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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC82

[Docket ID FCIC–22–0008]

Small Grains and Processing Sweet Corn Crop Insurance Improvements

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Small Grains Crop Insurance Provisions, Processing Sweet Corn Crop Insurance Provisions, Cabbage Crop Insurance Provisions, and the Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions. The changes will allow revenue coverage for oats and rye under the Small Grains Crop Insurance Provisions and extend the end of the insurance period date for processing sweet corn from September 20 to September 30 in Illinois, Minnesota, and Wisconsin. This will benefit the producers in those states by providing them with an additional 10 days of coverage, consistent with the existing coverage for producers in Iowa. In addition, this final rule will make corrections to the Cabbage Crop Insurance Provisions and the Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions. The changes will be effective for the 2023 and succeeding crop years for crops with a contract change date on or after November 30, 2022, and for the 2024 and succeeding crop years with a contract change date on or after June 30, 2023.

DATES:

Effective date: November 25, 2022.

Comment date: We will consider comments that we receive by the close of business January 24, 2023. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by going through the Federal eRulemaking Portal as follows:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FCIC–22–0008. Follow the instructions for submitting comments.

All comments will be posted without change and will be publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7829; or email *francie.tolle@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 or (844) 433–2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Background

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIPs) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Throughout this rule, the terms ''Crop Provisions,'' ''Special Provisions,'' and ''policy'' are used as defined in the Common Crop Insurance Policy (CCIP) Basic Provisions in 7 CFR 457.8. Additional information and definitions related to Federal crop insurance policies are in 7 CFR 457.8.

FCIC amends the Common Crop Insurance Regulations by revising 7 CFR 457.101 Small Grains Crop Insurance Provisions, 7 CFR 457.139 Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions, 7 CFR 457.154 Processing Sweet Corn Crop Insurance Provisions, and 7 CFR 457.171 Cabbage Crop Insurance Provisions. In addition, this final rule will make corrections to references, missing words, grammatical and spelling errors, repetitive parenthetical titles, and inadvertently missing text that was identified in the Cabbage Crop Insurance Provisions and the Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions. The changes will be effective for the 2023 and succeeding crop years for crops with a contract change date on or after November 30, 2022, and for the 2024 and succeeding crop years with a contract change date on or after June 30, 2023.

The changes to 7 CFR 457.101 Small Grains Crop Insurance Provisions are:

The Small Grains Crop Provisions currently offers actual production history (APH) coverage for buckwheat, flax, oats, and rye; and offers yield protection (YP), revenue protection (RP), and revenue protection with harvest price exclusion (RP–HPE) for barley and wheat. In this final rule, FCIC is expanding RP and RP–HPE for oats and rye, matching available coverage for barley and wheat.

The current APH coverage will be converted to YP. For producers who wish to maintain yield coverage, the only difference in coverage will be the price guarantee will match the projected price offered for revenue protection (established approximately 2 weeks prior to the sales closing date), instead of a price election established by the Risk Management Agency (RMA) (established prior to the contract change date).

With the availability of revenue protection for oats and rye, the terms ''price election'' and ''production guarantee'' are no longer applicable. Instead, the terms ''projected price,'' ''yield protection guarantee,'' and ''revenue protection guarantee'' are applicable. These changes appear in the following sections of the Small Grains Crop Insurance Provisions to expand revenue coverage to oats and rye:

paragraph 3 (a) and (b), paragraph 9 (c), and paragraphs 11 (b) and (c).

In Section 3, FCIC is revising paragraph (a) to remove the references to oats and rye. Prior to this rule, the provision stated that revenue protection is not available for oats, rye, flax, or buckwheat. FCIC is removing oats and rye from the list of crops because revenue coverage will now be available for oats and rye. FCIC is also revising paragraph (b) to add references to oats and rye. Prior to this rule, the provisions stated that revenue protection is available for barley and wheat. FCIC is adding oats and rye to the list of crops in the two places where the list occurs.

In Section 9, FCIC is revising paragraph (c)(2)(i) to remove the reference to oats and revise paragraph (c)(2)(ii) to add a reference to oats. When a crop does not have yield or revenue protection available, the price used for determining coverage and any indemnity payments, including replanting payments, is called the price election. For crops for which yield and revenue protection are available, this price is called the projected price. In paragraph (c)(2)(i), prior to this rule, the provision stated that the replanting payment for oats will be determined by using the price election. This rule changes the regulation to make revenue and yield protection plans of insurance available for oats; therefore, the price used will be the projected price. Paragraph (c)(2)(ii) contains provisions applicable to the projected price. FCIC is revising paragraph (c)(2)(ii) to include oats, as the projected price will now be used. There are no changes in this section regarding rye because replanting payments are not available for rye.

In Section 11, FCIC is revising paragraphs (b)(1)(i), (ii) and (iii). Paragraphs (b)(1)(i), (ii), and (iii) refer to ''yield protection guarantee,'' ''production guarantee,'' and ''revenue protection guarantee,'' respectively. For crops for which yield and revenue protection are available, the applicable terms are yield protection guarantee and revenue protection guarantee. For crops for which yield and revenue protection are not available, the applicable term is production guarantee. Therefore, this rule is removing the references to oats and rye in paragraph (b)(1)(ii), which address production guarantee, and adds them to paragraphs (b)(1)(i) and (iii), which address yield protection guarantee and revenue protection guarantee.

FCIC is also revising paragraph (b)(3)(i) to add references to oats and rye and revising paragraph (b)(3)(ii) to remove the references to oats and rye. This change is consistent with the change discussed above for section 9 paragraph (c)(2). Paragraph (b)(3)(i) refers to computations using the projected price; paragraph (b)(3)(ii) refers to computations using the price election. Oats and rye are being removed from paragraph (b)(3)(ii) and added to paragraph (b)(3)(i) to align with the proper terms for crops for which revenue protection is available.

FCIC is also revising paragraph (c)(1)(i) to remove the reference to oats and rye in one place and add the reference in two places. Paragraph (c)(1)(i) contains provisions that explain what appraised production includes. Prior to this rule, oats and rye were included in a list of crops with buckwheat and flax. Those four crops have similar coverage and use the same crop insurance terminology under the Small Grains Crop Provisions. This rule removes oats and rye from the list of crops containing buckwheat and flax and adds them to the list of crops containing barley and wheat in two places because allowing revenue coverage for oats and rye make coverage and crop insurance terminology for those two crops consistent with coverage and terminology for barley and wheat.

FCIC is adding the word ''an'' to make the sentence in section 2 paragraph (a)(3) grammatically correct.

FCIC is revising the sub-heading for section 3 to ''Insurance Guarantees, Coverage Levels, and Prices'' by removing the phrase ''for Determining Indemnities'' at the end. Removing this phrase will align the sub-heading to match the corresponding section in the CCIP Basic Provisions. It also helps clarify that price is not exclusively used to determine indemnities; it is also used to establish the guarantee and determine the premium due for the producer.

FCIC is correcting the location of premium rates from ''actuarial table'' to ''actuarial documents'' in section 6 paragraph (d). The practical meaning is the same. However, the CCIP Basic Provisions defines ''actuarial documents'' so that is the correct term to refer to the location of the premium rates information.

FCIC is updating prices in the settlement of claim example, so the prices are more reflective of current values and potential indemnities. FCIC is also adding ''not applicable'' next to any steps that do not apply to the example. Specifically, steps 2 and 4 in the example are to sum the results of the prior step for each type. The example is for a single type and summing the results is not an applicable step in the calculation.

The changes to 7 CFR 457.154 Processing Sweet Corn Crop Insurance Provisions are:

In response to feedback from producers and processors, FCIC is revising the end of insurance date for Illinois, Minnesota, and Wisconsin from September 20 to September 30. The end of insurance date is already September 30 in Iowa where the producers use the same processors for their crop. The processors coordinate the timing of harvest in advance to maximize operational and storage capabilities at the processing plant. The typical harvest period ends around September 30 and producers are currently left without insurance coverage after September 20. Claims for losses are not expected to increase significantly because the main cause of loss leading up to harvest is freeze or frost and the average first hard freeze dates for these states are between October 3 to October 12, after the revised end of insurance date. This rule will also move the end of insurance period date to the Special Provisions, ensuring RMA can timely adjust the end of insurance period date if another change is needed in the future.

Other minor changes to 7 CFR 457.154 Processing Sweet Corn Crop Insurance Provisions include:

FCIC is removing the introductory sentence explaining the order of priority of policy provisions because it is duplicative of the same order of priority included in the CCIP Basic Provisions.

FCIC is revising the definition of ''good farming practice'' to clarify the definition for ''good farming practice'' is in addition to the definition in the CCIP Basic Provisions, because cultural practices required by the sweet corn processor contract are also considered good farming practices for the crop.

FCIC is revising the definition of ''practical to replant'' to clarify that the definition is in addition to the definition in the CCIP Basic Provisions, because the processor must also agree to accept the production in order for the crop to be considered practical to replant.

FCIC is revising the definition of ''processor contract'' to replace the term ''written agreement'' with ''written contract.'' The term ''written agreement'' has a specific defined meaning in the CCIP Basic Provisions that does not apply to a processor contract. This change should help avoid confusion with the definition of a ''written agreement.''

FCIC is revising the sub-heading for section 3 to ''Insurance Guarantees, Coverage Levels, and Prices'' by removing the phrase ''for Determining Indemnities'' at the end. Removing this

phrase will align the sub-heading to match the corresponding section in the CCIP Basic Provisions. It also helps clarify that price is not exclusively used to determine indemnities; it is also used to establish the guarantee and determine the premium due for the producer.

FCIC is updating prices and yields in settlement of claim examples, so they are more reflective of current values and potential indemnities. FCIC is also adding ''not applicable'' next to any steps that do not apply to the example. Specifically, steps 3 and 5 in the first example are to sum the results of the prior step for each type. The example is for a single type and summing the results is not an applicable step in the calculation.

FCIC is removing the phrase ''the provisions of'' or the ''provisions contained in'' each time they occur to be consistent when referring to the CCIP Basic Provisions.

FCIC is removing the phrase ''the requirements of'' in section 3 to be consistent when referring to the CCIP Basic Provisions.

FCIC is replacing ''FSA farm serial number'' with ''FSA farm number,'' because ''FSA farm serial number'' is no longer used. A similar change was already implemented in the CCIP Basic Provisions in 2017 when the definition was changed to remove the word ''serial.''

The technical edits and corrections to 7 CFR 457.139 Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions are:

FCIC is revising section 11 paragraph (b) to clarify that FCIC will not insure the crop due to an excluded cause of loss for any damage, not just production losses. Production loss is not defined in the CCIP Basic Provisions and could be interpreted as having losses associated with a producer's actual production history only. Damage is defined in the CCIP Basic Provisions as injury, deterioration, or loss of production of the insured crop due to insured or uninsured causes.

FCIC is removing the phrase ''the provisions of'' each time they occur to be consistent when referring to the CCIP Basic Provisions.

The technical edits and corrections to 7 CFR 457.171 Cabbage Crop Insurance Provisions are:

FCIC is revising the definition of ''crop year'' to remove the capitalization of ''year'' so that it matches the definition in CCIP Basic Provisions.

Effective Date, Notice and Comment, and Exemptions

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

For major rules, the Congressional Review Act requires a delay the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective on the date of publication in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866. Therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or Executive Order 13563.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that

have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Assistance Listing to which this rule applies is No. 10.450—Crop Insurance.

Paperwork Reduction Act of 1995

The purpose of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), among other things, are to minimize the paperwork burden on individuals, and to require Federal agencies to request and receive approval from the Office of Management and Budget (OMB) prior to collecting information from ten or more persons. This rule does not change the information collection approved by OMB under control numbers 0563–0053.

