key Largo population.

Due to the semi-fossorial and cryptic nature of the Florida Keys mole skink, abundance data are lacking, and no population trend data exist for this species. There are also no data available regarding the population structure or demographics of the Florida Keys mole skink. Therefore, we assessed resiliency based on the number of individuals detected on an island (multiple individuals indicates a larger population), and the number of locations within an area (greater than 328 ft (100 m) apart) where individual Florida Keys mole skinks were observed (table 1). We chose the 328 ft (100 m) distance based on the estimated dispersal distance of individuals within other skink populations (Gianopulos 2001, p. 81; Mushinsky et al. 2001, p. 54; McCoy et al. 2020, p. 8; table 1).

TABLE 1—METRICS USED FOR POPULATION RESILIENCY CLASSIFICATIONS FOR THE FLORIDA KEYS MOLE SKINK

[For current populations, the number of individuals detected and the number of locations (>100 meters apart) factor into whether the population is considered to have a low, moderate, high, or very high current resiliency.]

Last detection	Number of individuals detected	Locations (>100 meters apart)	Resiliency
Before 1970:			
Historical			Unknown.*
1970–1999:			
Recent			Unknown.*
2000–2021:			
Current	1	1	Low.
	>1 and ≤10	1 or >1	Moderate.
	>10	1	Moderate.
	>10	>1	High.
	>50	>1	Very high.

* For historical and recent populations, we do not have survey data to indicate current status of these populations and therefore consider the status to be unknown.

Florida Keys mole skinks have been documented on 23 islands throughout the Florida Keys. Four populations are considered historical (no detections since 1970), five are considered relatively recent (skinks were detected between 1970 and 1999), and 15 are considered current (skinks were detected between 2000 and 2021). Of the 15 current populations, 2 are in the Upper Keys, 3 are in the Middle Keys, 8 are in the Lower Keys, and 2 are in the Distal Sand Keys (table 2). Based on the parameters outlined above (table 1), one current population is considered to have very high resiliency and two current populations are considered to have high resiliency. Six current populations are determined to be moderately resilient, and six current populations are considered to have low resiliency (Service 2022, pp. 46–47; table 2).

TABLE 2—RESILIENCY CLASSIFICATIONS FOR THE 15 CURRENT POPULATIONS OF FLORIDA KEYS MOLE SKINK

Region	Island	Resiliency
Upper Keys	Lower Matecumbe Key	Low.
	Key Largo	Moderate.
Middle Keys	Boot Key	Moderate
	Vaca Key	Low.
	Long Key	Low.
Lower Keys	Key West	Low.
	Boca Chica Key	Moderate.
	Sawyer Key	High.
	Content Keys	Moderate.
	Big Munson Island	Moderate.
	Cook's Island	Low.
	Big Pine Key	Very High.
	Bahia Honda Key	High.
Distal Sand Keys	Marquesas Key	Low.
	Boca Grande Key	Moderate.

Redundancy

Redundancy reduces the species' extinction risk if a portion of the species' range is negatively affected by a natural or anthropogenic catastrophic disturbance. In the Florida Keys, tropical storms and hurricanes are regular and common events. However, catastrophic events may include particularly strong or intense hurricanes or storms and the resulting winds, waves, and storm surges associated with these events. Increased frequency of such storms associated with climate change could further reduce the ability of Florida Keys mole skink populations to recover and could cause catastrophic impact to the species.

For the Florida Keys mole skink to withstand catastrophic events such as hurricanes, it needs to have multiple, sufficiently resilient populations across its range. Of the 15 currently known populations of Florida Keys mole skink, only one population is considered to have very high resiliency, two populations are considered to have high resiliency, and all three of these populations are found on islands in the Lower Keys (table 2). Although all three high-resiliency populations are found within the Lower Keys, some redundancy is provided by the fact that at least one moderate-resiliency population is located in each of the other three regions (table 2).

Representation

Representation describes the ability of a species to adapt to changing environmental conditions and is measured by the breadth of genetic or environmental diversity within and among populations. Overall, the genetic and environmental diversity of the Florida Keys mole skink is low, with no sign of morphological or behavioral differences between skinks on different islands (Branch et al. 2003, pp. 202–205; Technical Team Working Group 2016, pers. comm.; Mercier 2017, pers. comm.).

The species occurs on several islands across a narrow geographic and ecological range; there is little variation in habitat types across distance or elevation as occurs in wider ranging and more abundant species. The entire species is represented within the same tropical system. The amount of coastal sandy substrate and hammock habitat is limited and distributed in patches throughout the Florida Keys. The Florida Keys mole skink does not occur across different ecotones and does not have access to different ecotones or systems in which to adapt. However, within the narrow ecological range in which Florida Keys mole skink occurs, there are some differences in the substrates and habitat types available, specifically between the Upper Keys and Lower Keys regions. Given these factors, we consider overall representation of the Florida Keys mole skink to be relatively low.

Future Condition

Climate change impacts related to sea level rise, increased high tide flooding, and increased storm intensity are the primary threats to the Florida Keys mole skink. Development can also have significant impacts on the Florida Keys mole skink and its habitat, but because most land available for development has already been developed, we did not include development in our future scenarios (see above section ''Development'' and Service 2022, p. 52).

As sea level rises, Florida Keys mole skink habitats will become inundated and lost. While conditions may allow some beaches to migrate upslope, sea level rise will most likely lead to an overall loss of beach habitats due to inundation. In addition to sea level rise, the Florida Keys mole skink may be affected by increased high tide flooding and increased intensity of storm events (stronger hurricanes and stronger storm surges), which are projected to increase in frequency and intensity and thus exacerbate habitat loss and degradation.

For our evaluation of future condition, we used modeled projections of sea level rise (Sweet et al. 2017, pp. 11–13) and high tide flooding (Sweet et al. 2018, entire). We modeled threats for years 2040 and 2060 (approximately 20 years and 40 years) into the future. This timeframe was chosen to capture sea level rise estimates before the sea level rise scenarios begin to diverge significantly due to uncertainty of the future of human carbon emissions (Sweet et al. 2017, pp. 11–13). Additionally, we focused on changes that are expected within the next 40 years, because Florida Keys mole skink habitat is forecasted to be largely inundated by sea level rise in the Florida Keys beyond 2060 (Service 2022, appendix D; table 3). A detailed estimate of Florida Keys mole skink future conditions for later timeframes (up to 2100) is provided in the SSA report (Service 2022, appendix D).

For our sea level rise predictions, we used a suite of scenarios that describe the bounds of a range of plausible future conditions (intermediate, intermediate-high, high, and extreme), which are aligned with emissions-based, conditional probabilistic and global model projections of mean sea level rise (Sweet et al. 2017, pp. 11–13). We used the nearest local scenarios for specific sea level rise height values within the Florida Keys. Future sea level rise projections account for normal high tides (mean high tide for a given local station) (Sweet et al. 2017, entire; NOAA 2017, entire). In addition to normal high tides, minor, moderate, and

major flood events are also projected to increase in the future (Sweet et al. 2018, entire). Minor high tide flooding is defined as more disruptive than damaging and currently can be expected about 2 days per year (Sweet et al. 2018, p. 11). Minor high tide flooding is likely to increase to 7 to 15 days per year by 2030, and to 25 to 75 days per year by 2050, with much higher rates in many coastal locations, including much of coastal Florida and the Florida Keys (Sweet et al. 2017, p. 37; Sweet et al. 2020, pp. v–vi). To account for minor high tide flooding events in the future, we included minor high tide flooding threshold values from local gauges in the Florida Keys. Detailed descriptions of sea level rise and high tide flooding data are available in the SSA report (Service 2022, pp. 25–27).

Due to repeated habitat disturbance, we assume areas where high tide flooding occurs to have negative impacts on Florida Keys mole skink habitat and consider these areas to be degraded to the point of no longer representing suitable habitat. Repeated high tide flooding events are likely to degrade habitat (by moving the wrack line, rendering habitat unsuitable until waters recede) even before sea level is high enough to inundate habitat. Repeated habitat disturbance by high tide flooding also reduces the chance for an area to become repopulated by skinks following disturbance. While moderate and major high tide floods may degrade and remove habitat, it is less certain whether these floods will be frequent enough to render habitat unusable.

Habitat Impacts

To assess the amount of Florida Keys mole skink habitat that would be lost or degraded due to sea level rise and high tide flooding for years 2040 and 2060, we evaluated the total potential habitat for each island with a current, recent, or historical population. Since Florida Keys mole skink have been documented in habitats away from the beach, we included all island habitat as potential habitat. Thus, total potential habitat was calculated as the entire island area subtracting areas not considered to be suitable habitat for Florida Keys mole skink, including freshwater, water, and impervious cover areas (Monroe County 2016b, entire). For each foot of sea level rise, plus the effects of high tide flooding, we calculated the percent area that would be inundated or degraded for each island with a current, recent, or historical population. We provide detailed descriptions of our methods in the SSA report, and we also provide calculations for some islands with data available for preferred habitats (including beach berm, coastal hammock, and preferred soils) (Monroe County 2016b, entire; Service 2022, pp. 59–60; appendix D).

TABLE 3—CURRENT AMOUNT AND PERCENTAGE OF POTENTIAL HABITAT LOSS FOR FLORIDA KEYS MOLE SKINKS BY 2040 AND 2060 FOR EACH 1-FOOT CHANGE IN SEA LEVEL RISE

[These metrics are provided for individual populations on islands with a current (Years 2000–2021), recent (1970–1999), or historical (before 1970) population. Total percent lost includes habitat lost due to sea level rise and high tide flooding.]

Region	Island	Population status	Current amount of habitat (acres)	2040			2060			
				Percent of potential habitat lost per change in sea level			Percent of potential habitat lost per change in sea level			
				2 ft	3 ft	4 ft	3 ft	4 ft	5 ft	6 ft
Upper Keys	Lower Matecumbe Key	Current	866.3	43	69	90	69	90	98	99
	Indian Key	Historical	11.3	24	34	45	34	45	56	68
	Upper Matecumbe Key	Historical	903.6	47	55	65	55	65	72	78
	Plantation Key	Recent	1,751.0	37	48	63	48	63	73	80
	Key Largo	Current	14,591.0	71	77	80	77	80	84	87
	North Key Largo	Recent	6,548.0	59	66	73	66	73	80	85
Middle Keys	Boot Key	Current	795.4	95	98	99	98	99	100	100
	Vaca Key	Current	797.9	29	54	78	54	78	91	97
	Grassy Key	Historical	619.2	60	77	90	77	90	98	99
	Long Key	Current	1,114.1	82	90	97	90	97	98	99
Lower Keys	Key West	Current	3,200.0	25	51	70	51	70	82	90
	Boca Chica	Current	3,790.5	76	89	95	89	95	98	99
	Sawyer Key	Current	111.1	97	99	100	99	100	100	100
	Content Key	Current	166.3	98	99	100	99	100	100	100
	Big Munson	Current	128.0	93	96	99	96	99	100	100
	Cook's Island	Current	61.2	89	92	95	92	95	98	100
	Middle Torch	Recent	758.8	83	97	100	97	100	100	100
	Big Pine	Current	5,482.7	60	84	94	84	94	99	100
	Scout Key	Recent	91.6	58	74	81	74	81	86	88
	Bahia Honda Key	Current	351.3	78	86	90	86	90	93	96
Distal Sand Keys	Loggerhead Key	Historical	53.8	18	23	28	23	28	35	47
	Marquesas Key	Current	1,696.8	84	94	100	94	100	100	100
	Boca Grande Key	Current	212.5	80	90	100	90	100	100	100
Total			44,102.4	61	72	80	72	80	85	88

2040 Projected Habitat Loss—Under the 2040 scenario, sea level rise and the effects of high tide flooding (hereafter referred to as just sea level rise), is projected to be between 2.0 ft and 4.0 ft (0.7 m and 1.2 m) above the current mean high water line (table 3). Greatest impacts from sea level rise are projected within the Lower Keys, where the majority of the current populations are found; even under the lowest scenario of 2.0-ft (0.7-m) sea level rise, 9 of the 10 islands are projected to lose over half their potential habitat, which would include the loss of all current populations on those islands.

2060 Projected Habitat Loss—Under the 2060 scenario, sea level rise is projected to be between 3.0 ft (0.9 m) and 6.0 ft (1.8 m) above the current mean high water line, throughout the Florida Keys (table 3). The Upper Keys (where most of the historical and recent populations are located) are projected to have the least impacts from sea level rise, whereas the Lower Keys, and the current populations in that region, are projected to experience the greatest impacts from sea level rise (table 3).

Resiliency

We assessed future resiliency, by evaluating the magnitude of sea level rise impacts on current populations of Florida Keys mole skink and their habitat. We also evaluated future resiliency for islands with recent and historical populations to assess how sea level rise impacts may affect areas where skinks have been located in the past. For many of the recent and historical populations, follow up survey data are lacking and it is possible that skinks still exist on these islands.

We quantified the magnitude of change in population resiliency based on the percent of potential habitat that is projected to be lost or degraded by sea level rise. We used the percent of total potential habitat (usable land) to be impacted by sea level rise (lost and degraded) and based our resiliency assessment on those values. We represented the magnitude of a predicted change in resiliency where greater than 10 percent, but less than or equal to 50 percent, represents a slight decrease in resiliency; greater than 50 percent, but less than or equal to 75 percent, represents a moderate decrease; where greater than 75 percent, but less than or equal to 90 percent, represents a large decrease; and greater than 90 percent decrease represents the possibility of extirpation—as little or no unaltered habitat remains. In the SSA report, we provide these values for all populations up to 10.0 ft (3.0 m) sea level rise (Service 2022, appendix D).

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TABLE 4—PROJECTED MAGNITUDE OF CHANGE IN RESILIENCY FOR POPULATIONS OF FLORIDA KEYS MOLE SKINKS FOR VARIOUS SEA LEVEL RISE SCENARIOS IN YEARS 2040 AND 2060

CURRENT POPULATION STATUS = YEARS 2000–2021; RECENT = 1970–1999; AND HISTORICAL = BEFORE 1970.

SYMBOLS: ↓ = A SLIGHT DECREASE (>10 PERCENT BUT ≤50 PERCENT); ↓↓ = A MODERATE DECREASE (>50 PERCENT BUT ≤75 PERCENT); AND ↓↓↓ = A LARGE DECREASE (>75 PERCENT BUT ≤90 PERCENT).

IF >90 PERCENT OF THE POTENTIAL HABITAT IS IMPACTED, WE EXPECT THE POPULATION TO BE EXTIRPATED (X), REGARDLESS OF POPULATION RESILIENCY.

				2040			2060			
				Amount of Sea Level Rise						
Region	Island	Population Status	Current Resiliency	2 ft	3 ft	4 ft	3 ft	4 ft	5 ft	6 ft
Upper Keys	Lower Matecumbe Key	current	low	↓	↓↓	X	↓↓	X	X	X
	Indian Key	historical	unknown	↓	↓	↓	↓	↓	↓↓	↓↓
	Upper Matecumbe Key	historical	unknown	↓	↓↓	↓↓	↓↓	↓↓	↓↓	↓↓↓
	Plantation Key	recent	unknown	↓	↓	↓	↓	↓	↓↓	↓↓↓
	Key Largo	current	moderate	↓↓	↓↓↓	↓↓↓	↓↓↓	↓↓↓	↓↓↓	↓↓↓
	North Key Largo	recent	unknown	↓↓	↓↓	↓↓	↓↓	↓↓	↓↓↓	↓↓↓
Middle Keys	Boot Key	current	moderate	X	X	X	X	X	X	X
	Vaca Key	current	low	↓	↓↓	↓↓↓	↓↓	↓↓↓	X	X
	Grassy Key	historical	unknown	↓↓	↓↓↓	X	↓↓↓	X	X	X
	Long Key	current	low	↓↓↓	X	X	X	X	X	X
Lower Keys	Key West	current	low	↓	↓↓	↓↓	↓↓	↓↓	↓↓↓	↓↓↓
	Boca Chica	current	moderate	↓↓↓	↓↓↓	X	↓↓↓	X	X	X
	Sawyer Key	current	high	X	X	X	X	X	X	X
	Content Key	current	moderate	X	X	X	X	X	X	X
	Big Munson Island	current	moderate	X	X	X	X	X	X	X
	Cook's Island	current	low	↓↓↓	X	X	X	X	X	X
	Middle Torch Key	recent	unknown	↓↓↓	X	X	X	X	X	X
	Big Pine Key	current	very high	↓↓	↓↓↓	X	↓↓↓	X	X	X
	Scout Key	recent	unknown	↓↓	↓↓	↓↓↓	↓↓	↓↓↓	↓↓↓	↓↓↓
	Bahia Honda Key	current	high	↓↓↓	↓↓↓	X	↓↓↓	X	X	X
Distal Sand Keys	Loggerhead Key	historical	unknown	↓	↓	↓	↓	↓	↓	↓
	Marquesas Key	current	low	↓↓↓	X	X	X	X	X	X
	Boca Grande Key	current	moderate	↓↓↓	X	X	X	X	X	X

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By 2040, three of the six populations with moderate resiliency and one of two populations with high resiliency are projected to be extirpated, even under the lowest sea level rise scenario of 2.0 ft (0.7 m). Under the highest sea level

rise scenario of 4.0 ft (1.2 m) in 2040, 12 of the 15 current populations of Florida Keys mole skink are projected to be extirpated, including Big Pine Key, the only current population with very high resiliency. However, because much of Big Pine Key population is located in one area, resiliency may be affected more than projected under lower sea level rise scenarios. For example, with just 2.0–ft (0.7–m) sea level rise, much of the exposed land on Big Pine Key is projected to be inundated, leaving only a narrow strip of beach where current Florida Keys mole skink detections occur (Service 2020, p. 17).

Given the projected effects of sea level rise, we expect resiliency for all populations to decrease in the future, with the greatest impacts projected in the Lower Keys and Middle Keys, where most of the moderate or highly resilient populations currently occur. The most significant impacts of sea level rise are expected in 2040 with a projected 4.0 ft (1.2 m) sea level rise. Under the 4.0 ft (1.2 m) sea level rise scenario, one of the two current populations in the Upper Keys is projected to be extirpated, two of the three current populations in the Middle Keys are projected to be extirpated, 9 of the 10 current populations in the Lower Keys are projected to be extirpated, and both current populations in the Distal Sand Keys are projected to be extirpated (table 3). Thus, by 2040, no current populations in the Distal Sand Keys are projected to remain, and only one population in each of the other regions (Upper Keys, Middle Keys, Lower Keys) is projected to remain with a 4.0 ft (1.2 m) sea level rise.

Many islands with recent and historical populations, especially in the Upper Keys, are projected to be less impacted by sea level rise. Under the two highest sea level rise scenarios of 5.0 ft (1.5 m) and 6.0 ft (1.8 m) in 2060, six of the eight recent and historical populations are projected to have remaining Florida Keys mole skink habitat (table 3). However, many of the recent and historical populations have not been surveyed since original detections were reported; thus, even if suitable habitat remains, it is unknown if Florida Keys mole skinks still exist on these islands.

Redundancy

Redundancy is typically measured by the number and distribution of sufficiently resilient populations across a species' range. Of the 15 current populations of Florida Keys mole skink, only one population is considered to have very high resiliency, and two populations are considered to have high resiliency. All three of these populations are located in the Lower Keys, an area that is expected to have some of the greatest impacts from sea level rise. Additionally, at the lowest sea level rise estimate of 2.0 ft (0.7 m), all islands with moderate and high resiliency populations are expected to lose substantial habitat, rangewide (table 3). Because the Florida Keys mole skink is endemic to the Florida Keys, losing even a few populations to the effects of sea level rise would result in a significant reduction in redundancy. With the projected loss of a substantial amount of habitat by 2040, and a loss of nearly all potential habitat in the Middle Keys, Lower Keys, and Distal Sand Keys by 2060, redundancy for the species is expected to be severely reduced.

With the continued loss or degradation to Florida Keys mole skink habitat, we expect loss of island populations, thereby further reducing the species' ability to withstand catastrophic events such as hurricanes.

Representation

The four representative regions (Upper Keys, Middle Keys, Lower Keys, and Distal Sand Keys) are at risk of losing some or all of their Florida Keys mole skink populations. The ability of the Florida Keys mole skink to adapt to changing environmental conditions is limited. The reduction in Florida Keys mole skink habitat will lead to fewer individuals and populations throughout the species' range. Because there is little interbreeding among populations, genetic differentiation will likely be lost each time a population is lost. Therefore, we expect representation of the Florida Keys mole skink to decrease in the future.

Determination of Florida Keys Mole Skink Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or human-made factors affecting its continued existence.