USDA Non-Discrimination Policy

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

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 or (844) 433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

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List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

For the reasons discussed above, FCIC amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.101 by:

■ a. Revise the introductory text;

■ b. In section 1, in the definition of ''latest final planting date'', redesignate paragraphs (a), (b), and (c) as paragraphs (1), (2), and ''(3), respectively;

■ c. In section 2:

■ i. In the section heading, remove the period; and

■ ii. In paragraph (a)(3) introductory text, remove the words ''you elected enterprise unit'' and add ''you elected an enterprise unit'' in their place;

■ d. In section 3:

■ i. Revise the section heading;

■ ii. In paragraph (a), remove the words ''your oats, rye, flax,'' and add ''flax'' in their place; and

■ iii. Revise paragraphs (b) introductory text and (b)(1);

■ e. In section 6, in paragraph (d), remove the words ''actuarial table provides'' and add ''actuarial documents provide'' in their place;

■ f. In section 9:

■ i. In paragraph (c)(2)(i), remove the words ''oats, flax,'' and add ''flax'' in their place; and

■ ii. In paragraph (c)(2)(ii), remove the words ''wheat or barley'' and add ''barley, oats, or wheat'' in their place;

■ g. In section 11:

■ i. In paragraph (b)(1)(i), remove the word ''barley'' and add the words ''barley, oats, rye,'' in its place;

■ ii. In paragraph (b)(1)(ii), remove the words ''oats, rye, flax,'' and add ''flax'' in their place;

■ iii. In paragraph (b)(1)(iii), remove the word ''barley'' and add ''barley, oats, rye,'' in its place;

■ iv. In paragraph (b)(3)(i), remove the words ''wheat or barley'' and add ''barley, oats, rye, or wheat'' in their place;

■ v. In paragraph (b)(3)(ii), remove the words ''oats, rye, flax,'' and add the word ''flax'' in their place;

■ vi. Revise paragraph (b)(6);

■ vii. Revise paragraph (c)(1)(i) introductory text; and

■ viii. In paragraph (c)(1)(iii), remove the cross reference ''in accordance with subsection 11.(d)'' and add ''in accordance with paragraph (d) of this section'' in its place;

■ ix. In paragraph (d)(2)(i)(A), remove the words ''smutty or ergoty'' and add ''smutty, and ergoty'' in their place;

■ x. In paragraphs (d)(2)(i)(B) and (C), remove the words ''garlicky or ergoty'' and add ''garlicky, or ergoty'' in their place; and

■ xi. In paragraph (d)(2)(ii), remove the words ''smutty or ergoty'' and add ''smutty, and ergoty'' in their place; and

■ h. In section 13, in the section heading, remove the period.

The revisions and additions read as follows:

§ 457.101 Small grains crop insurance provisions.

The Small Grains Crop Insurance Provisions for the 2023 and succeeding crop years for crops with a contract change date on or after November 30, 2022, and for the 2024 and succeeding crop years with a contract change date prior to November 30, 2022, are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices

* * * * *

(b) Revenue protection is available for barley, oats, rye, and wheat. Therefore, if you elect to insure your barley, oats, rye, or wheat:

(1) You must elect to insure your barley, oats, rye, or wheat with either revenue protection or yield protection by the sales closing date; and

* * * * *

11. Settlement of Claim

* * * * *

(b) * * *

(6) Multiplying the result of section 11(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of wheat in the unit with a production guarantee (per acre) of 45 bushels, your projected price is $7.10, your harvest price is $10.90, and your production to count is 2,000 bushels.

If you elected yield protection:

(1) 50 acres × (45-bushel production guarantee × $7.10 projected price) = $15,975.00 value of the production guarantee;

(2) Not applicable;

(3) 2,000-bushel production to count × $7.10 projected price = $14,200.00 value of the production to count;

(4) Not applicable;

(5) $15,975.00 − $14,200.00 = $1,775.00; and

(6) $1,775.00 × 1.000 share = $1,775.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (45-bushel production guarantee × $10.90 harvest price) = $24,525.00 revenue protection guarantee;

(2) Not applicable;

(3) 2,000-bushel production to count × $10.90 harvest price = $21,800.00 value of the production to count;

(4) Not applicable;

(5) $24,525.00 − $21,800.00 = $2,725.00; and

(6) $2,725.00 × 1.000 share = $2,725.00 indemnity.

(c) * * *

(1) * * *

(i) For flax or buckwheat, and barley, oats, rye, or wheat under yield protection, not less than the production guarantee (per acre), and for barley, oats, rye, or wheat under revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

■ 3. Amend § 457.139 by:
■ a. In section 9, in paragraph (a) and paragraph (b) introductory text, remove the words ''the provisions of'';
■ b. In section 11:
■ i. Remove the words ''the provisions of'' in paragraph (a) introductory text; and
■ ii. Revise paragraph (b) introductory text.

The revisions read as follows:

§ 457.139 Fresh Market Tomato (Dollar Plan) crop insurance provisions.

* * * * *

11. Causes of Loss

* * * * *

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against any damage or loss of production due to:

* * * * *

■ 4. Amend § 457.154 by:
■ a. Revise the introductory text;
■ b. Remove the undesignated introductory paragraph between ''Processing Sweet Corn Crop Provisions'' and Section 1;
■ c. In section 1:
■ i. Revise the definition of ''Good farming practices'';
■ ii. Revise the definition of ''Practical to replant''; and
■ iii. Revise the definition of ''Processor contract'';
■ d. In section 2, in paragraph (a)(2), remove the word ''serial'';
■ e. In section 3:
■ i. Revise the section heading; and
■ ii. In the introductory text, remove the words ''the requirements of'';
■ f. In section 6, remove the words ''the provisions of'';
■ g. In section 8, introductory text, remove the words ''the provisions of'';
■ h. In section 9:
■ i. In the introductory text, remove the words ''the provisions contained in''; and
■ ii. Revise paragraph (d).
■ i. In section 10, introductory text, remove the words ''the provisions of'';
■ j. In section 11, introductory text, remove the words ''the requirements of''; and
■ k. In section 12, revise paragraph (b)(7).

The revisions read as follows:

§ 457.154 Processing Sweet Corn crop insurance provisions.

The Processing Sweet Corn Crop Insurance Provisions for the 2023 and succeeding crop years are as follows:

* * * * *

1. Definitions

* * * * *

Good farming practices. In addition to the definition contained in the Basic Provisions, cultural practices required by the processor contract.

* * * * *

Practical to replant. In addition to the definition in the Basic Provisions, it will not be considered practical to replant unless the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

* * * * *

Processor contract. (1) A written contract between the producer and a processor, containing at a minimum:

(i) The producer's commitment to plant and grow sweet corn, and to deliver the sweet corn production to the processor;

(ii) The processor's commitment to purchase all the production stated in the processor contract; and

(iii) A base contract price.

(2) Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract, unless the contracts are for different types. Your base contract price will be the weighted average of all applicable base contract prices.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices

* * * * *

9. Insurance Period

* * * * *

(d) The end of insurance date specified in the Special Provisions or otherwise allowed by written agreement.

* * * * *

12. Settlement of Claim

* * * * *

(b) * * *

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of type A processing sweet corn in the unit, with a guarantee of 6.0 tons per acre and a price election of $100.00 per ton. You are only able to harvest 200 tons. Your indemnity would be calculated as follows:

(1) 100 acres × 6.0 tons = 600 tons guarantee;

(2) 600 tons × $100.00 price election = $60,000.00 value of guarantee;

(3) Not applicable;

(4) 200 tons × $100.00 price election = $20,000.00 value of production to count;

(5) Not applicable;

(6) $60,000.00 − $20,000.00 = $40,000.00 loss; and

(7) $40,000.00 × 100 percent = $40,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of type B processing sweet corn in the same unit, with a guarantee of 60 tons per acre and a price election of $90.00 per ton. You are only able to harvest 350 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 100 acres × 6.0 tons = 600 tons guarantee for type A, and 100 acres × 6.0 tons = 600 tons guarantee for type B;

(2) 600 tons × $100.00 price election = $60,000.00 value of guarantee for type A, and 600 tons × $90.00 price election = $54,000.00 value of guarantee for type B;

(3) $60,000.00 + $54,000.00 = $114,000.00 total value of guarantee;

(4) 200 tons × $100.00 price election = $20,000.00 value of production to count for type A, and 350 tons × $90.00 price election = $31,500.00 value of production to count for type B;

(5) $20,000.00 + $31,500.00 = $51,500.00 total value of production to count;

(6) $114,000.00 − $51,500.00 = $62,500.00 loss; and

(7) $62,500.00 loss × 100 percent = $62,500.00 indemnity payment.

■ 5. Amend § 457.171, in section 1, by removing the definition of "Crop Year" and adding a definition for "Crop year" in its place to read as follows:

§ 457.171 Cabbage crop insurance provisions.

* * * * *

1. Definitions

* * * * *

Crop year. In lieu of the definition contained in section 1 of the Basic Provisions, a period of time that begins on the first day of the earliest planting period and continues through the last day of the insurance period for the latest planting period. The crop year is designated by the calendar year in which the cabbage planted in the latest planting period is normally harvested.

* * * * *

Marcia Bunger,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2022–25529 Filed 11–23–22; 8:45 am]

BILLING CODE 3410–08–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1022

Fair Credit Reporting Act Disclosures

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Consumer Financial Protection Bureau (Bureau) is issuing this final rule amending an appendix for Regulation V, which implements the Fair Credit Reporting Act (FCRA). The Bureau is required to calculate annually the dollar amount of the maximum allowable charge for disclosures by a consumer reporting agency to a consumer pursuant to FCRA section 609; this final rule establishes the maximum allowable charge for the 2023 calendar year.

DATES: This final rule is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Adrien Fernandez, Counsel, Thomas Dowell, Senior Counsel; 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: The Bureau is amending Appendix O to Regulation V, which implements the FCRA, to establish the maximum allowable charge for disclosures by a consumer reporting agency to a consumer for 2023. The maximum allowable charge will be $14.50 for 2023.

I. Background

Under section 609 of the FCRA, a consumer reporting agency must, upon a consumer's request, disclose to the consumer information in the consumer's file.[1] Section 612(a) of the FCRA gives consumers the right to a free file disclosure upon request once every 12 months from the nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies.[2] Section 612 of the FCRA also gives consumers the right to a free file disclosure under certain other, specified circumstances.[3] Where the consumer is not entitled to a free file disclosure, section 612(f)(1)(A) of the FCRA provides that a consumer reporting agency may impose a reasonable charge on a consumer for making a file disclosure. Section 612(f)(1)(A) of the FCRA provides that the charge for such a disclosure shall not exceed $8.00 and shall be indicated to the consumer before making the file disclosure.[4]

Section 612(f)(2) of the FCRA also states that the $8.00 maximum amount shall increase on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.[5] Such increases are based on the Consumer Price Index for All Urban Consumers (CPI–U), which is the most general Consumer Price Index and covers all urban consumers and all items.

II. Adjustment

For 2023, the ceiling on allowable charges under section 612(f) of the FCRA will be $14.50, an increase of one dollar from 2022. The Bureau is using the $8.00 amount set forth in section 612(f)(1)(A)(i) of the FCRA as the baseline for its calculation of the increase in the ceiling on reasonable charges for certain disclosures made under section 609 of the FCRA. Since the effective date of section 612(a) was September 30, 1997, the Bureau calculated the proportional increase in the CPI–U from September 1997 to September 2022. The Bureau then determined what modification, if any, from the original base of $8.00 should be made effective for 2023, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2022, the CPI–U increased by 84.124 percent from an index value of 161.2 in September 1997 to a value of 296.808 in September 2022. An increase of 84.124 percent in the $8.00 base figure would lead to a figure of $14.73. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the maximum allowable charge is $14.50. The Bureau therefore determines that the maximum

[1] 15 U.S.C. 1681g.

[2] 15 U.S.C. 1681j(a).

[3] 15 U.S.C. 1681j(b)–(d). The maximum allowable charge announced by the Bureau does not apply to requests made under section 612(a)–(d) of the FCRA. The charge does apply when a consumer who orders a file disclosure has already received a free annual file disclosure and does not otherwise qualify for an additional free file disclosure.

[4] 15 U.S.C. 1681j(f)(1)(A).

[5] 15 U.S.C. 1681j(f)(2).

allowable charge for the year 2023 will increase to $14.50.

III. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[6] Pursuant to this final rule, in Regulation V, Appendix O is amended to update the maximum allowable charge for 2023 under section 612(f). The amendments in this final rule are technical and non-discretionary, as they merely apply the method previously established in Regulation V for determining adjustments to the thresholds. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. The amendments therefore are adopted in final form.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[7] As noted previously, the Bureau has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirement relating to an initial and final regulatory flexibility analysis do not apply.

C. Paperwork Reduction Act

The information collections contained in Regulation V, which implements the FCRA, are approved by Office of Management and Budget under Control number 3170–0002. The current approval for this control number expires on November 30, 2023. In accordance with the Paperwork Reduction Act of 1995,[8] the Bureau reviewed this final rule. The Bureau has determined that this rule does not create any new information collections or substantially revise any existing collections.

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

[6] 5 U.S.C. 553(b)(B).

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

[8] 44 U.S.C. 3506; 5 CFR part 1320.

IV. Signing Authority

Senior Advisor Brian Shearer, having reviewed and approved this document, is delegating the authority to sign this document electronically to Grace Feola, Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1022

Banks, banking, Consumer protection, Credit unions, Holding companies, National banks, Privacy, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation V, 12 CFR part 1022, as set forth below:

PART 1022—FAIR CREDIT REPORTING (REGULATION V)

■ 1. The authority citation for part 1022 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1681a, 1681b, 1681c, 1681c–1, 1681e, 1681g, 1681i, 1681j, 1681m, 1681s, 1681s–2, 1681s–3, and 1681t; sec. 214, Public Law 108–159, 117 Stat. 1952.

■ 2. Appendix O is revised to read as follows:

Appendix O to Part 1022—Reasonable Charges for Certain Disclosures

Section 612(f) of the FCRA, 15 U.S.C. 1681j(f), directs the Bureau to increase the maximum allowable charge a consumer reporting agency may impose for making a disclosure to the consumer pursuant to section 609 of the FCRA, 15 U.S.C. 1681g, on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents. The Bureau will publish notice of the maximum allowable charge each year by amending this appendix. For calendar year 2023, the maximum allowable charge is $14.50. For historical purposes:

1. For calendar year 2012, the maximum allowable disclosure charge was $11.50.
2. For calendar year 2013, the maximum allowable disclosure charge was $11.50.
3. For calendar year 2014, the maximum allowable disclosure charge was $11.50.
4. For calendar year 2015, the maximum allowable disclosure charge was $12.00.
5. For calendar year 2016, the maximum allowable disclosure charge was $12.00.
6. For calendar year 2017, the maximum allowable disclosure charge was $12.00.
7. For calendar year 2018, the maximum allowable disclosure charge was $12.00.
8. For calendar year 2019, the maximum allowable disclosure charge was $12.50.
9. For calendar year 2020, the maximum allowable disclosure charge was $12.50.
10. For calendar year 2021, the maximum allowable disclosure charge was $13.00.
11. For calendar year 2022, the maximum allowable disclosure charge was $13.50.
12. For calendar year 2023, the maximum allowable disclosure charge is $14.50.

Grace Feola,

Federal Register Liaison, Consumer Financial Protection Bureau.

[FR Doc. 2022–25751 Filed 11–23–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–1283; Special Conditions No. 25–833–SC]

Special Conditions: Airbus SAS Model A380–800 Series Airplanes; Electronic System Security Protection From Unauthorized Internal Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Airbus SAS (Airbus) Model A380–800 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is associated with the installation of a digital system that contains a wireless and hardwired network with hosted application functionality that allows access, from sources internal to the airplane, to the airplane's internal electronic components. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Airbus on November 25, 2022. Send comments on or before January 9, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2022–1283 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey

Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

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

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

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

Confidential Business Information: 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 these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to Thuan T. Nguyen, Aircraft Information Systems, AIR–622, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3365; email *Thuan.T.Nguyen@faa.gov.* Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

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

FOR FURTHER INFORMATION CONTACT: Thuan T. Nguyen, Aircraft Information Systems, AIR–622, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3365; email *Thuan.T.Nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to § 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On August 26, 2021, Airbus applied for a change to Type Certificate No. A58NM for the installation of a digital system that contains a wireless and hardwired network with hosted application functionality that allows access, from sources internal to the airplane, to the airplane's internal electronic components. The Model A380–800 series are transport category airplanes and are powered by four engines. The maximum passenger seating capacity is 868 and maximum takeoff weight is 1,234,600 to 1,265,000 pounds, depending on the specific variant.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus must show that the Model A380–800 series airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A58NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A380–800 series airplanes, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model A380–800 series airplanes will incorporate the following novel or unusual design feature, which is the installation of a digital system that contains a wireless and hardwired network with hosted application functionality that allows access, from sources internal to the airplane, to the airplane's internal electronic components.

Discussion

The Airbus Model A380–800 series airplane electronic system architecture and network configuration change is novel or unusual for commercial transport airplanes because it is composed of several connected wireless and hardwired networks. This proposed system and network architecture is used for a diverse set of airplane functions, including:

• Flight-safety related control and navigation systems;

• Airline business and administrative support; and

• Passenger entertainment.

The airplane's control domain and airline information-services domain of these networks perform functions required for the safe operation and maintenance of the airplane. Previously,

these domains had very limited connectivity with other network sources. This network architecture creates a potential for unauthorized persons to access the aircraft control domain and airline information services domain from sources internal to the airplane, and presents security vulnerabilities related to the introduction of computer viruses and worms, user errors, and intentional sabotage of airplane electronic assets (networks, systems, and databases) critical to the safety and maintenance of the airplane.

The existing FAA regulations did not anticipate these networked airplane-system architectures. Furthermore, these regulations and the current guidance material do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks, data buses, and servers. Therefore, these special conditions ensure that the security (*i.e.,* confidentiality, integrity, and availability) of airplane systems will not be compromised by unauthorized hardwired or wireless electronic connections from within the airplane. These special conditions also require the applicant to provide appropriate instructions to the operator to maintain all electronic-system safeguards that have been implemented as part of the original network design so that this feature does not allow or reintroduce security threats.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to Airbus Model A380–800 series airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Airbus A380–800 series airplanes for airplane electronic-system internal access.

1. The applicant must ensure that the design provides isolation from, or airplane electronic-system security protection against, access by unauthorized sources internal to the airplane. The design must prevent inadvertent and malicious changes to, and all adverse impacts upon, airplane equipment, systems, networks, and other assets required for safe flight and operations.

2. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post-type-certification modifications that may have an impact on the approved electronic-system security safeguards.

Issued in Kansas City, Missouri, on November 18, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–25593 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–1282; Special Conditions No. 25–832–SC]

Special Conditions: Airbus SAS Model A380–800 Series Airplanes; Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Airbus SAS (Airbus) Model A380–800 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is a digital systems architecture with several connected networks that will allow access from external sources (*e.g.,* operator networks, wireless devices, internet connectivity, service provider satellite communications, electronic flight bags, etc.) to the airplane's internal electronic components. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Airbus on November 25, 2022. Send comments on or before January 9, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2022–1282 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

Confidential Business Information: 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 these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to Thuan T. Nguyen, Aircraft Information Systems, AIR–622, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3365; email *Thuan.T.Nguyen@faa.gov.* Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

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

FOR FURTHER INFORMATION CONTACT: Thuan T. Nguyen, Aircraft Information Systems, AIR–622, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3365; email *Thuan.T.Nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to § 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On August 26, 2021, Airbus applied for a change to Type Certificate No. A58NM for the installation of a digital systems architecture that will allow increased connectivity to and access from external network sources, (*e.g.,* operator networks, wireless devices, internet connectivity, service provider satelittle communications, electronic flight bags, etc.) to the airplane's previously isolated electronic assets (networks, systems, databases). The Model A380–800 series are transport category airplanes and are powered by four engines. The maximum passenger seating capacity is 868 and maximum takeoff weight is 1,234,600 to 1,265,000 pounds, depending on the specific variant.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus must show that the Model A380–800 series airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A58NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A380–800 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model A380–800 series airplanes will incorporate the following novel or unusual design feature:

The installation of electronic network system architecture that allows increased connectivity to and access from external sources (*e.g.,* operator networks, wireless devices, internet connectivity, service provider satellite communications, electronic flight bags, etc.) to the airplane's previously isolated electronic assets (networks, systems and databases).

Discussion

The Airbus Model A380–800 series airplane electronic system architecture and network configuration is novel and unusual for commercial transport airplanes because it may allow increased connectivity to and access from external network sources, airline operations, and maintenance networks, to the airplane control domain and airline information services domain. The airplane's control domain and airline information-services domain perform functions required for the safe operation and maintenance of the airplane. Previously, these domains had very limited connectivity with external network sources. This data network and design integration creates a potential for unauthorized persons to access the aircraft-control domain and airline information-services domain, and presents security vulnerabilities related to the introduction of computer viruses and worms, user errors, and intentional sabotage of airplane electronic assets (networks, systems, and databases) critical to the safety and maintenance of the airplane.

The existing FAA regulations did not anticipate these networked airplane-system architectures. Furthermore, these regulations and the current guidance material do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks, data buses, and servers. Therefore, these special conditions ensure that the security (*i.e.,* confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or wireless electronic connections. This includes ensuring that the security of the airplane's systems is not compromised during maintenance of the airplane's electronic systems. These special conditions also require the applicant to provide appropriate instructions to the operator to maintain all electronic-system safeguards that have been implemented as part of the original network design so that this

feature does not allow or introduce security threats.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to Airbus Model A380–800 series airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Airbus Model A380–800 series airplanes for airplane electronic unauthorized external access.

1. The applicant must ensure airplane electronic-system security protection from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure airplane electronic system security threats are identified and assessed, and that effective electronic system security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the aircraft is maintained, including all post-type-certification modifications that may have an impact on the approved electronic-system security safeguards.

Issued in Kansas City, Missouri, on November 18, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–25592 Filed 11–23–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0503; Project Identifier MCAI–2021–01244–T; Amendment 39–22219; AD 2022–22–04]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2018–03–12, which applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2018–03–12 required repetitive rototest inspections for cracking of the fastener holes in certain door stop fittings, and repair if necessary. This AD was prompted by new analysis by the manufacturer that resulted in optimized compliance times for the inspections. This AD continues to require repetitive rototest inspections for cracking of the fastener holes in certain door stop fittings at revised compliance times, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 30, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 30, 2022.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0503; 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, the mandatory continuing airworthiness information (MCAI), 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.

Material Incorporated by Reference:

- For material 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 IBR 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–2022–0503.

FOR FURTHER INFORMATION CONTACT: Hye Yoon Jang, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 817–222–5584; email *hye.yoon.jang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0242, dated November 8, 2021 (EASA AD 2021–0242) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2018–03–12, Amendment 39–19185 (83 FR 5906, February 12, 2018) (AD 2018–03–12). AD 2018–03–12 applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211,

–212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on May 6, 2022 (87 FR 27032). The NPRM was prompted by reports of fatigue damage in the structure for the door stop fittings on certain fuselage frames, and new analysis by the manufacturer, which resulted in optimized compliance times for the inspections. The NPRM proposed to continue to require repetitive rototest inspections for cracking of the fastener holes in certain door stop fittings at revised compliance times, and corrective actions if necessary, as specified in EASA AD 2021–0242.

The FAA is issuing this AD to address cracking at the door stop fitting holes of fuselage frame (FR) 66 and FR68 which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter, Delta Air Lines, Inc. (DAL). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise Exception Language

DAL requested that the language in paragraph (h)(3) of the proposed AD be revised to clearly state that the manufacturer must be contacted only ''when cracking exceeds the limits from the applicable SRM [structural repair manual]'' as opposed to ''if any crack is found during any inspection'' as stated in the NPRM. DAL pointed out that paragraph (2) of EASA AD 2021–0242 establishes requirements if a crack is detected and identified within the limit defined in the applicable SRM, and paragraph (3) of EASA AD 2021–0242 establishes corrective action requirements when cracking exceeds the limits from the applicable SRM. DAL emphasized that paragraph (h)(3) of the proposed rule does not make that distinction and that the exception specifies that any cracking found must be repaired before further flight. Because of this omission and the use of the verbiage ''if any crack is found during any inspection,'' DAL reasoned that paragraph (h)(3) of the proposed AD indicates that it applies to all instances of cracking, regardless of whether it exceeds SRM limits. DAL suggested that the exception paragraph would drive operators to obtain the specified level of approval for all crack findings from the required inspections, even if there are SRM approved repairs that are addressed by paragraph (2) of EASA AD 2021–0242.