We presented summary evaluations of the primary threats analyzed in the SSA including development (Factor A) and climate change, specifically sea level rise, increased high tide flooding, and increased intensity of storm events (Factor E). We also evaluated existing regulatory mechanisms (Factor D) and ongoing conservation measures. In the SSA, we also considered additional threats: overutilization due to recreational, educational, and scientific use (Factor B); disease (Factor C); and oil spills and nonnative species (Factor E). We concluded that, as indicated by the best available scientific and commercial information, that these minor threats currently have little to no impact on Florida Keys mole skink and their habitat, and thus their overall effect now and into the future is expected to be minimal. However, we consider each of these minor threats in the determination for the species, because although minor threats may have low impacts on their own, combined with impacts of other threats, they could further reduce the already low number of Florida Keys mole skinks.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we found that impacts from climate change present the most substantial threat to the Florida Keys mole skink's viability. In the foreseeable future, we anticipate that threats associated with climate change, specifically sea level rise, high tide flooding, and storm events will continue to increase in magnitude and have the greatest influence on Florida Keys mole skink viability. Sea level rise will continue to result in the inundation and loss of habitat. More frequent and intense high tide flooding and storm events will accelerate habitat loss, may kill individual skinks, and will reduce overall population resiliency. Acting together, these threats will cause irreversible habitat degradation and loss. We also considered the effects of development, habitat disturbance, and minor threats including overutilization due to recreational, educational, and scientific use, disease, oil spills, and nonnative species for their cumulative effects.

The Florida Keys mole skink has a current resiliency characterized by one population with very high resiliency, two populations with high resiliency, six populations with moderate resiliency, and six populations with low resiliency. Although all high-resiliency populations are found in the Lower Keys region, at least one moderate-resiliency population is found in each of the other three regions. Accordingly, given its current resiliency and redundancy across its range, we conclude that the Florida Keys mole skink is not currently in danger of extinction throughout its range.

We next considered whether the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. In considering the foreseeable future for the Florida Keys mole skink, we analyzed expected changes in sea level rise and high tide flooding from 2040 to 2100 (Service 2022, pp. 52–63). That said, we focused on changes that are expected within the next 40 years (year 2060), because almost all of Florida Keys mole skink habitat in the Florida Keys is forecasted to be lost by 2060. We determined that this timeframe represents a period for which we can reliably predict both the threats to the species and the species' response to those threats.

By 2040, populations of Florida Keys mole skink may begin experiencing significant losses under the lowest scenario of 2.0–ft (0.7–m) sea level rise. One population with high resiliency and three of the six Florida Keys mole skink populations with moderate resiliency are projected to be extirpated by 2040, even under the lowest sea level rise scenario (2.0 ft (0.7 m)). Big Pine Key, the only population that currently has very high resiliency, is projected to be extirpated by 2040, under a projected 4.0–ft (1.2–m) sea level rise. In total, 12 of the 15 current populations of Florida Keys mole skink are projected to be extirpated by 2040, with significant habitat loss projected for islands with remaining populations.

After assessing the best available information, we conclude that the Florida Keys mole skink is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range. Overall, the species currently exhibits some population resiliency and redundancy, and representation is considered naturally low. Thus, after assessing the best available information, we determined that the Florida Keys mole skink is not currently in danger of extinction throughout all of its range. However, after assessing all the same threats for future condition, we determined that habitat loss and degradation resulting from sea level rise, high tide flooding, and increased intensity of storm events will affect the Florida Keys mole skink within the foreseeable future, such that the species is likely to become an endangered species within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy) (79 FR 37578; July 1, 2014) that provided if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the Florida Keys mole skink, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

We evaluated the range of the Florida Keys mole skink to determine if the species is in danger of extinction now in any portion of its range.The range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the definition of an endangered species. For the Florida Keys mole skink, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is in danger of extinction now in that portion.

The statutory difference between an endangered species and a threatened species is the timeframe in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, we considered the time horizon for the threats that are driving the Florida Keys mole skink to warrant listing as a threatened species throughout all of its range. We examined the following threats: climate change (including sea level rise, increased high tide flooding, and increased storm events), development, habitat disturbance, overutilization due to recreational, educational, and scientific use, disease, oil spills, and nonnative species, as well as cumulative effects of those threats. As discussed in our rangewide analysis, sea level rise, increased high tide flooding, and increased intensity of storm events are the primary threats to the Florida Keys mole skink in the future. We also considered development, habitat disturbance, and overutilization due to recreational, educational, and scientific use, disease, oil spills, and nonnative species for their cumulative effects. We then considered whether these threats or their effects are currently occurring (or may imminently occur) in any portion of the species' range with sufficient magnitude such that the species is in danger of extinction now in that portion of its range.

Multiple populations currently exist in each region of the Florida Keys mole skink's current range, with at least one moderately resilient population in each region. The Florida Keys mole skink has a current resiliency characterized by one population with very high resiliency, two populations with high resiliency, six populations with moderate resiliency, and six populations with low resiliency. Although all high resiliency populations are found in the Lower Keys region, at least one moderate resiliency population is found in each of the other three regions. Given the low elevation of islands in the Florida Keys, all populations across the range are anticipated to experience effects from

climate change in the foreseeable future. Additionally, development, habitat disturbance and overutilization due to recreational, educational, and scientific use, disease, oil spills, and nonnative species are not concentrated in any portion of the species' range. We found no portion of the Florida Keys mole skink's range where threats are impacting individuals differently from how they are affecting the species elsewhere in its range. The best scientific and commercial data available indicate that the time horizon on which the species' responses to those threats are likely to occur is the foreseeable future. In addition, the best scientific and commercial data available do not indicate that any of the threats to the species and the species' responses to those threats are more immediate in any portions of the species' range. Therefore, we determine that the Florida Keys mole skink is not in danger of extinction now in any portion of its range, but that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of ''significant'' that those court decisions held to be invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that the Florida Keys mole skink meets the definition of a threatened species. Therefore, we propose to list the Florida Keys mole skink as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*), or from our Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Florida would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Florida Keys mole skink. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Although the Florida Keys mole skink is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

For the Florida Keys mole skink, Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other

landscape-altering activities such as mechanical treatment for vegetation management on Federal lands administered by the Service and the National Park Service. Other Federal agency actions under this category may include issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits (including but not limited to, dredging and spoil area management and beach renourishment projects) by the U.S. Army Corps of Engineers or the State of Florida and construction and maintenance of roads or highways by the Federal Highway Administration.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The Act allows the Secretary to promulgate protective regulations for threatened species pursuant to section 4(d) of the Act. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened species. The U.S. Supreme Court has noted that statutory language similar to the language in section 4(d) of the Act authorizing the Secretary to take action that she ''deems necessary and advisable'' affords a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592, 600 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting one or more of the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

In the early days of the ESA, the Service published at 50 CFR [17.31/ 17.71] a general protective regulation that would apply to each threatened species, unless we were to promulgate a separate species-specific protective regulation for that species. In the wake of the court's *CBD* v. *Haaland* decision vacating a 2019 regulation that had made 50 CFR 17.31 inapplicable to any species listed as a threatened species after the effective date of the 2019 regulation, the general protective regulation applies to all threatened species, unless we adopt a species-specific protective regulation. As explained below, we are adopting a species-specific rule that sets out all of the protections and prohibitions applicable to the Florida Keys mole skink.

The provisions of this proposed 4(d) rule would promote conservation of the Florida Keys mole skink by encouraging management of the habitat for Florida Keys mole skink in ways that facilitate conservation for Florida Keys mole skink. The provisions of this proposed rule are one of many tools that we would use to promote the conservation of the Florida Keys mole skink. This proposed 4(d) rule would apply only if and when we make final the listing of the Florida Keys mole skink as a threatened species.

As mentioned previously in Available Conservation Measures, section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of Federal actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

These requirements are the same for a threatened species with a species-specific 4(d) rule. For example, a Federal agency's determination that an action is ''not likely to adversely affect'' a threatened species will require the Service's written concurrence. Similarly, a Federal agency's determination that an action is ''likely to adversely affect'' a threatened species will require formal consultation and the formulation of a biological opinion.

Provisions of the Proposed 4(d) Rule

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a proposed rule that is designed to address the Florida Keys mole skink's conservation needs. As discussed previously in Summary of Biological Status and Threats, we have

concluded that the Florida Keys mole skink is likely to become in danger of extinction within the foreseeable future due to the degradation and loss of habitat primarily due to sea level rise, increased frequency of high tide flooding, and increased frequency of storm events. Section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(2) of the Act prescribes for endangered species. We find that, if finalized, the protections, prohibitions, and exceptions in this proposed rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Florida Keys mole skink.

The protective regulations we are proposing for Florida Keys mole skink incorporate prohibitions from section 9(a)(1) to address the threats to the species. Section 9(a)(1) prohibits the following activities for endangered wildlife: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. This protective regulation includes all these prohibitions for the Florida Keys mole skink because the Florida Keys mole skink is at risk of extinction in the foreseeable future and we anticipate these prohibitions will help to slow the rate of habitat loss and fragmentation, slow the species' rate of decline, and decrease synergistic, negative effects from other ongoing or future threats.

In particular, this proposed 4(d) rule would provide for the conservation of the Florida Keys mole skink by prohibiting the following activities, unless they fall within specific exceptions or are otherwise authorized or permitted: importing or exporting; take (as set forth at 50 CFR 17.21(c)(1) with exceptions as discussed below); possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take would help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other ongoing or future threats. Therefore, we propose to prohibit take of the Florida Keys mole skink, except for take resulting from those actions and activities specifically excepted by the 4(d) rule.

Exceptions to the prohibition on take would include all the general exceptions to the prohibition against take of endangered wildlife, as set forth in 50 CFR 17.21 and certain other specific activities that we propose for exception, as described below.

The proposed 4(d) rule would also provide for the conservation of the species by allowing exceptions that incentivize conservation actions or that, while they may have some minimal level of take of the Florida Keys mole skink, are not expected to rise to the level that would have a negative impact (*i.e.,* would have only de minimis impacts) on the species' conservation. The proposed exceptions to these prohibitions include mechanical treatment activities, prescribed fire activities, and nonnative plant or animal species eradication activities (described below) that are expected to provide conservation benefits and have negligible impacts to the Florida Keys mole skink and its habitat. Specifically, take associated with the following activities is excepted from the prohibitions:

(1) Mechanical treatment activities conducted within Florida Keys mole skink habitat that are carried out in accordance with a habitat management plan developed by a Federal, State, or county entity in coordination with the Service as long as the treatments are used to maintain, restore, or enhance a natural diversity and abundance of habitats for native plants and wildlife.

(2) Prescribed fire activities conducted within Florida Keys mole skink habitat that are carried out in accordance with a fire management plan developed by a Federal, State, or county entity in coordination with the Service as long as the treatments are used to maintain, restore, or enhance a natural diversity and abundance of habitats for native plants and wildlife. Prescribed fire activities include maintenance and creation of fire breaks, fire line installations, mechanical treatments to reduce fuel loads, and any other pre-fire preparations needed.

(3) Nonnative plant or animal species eradication activities that are carried out in accordance with a habitat management plan developed by a Federal, State, or county entity in coordination with the Service as long as the treatments are used to maintain, restore, or enhance a natural diversity and abundance of habitats for native plants and wildlife.

Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened wildlife state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. These include permits issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32). The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve Florida Keys mole skink that may result in otherwise prohibited take without additional authorization.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or our ability to enter into partnerships for the management and protection of the Florida Keys mole skink. However, interagency cooperation may be further

streamlined through planned programmatic consultations for the species between us and other Federal agencies, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that we could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

III. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species;

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We note that the court in *CBD* v. *Haaland* vacated the provisions from the 2019 regulations regarding unoccupied critical habitat. Therefore, the regulations that now govern designations of critical habitat are the implementing regulations that were in effect before the 2019 regulations.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in the 4(d) rule. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to

contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that a designation of critical habitat is not prudent when any of the following situations exist:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(ii) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of "critical habitat."

As discussed earlier in this document, there is currently no imminent threat of collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSA report and proposed listing determination for the Florida Keys mole skink, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to Florida Keys mole skinks. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met, we have determined that the designation of critical habitat is prudent for the Florida Keys mole skink.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Florida Keys mole skink is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of "critical habitat."

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Florida Keys mole skink.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define "physical or biological features" as the features that support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

As described in the *Species Needs* section in the Proposed Listing Determination, above, and the SSA report (Service 2022, pp. 30–31), the resource and demographic needs for breeding, feeding, sheltering, and dispersal of the Florida Keys mole skink are characterized as:

- Beach and dune, coastal berm, rockland hammock, and pine rockland habitats that provide ground cover in the form of leaf litter and wrack material skinks need for nesting, arthropod and insect food sources, and cover;
- Dry, loose, sandy, permeable, or friable (crumbly in texture) soils for digging of nest cavities and for their swimming movement;
- Ground cover such as leaf litter, debris, or tidal wrack (for thermoregulation, food sources, cover from predators, and breeding); and
- Arthropod and insect food sources (found within the ground cover of the habitat).

Habitats

The Florida Keys mole skink is endemic to the Florida Keys and has been documented on 23 islands from Key Largo in the Upper Keys to Loggerhead Key of the Dry Tortugas in the Distal Sand Keys (see Background in Proposed Listing Determination, above). The species is most frequently surveyed on Lower Keys beaches, and therefore, that is where the species is most documented; specifically the area above mean higher high water (increase of tides above the mean high tide) where wrack is deposited and sand dunes occur (Emerick 2017b, p. 5; Service 2022, pp. 24–27). However, beach formation is not common in the Florida Keys, and there are no naturally occurring beaches in the Upper Keys, yet the Florida Keys mole skink is still

found in this region (Clark 1990, p. 6; Zambrano 2021, pers. comm.). Though surveys have been limited mostly to beaches, with some in coastal berms hammocks, Florida Keys mole skinks have been documented in a variety of both natural and altered habitats along the coast and on the interior of islands (Service 2022, pp. 21, 24–27). Other habitat types they have been documented in include coastal cactus and rock barrens, rockland hammocks, pine rocklands, and small areas of habitat with suitable substrate within other mapped landcover types, such as urban open land and developed areas (FNAI 2011, entire; Emerick 2017b, pp. 4–5; iNaturalist 2020, entire; Zambrano 2021, pers. comm.).

Most areas where the Florida Keys mole skink have been documented have an open canopy and are sparsely vegetated with herbaceous ground cover, shrubs, and small trees (beaches, coastal berms, rock barrens, urban open land) (FNAI 2010, pp. 77, 81, 109, 2015; Kawula and Redner 2018, pp. 13–16). Florida Keys mole skinks have also been documented in coastal maritime hammock and rockland hammocks, both of which may have a closed canopy and are generally more vegetated but can have suitable substrate under the leaf litter (FNAI 2010, pp. 29–30, 91–92; Kawula and Redner 2018, pp. 9, 14). Florida Keys mole skinks have also been documented in pine rockland habitat, which has an open pine canopy with a mixed shrub and herb understory and requires fire approximately every 3 to 7 years to maintain an open shrub layer (FNAI 2010, pp. 69–70; Kawula and Redner 2018, p. 12).

Specific information on the amount of space needed for individual and population growth (dispersal distance, home range, and carrying capacity) for this species is lacking. The closest related species with information on home range and dispersal distances is the sand skink (*P. reynoldsi*), which occurs in scrub habitat on the Lake Wales Ridge of central Florida. Maximum dispersal distances for sand skinks in Florida scrub habitat have been documented at 115 ft (35 m) to 460 ft (140 m) although just a few adults were recorded at distances greater than 328 ft (100 m) (Gianopulos 2001, p. 81; Mushinsky et al. 2001, p. 54; McCoy et al. 2020, p. 8). The larger home range distances of a few individual sand skinks beyond 328 ft (100 m) could be attributed to localized resource limitations. The total size of an area needed to support a population of sand skinks or Florida Keys mole skinks has not been determined (Service 2022, p. 29).

While the amount of habitat necessary to support Florida Keys mole skink individual and population growth and normal behavior is unknown, preservation of the features described above is essential for the species to protect their home ranges. Therefore, based on the information above, we identify natural upland habitats (primarily sand beach, beach dune, coastal berm, rockland hammocks, and pine rocklands) as physical or biological features essential to the conservation of the Florida Keys mole skink.

Soils

Florida Keys mole skinks require sandy soils for nesting that are generally dry and unconsolidated to allow for the digging of nest cavities and their swimming movement through substrate (Service 2022, p. 28). No nests have been identified for the Florida Keys mole skink, but nest depth is probably dependent upon substrate depth and is documented to vary greatly for other mole skinks from 0.13 in (0.33 cm) to 6.0 ft (1.83 m) (Neill 1940, p. 266; Hamilton and Pollack 1958, p. 27). Because of the predominantly limestone, prehistoric coral reef, and rocky makeup of the Florida Keys archipelago, only a few areas provide the sandy, dry, unconsolidated soils considered preferred by the Florida Keys mole skink for nesting. In the Florida Keys, the sandy, dry, unconsolidated soil types are predominantly Beach and Bahia Fine sand and total only approximately 440 ac (178 ha) of soils in the archipelago (U.S. Department of Agriculture 2021 (USDA), p. 1). However, Florida Keys mole skinks have been documented in several other soil types that are also likely suitable for mole skink reproduction and movement based on their official soil series descriptions (dry, loose, sandy, permeable, or friable (crumbly in texture)) (USDA 2022, n.p.).

Based on the information above, we consider suitable habitats containing dry, loose, sandy, permeable, or friable soils as a physical or biological feature essential to the conservation of the species.

Ground Cover

Florida Keys mole skinks rely on ground cover over loose substrate as protection from predators and the insects existing in this ground cover as a food source. In this case, ground cover as a resource for the Florida Keys mole skink refers to a variety of materials such as leaf litter, logs, vegetative debris, and tidal wrack (deposited above the mean higher high-water level) rather than a strictly vegetative ground cover such as grass (Service 2022, p. 18). These ground cover and substrate conditions also provide areas for reproduction and thermoregulatory refugia.

As a reptile, the Florida Keys mole skink is a cold-blooded (ectothermic) animal and therefore highly dependent on the air and soil temperature to thermoregulate (maintain body core temperature) (Mount 1963, p. 362). The Florida Keys mole skink is specialized to live within a stable and relatively narrow thermal tropical environment. It is a thermoconformer, lacking the capacity to adjust or regulate to changes in temperature outside of this stable and relatively narrow thermal range in which it occurs (Gallagher et al. 2015, p. 62). Ground cover moderates soil temperatures and provides shade to assist in the skinks' thermoregulation in hot climates.

Based on the information above, we consider suitable habitats containing appropriate ground cover including tidal wrack, leaf litter, or vegetative debris for protection from predators and temperature extremes, sources of food, and areas for reproduction as a physical or biological feature essential for the Florida Keys mole skink.

Food Source

The Florida Keys mole skink preys on a variety of small insects (Hamilton and Pollack 1958, p. 26; Mount 1963, p. 364; Technical Team Working Group 2016, pers. comm.). The make-up of diets has been shown to shift seasonally with prey relative to abundance. Prey is also thought to be caught and eaten within ground cover material or underground (Mount 1963, p. 365). Since their feeding behavior is generalist and opportunistic (preying on those insects that are present and are of a size they can ingest), the prey-related requirements (abundance, diversity, range) to sustain a viable population of Florida Keys mole skink is unknown, but appear to be sufficient (Service 2022, pp. 28, 31).

Based on the information above, we consider habitats containing appropriate ground cover for arthropod and insect food sources as a physical or biological feature essential for the Florida Keys mole skink.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological feature essential to the conservation of the Florida Keys mole skink from studies of the species' habitat, ecology, and life history. Additional information can be found in the Proposed Listing Determination,

above, and the SSA report (Service 2022, entire). We have determined that the following physical or biological feature is essential to the conservation of the Florida Keys mole skink:

Natural habitats (including, but not limited to beaches, dunes, coastal berms, rockland hammocks, and pine rocklands) along the coast or on the interior of the Florida Keys that contain:

(a) Suitable soils (dry, loose, sandy, permeable, or friable soils) for movement and nesting; and

(b) Sufficient, appropriate ground cover (including, but not limited to tidal wrack deposited above the mean high-water line, leaf litter, and vegetative debris) for protection from predators and temperature extremes, sources of food, and areas for reproduction.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The feature essential to the conservation of the Florida Keys mole skink may require special management considerations or protection to reduce threats posed by climate change (sea level rise, more frequent tidal flooding, and increasing intensity of storm events); recreational activities (beach cleaning to remove wrack and other vegetative material); and human-caused disasters and response activities (*e.g.,* oil spills). For an in-depth discussion of threats, see Summary of Biological Status and Threats in the Proposed Listing Determination, above, and the SSA report (Service 2022, pp. 32–49).

Management activities that could ameliorate these threats include (but are not limited to): maintaining and protecting suitable habitat within occupied areas; identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; coordinating with landowners and local managers to implement best management practices during regular beach cleaning activities; conducting public outreach and education at all occupied areas; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

We are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing. We also are proposing to designate specific areas outside the geographical area occupied by the species because we have determined those areas are essential for the conservation of the species. By the year 2040, 8 out of 15 areas occupied by the Florida Keys mole skink at the time of listing will lose 75 percent or more of their available habitat under the lowest projected sea level rise scenario of 2.0 ft (0.7 m), and 12 of 15 occupied areas will lose 90 percent or more under the highest sea level rise scenario of 4.0 ft (1.2 m) (Service 2022, pp. 6–7). Islands with recent and historical populations of the Florida Keys mole skink are projected to be less affected by sea level rise under all scenarios (especially in the Upper Keys) than islands with current populations (see *Future Condition* in Proposed Listing Determination, above). Therefore, we identified suitable habitat within recently and historically occupied areas that met the definition of critical habitat and that are essential to provide for species redundancy into the foreseeable future. These unoccupied areas are both essential for the conservation of the species and contain habitat essential to the life history of the species.