The FAA agrees to clarify. Paragraph (h)(3) of this AD is included to ensure that any cracks are repaired before further flight, and applies only to the cracks specified in paragraph (3) of EASA AD 2021–0242 (*i.e.,* those found during the rototest inspections and exceeding the applicable SRM limit). Paragraph (3) of EASA AD 2021–0242 specifies to contact Airbus for instructions before further fight, but does not specify that the repair must be done before further flight. Since FAA policy does not allow flights with known cracks, an exception is needed to clarify the compliance time. The FAA notes that paragraph (2) of EASA AD 2021–0242 specifies accomplishing repair and corrective actions before further flight, so a similar exception is not needed for that action. However, the FAA agrees that clarification related to which cracks the language in paragraph (h)(3) of this AD applies to would be helpful. Therefore, the FAA has revised paragraph (h)(3) of this AD to specify that the actions are required only for cracks that exceed the applicable SRM limits.

Request To Include a New Exception

DAL requested that the FAA include an additional exception to the proposed AD that clarifies the ''contact Airbus'' language in paragraphs (5.2) and (6) of EASA AD 2021–0242. DAL noted that paragraphs (5.2) and (6) of EASA AD 2021–0242 require contacting Airbus, and reasoned that an exception similar to that in paragraph (h)(3) of the proposed AD would be needed. DAL pointed out that the language used in paragraphs (5.2) and (6) of EASA AD 2021–0242 is related to providing credit for actions that have been accomplished, rather than providing a corrective action like in paragraph (3) of EASA AD 2021–0242, so different language would be needed. DAL provided suggested wording, and stated that its proposed exception would ensure that the same actions are mandated at all instances where EASA AD 2021–0242 requires contacting the manufacturer.

The FAA agrees to clarify. Paragraph (j)(2) of this AD already specifies what actions to take in instances where the EASA AD or related service information specifies to contact the manufacturer. As explained previously, paragraph (h)(3) of this AD is needed to clarify the compliance time for crack repair, rather than simply clarifying who to contact for instructions. Therefore, an additional exception is not needed and this AD has not been changed regarding this issue.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. 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.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0242 specifies procedures for rototest inspections for cracking of the fastener holes in the airframe structure for the door stop fittings installation in FR66 and FR68, and corrective actions. Corrective actions include repair or modification of fastener holes at door stop locations. 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.

Costs of Compliance

The FAA estimates that this AD affects 1,084 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	Up to 25 work-hours × $85 per hour = $2,125.	$0	Up to $2,125	Up to $2,303,500.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 27 work-hours × $85 per hour = $2,295	$610	Up to $2,905.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs 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:

■ a. Removing Airworthiness Directive (AD) AD 2018–03–12, Amendment 39–19185 (83 FR 5906, February 12, 2018) (AD 2018–03–12); and

■ b. Adding the following new AD:

2022–22–04 Airbus SAS: Amendment 39–22219; Docket No. FAA–2022–0503; Project Identifier MCAI–2021–01244–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 30, 2022.

(b) Affected ADs

This AD replaces AD 2018–03–12, Amendment 39–19185 (83 FR 5906, February 12, 2018) (AD 2018–03–12).

(c) Applicability

This AD applies to Airbus SAS Model airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0242, dated November 8, 2021 (EASA AD 2021–0242).

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

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

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by reports of fatigue damage in the structure for the door stop fittings on certain fuselage frames, and new analysis by the manufacturer, which resulted in optimized compliance times for the inspections. The FAA is issuing this AD to address cracking at the door stop fitting holes of fuselage frame (FR) 66 and FR68, which could result in 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, EASA AD 2021–0242.

(h) Exceptions to EASA AD 2021–0242

(1) Where EASA AD 2021–0242 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0242 does not apply to this AD.

(3) Where paragraph (3) of EASA AD 2021–0242 specifies ''if, during any inspection as required by paragraph (1) of this [EASA] AD, a crack is detected and identified exceeding the limit defined in the applicable SRM [structural repair manual]'' to ''contact Airbus for approved instructions for corrective action and accomplish those instructions accordingly,'' replace those phrases with the following phrase: ''if any cracking is found and exceeding the limit defined in the applicable SRM, the cracking must be repaired before further flight using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.''

(4) Where paragraphs (2), (3), (5), and (5.1) of EASA AD 2021–0242 specify limits or actions in ''the applicable SRM'' or ''the SRM,'' for purposes of this AD, replace those phrases with the following phrase: ''the applicable SRM as specified in the instructions of the inspection SB.''

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0242 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, 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) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(ii) AMOCs approved previously for AD 2018–03–12 are approved as AMOCs for the corresponding provisions of EASA AD 2021–0242 that are required by paragraph (g) of this AD.

(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

For more information about this AD, contact Hye Yoon Jang, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 817–222–5584; email *hye.yoon.jang@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.

(i) European Union Aviation Safety Agency (EASA) AD 2021–0242, dated November 8, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0242, 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 EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) 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.

(5) You may view this material 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 October 20, 2022.

Christina Underwood,

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

[FR Doc. 2022–25509 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1065; Project Identifier MCAI–2022–00280–T; Amendment 39–22231; AD 2022–23–04]

RIN 2120–AA64

Airworthiness Directives; 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 Bombardier, Inc., Model BD–700–2A12 airplanes. This AD was prompted by a report that the flightcrew and passenger oxygen system's refill and capillary lines may have been contaminated by sealant and cotton fibers. This AD requires an inspection to determine the serial numbers of the oxygen cylinders installed and replacement of each affected oxygen cylinder and regulator assembly (OCRA). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 30, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 30, 2022.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1065; 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, the mandatory continuing airworthiness information (MCAI), 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.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone (514) 855–2999; email *ac.yul@aero.bombardier.com;* internet *bombardier.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call (206) 231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–1065.

FOR FURTHER INFORMATION CONTACT: Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–700–2A12 airplanes. The NPRM published in the **Federal Register** on August 31, 2022 (87 FR 53421). The NPRM was prompted by AD CF–2022–07, dated March 1, 2022, issued by Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states the flightcrew and passenger oxygen system's refill and capillary lines may have been contaminated by sealant and cotton fibers. Any contamination is expected to collect in the OCRA filters, which may cause a blockage of the oxygen system components and result in a reduction of oxygen flow, reduce the total amount of available oxygen, or create a fire hazard. See the MCAI for additional background information.

In the NPRM, the FAA proposed to require accomplishing the actions specified in the Bombardier Service Bulletin 700–35–7502, Basic Issue, dated January 26, 2022. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1065.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 700–35–7502, Basic Issue, dated January 26, 2022. This service information describes procedures for an inspection to determine the serial numbers of the oxygen cylinders installed and replacement of each affected OCRA with a new or reworked OCRA.

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 would affect 16 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
5 work-hours × $85 per hour = $425	$3,069	$3,494	$55,904

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–23–04 Bombardier, Inc.: Amendment 39–22231; Docket No. FAA–2022–1065; Project Identifier MCAI–2022–00280–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 30, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category, having serial numbers 70006, 70008, 70009 through 70016 inclusive, 70019, 70020, 70025, 70026, 70028, 70032 through 70035 inclusive, 70038 through 70043 inclusive, 70046, 70048, 70050, 70051, 70054, 70063, and 70073.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that the flightcrew and passenger oxygen system's refill and capillary lines may have been contaminated by sealant and cotton fibers. The FAA is issuing this AD to address the contamination, which may cause a blockage of the oxygen system components and result in a reduction of oxygen flow, reduce the total amount of available oxygen, or create a fire hazard.

(f) Compliance

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

(g) Inspection and Replacement

Within 36 months after the effective date of this AD: Do an inspection to determine the serial numbers of the oxygen cylinders installed in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–35–7502, Basic Issue, dated January 26, 2022 (SB 700–35–7502). If any affected oxygen cylinder and regulator assembly (OCRA) is installed, before further flight replace the affected part with a new or reworked OCRA, in accordance with the Accomplishment Instructions of SB 700–35–7502.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install any affected oxygen cylinder having a serial number specified in paragraph 1.A. of SB 700–35–7502, on any airplane.

(i) No Reporting Requirement

Although SB 700–35–7502 specifies to report 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, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(k) Additional Information

(1) Refer to TCCA AD CF–2022–07, dated March 1, 2022, for related information. This TCCA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1065.

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

(l) 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 this AD specifies otherwise.

(i) Bombardier Service Bulletin 700–35–7502, Basic Issue, dated January 26, 2022.

(ii) [Reserved]

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

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

(5) You may view this 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 October 27, 2022.

Christina Underwood,

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

[FR Doc. 2022–25513 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1066; Project Identifier MCAI–2022–00622–T; Amendment 39–22225; AD 2022–22–10]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–21–11, which applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes; and Model A320 and A321 series airplanes. AD 2020–21–11 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2020–21–11 and requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 30, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 30, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 20, 2020 (85 FR 65674, October 16, 2020).

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–1066; 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, the mandatory continuing airworthiness information (MCAI), 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.

Material Incorporated by Reference:

- For material incorporated by reference 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–2022–1066.

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:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–21–11, Amendment 39–21284 (85 FR 65674, October 16, 2020) (AD 2020–21–11). AD 2020–21–11 applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes; and Model A320 and A321 series airplanes. AD 2020–21–11 required revising the existing maintenance or inspection program, as

applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2020–21–11 to address the failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on September 2, 2022 (87 FR 54183). The NPRM was prompted by AD 2022–0082, dated May 10, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0082) (referred to after this as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1066.

In the NPRM, the FAA proposed to continue to require the actions in AD 2020–21–11 and require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2022–0082. The FAA is issuing this AD to address failure of certain life-limited parts, which could result in reduced structural integrity of the airplane

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0082 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires EASA AD 2020–0080, dated April 1, 2020, which the Director of the Federal Register approved for incorporation by reference as of November 20, 2020 (85 FR 65674, October 16, 2020).

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.

Costs of Compliance

The FAA estimates that this AD affects 1,857 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020–21–11 to be $7,650 (90 work-hours × $85 per work-hour).

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

The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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:

■ a. Removing Airworthiness Directive (AD) 2020–21–11, Amendment 39–21284 (85 FR 65674, October 16, 2020); and

■ b. Adding the following new AD:

2022–22–10 Airbus SAS: Amendment 39–22225; Docket No. FAA–2022–1066; Project Identifier MCAI–2022–00622–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 30, 2022.

(b) Affected ADs

This AD replaces AD 2020–21–11, Amendment 39–21284 (85 FR 65674, October 16, 2020) (AD 2020–21–11).

(c) Applicability

This AD applies to Airbus SAS Model airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before February 2, 2022.

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

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

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

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

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With a New Terminating Action

This paragraph restates the requirements of paragraph (i) of AD 2020–21–11, with a new terminating action. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 13, 2019, except for Model A319–171N airplanes: 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 2020–0080, dated April 1, 2020 (EASA AD 2020–0080). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2020–0080, With No Changes

(1) The requirements specified in paragraph (1), (3), and (4) of EASA AD 2020–0080 do not apply to this AD.

(2) Paragraph (2) of EASA AD 2020–0080 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations'' specified in paragraph (3) of EASA AD 2020–0080 within 90 days after November 20, 2020 (the effective date of AD 2020–21–11).

(3) The initial compliance time for doing the tasks specified in paragraph (2) of EASA AD 2020–0080 is at the applicable compliance times specified in paragraph (2) of EASA AD 2020–0080, or within 90 days after November 20, 2020 (the effective date of AD 2020–21–11), whichever occurs later.

(4) The ''Remarks'' section of EASA AD 2020–0080 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2020–21–11, with a new exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed except as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0080.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0082, dated May 10, 2022 (EASA AD 2022–0082). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022–0082

(1) Where EASA AD 2022–0082 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraph (1) of EASA AD 2022–0082 do not apply to this AD.

(3) Paragraph (2) of EASA AD 2022–0082 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (2) of EASA AD 2022–0082 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (2) of EASA AD 2022–0082, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (3) and (4) of EASA AD 2022–0082 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2022–0082 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0082.

(m) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(ii) AMOCs approved previously for AD 2020–21–11 are approved as AMOCs for the corresponding provisions of EASA AD 2022–0082 that are required by paragraph (j) of this AD.

(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.

(n) Additional Information

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.*

(o) 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 December 30, 2022.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0082, dated May 10, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on November 20, 2020 (85 FR 65674, October 16, 2020).

(i) European Union Aviation Safety Agency (EASA) AD 2020–0080, dated April 1, 2020.

(ii) [Reserved]

(5) For EASA ADs 2022–0082 and 2020–0080, 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 these EASA ADs on the EASA website at *ad.easa.europa.eu.*

(6) 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.

(7) You may view this material 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 October 21, 2022.

Christina Underwood,

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

[FR Doc. 2022–25510 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1064; Project Identifier MCAI–2022–00342–T; Amendment 39–22224; AD 2022–22–09]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–1041 airplanes. This AD was prompted by a report of rejected take-offs after transient engine N1 shaft speed exceedance. This AD requires replacing certain hydro-mechanical units (HMUs) with serviceable HMUs before reaching a reduced life limit, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also limits the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 30, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 30, 2022.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1064; 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, the mandatory continuing airworthiness information (MCAI), 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.

Material Incorporated by Reference:

- For material incorporated by reference 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–2022–1064.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–1041 airplanes. The NPRM published in the **Federal Register** on August 29, 2022 (87 FR 52705). The NPRM was prompted by AD 2022–0040, dated March 8, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0040) (referred to after this as the MCAI). The MCAI states that rejected take-offs after transient engine N1 shaft speed exceedance have been reported. The MCAI adds that the combining spill valve (CSV) of the engine HMU was slow to close due to piston wear. A worn CSV piston does not move fully and freely over its operating range, and when it moves to the fully closed position, an excess of fuel is sent to the fuel nozzles, which eventually results in an N1 transient shaft overspeed. A stuck CSV piston could significantly reduce engine thrust, and if combined with a loss of the second engine, could possibly result in reduced control of the airplane.

In the NPRM, the FAA proposed to require replacing certain HMUs with serviceable HMUs before reaching a reduced life limit, as specified in EASA AD 2022–0040. The NPRM also proposed to limit the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1064.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0040 specifies procedures for replacing each HMU having part number G5020HMU02 with a serviceable HMU before reaching a reduced life limit. EASA AD 2022–0040 also limits the installation of affected parts under certain conditions. 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.

Interim Action

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

Costs of Compliance

The FAA estimates that this AD affects 29 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
7 work-hours × $85 per hour = $595	$0 *	$595	$17,255

* The FAA has received no definitive data on which to base the cost estimates for the parts 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:

2022–22–09 Airbus SAS: Amendment 39–22224; Docket No. FAA–2022–1064; Project Identifier MCAI–2022–00342–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 30, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0040, dated March 8, 2022 (EASA AD 2022–0040).

(d) Subject

Air Transport Association (ATA) of America Code 73, Engine Fuel and Control.

(e) Unsafe Condition

This AD was prompted by a report of rejected take-offs after transient engine N1 shaft speed exceedance. The FAA is issuing this AD to address a stuck combined spill valve (CSV) piston of the engine hydro-mechanical units (HMUs), which could significantly reduce engine thrust, and if combined with a loss of the second engine, could possibly result in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0040.

(h) Exceptions to EASA AD 2022–0040

(1) Where EASA AD 2022–0040 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0040 does not apply to this AD.

(3) Where paragraph (1) of EASA AD 2022–0040 specifies to replace ''[b]efore an affected part exceeds the life limit as defined in Table 1 of this [EASA] AD,'' this AD requires replacing ''before an affected part exceeds the life limit specified in Table 1 of EASA 2022–0040, or within 3 flight cycles after the effective date of this AD, whichever occurs later.''

(4) Where Table 1 of EASA AD 2022–0040 specifies calendar timeframes, for this AD replace the text ''31 March 2022 to 29, June 2023'' with ''the effective date of this AD through June 29, 2023.''

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information referenced in EASA AD 2022–0042 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, 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 instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

(k) 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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0040, dated March 8, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0040, 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.*

(4) 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.

(5) You may view this material 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 October 21, 2022.

Christina Underwood,

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

[FR Doc. 2022–25512 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1060; Project Identifier MCAI–2022–00251–T; Amendment 39–22226; AD 2022–22–11]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–14–08, which applied to all Airbus SAS Model A319–151N, A319–153N, A319–171N, A320–251N, A320–252N, A320–273N, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N, and A321–272NX airplanes. AD 2021–14–08 required revising the existing airplane flight manual (AFM) to include a procedure to reinforce the airspeed check during the take-off phase and provide instructions to abort take-off in certain cases. This AD was prompted by the development of a software update to the elevator aileron computer (ELAC) to address the unsafe condition. This AD continues to require the actions in AD 2021–14–08 and requires replacing each affected ELAC and removing the AFM revision required by AD 2021–14–08, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 30, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 30, 2022.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1060; 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, the mandatory continuing airworthiness information (MCAI), 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.

Material Incorporated by Reference:

- For material incorporated by reference 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–2022–1060.

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:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–14–08, Amendment 39–21635 (86 FR 34933, July 1, 2021) (AD 2021–14–08). AD 2021–14–08 applied to all Airbus SAS Model A319–151N, A319–153N, A319–171N, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, A320–273N, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N, and A321–272NX airplanes. AD 2021–14–08 required revising the existing AFM to include a procedure to reinforce the airspeed check during the take-off phase and provide instructions to abort take-off in certain cases. The FAA issued AD 2021–14–08 to address airspeed discrepancies, which could lead to an unstable flight path after take-off, possibly resulting in reduced control of the airplane.

The NPRM published in the **Federal Register** on August 23, 2022 (87 FR 51617). The NPRM was prompted by AD 2022–0028, dated February 22, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0028) (referred to after this as the MCAI). The MCAI states that an increasing number of operational disruptions due to airspeed discrepancies were reported, which may affect the airplane's response, particularly during the rotation phase. The MCAI states that this condition, if not addressed, could lead to an unstable flight path after take-off, possibly resulting in reduced control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1060.

In the NPRM, the FAA proposed to continue to require the actions in AD 2021–14–08 and to require replacing each affected ELAC and removing the AFM revision required by AD 2021–14–08, as specified in EASA AD 2022–0028. The NPRM also proposed to prohibit the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0028 specifies procedures for, among other actions, revising the AFM to include a procedure to reinforce the airspeed check during the take-off phase and provide instructions to abort take-off in certain

cases (*e.g.,* an unreliable airspeed situation or certain airspeed differences); replacing each affected ELAC with a serviceable ELAC (one with the updated ELAC software standard); and removing the AFM revision required by AD 2021–14–08. EASA AD 2022–0028 also prohibits installation of affected ELACs. 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.

Costs of Compliance

The FAA estimates that this AD affects 204 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2021–14–08	1 work-hour × $85 per hour = $85	$0	$85	$17,340
New actions	3 work-hours × $85 per hour = $355	150	405	82,620

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:

■ a. Removing Airworthiness Directive (AD) 2021–14–08, Amendment 39–21635 (86 FR 34933, July 1, 2021); and

■ b. Adding the following new AD:

2022–22–11 Airbus SAS: Amendment 39–22226; Docket No. FAA–2022–1060; Project Identifier MCAI–2022–00251–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 30, 2022.

(b) Affected ADs

This AD replaces AD 2021–14–08, Amendment 39–21635 (86 FR 34933, July 1, 2021) (AD 2021–14–08).

(c) Applicability

This AD applies to all Airbus SAS Model airplanes identified in paragraphs (c)(1) through (3) of this AD, certificated in any category.

(1) Model A319–151N, –153N, and –171N airplanes.

(2) Model A320–251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(3) Model A321–251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Control System; 34, Navigation.

(e) Unsafe Condition

This AD was prompted by reports of an increasing number of operational disruptions due to airspeed discrepancies, and the development of a software update to the elevator aileron computer (ELAC) to address the unsafe condition. The FAA is issuing this AD to address airspeed discrepancies, which could lead to an unstable flight path after take-off, possibly resulting in reduced control 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 2022–0028, dated February 22, 2022 (EASA AD 2022–0028).

(h) Exceptions to EASA AD 2022–0028

(1) Where EASA AD 2022–0028 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0028 refers to June 28, 2021 (the effective date of EASA AD 2021–0150, dated June 21, 2021; corrected June 25, 2021), this AD requires using July 1, 2021 (the effective date of AD 2021–14–08).

(3) Paragraph (3) of EASA AD 2022–0028 does not apply to this AD.

(4) Where paragraphs (1) and (5) of EASA AD 2022–0028 specify 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.

(5) The "Remarks" section of EASA AD 2022–0028 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, 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 (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector,

or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(ii) AMOCs approved previously for AD 2022–14–08 are approved as AMOCs for the corresponding provisions of EASA AD 2022–0028 that are required by paragraph (g) of this AD.

(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 paragraph (i)(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.

(j) Additional Information

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*.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0028, dated February 22, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0028, 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*.

(4) 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.

(5) You may view this material 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 October 21, 2022.

Christina Underwood,

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

[FR Doc. 2022–25511 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31457; Amdt. No. 4034]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 25, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 25, 2022.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29 Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff

Minimums and ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on October 28, 2022.

Thomas J Nichols,

Aviation Safety, Flight Standards Service Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
1–Dec–22	MT	Great Falls	Great Falls Intl	2/0727	10/4/22	This NOTAM, published in Docket No. 31455, Amdt No. 4032, TL 22–25, (87 FR 68628, November 16, 2022) is hereby rescinded in its entirety.
1–Dec–22	IA	Vinton	Vinton Veterans Meml Airpark.	2/2320	9/26/22	This NOTAM, published in Docket No. 31455, Amdt No. 4032, TL 22–25, (87 FR 68628, November 16, 2022) is hereby rescinded in its entirety.
1–Dec–22	NC	Hickory	Hickory Rgnl	2/0446	10/17/22	RNAV (GPS) RWY 24, Amdt 1C.
1–Dec–22	NC	Hickory	Hickory Rgnl	2/0447	10/17/22	RNAV (GPS) RWY 6, Amdt 1B.
1–Dec–22	MT	Great Falls	Great Falls Intl	2/3449	10/18/22	RNAV (RNP) Z RWY 3, Orig–C.
1–Dec–22	FL	West Palm Beach	Palm Beach Intl	2/3490	10/24/22	RNAV (RNP) Z RWY 10L, Amdt 2.
1–Dec–22	PR	San Juan	Luis Munoz Marin Intl	2/9138	10/17/22	VOR OR TACAN RWY 10, Amdt 2B.
1–Dec–22	OR	Grants Pass	Grants Pass	2/9326	10/17/22	RNAV (GPS) RWY 13, Amdt 1.
1–Dec–22	OR	Grants Pass	Grants Pass	2/9327	10/17/22	RNAV (GPS)–A, Orig–A.