We developed the following criteria for determining the specific areas that contain the physical and biological feature essential to the conservation of the species:

(1) Genetic differentiation and geographic extent—To maintain viability in populations of the Florida Keys mole skink that represent and conserve the genetic differentiation and habitat in each of the four geographic regions of the Florida Keys (see *Current Condition* in Proposed Listing Determination, above), critical habitat units should encompass all current populations, ensuring that each of the four geographic regions of the Florida Keys are represented.

(2) Climate change resilience—To provide sufficient amounts of suitable habitat for the Florida Keys mole skink predicted to be less affected by sea level rise (see *Future Condition* in Proposed Listing Determination, above), critical habitat should include at least one unit that is less vulnerable to sea level rise within each of the four geographic regions of the Florida Keys.

(3) Structural connectivity—To maintain, enhance, and establish connectivity within Florida Keys mole skink populations (see Summary of Biological Status and Threats in Proposed Listing Determination, above), critical habitat units should incorporate corridors for connectivity, dispersal, and refuge areas during high tide flooding and storm events.

Sources of data used for the delineation of critical habitat units included:

(1) Confirmed presence data compiled in our Geographic Information System database from 1862 through 2021 and provided by multiple databases maintained by museums, universities, and State agencies in Florida; State agency reports; and numerous survey reports for projects throughout the species' range.

(2) Habitat and land use cover types from the Cooperative Land Cover map (version 3.5), developed by the Florida Fish and Wildlife Conservation Commission and Florida Natural Areas Inventory (FWC and FNAI 2021, entire), determined to be suitable for the species based on peer-reviewed articles on this species or similar species, and gray literature by researchers involved in wildlife biology and conservation activities.

(3) Monroe County soil data layers from the U.S. Department of Agriculture's Natural Resources Conservation Service Web Soil Survey (USDA, entire) determined to be suitable for the species based on their official soil series descriptions (see *Soils,* above).

(4) Composite shoreline data representing the mean high-water line from the National Oceanic and Atmospheric Administration's Office of Coastal Management (NOAA 2007, entire).

(5) Global and regional sea level rise scenarios for the United States from the National Oceanic and Atmospheric Administration's National Ocean Service Center for Operational

Oceanographic Products and Services (Sweet et al. 2017).

(6) Environmental Systems Research Institute's (ESRI's) Aeronautical Reconnaissance Coverage Geographical Information System (ArcGIS) online basemap aerial imagery (2018 to 2020) to cross-check Cooperative Land Cover data and ensure the presence of the physical or biological feature.

For areas within the geographic area occupied by the Florida Keys mole skink at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

(1) We determined occupied areas for this species by reviewing the best available scientific and commercial data on occurrence records. As discussed in the Background section of the Proposed Listing Determination, Florida Keys mole skinks are cryptic and adapted to living underground. Because of their cryptic nature, we determined that if suitable habitat containing the physical and biological feature was still present in an area where a Florida Keys mole skink had been detected between 2000 and 2021, that there was a high likelihood that the species would still be present. Therefore, based on the best available information, we defined occupied areas as islands with at least one current occurrence record ranging from 2000 to 2021.

(2) We selected all suitable habitat that contained the physical or biological feature as determined using the data sources listed above, and within a 328 ft (100 m) radius (the estimated home range of Florida Keys mole skink, see *Habitats,* above), for all current, recent, and historical occurrence records. When the exact location of an occurrence record could not be determined for an island (a verified record, but only general location information, such as the name of the island, was provided), or the location was accurate but in unsuitable habitat (developed areas), all suitable habitat on the island was selected.

(3) We selected additional suitable habitat that extended beyond the 328 ft (100 m) radius to include corridors for greater dispersal due to population expansions, localized resource limitations, and sea level rise, storm surge, or tidal flooding refugia areas for the species.

(4) We then constrained the boundary of a critical habitat unit based on potential effects of physical barriers (for example, roads wider than two lanes, permanent water channels, or unsuitable habitat greater than 820 ft (250 m) wide) that cause habitat fragmentation or prevent connectivity and dispersal opportunities within units, as we consider that individuals would be unable or unlikely to pass such barriers (Mercier 2018, pp. 21–23). On the shorelines of critical habitat units, boundaries were constrained to whichever occurred furthest offshore including the habitat boundary (for upland habitats only), mean high water line, or shoreline that was visible in aerial imagery.

For areas outside the geographic area currently occupied by the species at the time of listing, we looked at islands considered recently occupied (from 1970 to 1999) and historically occupied (prior to 1970) by the Florida Keys mole skink. We analyzed recently and historically occupied islands for those that contained suitable habitat and evaluated each site for its potential conservation contribution based on quality of habitat, vulnerability to climate change, specifically sea level rise, high tide flooding, and increased intensity of storm events, and existing protections and management of the habitat and sites. Based on these criteria, we identified five islands with recent or historical populations that contained appropriate habitat for the species and are essential for the conservation of the species, but that are considered unoccupied at the time of listing. For areas outside the geographic area occupied by the Florida Keys mole skink at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

(1) Based on the best available information, we defined unoccupied areas as islands with at least one recent (1970 to 1999) or historical (before 1970) occurrence record.

(2) To ensure unoccupied areas would provide skink habitat into the future, we analyzed impacts to potential habitat on each island containing recent or historical occurrence records and included only those that will still have habitat remaining after the most extreme scenario of 6.0 ft (1.8 m) of sea level rise by the year 2060 (see *Future Condition* in Proposed Listing Determination, above).

(3) We selected all suitable habitat that contained the physical or biological feature as determined using Criteria 2–4 outlined above for occupied units.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical or biological feature necessary for the Florida Keys mole skink. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological feature in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain the physical or biological feature essential to support life-history processes of the species. We have also identified, and propose for designation as critical habitat, unoccupied areas that are essential for the conservation of the species. Nineteen units are proposed for designation based on current, recent, or historical occurrences and the physical or biological feature being present to support the Florida Keys mole skink's life-history processes.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0104 and on our internet site (*https://www.fws.gov/office/florida-ecological-services/library*).

Proposed Critical Habitat Designation

We are proposing to designate approximately 7,068 ac (2,860 ha) in 19 units as critical habitat for the Florida Keys mole skink. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Florida Keys mole skink. The 19 areas we propose as critical habitat are: (1) Key Largo, (2) Plantation Key, (3) Upper Matecumbe Key, (4) Indian Key, (5) Lower Matecumbe Key, (6) Long Key, (7) Vaca Key, (8) Boot Key, (9) Bahia Honda Key, (10) Scout Key, (11) Big Pine Key, (12) Cook's Island, (13) Big Munson Island, (14) Content Key, (15) Sawyer Key, (16) Key West, (17)

Boca Grande Key, (18) Marquesas Key, and (19) Loggerhead Key. Table 5 shows the proposed critical habitat units, occupancy, land ownership, and the approximate area of each unit.

TABLE 5—PROPOSED CRITICAL HABITAT UNITS FOR THE FLORIDA KEYS MOLE SKINK

[Area estimates reflect all land within critical habitat unit boundaries. Note: Area sizes may not sum due to rounding.]

Unit	Occupied?	Ownership: acres [hectares]					Total area: acres [hectares]
		Federal	State	Local	Private	Unknown/ undefined	
1. Key Largo	Yes	608 [246]	2,176 [881]	85 [34]	158 [64]	130 [53]	3,157 [1,278]
2. Plantation Key	No	0	63 [26]	29 [12]	177 [72]	6 [2]	275 [111]
3. Upper Matecumbe Key	No	0	24 [10]	18 [7]	93 [37]	5 [2]	140 [57]
4. Indian Key	No	0	12 [5]	0	0	0	12 [5]
5. Lower Matecumbe Key	Yes	0	34 [14]	6 [3]	41 [17]	13 [5]	95 [38]
6. Long Key	Yes	0	350 [142]	20 [8]	2 [1]	32 [13]	405 [164]
7. Vaca Key	Yes	0	0	1 [<1]	69 [28]	1 [1]	72 [29]
8. Boot Key	Yes	0	14 [6]	<1 [<1]	206 [83]	1 [<1]	221 [90]
9. Bahia Honda Key	Yes	0	57 [23]	0	0	8 [3]	65 [26]
10. Scout Key	No	0	9 [4]	33 [13]	7 [3]	5 [2]	53 [21]
11. Big Pine Key	Yes	1,547 [626]	412 [167]	80 [32]	79 [32]	40 [16]	2,159 [874]
12. Cook's Island	Yes	0	0	0	13 [5]	2 [1]	15 [6]
13. Big Munson Island	Yes	0	0	0	50 [20]	1 [1]	51 [21]
14. Content Keys	Yes	6 [3]	1 [<1]	0	0	3 [1]	10 [4]
15. Sawyer Key	Yes	10 [4]	0	0	0	1 [<1]	11 [4]
16. Key West	Yes	0	15 [6]	10 [4]	16 [6]	1 [1]	42 [17]
17. Boca Grande Key	Yes	71 [29]	0	0	0	0	71 [29]
18. Marquesas Key	Yes	149 [60]	0	0	0	0	149 [60]
19. Loggerhead Key	No	65 [26]	0	0	0	0	65 [26]
Total	N/A	2,456 [994]	3,168 [1,284]	283 [115]	911 [365]	250 [101]	7,068 [2,860]

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Florida Keys mole skink, below.

Unit 1: Key Largo, Monroe County, Florida

Unit 1 encompasses approximately 3,157 ac (1,278 ha) within Monroe County and the city of Key Largo, of the upper Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. As no sandy beaches occur on Key Largo, the majority of Florida Keys mole skink habitat on the island is rockland hammock with small areas of other suitable habitats along the edges or within the unit. This unit includes Federal lands within Crocodile Lake National Wildlife Refuge (608 ac (246 ha)), State lands within Dagny Johnson Botanical State Park, John Pennekamp Coral Reef State Park, and the Florida Keys Wildlife and Environmental Area (2,176 ac (881 ha)), local lands (85 ac (34 ha)), and property in private or unknown or undefined ownership (288 ac (117 ha)). The entirety of Unit 1 overlaps with designated critical habitat for the American crocodile (*Crocodilus acutus*), Cape Sable thoroughwort (*Chromolaena frustrata*), and Florida semaphore cactus (*Consolea corallicola*).

The habitat in the northern part of the unit(north of where U.S. Route 1 turns west to the Florida mainland) is surrounded by the Atlantic Ocean to the east and the Florida Bay to the west. Habitat consists primarily of contiguous habitat owned by several Federal agencies (National Park Service, U.S. Navy, U.S. Coast Guard, and the Service), in which the Service owns the majority as Crocodile Lake National Wildlife Refuge. The other Federal landowners have or are in the process of turning over ownership to the Service and records may not reflect this yet. The State of Florida owns and manages Dagny Johnson Key Largo Hammock Botanical Park. Monroe County, local government, and private entities own additional habitat within the northern part of the unit. The physical and biological feature in the northern part of the unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; and conducting public outreach and education to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events).

The habitat in the southern part of the unit (south of where U.S. Route 1 turns west to the Florida mainland) is surrounded or fragmented by residential and commercial development. The majority of habitat consists of lands owned by private entities and the State of Florida (John Pennekamp Coral Reef State Park). Smaller portions of habitat are owned by Monroe County. Habitat connectivity among occurrences is lacking within the southern part of the unit; fragmentation is from residential and light commercial development, as well as canals and two-lane roads. The physical and biological feature in the southern part of the unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; and conducting public outreach and education to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events).

Unit 2: Plantation Key, Monroe County, Florida

Unit 2 encompasses approximately 275 ac (111 ha) in Monroe County and

the village of Islamorada, of the upper Florida Keys. This unit is considered unoccupied. As few sandy beaches occur on Plantation Key, the majority of Florida Keys mole skink habitat on the island is rockland hammock with small areas of other suitable habitats along the edges or within the unit. This unit includes State lands within the Florida Keys Wildlife and Environmental Area (63 ac (26 ha)), local lands (29 ac (12 ha)), and property in private or unknown/undefined ownership (183 ac (74 ha)). The entirety of Unit 2 overlaps with designated critical habitat for the American crocodile. The habitat in this unit is surrounded or fragmented by residential and commercial development. Threats from development are moderate, and threats from climate change are low in this unit because of its higher elevation (see Summary of Biological Status and Threats in Proposed Listing Determination, above).

Although it is currently considered unoccupied, the Florida Keys mole skink was documented on the island in the past (FNAI 2011, entire), and it is possible that the lack of current detections could be due to lack of surveys. Also, this unit constitutes habitat for the species because it contains the physical or biological feature necessary for the life history of the species. This unit is essential for the conservation of the species because it will still provide habitat for potential reintroductions in the case of sea level rise (as described in *Future Condition* in Proposed Listing Determination, above, and Service 2022, pp. 61–70) or stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed, or the Florida Keys mole skink be extirpated from one of its currently occupied locations.

Unit 3: Upper Matecumbe Key, Monroe County, Florida

Unit 3 encompasses approximately 140 ac (57 ha) in Monroe County and the village of Islamorada, of the upper Florida Keys. This unit is considered unoccupied. As few sandy beaches occur on Upper Matecumbe Key, the majority of Florida Keys mole skink habitat on the island is rockland hammock with small areas of other suitable habitats along the edges or within the unit. This unit includes State lands within the Lignumvitae Key Botanical and Indian Key Historic State Parks (24 ac (10 ha)), local lands (18 ac (7 ha)), and property in private or unknown/undefined ownership (97 ac (39 ha)). The majority (94 percent) of Unit 3 overlaps with designated critical habitat for the American crocodile and Cape Sable thoroughwort. The habitat in this unit is surrounded or fragmented by residential and commercial development. Threats from development and climate change are moderate in this unit (see Summary of Biological Status and Threats in Proposed Listing Determination, above).

Although it is currently considered unoccupied, the Florida Keys mole skink was documented on the island in the past (FNAI 2011, entire), and it is possible that the lack of current detections could be due to lack of surveys. Also, this unit constitutes habitat for the species because it contains the physical or biological feature necessary for the life history of the species. This unit is essential for the conservation of the species because it will still provide habitat for potential reintroductions in the case of sea level rise (as described in *Future Condition* in Proposed Listing Determination, above, and Service 2022, pp. 61–70) or stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed, or the Florida Keys mole skink be extirpated from one of its currently occupied locations. Additionally, a portion of this unit is on State lands, where reintroductions would be likely.

Unit 4: Indian Key, Monroe County, Florida

Unit 4 encompasses approximately 12 ac (5 ha) within Monroe County and the village of Islamorada, of the upper Florida Keys. This unit is considered unoccupied. The habitat in this unit is classified by the Cooperative Landcover Classification map (FWC and FNAI 2021) as mangrove swamp but is more accurately described as ruderal (historically cleared area with recolonizing native vegetation) with a mangrove and Keys tidal rock barren fringe (FDEP 2012, entire). The unit encompasses the entire island of Indian Key, which is owned by the State as part of Indian Key Historic State Park. The habitat in this unit is contiguous since there is very little development on the island, which is only accessible by boat. The threat of development is low due to designation as a state park and threats from climate change are low because of its higher elevation (see Summary of Biological Status and Threats in Proposed Listing Determination, above).

Although it is currently considered unoccupied, the Florida Keys mole skink was documented on the island in the past (FNAI 2011, entire), and it is possible that the lack of current detections could be due to lack of surveys. Also, this unit constitutes habitat for the species because it contains the physical or biological feature necessary for the life history of the species. This unit is essential for the conservation of the species because it will still provide habitat for potential reintroductions in the case of sea level rise (as described in *Future Condition* in Proposed Listing Determination, above, and Service 2022, pp. 61–70) or stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed, or the Florida Keys mole skink be extirpated from one of its currently occupied locations. Additionally, the entire unit is on State lands, where reintroductions would be likely.

Unit 5: Lower Matecumbe Key, Monroe County, Florida

Unit 5 encompasses approximately 95 ac (38 ha) in Monroe County and the village of Islamorada, of the upper Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. As few sandy beaches occur on Lower Matecumbe Key, the majority of Florida Keys mole skink habitat on the island is rockland hammock with small areas of other suitable habitats along the edges or within the unit. This unit includes State lands that are part of Lignumvitae Key Botanical State Park (34 ac (14 ha)), local lands (6 ac (3 ha)), and property in private or unknown/undefined ownership (54 ac (22 ha)). The majority (99 percent) of Unit 5 overlaps with designated critical habitat for the American crocodile, Cape Sable thoroughwort, and piping plover (*Charadrius melodus*). The habitat in this unit is surrounded and/or fragmented by residential and commercial development. The physical and biological feature in this unit may require special management considerations or protection identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; conducting public outreach and education; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-

caused disasters and response activities (*e.g.,* oil spills).

Unit 6: Long Key, Monroe County, Florida

Unit 6 encompasses approximately 405 ac (164 ha) within Monroe County and the city of Layton, of the middle Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. Habitat on Long Key is a mix of sand beach, beach dune, coastal berm, rockland hammock, and some suitable upland mangrove fringe areas. This unit includes State lands that are part of Long Key State Park (350 ac (142 ha)), local lands (20 ac (8 ha)), and property in private or unknown/undefined ownership (34 ac (14 ha)). The majority (99 percent) of Unit 6 overlaps with designated critical habitat for the American crocodile, Cape Sable thoroughwort, and loggerhead sea turtle (*Caretta caretta*). The habitat in this unit is primarily contiguous with residential and commercial development located on both ends of the unit. The physical and biological feature in this unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; conducting public outreach and education; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 7: Vaca Key, Monroe County, Florida

Unit 7 encompasses approximately 72 ac (29 ha) within Monroe County and the city of Marathon, within the middle Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. As few sandy beaches occur on Vaca Key, the majority of Florida Keys mole skink habitat on the island is rockland hammock with small areas of upland mangrove habitats along the edges or within the unit. This unit includes local lands (1 ac (less than 1 ha)) and property in private or unknown or undefined ownership (71 ac (29 ha)), 62 ac (25 ha) of which are part of Crane Point Hammock, a preserve owned by the Florida Keys Land and Sea Trust Incorporated. The habitat in this unit is surrounded or fragmented by residential and commercial development. The physical and biological feature in this unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; and conducting public outreach and education to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events).

Unit 8: Boot Key, Monroe County, Florida

Unit 8 encompasses approximately 221 ac (90 ha) within Monroe County and the city of Marathon, within the middle Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. Habitat on Boot Key is a mix of coastal berm, rockland hammock, and some suitable upland mangrove fringe areas. This unit includes State lands (14 ac (6 ha)) and property in private or unknown or undefined ownership (207 ac (84 ha)). The habitat in this unit is primarily contiguous as very little development occurs on the island, which is only accessible by boat. The physical and biological feature in this unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; conducting public outreach and education; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 9: Bahia Honda Key, Monroe County, Florida

Unit 9 encompasses approximately 65 ac (26 ha) within Monroe County in the lower Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. Habitat on Bahia Honda Key is a mix of sand beach, beach dune, coastal berm, maritime hammock, and some suitable upland mangrove fringe areas. This unit is almost entirely within Bahia Honda State Park (57 ac (23 ha)), with approximately 8 ac (3 ha) of unknown/undefined ownership. The majority (98 percent) of Unit 9 overlaps with designated critical habitat for the loggerhead sea turtle and piping plover. The habitat in this unit is primarily contiguous with low-intensity development located on both ends of the unit. The physical and biological feature in this unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; conducting public outreach and education; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 10: Scout Key, Monroe County, Florida

Unit 10 encompasses approximately 53 ac (21 ha) within Monroe County in the lower Florida Keys. This unit is considered unoccupied. Habitat on Scout Key (also called West Summerland Key) is a mix of beach dune and rockland hammock with small areas of other suitable habitats along the edges or within the unit. This unit includes State lands (9 ac (4 ha)), local lands (33 ac (13 ha)), and property in private or unknown/undefined ownership (12 ac (5 ha)). The habitat in this unit is primarily contiguous with

boy scout and girl scout camps located on the southwest end of the unit. Threats from development and climate change are moderate in this unit (see Summary of Biological Status and Threats in Proposed Listing Determination, above).

Although it is currently considered unoccupied, the Florida Keys mole skink was documented on the island in the past (FNAI 2011, entire), and it is possible that the lack of current detections could be due to lack of surveys. Also, this unit constitutes habitat for the species because it contains the physical or biological feature necessary for the life history of the species. This unit is essential for the conservation of the species because it will still provide habitat for potential reintroductions in the case of sea level rise (as described in *Future Condition* in Proposed Listing Determination, above, and Service 2022, pp. 61–70) or stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed, or the Florida Keys mole skink be extirpated from one of its currently occupied locations. Additionally, a portion of the unit is on State lands, where reintroductions would be likely.

Unit 11: Big Pine Key, Monroe County, Florida

Unit 11 encompasses approximately 2,159 ac (874 ha) within Monroe County and the town of Big Pine Key, in the lower Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. The habitat in the northern part of the unit (north of U.S. Route 1) is a mix of pine rockland and rockland hammock with small areas of other suitable habitats along the edges or within the unit. In the southern part of the unit (south of U.S. Route 1), the habitat is a mix of beach dune, coastal berm, and rockland hammock with small areas of other suitable habitats bordering or within the unit. This unit includes Federal lands within the National Key Deer Refuge (1,547 ac (626 ha)), State lands (412 ac (167 ha)), local lands (80 ac (32 ha)), and property in private or unknown or undefined ownership (120 ac (49 ha)). The majority (73 percent) of Unit 11 overlaps with designated critical habitat for the Cape Sable thoroughwort, Florida semaphore cactus, Bartram's scrub-hairstreak butterfly (*Strymon acis bartrami*), and Florida leafwing butterfly (*Anaea floridalis*). The habitat in the northern part of the unit is surrounded or fragmented by residential communities, light commercial development, and two-lane roads (primarily in the central and southern portions of the northern part of the unit). The habitat in the southern part of the unit is primarily contiguous with residential development to the west of the unit. The physical and biological feature in this unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; conducting public outreach and education; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 12: Cook's Island, Monroe County, Florida

Unit 12 encompasses approximately 15 ac (6 ha) within Monroe County and the town of Big Pine Key, in the lower Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. Habitat on Cook's Island is mostly coastal berm with some areas of suitable upland mangroves along the edges of the unit. This unit is almost entirely in private ownership (13 ac (5 ha)), with approximately 2 ac (1 ha) of unknown or undefined ownership. The habitat in this unit is primarily contiguous with low-density residential development scattered along the southern shoreline of the island, which is only accessible by boat. The physical and biological feature in this unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; conducting public outreach and education; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 13: Big Munson Island, Monroe County, Florida

Unit 13 encompasses approximately 51 ac (21 ha) within Monroe County and the town of Big Pine Key, in the lower Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. Habitat on Big Munson Island is a mix of sand beach, coastal berm, and rockland hammock with small areas of other suitable habitats along the edges or within the unit. This unit is almost entirely in private ownership by the Boy Scouts of America (50 ac (20 ha)), with approximately 1 ac (1 ha) of unknown or undefined ownership. Approximately half (52 percent) of Unit 13 overlaps with designated critical habitat for the Cape Sable thoroughwort. The habitat in this unit is contiguous since very little development occurs on the island, which is accessible only by boat. The physical and biological feature in this unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; conducting public outreach and education; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 14: Content Key, Monroe County, Florida

Unit 14 encompasses approximately 10 ac (4 ha) within Monroe County in the lower Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. Habitat on Content Key is a mix of sand beach, coastal berm, and some suitable upland mangrove fringe areas. This unit includes Federal lands within the

National Key Deer Refuge and the Great White Heron National Wildlife Refuge (6 ac (3 ha)), State lands (1 ac (less than 1 ha)), and property with unknown/undefined (3 ac (1 ha)). The habitat in this unit is contiguous since there is no development on the island, which is accessible only by boat. The physical and biological feature in this unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; conducting public outreach and education; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 15: Sawyer Key, Monroe County, Florida

Unit 15 encompasses approximately 11 ac (4 ha) within Monroe County in the lower Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. Habitat on Sawyer Key is a mix of beach dune, rockland hammock, and some suitable upland mangrove fringe areas. This unit is almost entirely in Federal ownership as part of the Great White Heron National Wildlife Refuge (10 ac (4 ha)), with approximately 1 ac (less than 1 ha) of unknown or undefined ownership. The habitat in this unit is contiguous since there is no development on the island, which is accessible only by boat. The physical and biological feature in this unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; conducting public outreach and education; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 16: Key West, Monroe County, Florida

Unit 16 encompasses approximately 42 ac (17 ha) within Monroe County and the city of Key West, in the lower Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. Habitat on Key West is mostly sand beach and a few small patches of rockland hammock. This unit includes State lands within Fort Zachary Taylor State Park (15 ac (6 ha)), local lands (10 ac (4 ha)), and property in private or unknown/undefined ownership (17 ac (7 ha)). Under section 4(a)(3)(B)(i) of the Act, we are exempting Naval Air Station Key West lands within this unit (8 ac (3 ha)) from the critical habitat designation because the U.S. Navy within the DoD has an approved INRMP that provides benefits to the Florida Keys mole skink and its habitat (see Exemptions, below). The habitat in this unit is surrounded or fragmented by residential and commercial development. The physical and biological feature in this unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; coordinating with landowners and local managers to implement best management practices during regular beach cleaning activities; conducting public outreach and education; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events), recreational activities (beach cleaning to remove wrack and other vegetative material), and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 17: Boca Grande Key, Monroe County, Florida

Unit 17 encompasses approximately 71 ac (29 ha) within Monroe County, in the Distal Sand Region of the Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. Habitat on Boca Grande Key is a mix of sand beach, beach dune, coastal berm, rockland hammock and some suitable upland mangrove fringe areas. This unit is entirely in Federal ownership as part of the Key West National Wildlife Refuge. The majority (95 percent) of Unit 17 overlaps with designated critical habitat for the Cape Sable thoroughwort, loggerhead sea turtle, and piping plover. The habitat in this unit is contiguous since there is no development on the island, which is accessible only by boat. The physical and biological feature in this unit may require special management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; conducting public outreach and education; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 18: Marquesas Key, Monroe County, Florida

Unit 18 encompasses approximately 149 ac (60 ha) within Monroe County, in the Distal Sand Region of the Florida Keys. This unit is considered occupied by the species and contains the physical or biological feature essential to its conservation. Habitat on Marquesas Key is mostly coastal berm with a thin sandy shoreline. This unit is entirely in Federal ownership as part of the Key West National Wildlife Refuge. The entirety of Unit 18 overlaps with designated critical habitat for the loggerhead sea turtle and piping plover. The habitat in this unit is contiguous since there is no development on the island, which is accessible only by boat. The physical and biological feature in this unit may require special

management considerations or protection such as identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing renourishment or restoration/protection activities further upland; conducting restoration and debris cleanup after storms while concurrently minimizing disturbance to Florida Keys mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats to persist; conducting public outreach and education; and preparing disaster response plans and conducting trainings that consider Florida Keys mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills) (see Special Management Considerations or Protection, above).

Unit 19: Loggerhead Key, Monroe County, Florida

Unit 19 encompasses approximately 65 ac (26 ha) within Monroe County, in the Distal Sand Region of the Florida Keys. This unit is considered unoccupied. Habitat on Loggerhead Key is sand beach and coastal uplands. This unit is entirely in Federal ownership as part of the Dry Tortugas National Park. Approximately 31 percent of Unit 19 overlaps with designated critical habitat for the loggerhead sea turtle. The habitat in this unit is contiguous since there is very little development on the island, which is accessible only by boat. The threat of development is low due to designation as a national park and threats from climate change are low because of its higher elevation (see Summary of Biological Status and Threats in Proposed Listing Determination, above).

Although it is currently considered unoccupied, the Florida Keys mole skink was documented on the island in the past (FNAI 2011, entire), and it is possible that the lack of current detections could be due to lack of surveys. Also, this unit constitutes habitat for the species because it contains the physical or biological feature necessary for the life history of the species. This unit is essential for the conservation of the species because it will still provide habitat for potential reintroductions in the case of sea level rise (as described in *Future Condition* in Proposed Listing Determination, above, and Service 2022, pp. 61–70) or stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed, or the Florida Keys mole skink be extirpated from one of its currently occupied locations. Additionally, the entire unit is on National Park lands, where reintroductions would be likely.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on February 11, 2016 (81 FR 7214) (although we also published a revised definition after that (on August 27, 2019), that 2019 definition was subsequently vacated by the court in *CBD* v. *Haaland*). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (a) if the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (d) if a new species is listed or critical habitat

designated that may be affected by the identified action.

In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species. Factors considered in making these determinations may include the extent of the proposed action, including its temporal and spatial scale relative to the critical habitat unit within which it occurs; the specific purpose for which that unit was identified and designated as critical habitat; and the impact of the proposed action on the unit's likelihood of serving its intended conservation function or purpose and how this may appreciably diminish the value of the critical habitat designation as a whole.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would change the habitat or land cover type, if impacts are the extent and scale that they appreciably diminish the value of critical habitat as a whole. Such activities may include, but are not limited to, residential, commercial, or recreational development and road construction. These activities could further fragment tracts of suitable habitat, inhibiting dispersal by the Florida Keys mole skink between remaining areas of suitable habitat.

(2) Actions that would significantly alter the substrate, such as excavation or filling, if impacts are to the extent and scale that they appreciably diminish the value of critical habitat as a whole. Such activities may include, but are not limited to, residential, commercial, or recreational development, and road construction or maintenance. These activities could remove soils necessary for the movement and burrowing (nesting) of the Florida Keys mole skink.

(3) Actions that would alter the ground cover (*e.g.,* tidal wrack, leaf litter, or vegetative debris), if impacts are to the extent and scale that they appreciably diminish the value of critical habitat as a whole. Such activities may include, but are not limited to, road maintenance, habitat management activities (such as beach renourishment, shoreline armoring, nonnative species control, prescribed fire), and recreational management activities (such as beach raking or other cleaning methods to remove wrack or debris). These activities could remove the ground cover that the Florida Keys mole skink relies on for protection from predators and temperature extremes, sources of food, and areas for reproduction.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the DoD, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for the Florida Keys mole skink to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are DoD lands with completed, Service-approved INRMPs within the proposed critical habitat designation.

Approved INRMPs

Naval Air Station Key West

We have determined that approximately 150 ac (61 ha) of beach, coastal berm, coastal uplands, rockland hammock, mangrove, and Keys tidal rock barren habitat on Boca Chica Key and 8 ac (3 ha) of beach habitat on Key West contain the physical or biological feature essential to the conservation of the Florida Keys mole skink. These specific lands are owned and managed by the DoD as part of the Naval Air Station Key West. The Naval Air Station Key West has a current and completed INRMP, covering land owned by the DoD on Boca Chica Key and Key West (Department of the Navy 2020, entire). Though the Florida Keys mole skink is not specifically mentioned, the INRMP provides conservation and habitat management measures applicable to the species. The Service has approved these conservation and management measures, and the INRMP has been signed.

The goals listed in the Naval Air Station Key West INRMP include protecting and maintaining the land and water resources by continuation and enhancement of ecologically appropriate and best management practices compatible with the military mission, and protecting, maintaining, and restoring native vegetation communities and threatened and/or endangered species, including resident

and migratory animal populations while supporting the military mission (Department of the Navy 2020, pp. 1–4). In the Wildlife Management section of the INRMP, the main objective is to preserve, protect, and manage wildlife and their habitats to ensure healthy productive populations (Department of the Navy 2020, p. ES–5). Several specific actions under that objective should benefit the Florida Keys mole skink, including actions to protect natural communities necessary for the continuation of healthy wildlife populations and actions to avoid habitat fragmentation (Department of the Navy 2020, pp. 4–30–4–31).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Naval Air Station Key West INRMP and that conservation efforts identified in the INRMP will provide a benefit to Florida Keys mole skink. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 158 ac (64 ha) of habitat (150 ac (61 ha) as a separate unit on Boca Chica Key and 8 ac (3 ha) as part of Unit 16 on Key West) in this proposed critical habitat designation because of this exemption.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act, 81 FR 7226 (Feb. 11, 2016) (2016 Policy)—both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species.

In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a ''significant'' rulemaking, and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of greater than $100 million in any given year (section 3(f)(1)). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for the Florida Keys mole skink is likely to exceed the economically significant threshold.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Florida Keys mole skink (Industrial Economics Incorporated [IEc] 2022, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and

includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas will also jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. Therefore, the screening analysis focuses on areas of unoccupied critical habitat. If there are any unoccupied units in the proposed critical habitat designation, the screening analysis assesses whether any additional management or conservation efforts may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, constitute what we consider to be our draft economic analysis of the proposed critical habitat designation for the Florida Keys mole skink; our draft economic analysis is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation.

In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Florida Keys mole skink, first we identified, in the IEM dated March 31, 2022, probable incremental economic impacts associated with the following categories of activities: (1) residential and commercial development; (2) road construction and maintenance; (3) habitat management activities (such as beach renourishment, shoreline armoring, nonnative species control including mechanical or herbicide applications, and prescribed fire); and (4) recreational activities and associated developments (such as campgrounds, trails, and visitor facilities) and management activities (such as beach raking or other cleaning methods to remove wrack and debris). We considered each industry or category individually. Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the Florida Keys mole skink is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If, when we list the species, we also finalize this proposed critical habitat designation, our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the Florida Keys mole skink's critical habitat. Because the designation of critical habitat for Florida Keys mole skink is being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological feature identified for critical habitat is the same feature essential for the life requisites of the species, and (2) any actions that would likely adversely affect the essential physical or biological feature of occupied critical habitat are also likely to adversely affect the Florida Keys mole skink. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Florida Keys mole skink totals approximately 7,068 ac (2,860 ha) in 19 units in Monroe County, Florida (see Proposed Critical Habitat Designation, above). Land ownership across the units includes Federal lands (35 percent), State lands (45 percent), local lands (4 percent), private lands (13 percent), and lands with unknown/undefined ownership (4 percent). Fourteen of the 19 units are currently occupied by the Florida Keys mole skink; the remaining 5 units are within the species' historical range but are not known to be currently occupied. Approximately 84 percent of the proposed critical habitat for the Florida Keys mole skink overlaps with currently designated Federal critical habitat for other species. Further, only about 22 percent (120 ac (48 ha)) of unoccupied proposed critical habitat does not overlap with existing designated Federal critical habitat (IEc 2022, p. 4).

When an action is proposed in an area of designated critical habitat, and the proposed activity has a Federal nexus, the need for section 7 consultation is triggered. Any incremental costs associated with consideration of potential effects to the critical habitat are a result of this consultation process. For all occupied areas, the economic costs of critical habitat designations will most likely be limited to additional administrative efforts to consider adverse modification in section 7 consultations, as the listing of the species is happening concurrently with critical habitat designation, and all occupied units would still need to undergo section 7 consultation due to listing regardless of critical habitat designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant. In total, a critical habitat designation for the Florida Keys mole skink is unlikely to generate costs or benefits exceeding $100 million in a single year. Because of the relatively small size of the critical habitat designation, the volume of lands that are State, county, or privately owned, the amount of land that is already being managed for conservation, and the significant overlap with other species' designated critical habitat, the numbers of section 7 consultations expected annually are modest (approximately one formal, two informal, and four technical assistance efforts annually across the designation; IEc 2022, p. 25).

Overall, we expect that agency administrative costs for consultation, incurred by the Service and the consulting Federal agency, would be minor (less than $6,000 per consultation effort) and, therefore, would not be significant (IEc 2022, p. 26). The total annual incremental costs of critical habitat designations for the Florida Keys mole skink are anticipated to be approximately $10,200 per year (IEc 2022, p. 27).

Potential private property value effects are possible due to public perception of impacts to private lands. The designation of critical habitat may cause some developers or landowners to perceive that private lands will be subject to use restrictions or litigation from third parties, resulting in costs. However, due to the speculative nature of this perception, costs are not able to be quantified. Regardless, only 13 percent of the proposed critical habitat designation is privately owned land, leading to nominal incremental costs arising from changes in public perception of lands included in the designation.

Incremental costs may occur outside of the section 7 consultation process if the designation of critical habitat triggers additional requirements or project modifications under State or local laws, regulations, or management strategies. These types of costs typically occur if the designation increases awareness of the presence of the species or the need for protection of its habitat. Given that the Florida Keys mole skink is covered by existing State protections, project proponents may already be aware of the presence of the species. For example, the Florida Keys mole skink is listed as threatened under Florida's endangered and threatened species rule. The species is further protected through habitat management and conservation under Florida's Imperiled Species Management Plan, the Florida Keys Wildlife and Environmental Area Management Plan, and Florida State park management plans. Therefore, designating critical habitat is unlikely to provide information to State or local agencies that would result in new regulations or actions (IEc 2022, p. 28).

We are soliciting data and comments from the public on the draft economic analysis discussed above, as well as on all aspects of this proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the draft economic analysis and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national security or homeland security concerns are not a factor in the process of determining what areas meet the definition of "critical habitat." However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i), because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, the Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national security or homeland security concerns, or we have otherwise identified national security or homeland security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national security or homeland security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national security or homeland security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national security and homeland security concerns in analyzing the benefits of exclusion.

Under section 4(b)(2) of the Act, we also consider whether a national security or homeland security impact might exist on lands owned or managed by DoD or DHS. In preparing this proposal, we have determined that, other than the land exempted under section 4(a)(3)(B)(i) of the Act based upon the existence of an approved INRMP (see Exemptions, above), the lands within the proposed designation of critical habitat for the Florida Keys mole skink are not owned or managed by DoD or DHS. Therefore, we anticipate no impact on national security or homeland security. However, if through the public comment period we receive information that we determine indicates that there is a potential for impacts on national security or homeland security from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other

impacts that might occur because of the designation.

When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional regulatory benefits that the area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. We consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitat. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

CCAAs and SHAs are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an ''enhancement of survival'' permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and, in the case of SHAs, the option to return to a baseline condition under the agreements. We also provide enrollees assurances that we will not impose further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary section 4(b)(2) exclusion analysis based on permitted conservation plans (*e.g.,* CCAAs, SHAs, and HCPs), we anticipate consistently excluding such areas if incidental take caused by the activities in those areas is covered by the permit under section 10 of the Act and the CCAA/SHA/HCP meets all of the following three factors (see the 2016 Policy for additional details):

a. The permittee is properly implementing the CCAA/SHA/HCP and is expected to continue to do so for the term of the agreement. A CCAA/SHA/HCP is properly implemented if the permittee is and has been fully implementing the commitments and provisions in the CCAA/SHA/HCP, Implementing Agreement, and permit.

b. The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP would also protect the habitat features of the similar species.

c. The CCAA/SHA/HCP specifically addresses that species' habitat and meets the conservation needs of the species in the planning area.

The proposed critical habitat designation includes areas that are covered by the following permitted plan providing for the conservation of the Florida Keys mole skink: Habitat Conservation Plan for Florida Key Deer and Other Protected Species on Big Pine Key and No Name Key, Monroe County, Florida.

In preparing this proposal, we have determined that lands associated with the HCP for Florida Key Deer and Other Protected Species on Big Pine Key and No Name Key within Big Pine Key (Unit 11) are included within the boundaries of the proposed critical habitat for the Florida Keys mole skink. However, we have determined that the HCP does not include the Florida Keys mole skink as a ''covered species,'' and the Florida Keys mole skink is not mentioned specifically anywhere in the HCP document. Because it is not a ''covered species,'' the HCP will not trigger surveys or conservation measures for this species. The HCP expires in 2023, though the county is applying for an extension to 2026, which may provide an opportunity to add the Florida Keys mole skink.

At this time, we are not considering the exclusion of any areas within the proposed critical habitat for the Florida Keys mole skink that are covered by permitted plans. However, we are requesting information supporting a benefit of excluding any areas from the HCP for Florida Key Deer and Other Protected Species on Big Pine Key and No Name Key. Based on our evaluation of the information we receive, we may determine that we have reason to exclude one or more areas from the final designation.

Non-Permitted Conservation Plans, Agreements, or Partnerships

Shown below is a non-exhaustive list of factors that we consider in evaluating how non-permitted plans or agreements affect the benefits of inclusion or exclusion. These are not required elements of plans or agreements. Rather, they are some of the factors we may consider, and not all of these factors apply to every plan or agreement.

(i) The degree to which the record of the plan, or information provided by proponents of an exclusion, supports a conclusion that a critical habitat designation would impair the realization of the benefits expected from the plan, agreement, or partnership.

(ii) The extent of public participation in the development of the conservation plan.

(iii) The degree to which agency review and required determinations (*e.g.,* State regulatory requirements) have been completed, as necessary and appropriate.

(iv) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) reviews or similar reviews occurred, and the nature of any such reviews.

(v) The demonstrated implementation and success of the chosen mechanism.

(vi) The degree to which the plan or agreement provides for the conservation of the essential physical or biological feature for the species.

(vii) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented.

(viii) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

The proposed critical habitat designation includes areas that are covered by the following non-permitted plans providing for the conservation of the Florida Keys mole skink: Florida Keys Wildlife and Environmental Area Management Plan and several Florida Keys State Park Unit Management Plans.