[FR Doc. 2022–25639 Filed 11–23–22; 8:45 a.m.]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31456; Amdt. No. 4033]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 25, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 25, 2022.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on October 28, 2022.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 1 December 2022

West Palm Beach, FL, KPBI, ILS OR LOC RWY 28R, Amdt 4A
West Palm Beach, FL, KPBI, RNAV (GPS) Y RWY 14, Amdt 4
West Palm Beach, FL, KPBI, RNAV (GPS) Y RWY 28R, Amdt 3A
West Palm Beach, FL, KPBI, RNAV (RNP) Z RWY 32, Amdt 2
Mansfield, MA, 1B9, COPTER RNAV (GPS) Y RWY 14, Orig
Mansfield, MA, 1B9, RNAV (GPS) RWY 32, Amdt 1
Mansfield, MA, 1B9, RNAV (GPS) Z RWY 14, Orig
Rochester, NH, KDAW, RNAV (GPS) RWY 15, Orig
East Hampton, NY, KJPX, RNAV (GPS) Z RWY 28, Orig-A

Effective 29 December 2022

Weed, CA, O46, RNAV (GPS) RWY 14, Orig-A
Orlando, FL, KMCO, ILS OR LOC RWY 17L, ILS RWY 17L (SA CAT I), ILS RWY 17L (CAT II), ILS RWY 17L (CAT III), Amdt 4B
Orlando, FL, KMCO, ILS OR LOC RWY 17R, ILS RWY 17R (CAT II), Amdt 5F
Orlando, FL, KMCO, ILS OR LOC RWY 35L, ILS RWY 35L (SA CAT I), ILS RWY 35L (CAT II), ILS RWY 35L (CAT III), Amdt 8A
Orlando, FL, KMCO, ILS OR LOC RWY 35R, ILS RWY 35R (SA CAT I), ILS RWY 35R (CAT II), ILS RWY 35R (CAT III), Amdt 5B
Orlando, FL, KMCO, ILS OR LOC RWY 36R, ILS RWY 36R (SA CAT I), ILS RWY 36R (CAT II), ILS RWY 36R (CAT III), Amdt 11A
Swainsboro, GA, KSBO, ILS OR LOC RWY 14, Amdt 2
Swainsboro, GA, KSBO, NDB RWY 14, Amdt 2B, CANCELLED
Danville, KY, KDVK, Takeoff Minimums and Obstacle DP, Amdt 1A
Lake Charles, LA, KCWF, ILS OR LOC RWY 15, Amdt 7
Lake Charles, LA, KCWF, RNAV (GPS) RWY 15, Amdt 1A
Lake Charles, LA, KCWF, RNAV (GPS) RWY 33, Amdt 1B
Rangeley, ME, 8B0, RNAV (GPS) RWY 14, Orig
Rangeley, ME, 8B0, RNAV (GPS) RWY 32, Orig
Stanley, ND, 08D, RNAV (GPS) RWY 28, Amdt 2
Stanley, ND, 08D, Takeoff Minimums and Obstacle DP, Orig-A
Reno, NV, KRNO, SPARKS ONE, Graphic DP
Reno, NV, KRNO, Takeoff Minimums and Obstacle DP, Amdt 5
Tulsa, OK, KTUL, RNAV (GPS) RWY 36L, Amdt 1A
Greenville, SC, KGMU, ILS OR LOC RWY 1, Amdt 31
Greenville, SC, KGMU, ILS Y OR LOC Y RWY 1, Orig-B, CANCELLED
Rosebud, SD, KSUO, RNAV (GPS) RWY 34, Orig-A
Commerce, TX, 2F7, VOR–A, Amdt 3B, CANCELLED
Blanding, UT, KBDG, Takeoff Minimums and Obstacle DP, Amdt 2

[FR Doc. 2022–25638 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1141

[Docket No. FDA–2019–N–3065]

RIN 0910–AI39

Tobacco Products; Required Warnings for Cigarette Packages and Advertisements; Delayed Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: As required by an order issued by the U.S. District Court for the Eastern District of Texas, this action delays the effective date of the final rule (''Tobacco Products; Required Warnings for Cigarette Packages and Advertisements''), which published on March 18, 2020. The new effective date is November 6, 2023.

DATES: The effective date of the rule amending 21 CFR part 1141 published at 85 FR 15638, March 18, 2020, and delayed at 85 FR 32293, May 29, 2020; 86 FR 3793, January 15, 2021; 86 FR 36509, July 12, 2021; 86 FR 50855, September 13, 2021; 86 FR 70052, December 9, 2021; 87 FR 11295, March 1, 2022; 87 FR 32990, June 1, 2022; and 87 FR 50765, August 18, 2022, is further delayed until November 6, 2023.

FOR FURTHER INFORMATION CONTACT: Courtney Smith, Office of Regulations, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1371, email: *CTPRegulations@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 18, 2020, the Food and Drug Administration (FDA or Agency) issued a final rule establishing new cigarette health warnings for cigarette packages and advertisements. The final rule implements a provision of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) that requires FDA to issue regulations requiring color graphics depicting the negative health consequences of smoking to accompany new textual warning label statements. The Tobacco Control Act amends the Federal Cigarette Labeling and Advertising Act of 1965 (Pub. L. 89–92) to require each cigarette package and advertisement to bear one of the new required warnings. The final rule specifies the 11 new textual warning label statements and accompanying color graphics. Pursuant to section 201(b) of the Tobacco Control Act, the rule was published with an effective date of June 18, 2021, 15 months after the date of publication of the final rule.

On April 3, 2020, the final rule was challenged in the U.S. District Court for the Eastern District of Texas.[1] On May 8, 2020, the court granted a joint motion to govern proceedings in that case and postpone the effective date of the final rule by 120 days.[2] On December 2, 2020, the court granted a new motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[3] On March 2, 2021, the court granted another motion by the plaintiffs to postpone the effective date of the

[1] *R.J. Reynolds Tobacco Co. et al.* v. *United States Food and Drug Administration et al.,* No. 6:20–cv–00176 (E.D. Tex. filed April 3, 2020).

[2] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. May 8, 2020) (order granting joint motion and establishing schedule), Doc. No. 33.

[3] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. December 2, 2020) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 80.

final rule by an additional 90 days.[4] On May 21, 2021, the court granted another motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[5] On August 18, 2021, the court issued an order to postpone the effective date of the final rule by an additional 90 days.[6] On November 12, 2021, the court issued another order to postpone the effective date of the final rule by an additional 90 days.[7] On February 10, 2022, the court issued another order to postpone the effective date of the final rule by an additional 90 days.[8] On May 10, 2022, the court issued another order to postpone the effective date of the final rule by an additional 90 days.[9] On August 10, 2022, the court granted a motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[10] On November 7, 2022, the court issued another order to postpone the effective date of the final rule by an additional 31 days.[11] The court ordered that the new effective date of the final rule is November 6, 2023. Pursuant to the court order, any obligation to comply with a deadline tied to the effective date is similarly postponed, and those obligations and deadlines are now tied to the postponed effective date.

To the extent that 5 U.S.C. 553 applies to this action, the Agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exception in 5 U.S.C. 553(b)(B). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The 31-day postponement of the effective date, until November 6, 2023, is required by court order in accordance with the court's authority to postpone a rule's effective date pending judicial review (5 U.S.C. 705). Seeking prior public comment on this postponement would have been impracticable, as well as contrary to the public interest in the orderly issuance and implementation of regulations.

Dated: November 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–25650 Filed 11–23–22; 8:45 am]

BILLING CODE 4164–01–P

[4] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. March 2, 2021) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 89.

[5] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. May 21, 2021) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 91.

[6] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. August 18, 2021) (order postponing effective date), Doc. No. 92.

[7] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. November 12, 2021) (order postponing effective date), Doc. No. 93.

[8] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. February 10, 2022) (order postponing effective date), Doc. No. 94.

[9] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. May 10, 2022) (order postponing effective date), Doc. No. 96.

[10] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. August 10, 2022) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 100.

[11] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. November 7, 2022) (order postponing effective date), Doc. No. 104.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0881]

Special Local Regulations; Marine Event Within the Captain of the Port Savannah Zone—Savannah Harbor Boat Parade of Lights and Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation for the Savannah Harbor Boat Parade of Lights and Fireworks. This action is necessary to ensure safety of life on navigable waters of the Savannah River during the Savannah Harbor Boat Parade of Lights and Fireworks displays. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the designated area unless authorized by the Captain of the Port Savannah or a designated representative.

DATES: The regulations in 33 CFR 100.701 will be enforced for the location identified in paragraph (d) Item 4 of Table 1 to § 100.701, will be enforced from 5 p.m. through 10 p.m. on November 26, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LT Alex McConnell, Marine Safety Unit Savannah Office of Waterways Management, Coast Guard; telephone 912–652–4353, extension 240, or email *Alexander.W.McConnell@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the Savannah Harbor Parade of Lights and Fireworks in 33 CFR 100.701, Table 1 to § 100.701, paragraph (d), Item 4, from 5 p.m. until 10 p.m., on November 26, 2022. This action is being taken to provide for the safety and security of navigable waterways during this one-day event. Our regulation for marine events within the Captain of the Port Savannah, § 100.701, specifies the location of the special local regulation for Savannah Harbor Boat Parade of Lights and Fireworks, which encompasses parts of the Savannah River from the Talmadge bridge to a line drawn at 146 degrees true from Dayboard 62, in Savannah, GA. Only event sponsored, designated participants and official patrol vessels will be allowed to enter the regulated area.

Spectator vessels may safely transit outside the regulated area, but may not anchor, block, loiter in, impede the transit of festival participants or official patrol vessels or enter the regulated area without approval from the Captain of the Port Savannah or a designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notice of the regulated area via Local Notice to Mariners, Marine Safety Information Bulletins, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: November 22, 2022.

M.K. Villafane,

Lieutenant Commander, U.S. Coast Guard, Acting, Captain of the Port Savannah, GA.

[FR Doc. 2022–25902 Filed 11–22–22; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0926]

RIN 1625–AA00

Safety Zone; Bahia de San Juan, San Juan, PR

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of Bahia de San Juan, within a 200-yard radius of the tug MICHELE FOSS and barge FOSS PREVAILING WIND. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the movement and berthing of two port

facility cranes transiting inbound to Puerto Rico Ports Authority (PRPA) piers M, N and O, through Bahia de San Juan's main navigational channels. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector San Juan.

DATES: This rule is effective without actual notice from November 25, 2022, until November 28, 2022. For purposes of enforcement, actual notice will be used from November 18, 2022, until November 25, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0926 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Carlos M. Ortega-Perez, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone (787) 729–2380, email *carlos.m.ortega-perez@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard lacks sufficient time to provide for a comment period and then consider those comments before issuing the rule since this rule is needed by November 18, 2022. It would be contrary to the public interest since immediate action is necessary to protect the safety of the public, and vessels transiting the waters of the Bahia de San Juan, PR during the planned movement and obstruction created by oversized cranes.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to minimize the potential safety hazards associated with the restricted maneuverability and oversized cargo being carried by these vessels.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with the movement and berthing of oversized cranes by barge on November 18, 2022, will be a safety concern for anyone within a 200-yard radius of the tug MICHELE FOSS and barge FOSS PREVAILING WIND. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the barge transits inbound from sea and while berthed alongside the wharf.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from November 18, 2022 through November 28, 2022. A moving and fixed temporary safety zone will be established for the the tug MICHELE FOSS and barge FOSS PREVAILING WIND while they are inside of the Bahia de San Juan and loaded with large cranes on deck. While the tug and barge are underway and laden with cranes, the temporary safety zone will cover all navigable waters of Bahia de San Juan within 200 yards of the tug MICHELE FOSS and barge FOSS PREVAILING WIND. The tug and barge are only expected to be underway for approximately one hour. There will be a fixed safety zone within 200 yards of the tug and barge, while they are moored, and discharging the cranes to Puerto Rico Ports Authority (PRPA) piers M, N and O. This safety zone may last until November 28, 2022, but it will not be enforced after the cranes have been removed from the barge. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the movement and obstruction hazard of two oversized cranes transiting inbound to PRPA piers M, N and O, through Bahia de San Juan's main navigational channels, and when they are moored to that facility. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location and scope of the safety zone. The zone is limited in size, location, and duration as it will cover all navigable waters of the Atlantic Ocean and the Bahia de San Juan within 200 yards of the Tug (MICHELE FOSS) and Barge (FOSS PREVAILING WIND) while they are underway with cranes onboard, and while they are moored to the PRPA piers, and discharging their cargo. The zone is limited in scope as vessel traffic may be able to safely transit around this safety zone and vessels may seek permission from the COTP to enter the zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Safety Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone, for the tug MICHELE FOSS and barge FOSS PREVAILING WIND, of which the moving zone is anticipated to last approximately one hour and the fixed zone, up to ten days, that will prohibit entry within 200 yards of the tug MICHELE FOSS and barge FOSS PREVAILING WIND. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0926 to read as follows:

§ 165.T07–0926 Safety Zone; Bahia de San Juan, tug MICHELE FOSS and barge FOSS PREVAILING WIND, San Juan, PR.

(a) *Location.* The following is a safety zone: The moving safety zone will include all navigable waters of Bahia de San Juan, within a 200-yard radius of the tug MICHELE FOSS and barge FOSS PREVAILING WIND while transiting Puerto Rico Ports Authority (PRPA) piers M, N and O, and laden with oversized cranes. The fixed zone will include all navigable waters of Bahia de San Juan, within a 200-yard radius of the tug MICHELE FOSS and barge FOSS PREVAILING WIND while moored at PRPA piers M, N and O, and laden with oversized cranes.

(b) *Definition.* The term *designated representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) No person or vessel will be permitted to enter, transit, anchor, or remain within the safety zone unless authorized by the COTP San Juan or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP San Juan or designated representative.

(2) Persons who must notify or request authorization from the COTP San Juan may do so by telephone at (787) 289–2041, or may contact a designated representative via VHF radio on channel 16.