In preparing this proposal, we have determined that lands associated with the Florida Keys Wildlife and Environmental Area (Units 1 and 2), Dagny Johnson Key Largo Hammock Botanical State Park (Unit 1), John Pennekamp Coral Reef State Park (Unit 1), Lignumvitae Key Botanical State Park (Units 3 and 5), Indian Key Historic State Park (Unit 4), Long Key State Park (Unit 6), Bahia Honda State Park (Unit 9), and Fort Zachary Taylor State Park (Unit 16) are included within the boundaries of the proposed critical habitat for the Florida Keys mole skink. While the Florida Keys mole skink is mentioned within four of these plans and monitoring is included as an objective in three (two of which are only for opportunistic monitoring), specific management objectives for the species are not discussed.

At this time, we are not considering the exclusion of any areas within the proposed critical habitat for the Florida Keys mole skink that are covered by non-permitted plans because these areas are managed for conservation. However, we are requesting information supporting a benefit of excluding any areas covered by the Florida Keys Wildlife and Environmental Area Management Plan or the Florida Keys State Park Unit Management Plans. Based on our evaluation of the information we receive, we may determine that we have reason to exclude one or more areas from the final designation.

Tribal Lands

In preparing this proposal, we have determined that there are no Tribal lands or resources that are included within the boundaries of the proposed critical habitat for the Florida Keys mole skink.

Summary of Exclusions Considered Under Section 4(b)(2) of the Act

At this time we are not considering any exclusions from the proposed designation based on economic impacts, national security impacts, or other relevant impacts—such as partnerships, management, or protection afforded by cooperative management efforts—under section 4(b)(2) of the Act. Some areas within the proposed designation are included in an HCP or State land management plans; however, the Florida Keys mole skink is not a covered species within those plans, nor is the species discussed in the plans. In this proposed rule, we are seeking information from the public supporting a benefit of excluding any areas that would be used in an exclusion analysis that may result in the exclusion of areas from the final critical habitat designation. (Please see **DATES** and **ADDRESSES** for instructions on how to submit comments.)

Required Determinations

Clarity of the Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and Service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we

considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects when undertaking certain actions. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use, as there are no energy facilities within the boundaries of the proposed critical habitat units for the Florida Keys mole skink. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Florida Keys mole skink in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for the Florida Keys mole skink, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the Federal government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological feature essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the Florida Keys mole skink, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Florida Ecological Services Field Office.

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on August 30, 2022, for publication. On September 15, 2022, Martha Williams authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11 in paragraph (h) by adding an entry for ''Skink, Florida Keys mole'' to the List of Endangered and Threatened Wildlife in alphabetical order under REPTILES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * * * *				
REPTILES				
* * * * * * *				
Skink, Florida Keys mole	*Plestiodon egregius egregius*.	Wherever found	T	[**FEDERAL REGISTER** Citation when Published as a Final Rule]; 50 CFR 17.42(q);[4d] 50 CFR 17.95(c).[CH]
* * * * * * *				

■ 3. Amend § 17.42 by adding paragraphs (j) through (q) to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(j) [Reserved]

(k) [Reserved]

(l) [Reserved]

(m) [Reserved]

(n) [Reserved]

(o) [Reserved]

(p) [Reserved]

(q) Florida Keys mole skink (*Plestiodon egregius egregius*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to Florida Keys mole skink. Except as provided under paragraph (q)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of a commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(v) Take incidental to an otherwise lawful activity caused by:

(A) Mechanical treatment activities conducted within Florida Keys mole skink habitat that are carried out in accordance with a habitat management plan developed by a Federal, State, or county entity in coordination with the Service, as long as the treatments are used to maintain, restore, or enhance a natural diversity and abundance of habitats for native plants and wildlife.

(B) Prescribed fire activities conducted within Florida Keys mole skink habitat that are carried out in accordance with a fire management plan developed by a Federal, State, or county entity in coordination with the Service, as long as the treatments are used to maintain, restore, or enhance a natural diversity and abundance of habitats for native plants and wildlife. Prescribed fire activities include maintenance and creation of fire breaks, fire line installation, mechanical treatments to reduce fuel loads, and any other pre-fire preparations needed.

(C) Nonnative plant or animal species eradication activities that are carried out in accordance with a habitat management plan developed by a Federal, State, or county entity in coordination with the Service, as long as the treatments are used to maintain, restore, or enhance a natural diversity and abundance of habitats for native plants and wildlife.

■ 4. Amend § 17.95 in paragraph (c) by adding an entry for ''Florida Keys Mole Skink (*Plestiodon egregius egregius*)'' after the entry for ''Loggerhead Sea Turtle, Northwest Atlantic Ocean DPS (*Caretta caretta*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) *Reptiles.*

* * * * *

Florida Keys Mole Skink (*Plestiodon egregius egregius*)

(1) Critical habitat units are depicted for Monroe County, Florida, on the maps in this entry.

(2) Within these areas, the physical or biological feature essential to the conservation of the Florida Keys mole skink consists of natural habitats (including, but not limited to beaches, dunes, coastal berms, rockland hammocks, and pine rocklands) along the coast or on the interior of the Florida Keys that contain:

(i) Suitable soils (dry, loose, sandy, permeable, or friable soils) for movement and nesting; and

(ii) Sufficient, appropriate ground cover (including, but not limited to tidal wrack deposited above the mean high-water line, leaf litter, and vegetative debris) for protection from predators and temperature extremes, sources of food, and areas for reproduction.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF RULE].

(4) Data layers defining map units were created using ESRI ArcGIS mapping software along with various spatial data layers. ArcGIS was also used to calculate the size of habitat areas. The projection used in mapping and calculating distances and locations within the units was Albers Conical Equal Area (Florida Geographic Data Library), NAD 1983 HARN. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/florida-ecological-services/library,* at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2022–0104, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

Figure 1 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (5)

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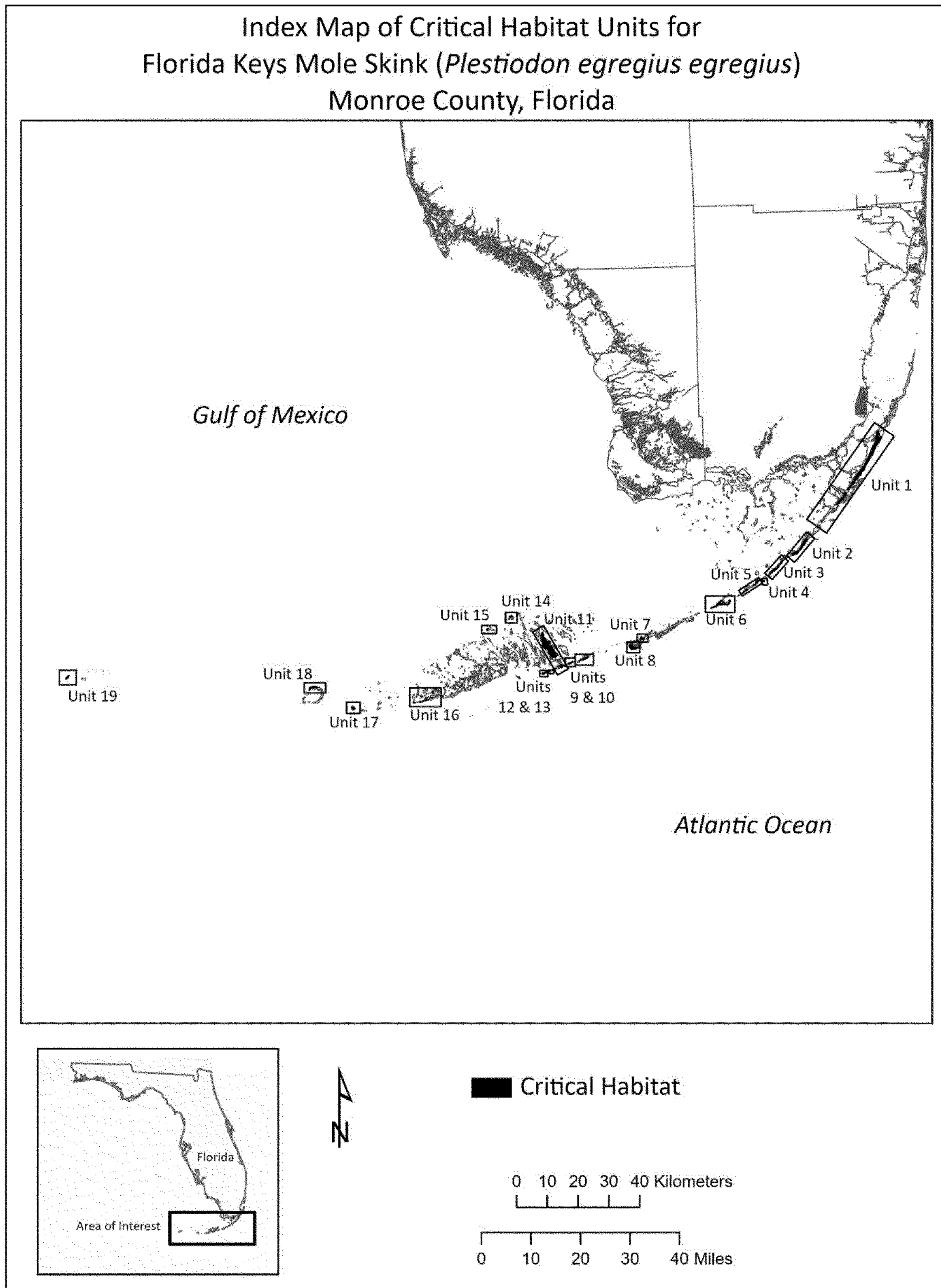


(6) Unit 1: Key Largo, Monroe County, Florida.

(i) Unit 1 consists of 3,157 ac (1,278 ha) in Monroe County, Florida, in the upper Florida Keys. This unit includes Federal lands within Crocodile Lake National Wildlife Refuge (608 ac (246 ha)), State lands within Dagny Johnson Botanical State Park, John Pennekamp Coral Reef State Park, and the Florida Keys Wildlife and Environmental Area (2,176 ac (881 ha)), local lands (85 ac (34 ha)), and property in private or unknown/undefined ownership (288 ac (117 ha)). The unit originates on the north end of Key Largo, just south of the Ocean Reef Club, and continues contiguously south to U.S. Route 1, after which it continues intermittently to just north of Ocean Drive. There is one disjunct portion of the unit,

approximately 4.5 miles south of Ocean Drive, between Dove Road and Snapper Lane.

(ii) Maps of Unit 1 follow:

Figure 2 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (6)(ii)

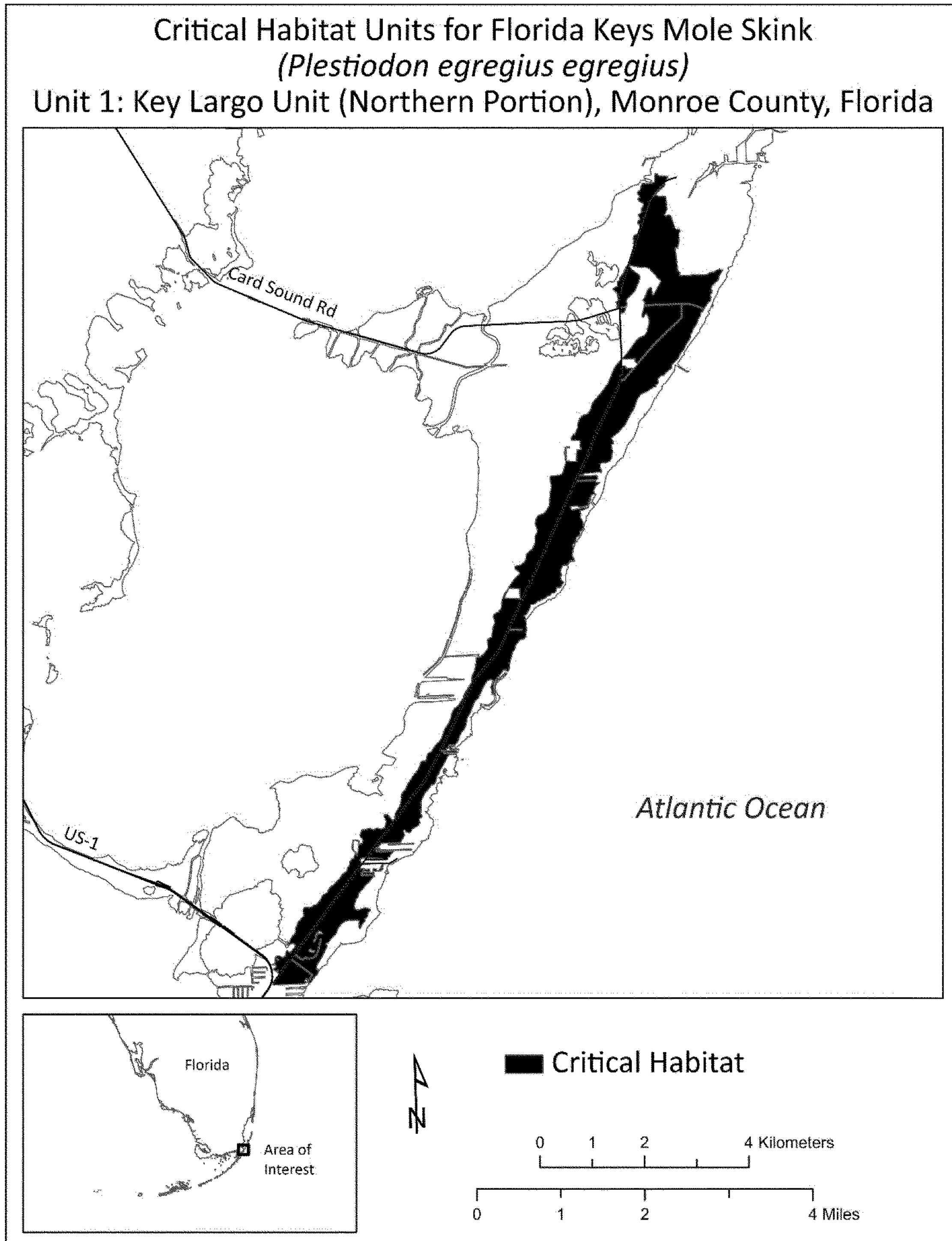
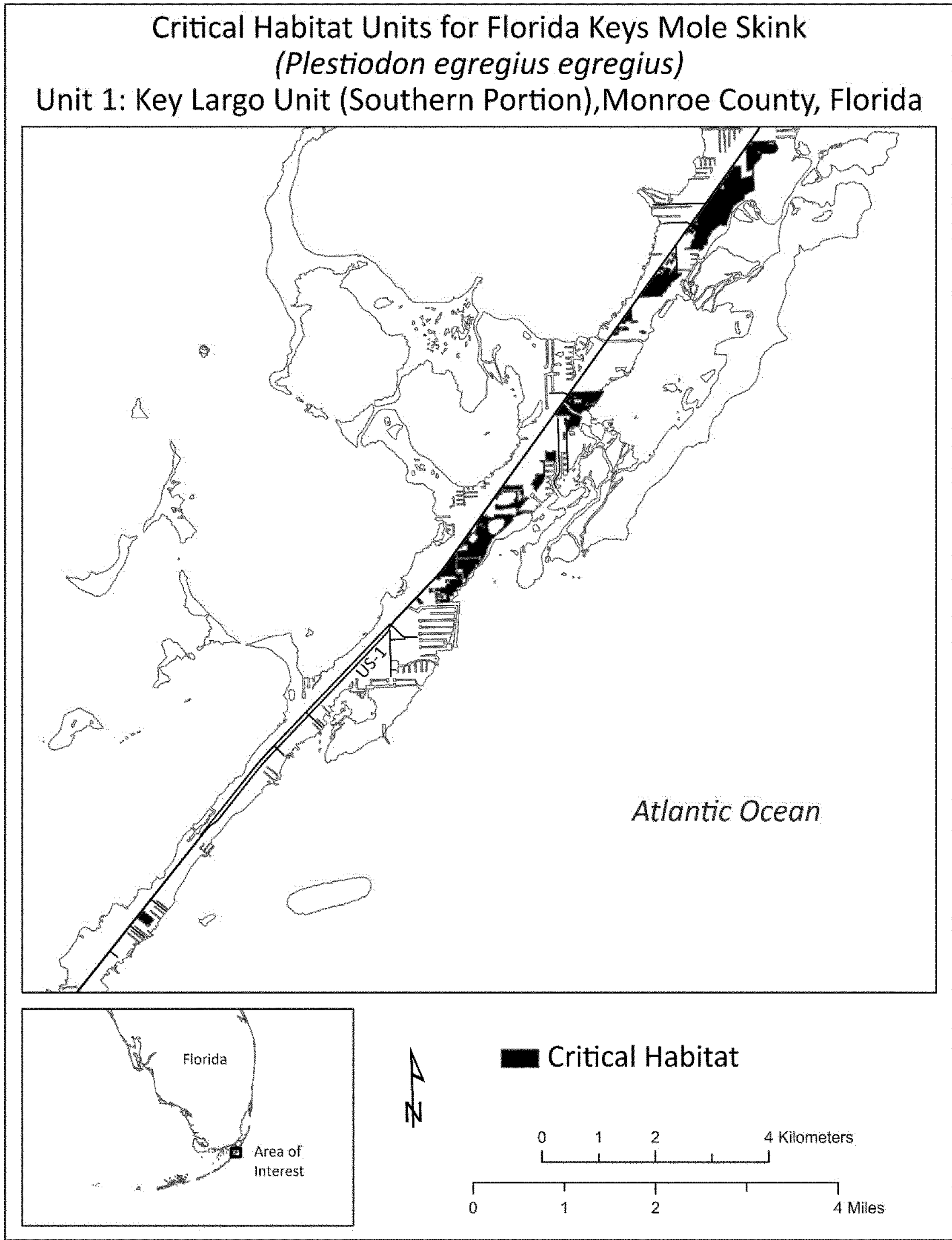


Figure 3 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (6)(ii)

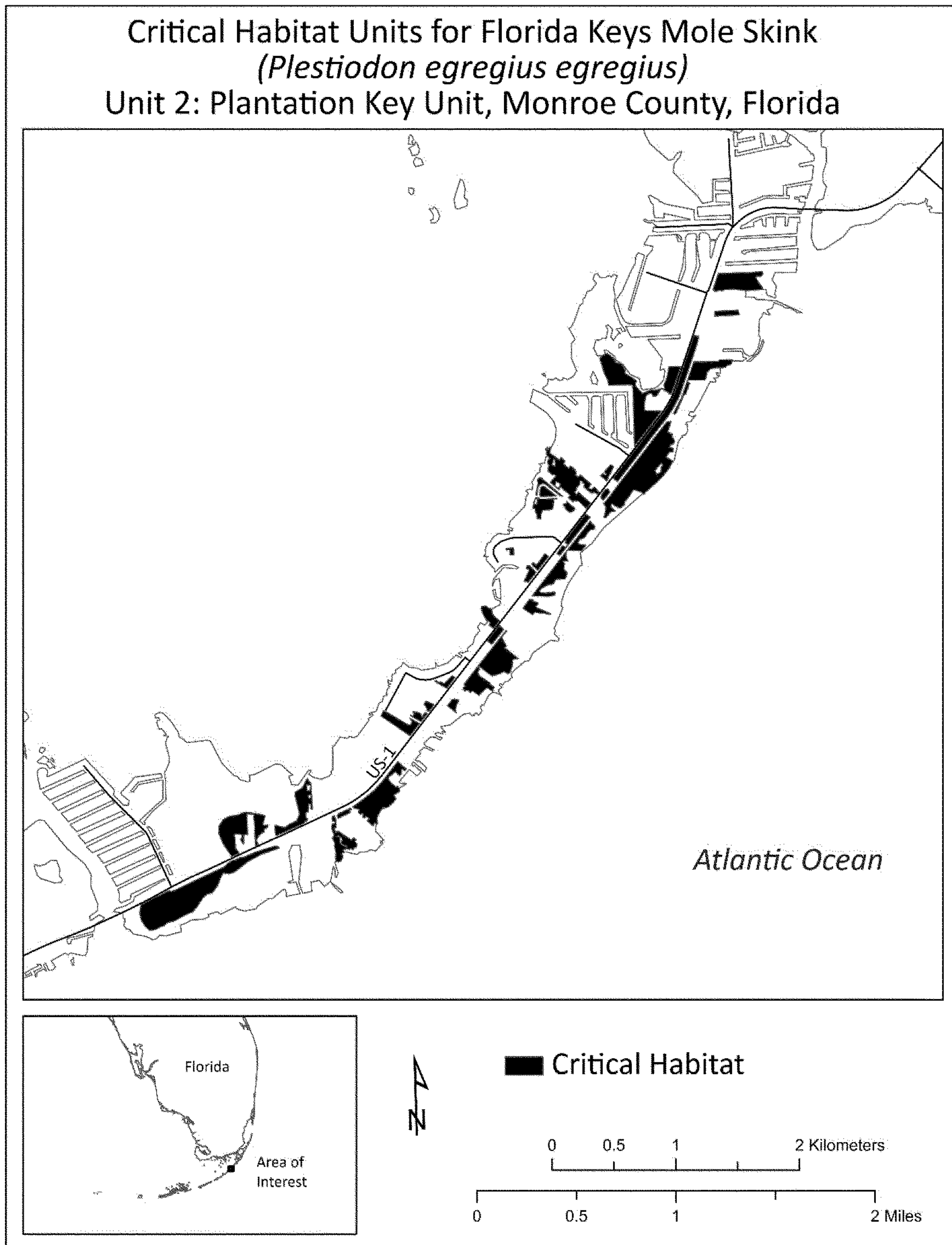


(7) Unit 2: Plantation Key, Monroe County, Florida.