(d) *Enforcement period.* This section will be enforced from November 18, 2022, through November 28, 2022. The moving zone will be enforced while the tug and barge are transiting with the cranes embarked, and the fixed zone will be enforced while the tug and barge are moored at the facility, and the cranes are onboard.

Dated: November 18, 2022.

José E. Díaz,

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

[FR Doc. 2022–25730 Filed 11–23–22; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket Nos. 20–330; FCC 22–63; FR ID 107242]

Amendment to Enable GSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3–17.8 GHz Band, To Modernize Certain Rules Applicable to 17/24 GHz BSS Space Stations, and To Establish Off-Axis Uplink Power Limits for Extended Ka-Band FSS Operations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC) adopts amendments to its rules toenable geostationary satellite orbit (GSO) space stations in the fixed-satellite service (FSS) to operate downlinks (space-to-Earth) in the 17.3–17.8 GHz frequency band, subject to certain limitations, and adopts related technical updates to its rules governing the FSS and the Broadcasting-Satellite Service to prevent harmful interference.

DATES: The amendments are effective December 27, 2022, except for the amendments to §§ 25.114 (amendatory instruction 5), 25.115 (amendatory instruction 6), 25.117 (amendatory instruction 7), 25.140 (amendatory instruction 8), 25.203 (amendatory instruction 10), and 25.264 (amendatory instruction 18), which are delayed. The Commission will publish a document in the **Federal Register** announcing the effective date for those amendments.

FOR FURTHER INFORMATION CONTACT: Sean O'More, International Bureau, Satellite Division, 202–418–2453, *sean.omore@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 22–63, adopted August 3, 2022, and released August 3, 2022. The full text of the Report and Order is available at *https://www.fcc.gov/edocs/search-results?t=quick&fccdaNo=22-63.* To request materials in accessible formats for people with disabilities, send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules adopted in the Order, which was incorporated in the Report and Order.

Congressional Review Act

The Commission will send a copy of the Report and Order in a report to be sent to Congress ad the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A).

Paperwork Reduction Act

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

I. Introduction

In this final rule, the Commission permits use of the 17.3–17.7 GHz band by geostationary satellite orbit (GSO) space stations in the fixed-satellite service (FSS) in the space-to-Earth direction on a co-primary basis with incumbent services. We also permit limited GSO FSS (space-to-Earth) use of the 17.7–17.8 GHz band on an unprotected basis with respect to fixed service operations. Permitting use of the 17.3- 17.8 GHz band to include FSS downlinks increases intensive and efficient use of the band and provides additional downlink capacity for high-throughput satellite communications. With appropriate technical safeguards established herein, including coordination requirements, this band can be shared in an efficient and effective manner without harmful interference while alleviating the growing need for additional Ka-band GSO FSS downlink spectrum to support communications to earth stations, and further streamline the licensing process of certain satellite systems. Permitting use of the 17.3–17.8 GHz band to include FSS downlinks will create a contiguous band for FSS (space-to-Earth) operations, enabling greater flexibility and efficiency for advanced satellite systems operations for the benefit of American consumer. In this final rule, we also define an extended Ka-band in our rules, *i.e.,* the 17.3- 18.3 GHz (space-to-Earth), 18.8–19.4 GHz (space-to-Earth), 19.6–19.7 GHz (space-to-Earth), 27.5–28.35 GHz (Earth-to-space) and 28.6–29.1 GHz (Earth-to-space) bands to streamline licensing of FSS earth stations in a closely harmonized regulatory framework for all similar FSS uplink transmissions in the conventional and extended Ka-bands.

II. Background

The Table of Frequency Allocations is comprised of the International Table and the United States Table of Frequency Allocations (U.S. Table). In the International Table, the 17.3–17.7 GHz band is allocated, in International Telecommunication Union (ITU) Region 2, to the fixed-satellite service (FSS) (Earth-to-space) and to the broadcasting-satellite service (BSS) on a co-primary basis, as well as to the radiolocation service on a secondary basis. In the U.S. Table, the 17.3–17.7 GHz band is allocated to the FSS (Earth-to-space) and to the BSS on a co-primary basis and to the radiolocation services on a secondary basis. The adjacent 17.7–17.8 GHz band is allocated internationally in ITU Region 2 to the fixed service, BSS, and FSS (in both the space-to-Earth and Earth-to-space directions) on a primary basis and to the mobile service on a secondary basis. The 17.7–17.8 GHz band is allocated to FSS (Earth-to-space) and to the fixed service on a co-primary basis in the U.S. Table. Historically, in the United States, the 17.3–17.8 GHz band has been used for FSS feeder uplinks that transmit programming to Direct Broadcast Satellite (DBS) service GSO space stations, in addition to terrestrial fixed service use of the 17.7–17.8 GHz band. DBS feeder link operations typically involve the use of large, high-gain antennas at a limited number of individually-licensed earth station locations. The DBS service satellites then downlink that video programming directly to consumers in the 12.2–12.7 GHz band.

In 2007, the Commission adopted rules for a new service that would use the 17.3–17.8 GHz band in the space-to-Earth direction to provide BSS. This service, known as the ''17/24 GHz BSS,''

provides service downlinks to customers in the same 17.3–17.8 GHz band that is used for feeder uplinks to DBS space stations, *i.e.,* reverse band operation. Although the 17/24 GHz BSS may use the entire 17.3–17.8 GHz band internationally, it may only provide service in the United States in the 17.3–17.7 GHz band. DBS feeder link uplinks, by contrast, operate in the entire 17.3–17.8 GHz band in the United States. When the Commission adopted rules for the 17/24 GHz BSS, it also sought comment on rules to avoid interference between DBS and 17/24 GHz BSS operations, both in-orbit (''space path'' interference) and on the ground (''ground path'' interference). The Commission adopted technical rules to address space path interference in 2011 that included a requirement that 17/24 GHz BSS space stations locate at least 0.2 degrees from a DBS space station. In 2017, the Commission adopted rules to address ground path interference.

On November 18, 2020, the Commission adopted a notice of proposed rulemaking (NPRM) (86 FR 7660 (Feb. 1, 2021)). In the *17 GHz FSS NPRM,* the Commission proposed to revise its rules and permit GSO FSS (space-to-Earth) communications in the 17.3–17.7 GHz on a co-primary basis. The Commission also proposed to permit GSO FSS (space-to-Earth) communications in the 17.7–17.8 GHz band on an unprotected basis with respect to terrestrial fixed service operations in the band. This would join with current spectrum allocations to produce a contiguous band for non-Federal Government space-to-Earth FSS operations in the United States, from 17.3–20.2 GHz.

The Commission also proposed a number of technical rules to prevent harmful interference between stations sharing the 17.3–17.8 GHz band. In order to facilitate sharing of the band between BSS and FSS, the Commission proposed satellite spacing requirements, power-flux density (PFD) limits for transmitting (downlinking) FSS space stations, polarization and frequency re-use requirements, and space station antenna cross-polarization requirements. In order to mitigate space path interference in the band,[1] the Commission proposed to extend the ''coordination trigger'' applicable to DBS and BSS space stations in the 17.3–17.8 GHz band to FSS space stations, to require PFD calculations in the band to consider aggregate PFD from all transmitting beams on the adjacent space station. The Commission also proposed a minimum orbital separation between FSS space stations of 0.5 degrees and amendment of the values for off-axis measurement angles, measurement frequency requirements, and a two-part process for submission of off-axis antenna gain data. In order to mitigate ground path interference,[2] the Commission proposed to maintain its current rules to ''grandfather'' upgrades and modifications to existing DBS earth station sites, modify the measurements and values used to establish DBS/FSS coordination zones in the 17.3–17.8 GHz band, and permit blanket-licensed FSS receiving earth stations in the 17.3–17.8 GHz band. The Commission also proposed certain conforming modifications to the rules in order to effectuate the proposed'' changes. Finally, the Commission proposed to define the term ''extended Ka-band'' to include all frequency bands in the Ka-band with allocations to the GSO FSS, apart from the currently-defined ''conventional Ka-band,'' and to apply the Commission's routine license application processing procedures to applications in the ''extended Ka-band.''

III. Discussion

A. GSO FSS Allocation in the 17.3–17.8 GHz Band

The Ka-band[3] is used extensively by FSS operators to provide satellite-based broadband access services using high-throughput satellites. In these high throughput systems, end user terminals uplink to space stations on one set of frequencies, and the space station downlinks traffic to earth station terminals (and back into the internet backbone) using a separate set of frequencies. The satellites in these systems typically use spot-beam technology and high-order frequency re-use to significantly increase capacity and spectral efficiency. In this final rule, we permit FSS downlinks from geostationary satellites to operate in the 17.3–17.7 GHz band on a co-primary (co-equal) basis[4] with other primary services in that band by revising footnote US402 in the U.S. Table, and adopting a new footnote NG58. In addition, as discussed below, we make certain other changes to the U.S. Table to permit GSO FSS space-to-Earth operations in the adjacent 17.7–17.8 GHz band. We revise the existing primary FSS allocation in the U.S. Table to permit GSO space-to-Earth operations. We also permit authorization of FSS receiving earth stations in the 17.7–17.8 GHz band on an unprotected basis with respect to fixed service operations; such FSS receiving earth stations would operate on a co-primary basis, however, vis-à-vis primary satellite operations in the band.

1. GSO FSS Transmissions in the 17.3–17.7 GHz Band

The 17.3–17.7 GHz band is allocated in the U.S. Table to FSS (Earth-to-space), limited to feeder links for the BSS (DBS), and to the BSS (17/24 GHz BSS), on a co-primary basis. In the *17 GHz FSS NPRM,* the Commission proposed to add a co-primary allocation in the 17.3–17.7 GHz band for FSS (space-to-Earth). Neither the International (Region 2) nor the U.S. Table of Frequency Allocations currently permit FSS (space-to-Earth) operations in this band. In the *17 GHz FSS NPRM,* the Commission proposed to modify the U.S. Table, revise footnote US402, and adopt a new footnote NG58 to permit co-primary operation of FSS downlink transmissions in the 17.3–17.7 GHz band, while limiting FSS downlink operations to GSO satellite networks. To streamline the applicable restrictions to the 17.3–17.8 GHz band

[1] Space path interference may occur when the off-axis downlinked signals from one space station are detected by the receiving antenna of a nearby co-frequency space station. The severity of space path interference will depend upon the transmitted signal power level; the off-axis gain discrimination characteristics of the transmitting and receiving antennas; and on the specific orientation of, and separation between, the transmitting and receiving antennas on both space stations. This latter factor in turn depends upon various inter-dependent parameters including longitudinal separation and the inclination and eccentricity of both space station orbits. Management of space path interference is typically more challenging when a receiving DBS space station is located within a few tenths of a degree in orbital longitude from a transmitting co-frequency space station.

[2] Ground path interference arises in reverse-band sharing scenarios when the off-axis uplinked signals transmitted by one earth station are detected by the receiving antenna of a nearby co-frequency earth station. It is analogous to space path interference which arising between co-frequency space stations as discussed above. As with space path interference, the severity of ground path interference will depend upon the transmitted signal power level, the off-axis gain discrimination characteristics of the transmitting and receiving antennas, and the specific orientation of, and separation between, the transmitting and receiving antennas on both earth stations. In addition, local geography can also influence ground path interference levels.

[3] The Ka-band is generally considered to be 17.3–20.2 GHz and 27.0–30.0 GHz. For the FSS, the conventional Ka-band is defined as 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space) frequency bands, which the Commission has designated as primary for GSO FSS operation. 47 CFR 25.103. This final rule establishes an extended Ka-band for the FSS in the 17.3–18.3 GHz (space-to-Earth), 18.8–19.4 GHz (space-to-Earth), 19.6–19.7 GHz (space-to-Earth), 27.5–28.35 GHz (Earth-to-space) and 28.6–29.1 GHz (Earth-to-space) bands.

[4] A service designated as co-primary must share operations with other services designated as co-primary in the frequency band on a co-equal basis.

in the U.S. Table, the Commission further proposed to incorporate the use limits found in US271 and NG163 into the new footnote NG58 to remove footnotes US271 and NG163 from the Commission's rules. The Commission also proposed consequential modifications to the licensing information requirements contained in § 25.115(e).