(i) Unit 2 consists of 275 ac (111 ha) in Monroe County, Florida, in the upper Florida Keys. This unit includes State lands within the Florida Keys Wildlife and Environmental Area (63 ac (26 ha)), local lands (29 ac (12 ha)), and property in private or unknown/undefined ownership (183 ac (74 ha)). The unit originates on the north end of Plantation Key just south of Ocean Drive and continues intermittently until the south end of the island.

(ii) Map of Unit 2 follows:

Figure 4 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (7)(ii)

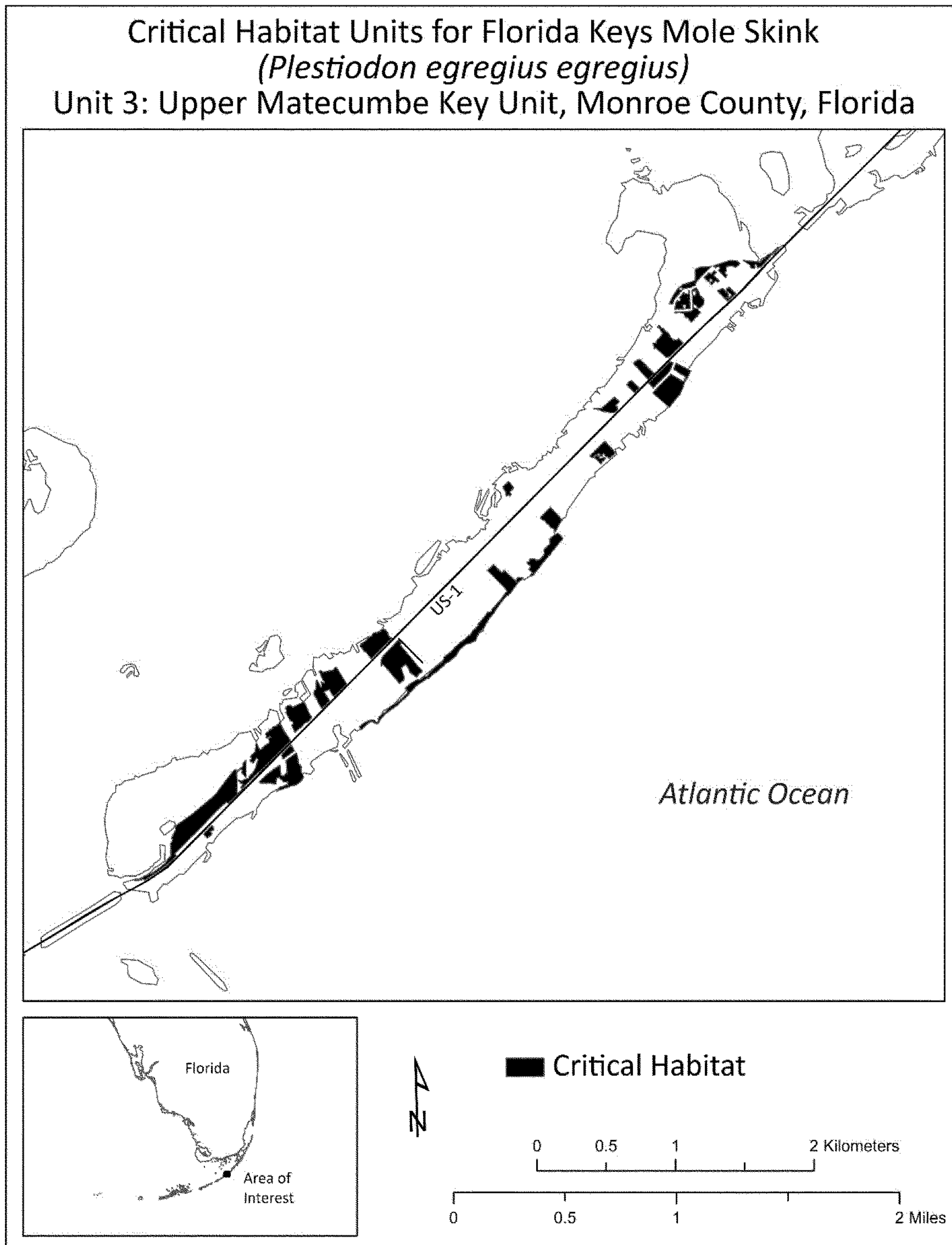


(8) Unit 3: Upper Matecumbe Key, Monroe County, Florida.

(i) Unit 3 consists of 140 ac (57 ha) in Monroe County, Florida, in the upper Florida Keys. This unit includes State lands within the Lignumvitae Key Botanical and Indian Key Historic State Parks (24 ac (10 ha)), local lands (18 ac (7 ha)), and property in private or unknown/undefined ownership (97 ac (39 ha)). The unit originates on the north end of Upper Matecumbe Key and continues intermittently until the south end of the island.

(ii) Map of Unit 3 follows:

Figure 5 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (8)(ii)



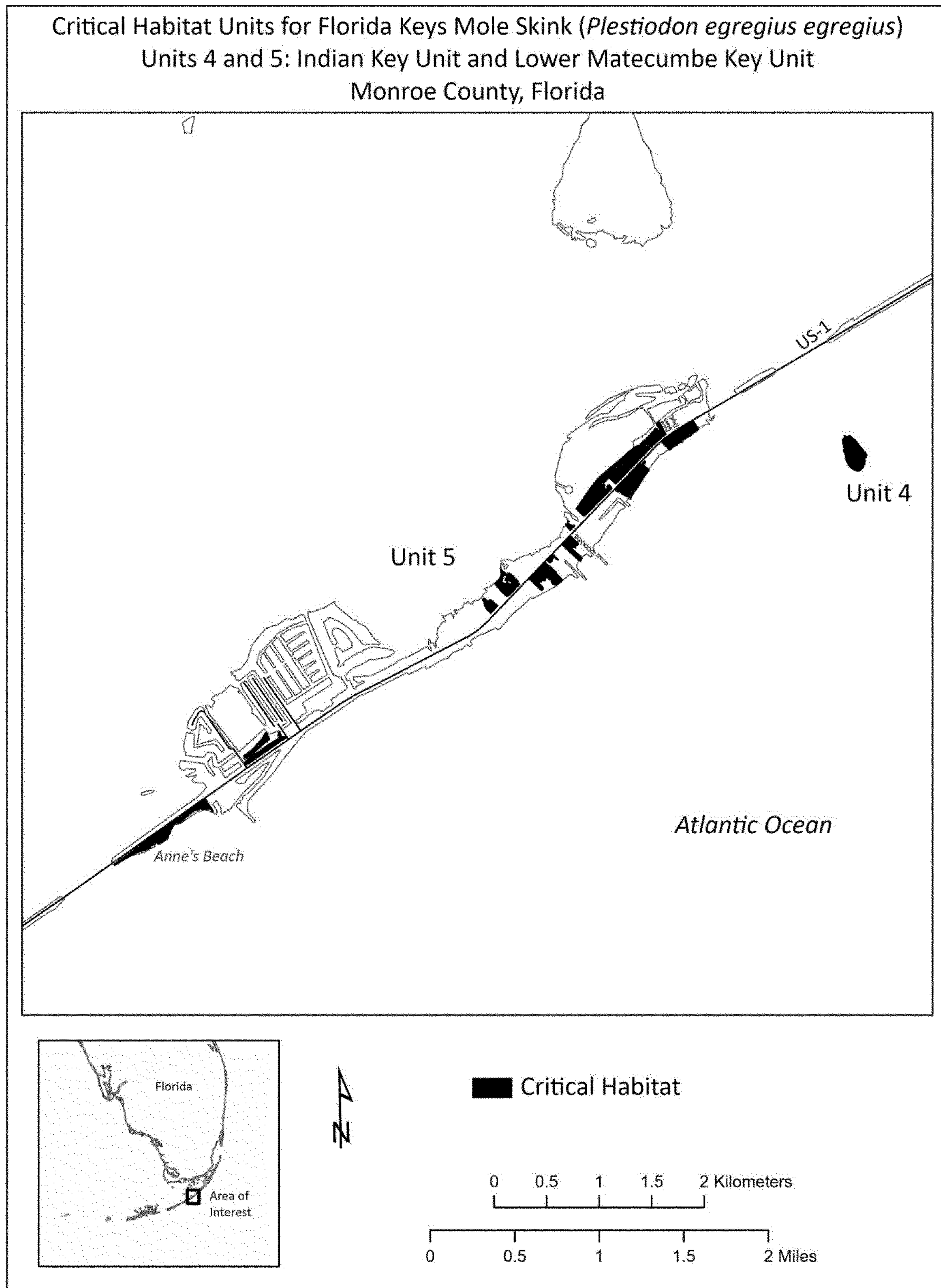
(9) *Unit 4:* Indian Key, Monroe County, Florida; and Unit 5: Lower Matecumbe Key, Monroe County, Florida.

(i) Unit 4 consists of 12 ac (5 ha) in Monroe County, Florida, in the upper Florida Keys. The unit encompasses the entire island of Indian Key, which is owned by the State as part of the Indian Key Historic State Park.

(ii) Unit 5 consists of 95 ac (38 ha) in Monroe County, Florida, in the upper Florida Keys. This unit includes State lands that are part of Lignumvitae Key Botanical State Park (34 ac (14 ha)), local lands (6 ac (3 ha)), and property in private or unknown/undefined ownership (54 ac (22 ha)). The unit originates on the north end of Lower Matecumbe Key and continues intermittently until the south end of the island.

(iii) Map of Unit 4 and Unit 5 follows:

Figure 6 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (9)(iii)

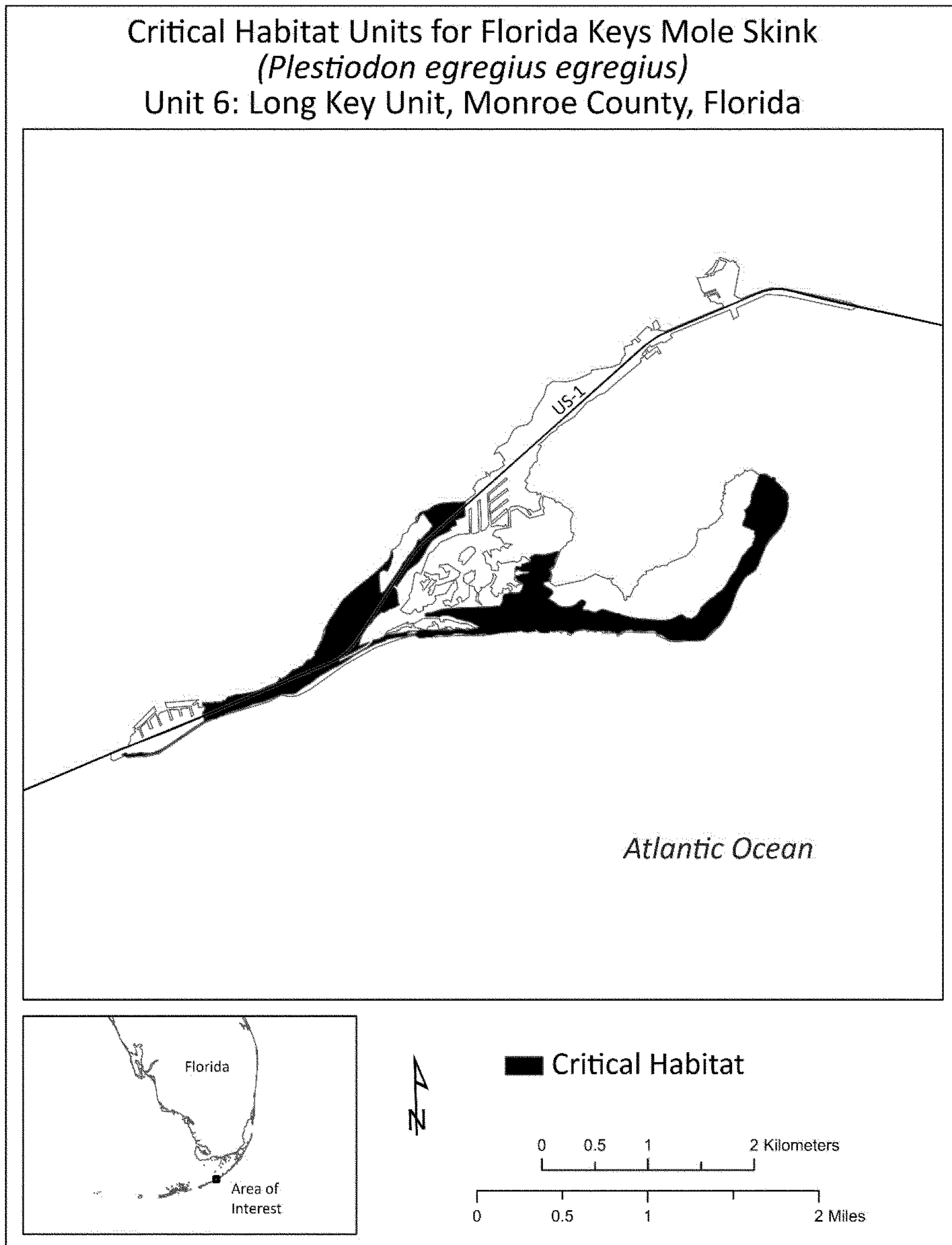


(10) *Unit 6:* Long Key, Monroe County, Florida.

(i) Unit 6 consists of 405 ac (164 ha) in Monroe County, Florida, in the middle Florida Keys. This unit includes State lands that are part of Long Key State Park (350 ac (142 ha)), local lands (20 ac (8 ha)), and property in private or unknown/undefined ownership (34 ac (14 ha)). The unit originates on the north end of the southern hook of Long Key and continues until the south end of the island, with a portion extending north along U.S. Route 1 to Long Key Lake Drive.

(ii) Map of Unit 6 follows:

Figure 7 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (10)(ii)



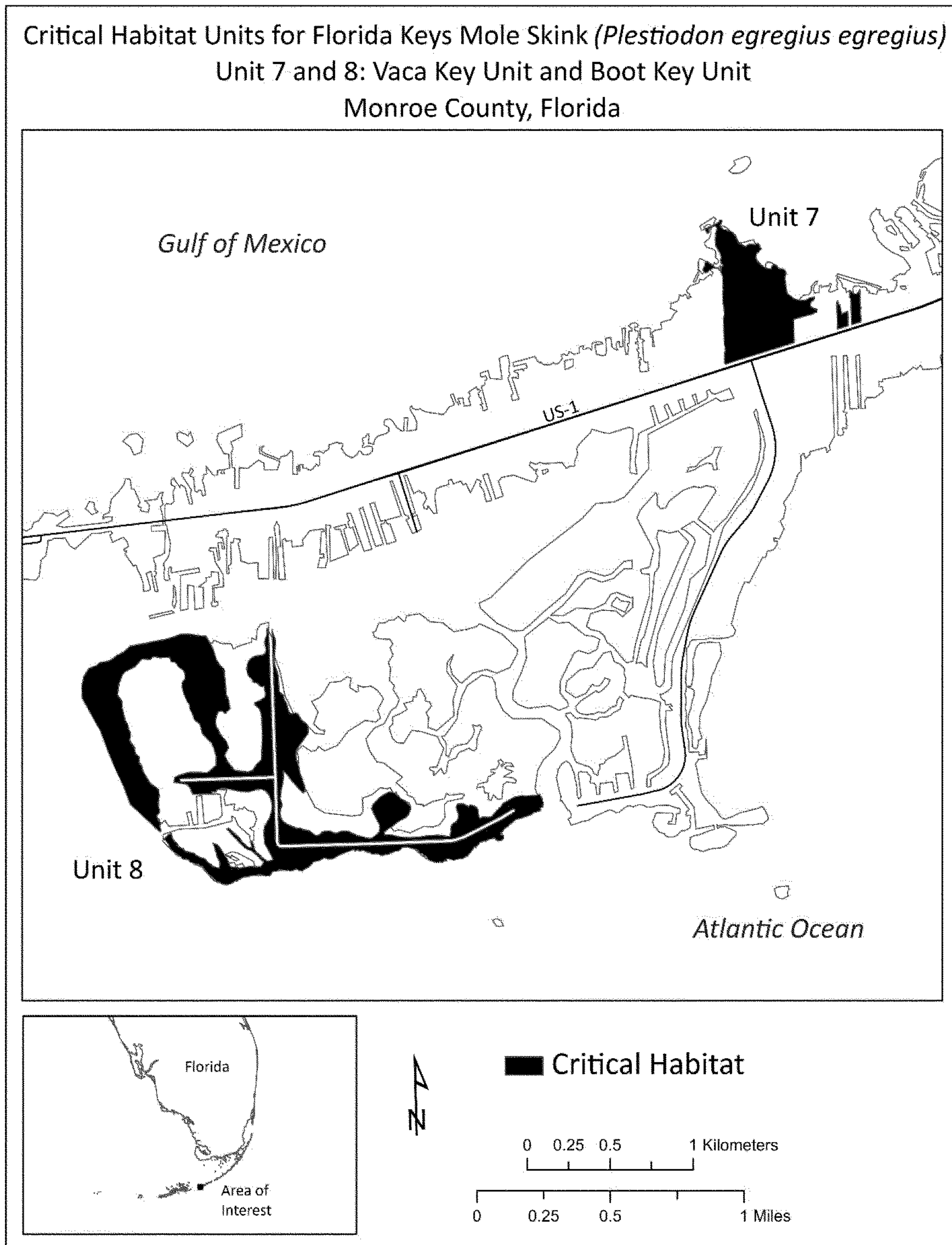
(11) *Unit 7:* Vaca Key, Monroe County, Florida; and Unit 8: Boot Key, Monroe County, Florida.

(i) Unit 7 consists of 72 ac (29 ha) in Monroe County, Florida, in the middle Florida Keys. This unit includes local lands (1 ac (<1 ha)) and property in private or unknown/undefined ownership (71 ac (29 ha)). The unit includes most of the Crane Point Hammock Preserve, which is located on the north side of U.S. Route 1, and two smaller areas to the east.

(ii) Unit 8 consists of 221 ac (90 ha) in Monroe County, Florida, in the middle Florida Keys. This unit includes State lands (14 ac (6 ha)) and property in private or unknown/undefined ownership (207 ac (84 ha)). The unit originates on the east end of the southern shore of Boot Key and continues up the middle and along the northwestern shoreline of the island.

(iii) Map of Unit 7 and Unit 8 follows:

Figure 8 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (11)(iii)

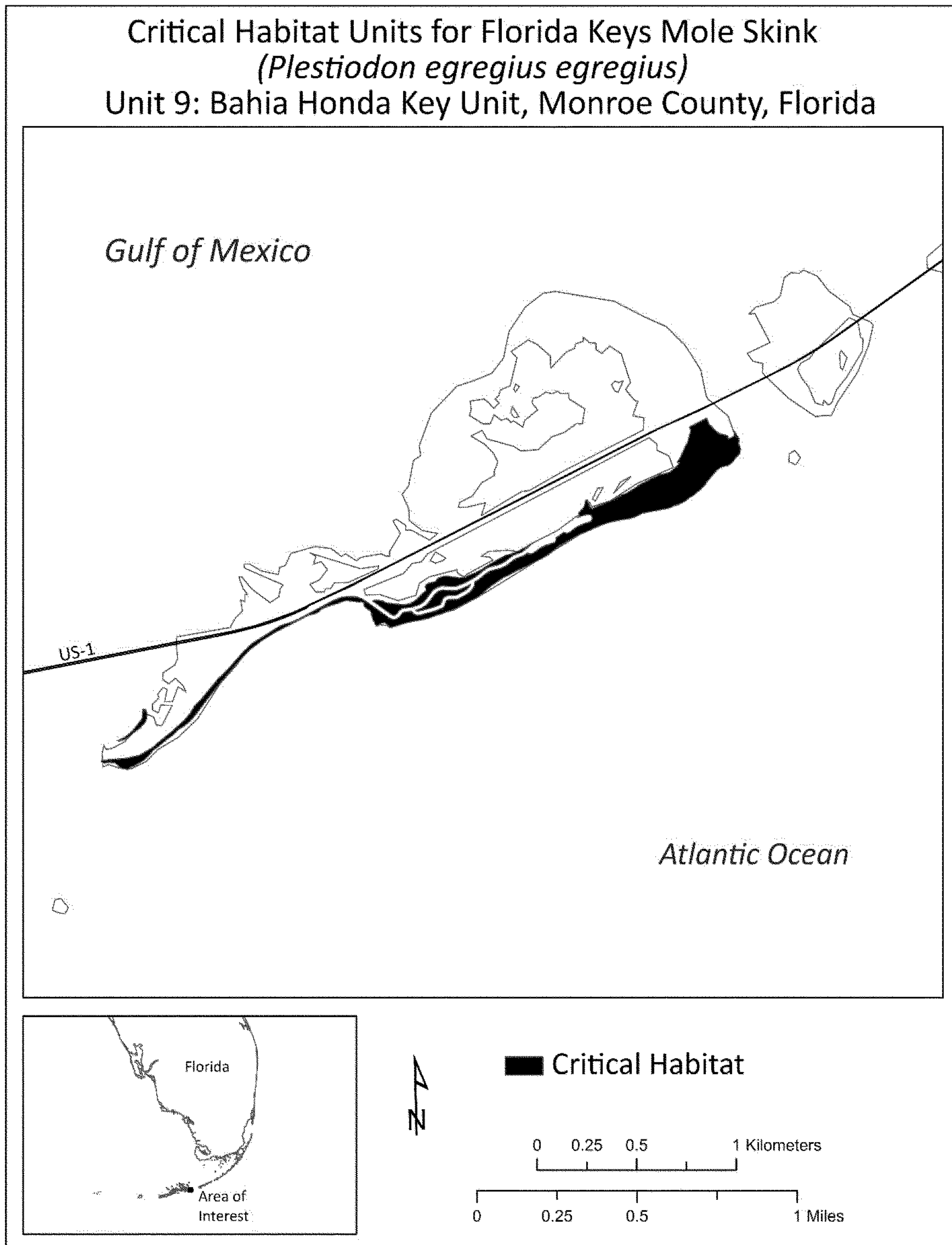


(12) *Unit 9:* Bahia Honda Key, Monroe County, Florida.

(i) Unit 9 consists of 65 ac (26 ha) in Monroe County, Florida, in the lower Florida Keys. This unit is almost entirely within Bahia Honda State Park (57 ac (23 ha)), with approximately 8 ac (3 ha) of unknown or undefined ownership. The unit originates on the east end of the southern shore of Bahia Honda Key and continues along the southern shore until the west end of the island, with a small area on the northwestern shore of the island.

(ii) Map of Unit 9 follows:

Figure 9 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (12)(ii)

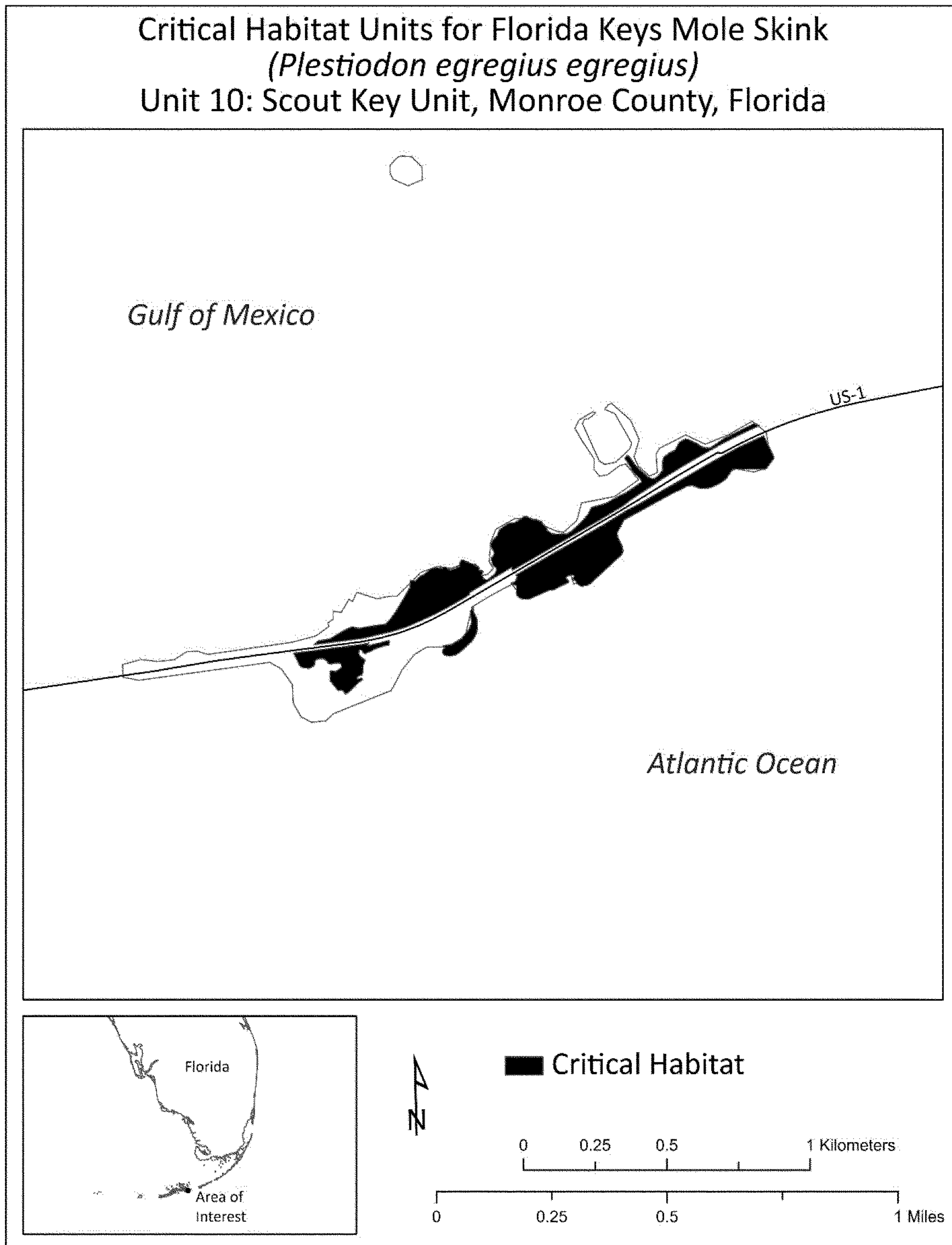


(13) *Unit 10:* Scout Key, Monroe County, Florida.

(i) Unit 10 consists of 53 ac (21 ha) in Monroe County, Florida, in the lower Florida Keys. This unit includes State lands (9 ac (4 ha)), local lands (33 ac (13 ha)), and property in private or unknown/undefined ownership (11 ac (5 ha)). The unit originates on the east end of Scout Key (also called West Summerland Key) and continues to the west end of the island just east of the entrance to the Boy Scout Camp, with a small area on the southern shore of the island.

(ii) Map of Unit 10 follows:

Figure 10 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (13)(ii)

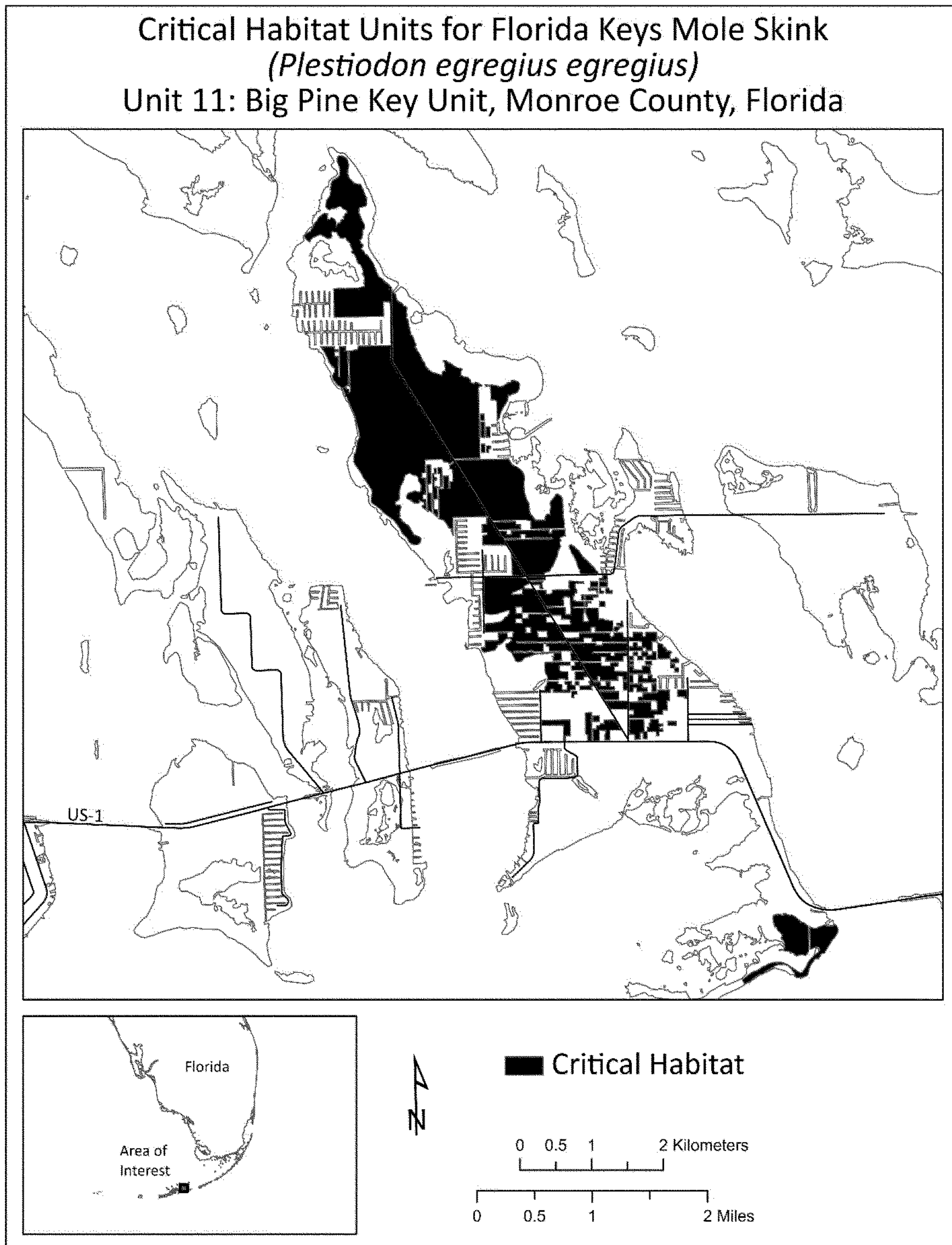


(14) *Unit 11:* Big Pine Key, Monroe County, Florida.

(i) Unit 11 consists of 2,159 ac (874 ha) in Monroe County, Florida, in the lower Florida Keys. This unit includes Federal lands within the National Key Deer Refuge (1,547 ac (626 ha)), State lands (412 ac (167 ha)), local lands (80 ac (32 ha)), and property in private or unknown/undefined ownership (120 ac (49 ha)). The northern part of the unit extends from near the northern tip of Big Pine Key south to U.S. Route 1, and the southern part of the unit originates on the eastern end of Long Beach, just south of the Big Pine Key Resort, and extend west to where the low-density residential developments begin.

(ii) Map of Unit 11 follows:

Figure 11 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (14)(ii)



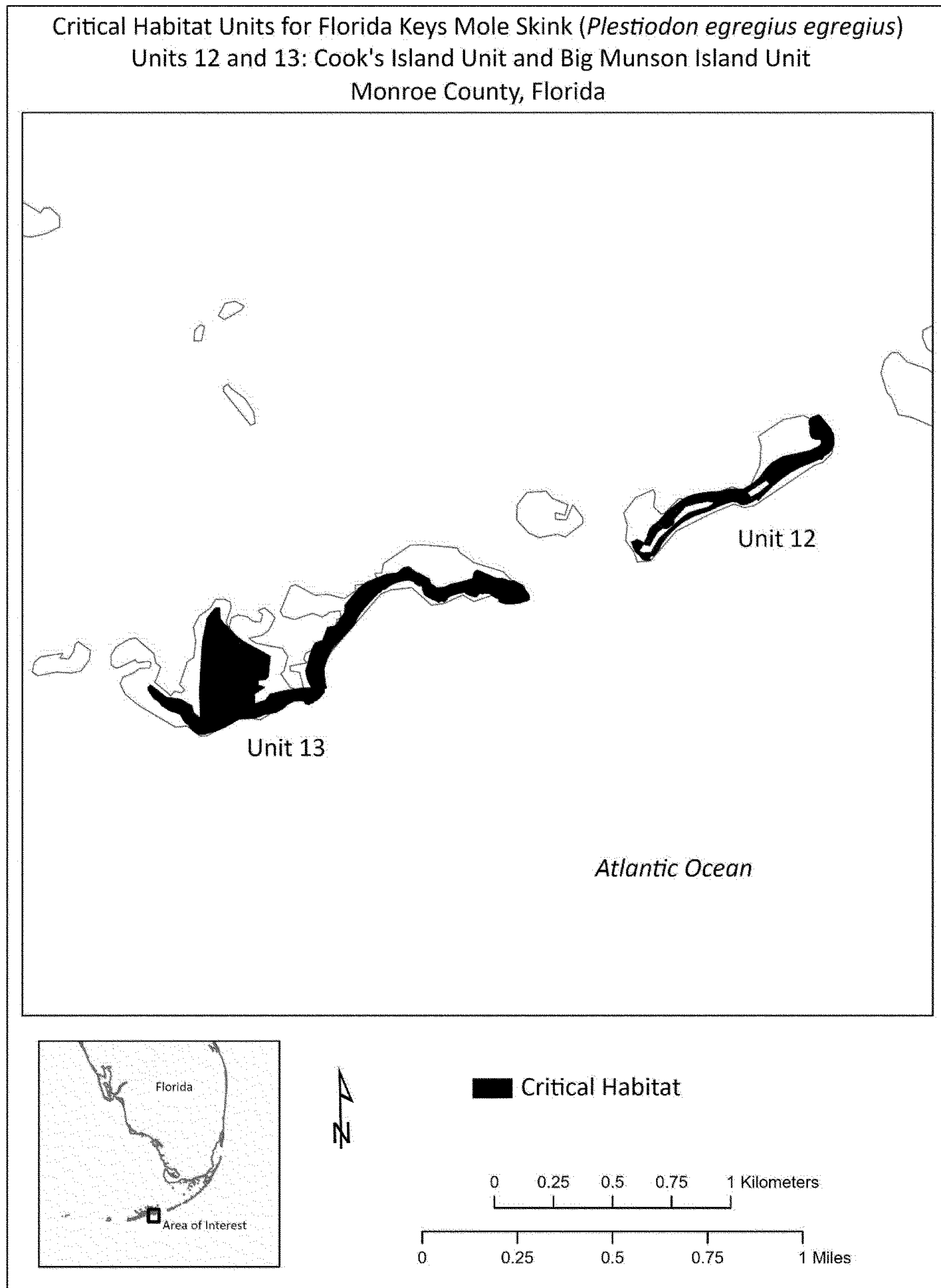
(15) *Unit 12:* Cook's Island, Monroe County, Florida; and Unit 13: Big Munson Island, Monroe County, Florida.

(i) Unit 12 consists of 15 ac (6 ha) in Monroe County, Florida, in the lower Florida Keys. This unit is almost entirely in private ownership (13 ac (5 ha)), with approximately 2 ac (1 ha) of unknown or undefined ownership. The unit stretches along the entire southern shore of Cook's Island.

(ii) Unit 13 consists of 51 ac (21 ha) in Monroe County, Florida, in the lower Florida Keys. This unit is almost entirely in private ownership by the Boy Scouts of America (50 ac (20 ha)), with approximately 1 ac (1 ha) of unknown or undefined ownership. The unit stretches along the entire southern shore of Big Munson Island with a portion extending to the north on the western end.

(iii) Map of Unit 12 and Unit 13 follows:

Figure 12 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (15)(iii)

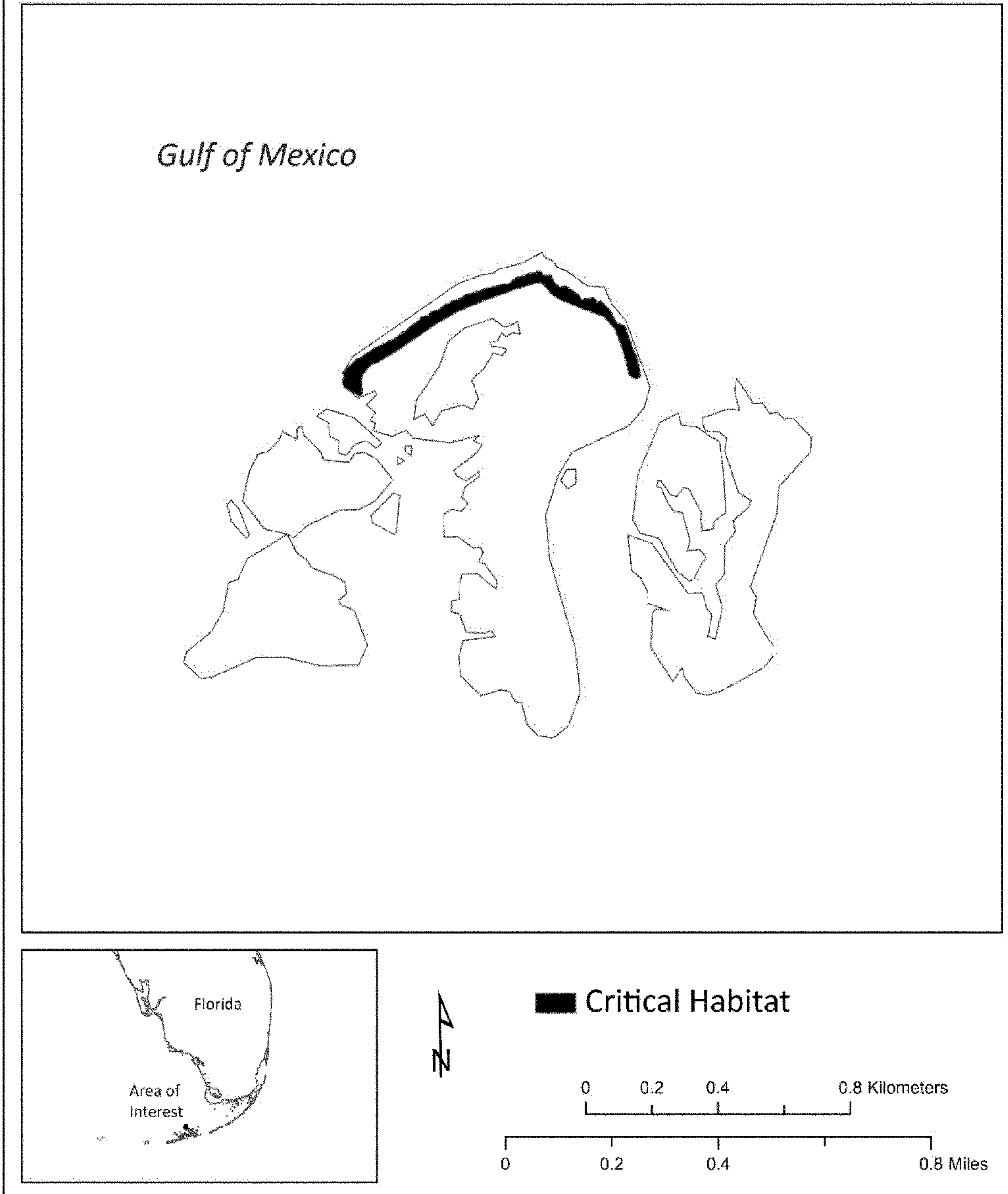


(16) *Unit 14:* Content Key, Monroe County, Florida.

(i) Unit 14 consists of 10 ac (4 ha) in Monroe County, Florida, in the lower Florida Keys. This unit includes Federal lands within the National Key Deer Refuge and the Great White Heron National Wildlife Refuge (6 ac (3 ha)), State lands (1 ac (<1 ha)), and property with unknown or undefined ownership (3 ac (1 ha)). The unit stretches along most of the northern shore of the middle island of Content Keys.

(ii) Map of Unit 14 follows:

Figure 13 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (16)(ii)

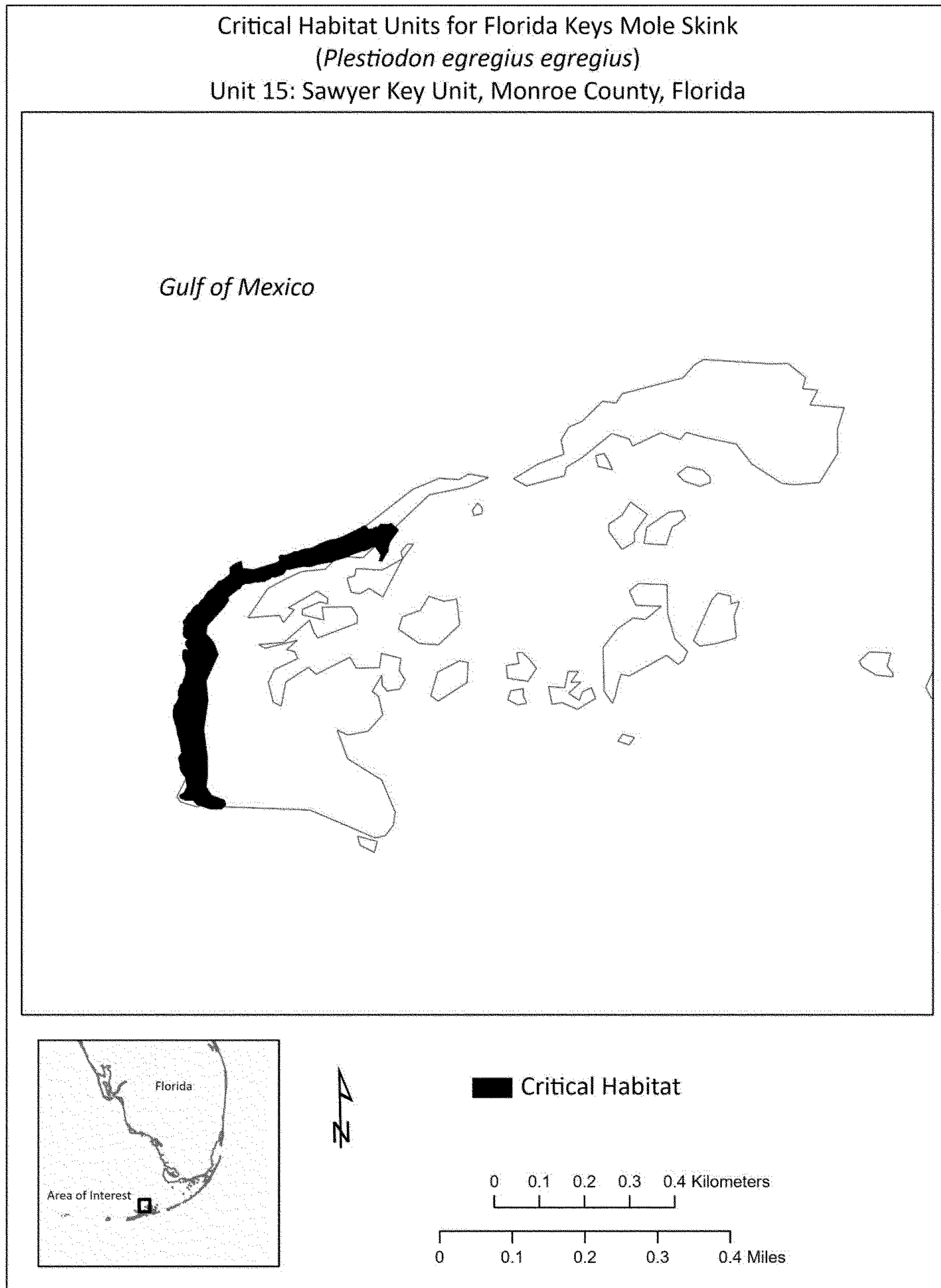


(17) *Unit 15:* Sawyer Key, Monroe County, Florida.

(i) Unit 15 consists of 11 ac (4 ha) in Monroe County, Florida, in the lower Florida Keys. This unit is almost entirely in Federal ownership as part of the Great White Heron National Wildlife Refuge (10 ac (4 ha)), with approximately 1 ac (<1 ha) of unknown or undefined ownership. The unit stretches along the entire western and northern shore of the westernmost island of Sawyer Key.

(ii) Map of Unit 15 follows:

Figure 14 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (17)(ii)

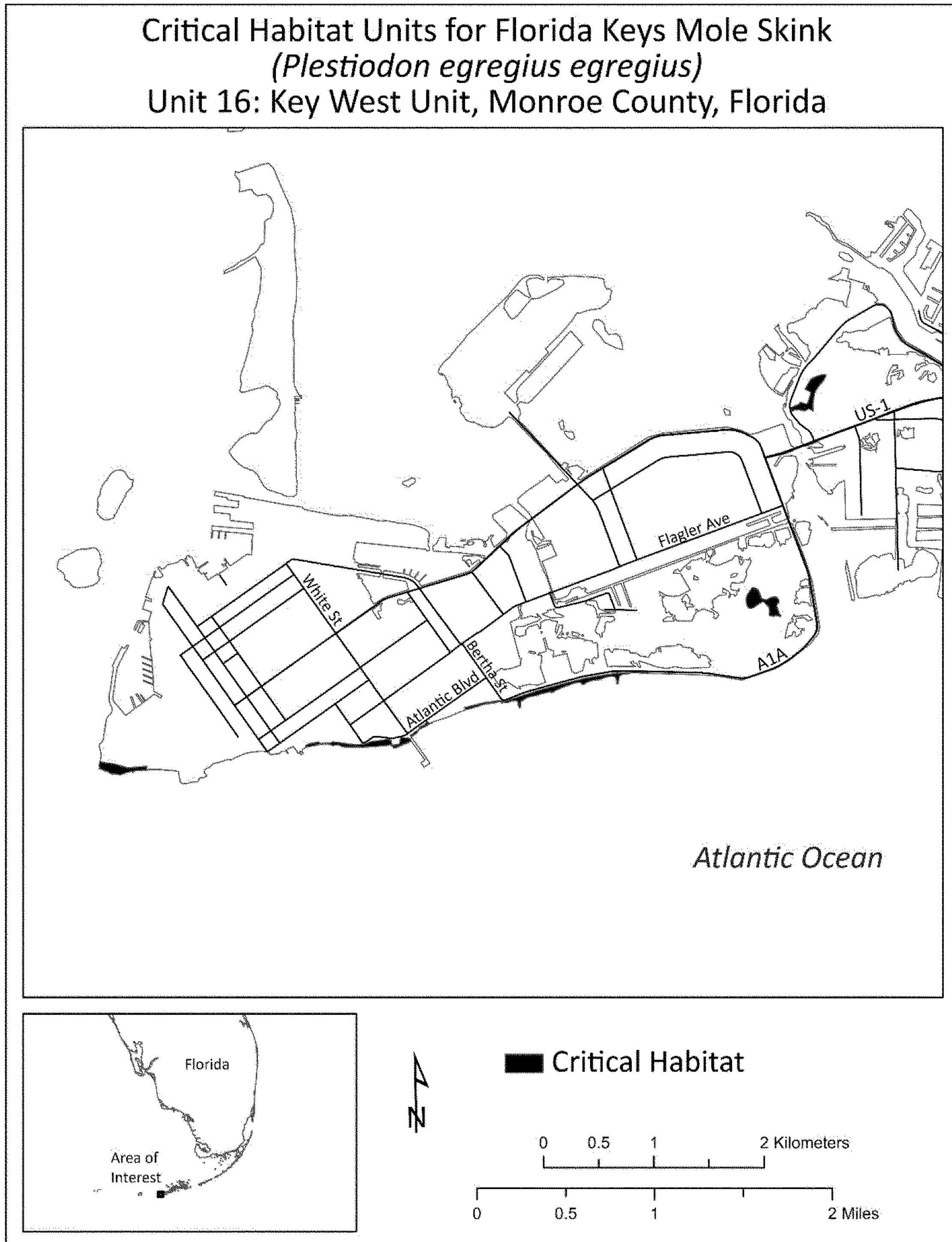


(18) Unit 16: Key West, Monroe County, Florida.

(i) Unit 16 consists of 42 ac (17 ha) in Monroe County, Florida, in the lower Florida Keys. This unit includes State lands within Fort Zachary Taylor State Park (15 ac (6 ha)), local lands (10 ac (4 ha)), and property in private or unknown/undefined ownership (17 ac (7 ha)). The unit originates on the southwest end of Key West and continues intermittently along the beach shoreline to the east until the sand beach stops south of the Key West International Airport. There are two disjunct portions of the unit to the northwest, one just north of the western end of the airport and the other on Stock Island, within the Key West Tropical Forest and Botanical Garden.

(ii) Map of Unit 16 follows:

Figure 15 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (18)(ii)

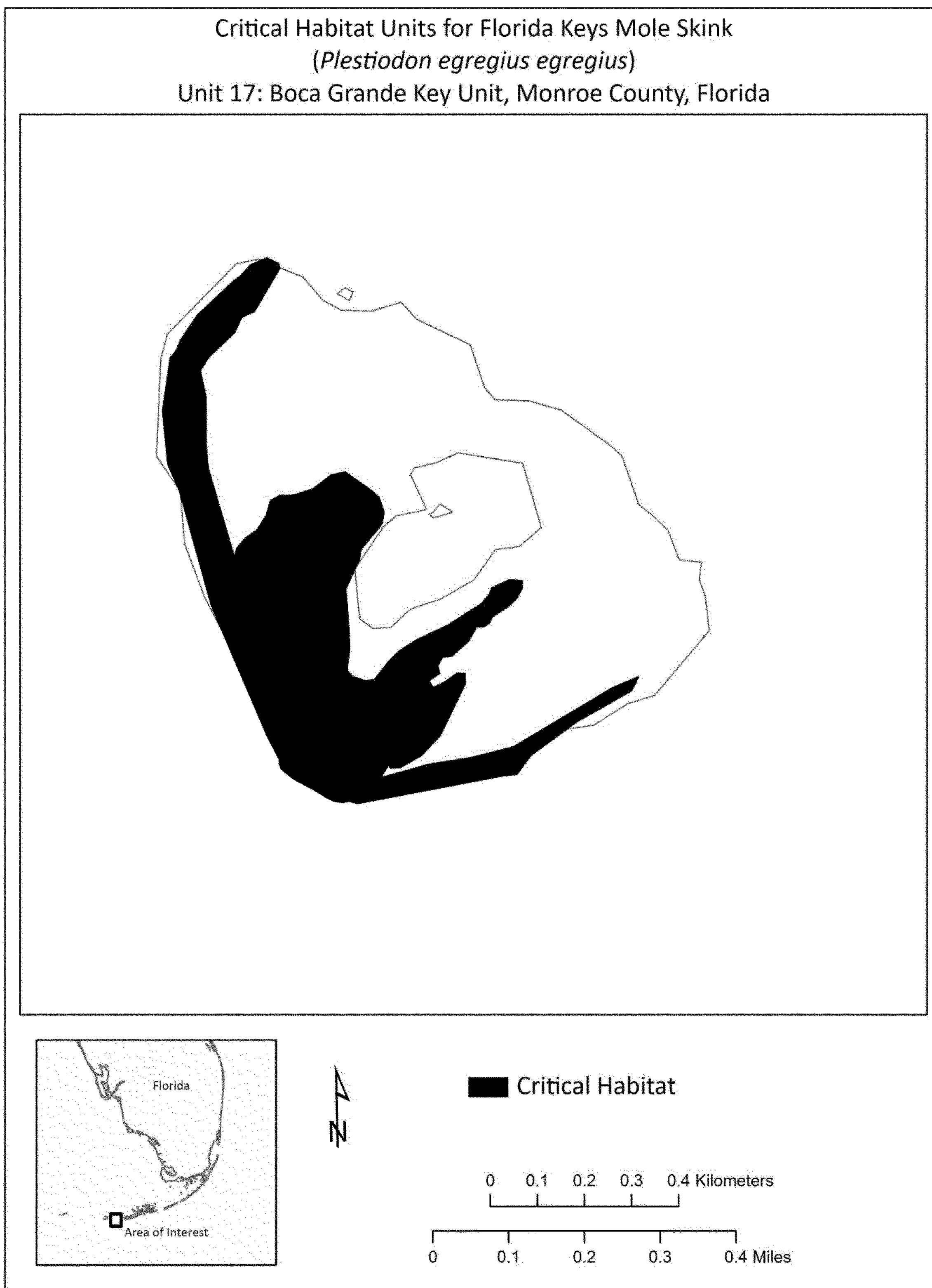


(19) Unit 17: Boca Grande Key, Monroe County, Florida.

(i) Unit 17 consists of 71 ac (29 ha) in Monroe County, Florida, in the Distal Sand Region of the Florida Keys. This unit is entirely in Federal ownership as part of the Key West National Wildlife Refuge. The unit stretches along the entire western and southern shore of Boca Grande Key.

(ii) Map of Unit 17 follows:

Figure 16 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (19)(ii)

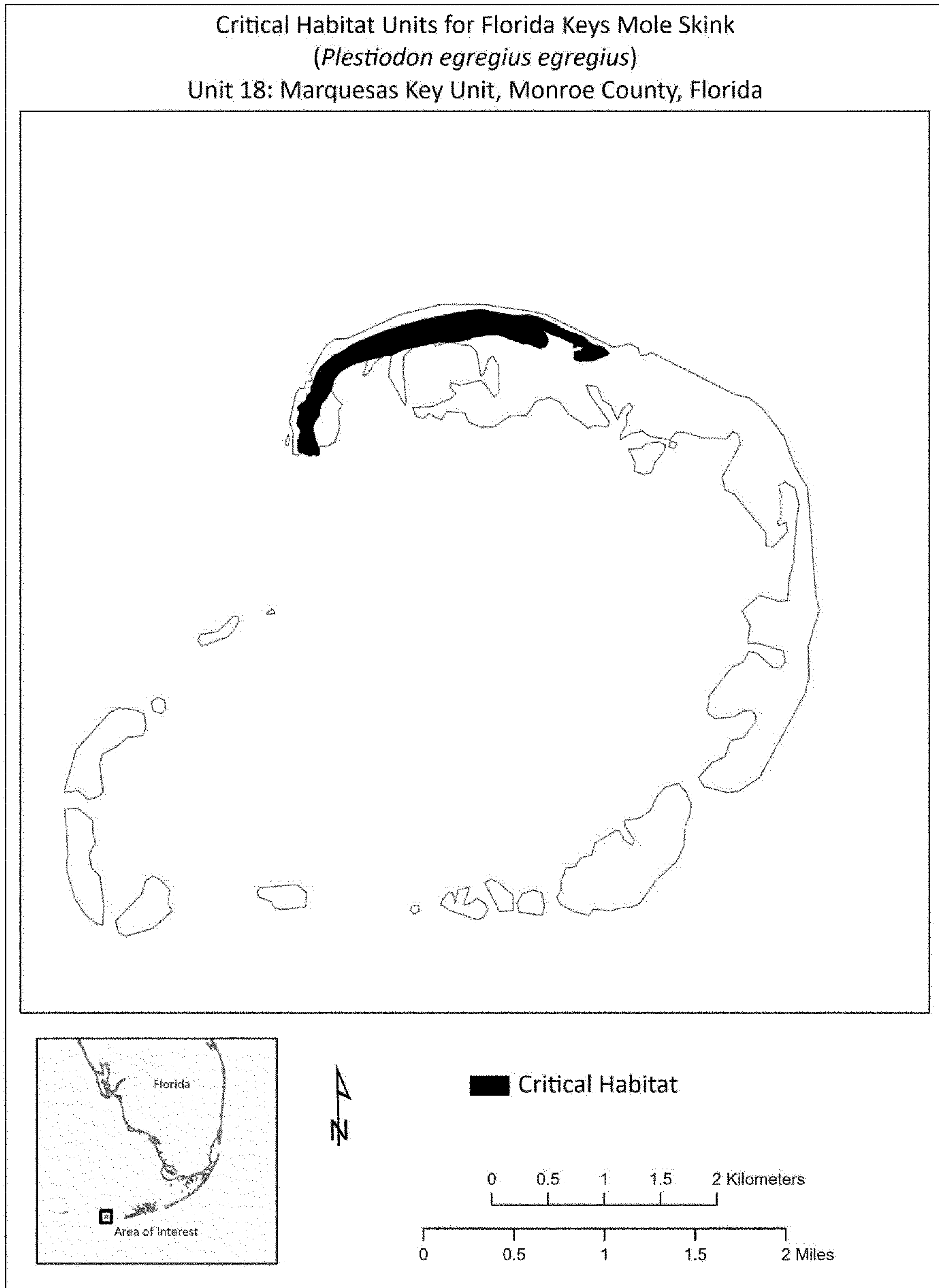


(20) Unit 18: Marquesas Key, Monroe County, Florida.

(i) Unit 18 consists of 149 ac (60 ha) in Monroe County, Florida, in the Distal Sand Region of the Florida Keys. This unit is entirely in Federal ownership as part of the Key West National Wildlife Refuge. The unit originates at the western tip of the north shore of the northernmost Marquesas Keys and continues west until the coastal berm stops.

(ii) Map of Unit 18 follows:

Figure 17 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (20)(ii)



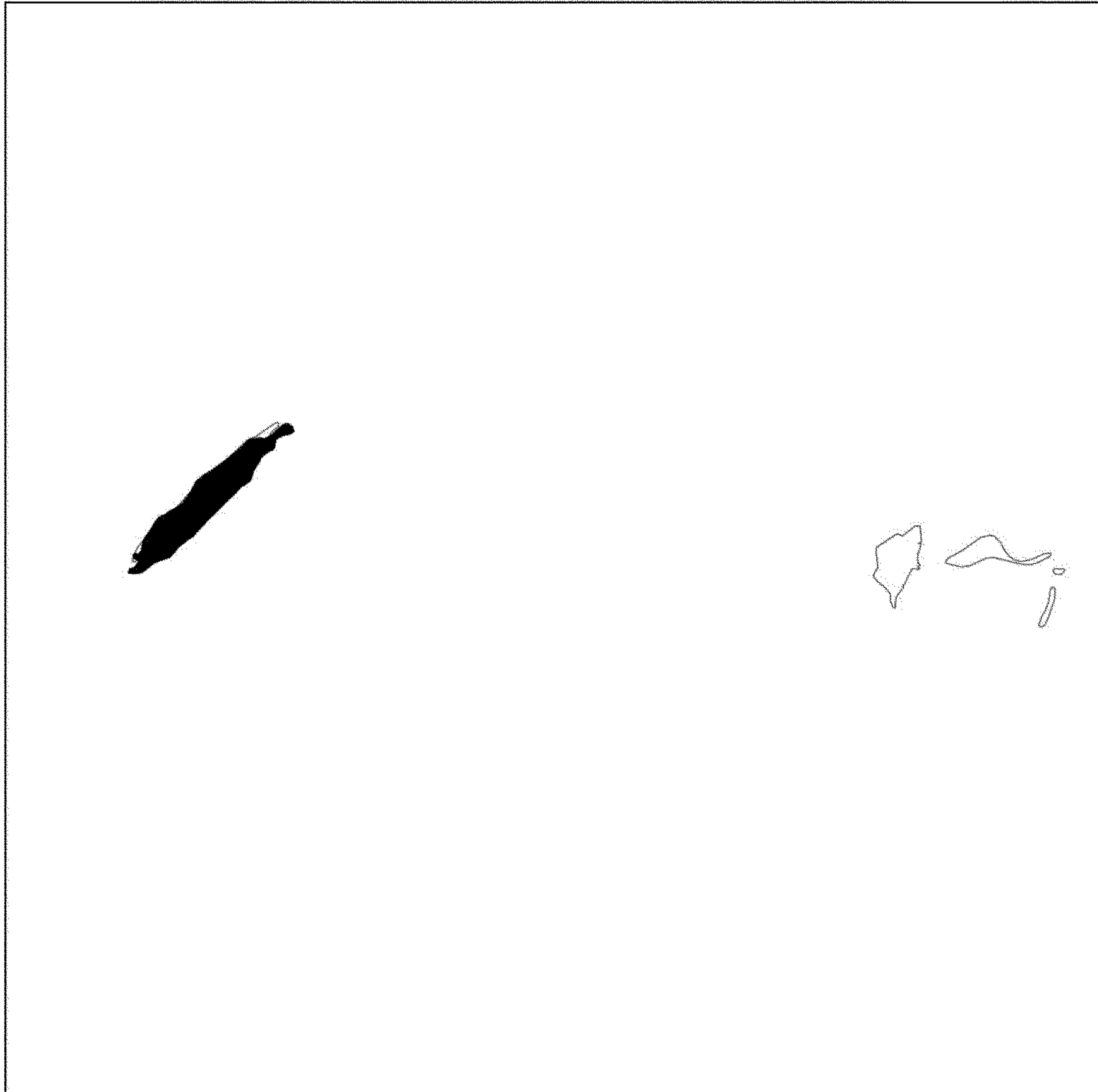
(21) Unit 19: Loggerhead Key, Monroe County, Florida.

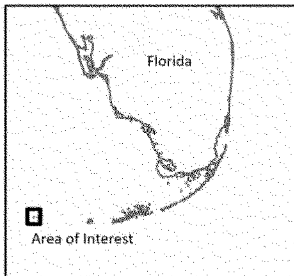
(i) Unit 19 consists of 65 ac (26 ha) in Monroe County, Florida, in the Distal Sand Region of the Florida Keys. The unit encompasses the entire island of Loggerhead Key, which is in Federal ownership as part of the Dry Tortugas National Park.

(ii) Map of Unit 19 follows:

Figure 18 to Florida Keys Mole Skink (*Plestiodon egregius egregius*) paragraph (21)(ii)

Critical Habitat Units for Florida Keys Mole Skink
(*Plestiodon egregius egregius*)
Unit 19: Loggerhead Key Unit, Monroe County, Florida





Critical Habitat

0 0.5 1 1.5 2 Kilometers

0 0.5 1 1.5 2 Miles

* * * * *

Madonna Baucum,

Chief, Policy and Regulations Branch, U.S. Fish and Wildlife Service.

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