A number of commenters support permitting FSS (space-to-Earth) operations in the 17.3–17.7 GHz band. These commenters argue that additional Ka-band FSS (space-to-Earth) spectrum is needed to expand the capacity to serve the public and to support faster, higher-capacity satellite broadband communications, in remote and underserved areas.

AT&T states that in order to protect the current operations and future expansion of BSS and DBS, the Commission must adopt technical rules to protect incumbents and make any new FSS (space-to-Earth) allocation secondary to BSS and DBS. CTIA-The Wireless Association (CTIA) notes that the Commission currently has a proceeding open to address allocations of spectrum in the 12.2–12.7 GHz band, which is a downlink band for DBS (Earth-to-space) uplinks in the 17.3–17.8 GHz band. CTIA suggests that the Commission should consider allocations in the 12.2–12.7 GHz band and the 17.3–17.8 GHz band in the same proceeding.

We find that it would serve the public interest to allocate the 17.3–17.7 GHz band to FSS (space-to-Earth). FSS downlinks in the 17 GHz band will be compatible with the incumbent services: feeder links for DBS networks and ''reverse band'' use for the downlink portion of 17/24 GHz BSS operations. The majority of commenters support the Commission's proposed changes to the U.S. Table. Hughes also notes that appropriate rules to prevent harmful interference have facilitated a convergence of BSS, FSS, and MSS in the 17/24 GHz band. Only CTIA opposes the allocation. AT&T states that the allocation should be conditioned to protect DBS and BSS services. We note that FSS (space-to-Earth) communications are technically similar to DBS/BSS communications, and we see no reason why the band, already successfully shared between DBS, BSS, and FSS (Earth-to-space), cannot be successfully shared with FSS (space-to-Earth) with the technical standards adopted herein to prevent harmful interference. We find that permitting use of the 17.3–17.8 GHz band to include FSS downlinks would increase intensive and efficient use of the band and provide additional downlink capacity for high-throughput satellite communications. Increasing space launch activity in the United States and decreasing satellite size and weight make more satellite-based communications feasible, and the record in this proceeding demonstrates a need to provide additional spectrum for FSS (space-to-Earth) capacity. In addition to providing greater bandwidth to FSS customers, this allocation will help to provide increased communications capability to unserved and underserved areas of the United States, assist in closing the digital divide, and ensure that this spectrum band is used and shared in the most efficient and effective manner.

For any new GSO FSS allocation in the 17 GHz Band, AT&T encourages the Commission to amend the U.S. Table ''to reflect the secondary status of GSO FSS downlinks vis-à-vis the incumbent coprimary services.'' Toward this end, AT&T proposes that we expressly require ''GSO FSS downlinks to protect incumbent 17/24 GHz BSS services, while not requiring future 17/24 GHz BSS to protect GSO FSS systems.'' We are not persuaded by these arguments. FSS (space-to-Earth) transmissions are similar to DBS/BSS transmissions, including the 17/24 GHz BSS downlinks to customers in the same band, and there is no evidence in the record of likely harmful interference among the services currently allocated in the 17.3–17.7 GHz band and FSS (space-to-Earth) if we were to add a primary FSS (space-to-Earth) allocation (GSO-only) in the band. We also are not persuaded that treating GSO FSS transmissions secondary to current and future 17/24 GHz BSS transmissions would be more appropriate here. In light of the technical rules adopted herein and the fact that GSO FSS (space-to-Earth) transmissions are similar to DBS/BSS transmissions, co-primary operations would ensure that all satellite services, including both current and future 17/24 GHz BSS, use scarce spectrum and orbital resources in the most efficient and effective manner, in the absence of any compelling harmful interference or undue burden concerns. Given the importance of FSS services and the need for additional FSS downlink spectrum, we find that it would serve the public interest to adopt a primary FSS downlink allocation in the band without AT&T's requested condition. Although there is not a Region 2 allocation specifying FSS in the downlink direction, we believe that the technical rules we adopt herein will prevent harmful interference and allow successful sharing of the band among all satellite operators, and to ensure that FSS (space-to-Earth) communications cause no more interference than, nor require more protection from interference than, BSS communications in the band.

We also reject CTIA's request to merge this proceeding with the *12 GHz NPRM* (86 FR 13266 (March 8, 2021)). We do not agree with CTIA that band sharing in the 17.3–17.8 GHz band in the space-to-Earth direction is affected by possible band sharing in the 12.2–12.7 GHz band. The technical and policy issues in these two proceedings are different, with varying complexities, and permitting GSO FSS (space-to-Earth) operations in the 17.3–17.8 GHz band will not affect the allocation or performance of services in the 12.2–12.7 GHz band. In addition, there are no efficiencies to be gained by merging these two separate proceedings. Rather such an action would create delays, procedural complexities, and administrative inefficiencies.

2. The 17.7–17.8 GHz Band

The 17.7–17.8 GHz band is allocated in ITU Region 2 to the fixed service, FSS in both directions, and BSS on a primary basis, and to the mobile service on a secondary basis. In the United States, the band is allocated for the non-Federal fixed service and FSS (Earth-to-space) on a primary basis. In the *17 GHz FSS NPRM,* the Commission proposed to add a space-to Earth direction (to the existing primary FSS allocation) in the U.S. Table, but also to add a footnote stipulating that earth stations receiving in the 17.7–17.8 GHz band are not entitled to protection from the fixed service. The Commission noted that allowing use of the 17.7–17.8 GHz band by the FSS (space-to-Earth) would provide a contiguous band for FSS downlink operations at 17.3–18.3 GHz, along with the existing FSS use in the 18.3–18.8 GHz band, which would facilitate operational efficiencies and flexibility to avoid interference and to use this contiguous spectrum in the most effective and efficient manner.

Commenters who support the allocation of the 17.3–17.7 GHz band to FSS (space-to-Earth) generally support allocating the 17.7–17.8 GHz band as well. AT&T expresses concerns and states that FSS (space-to-Earth) should be allocated secondary status in the 17.7–17.8 GHz band. CTIA opposes the allocation, stating that the allocation would hinder use of the band by future terrestrial services, and that SES did not request the use of the band for FSS (space-to-Earth) in its petition.

We find that adding a space-to Earth direction to the existing primary FSS allocation in the U.S. Table and a footnote stipulating that earth stations receiving in the 17.7–17.8 GHz band are not entitled to protection from the fixed service strikes the best balance between facilitating FSS (space-to-Earth) as well as continued operations of other users of the 17.7–17.8 GHz band. The co-primary allocation allows FSS to use the band for space-to-Earth communications, while the addition of footnote NG58 to the U.S. Table ensures that interference environment is not significantly changed for the existing operations of the incumbent fixed services in the 17.7–17.8 GHz band. We permit authorization of earth stations receiving transmissions from GSO FSS space stations in the 17.7–17.8 GHz band, strictly on an unprotected basis vis-a-vis the fixed service.[5] This approach is consistent with our goals to allocate increasingly scarce spectrum resources in the most efficient and effective manner possible. Allocating the 17.7–17.8 GHz band to the FSS (space-to-Earth) under the conditions adopted herein will provide a contiguous band for FSS downlink operations at 17.3–18.3 GHz, along with the existing FSS use in the 18.3–18.8 GHz band. This in turn would facilitate operational efficiencies and flexibility to avoid interference and to use this contiguous spectrum for next generation FSS services.

For these reasons, we adopt the proposed co-primary allocations for FSS (space-to-Earth) in the 17.3–17.8 GHz band, subject to conditions adopted herein. For the reasons stated below, we conclude that appropriate technical limitations on FSS (space-to-Earth) use of the band will allow for successful band sharing and preserve the utility of the band for incumbent services.

B. Technical Rules To Prevent Harmful Interference in the 17.3–17.8 GHz Band

In order to prevent harmful interference between services in the 17.3–17.8 GHz band, the Commission proposed a number of technical rules. These rules were designed to allow FSS (space-to-Earth) communications flexibility in the band, while preserving the ability to both use and grow in the band for other services.

1. Measures To Facilitate Space-to-Earth Operations of 17/24 GHz BSS and FSS

In the *17 GHz FSS NPRM,* the Commission proposed various requirements intended to facilitate both intra-service operations between 17.3–17.8 GHz FSS space stations and inter-service operations between FSS and 17/24 GHz BSS space stations operating in the space-to-Earth direction. Most of these requirements are already applicable to 17/24 GHz BSS space stations transmitting in the band, and the Commission generally proposed to extend them to 17.3–17.8 GHz FSS space stations either directly or with some targeted modifications.

Required Longitudinal Separation between Downlinking Satellites. The Commission proposed to adopt a two-degree orbital spacing requirement[6] between transmitting FSS space stations and a four-degree separation requirement between FSS and 17/24 GHz BSS space stations. The Commission proposed to require an FSS applicant to make a different coordination showing depending upon the services of its adjacent space stations. To implement this approach, the Commission proposed amending §§ 25.140(a), (b), and (d) and 25.262 of our rules to require GSO FSS and 17/24 GHz BSS applicants seeking to operate in the 17.3–17.8 GHz band to demonstrate compliance with rules applicable to their service's particular orbital spacing requirements, while simultaneously accommodating adjacent space stations in other services.[7] While the Commission believed that this approach would use the orbital arc and associated spectrum resources most efficiently, the Commission also sought comment on other possible orbital spacing options, including the four-degree spacing regimen which we currently apply to 17/24 GHz BSS stations.

Most commenters support our proposed orbital spacing approach. AT&T offers a different option, arguing that given the currently proposed power flux density (PFD) levels, we may require two degrees of separation between FSS space stations, but should require six degrees (vs. four) between FSS and 17/24 GHz BSS stations. AT&T bases this choice of distance on its argument that the proposed spacing would increase the aggregate adjacent satellite interference by approximately 1.3 dB, thereby exceeding the standard 6% delta T/T coordination trigger. In the alternative, AT&T asserts that should we adopt our orbital spacing proposal, then we must reduce our proposed PFD levels, particularly in the northeast and west regions, by 2.5 dB.

The Satellite Companies counter that requiring FSS satellites to either locate at least six degrees from a 17/24 GHz BSS space station or reduce their PFD levels is unnecessary, as there is no reason to suppose that the 17/24 GHz BSS system would be affected any differently by downlinking FSS transmissions than it would be from a neighboring 17/24 GHz BSS station in the current four-degree spacing environment. The Satellite Companies note, however, that AT&T's concerns may arise instead from concern about potential aggregate interference that might arise if multiple satellites were positioned within six degrees on either side of a current 17/24 GHz BSS location—a situation which they point out is currently not possible. For this reason, the Satellite Companies argue that AT&T proposes an overly-broad solution to address an unlikely, hypothetical scenario. The Satellite Companies propose as an alternative that the Commission adopt language permitting the proposed two-degree separation between FSS space stations, and four degrees between FSS and 17/24 GHz BSS stations, with the added proviso that an applicant for an additional FSS satellite proposing to operate within six degrees of a 17/24 GHz BSS satellite must demonstrate that

[5] In addition, the fixed service stations would be protected from harmful interference from GSO FSS downlink operations, given the existing power flux density (PFD) limits for GSO space stations in § 25.208(c) of the Commission rules. 47 CFR 25.208(c). These PFD limits comport with established international standards for preventing harmful interference to fixed service stations and are applicable in the entire 17.7–19.7 GHz band. See also infra at para. 29. We note that with respect to adjacent band operations, a fixed service operator in the 17.7–18.3 GHz band is required to comply with out of band emission limits contained in our rules. A fixed service operator in the 17.7–18.3 GHz band that complies with these limits would not otherwise be required to coordinate its operations with FSS receiving earth stations in the 17.3–17.7 GHz band. See also 47 CFR 74.637, 78.103, and 101.111. Fixed services in the 17.8–18.3 GHz band would likewise not be subject to a coordination requirement vis-à-vis FSS receiving earth stations operating in the 17.7–17.8 GHz band.

[6] The different satellite services operating in the 17.3–17.8 GHz band are subject to different orbital spacing requirements. Our rules require 17/24 GHz BSS space stations that transmit in the space-to-Earth direction in the 17.3–17.8 GHz band to be separated from each other by at least four degrees. In contrast, DBS stations are authorized to receive feeder uplink transmissions in the 17.3–17.8 GHz band in the opposite direction (*i.e.,* reverse-band operations), and are typically separated from each other by at least nine degrees. Transmitting 17/24 GHz BSS space stations must also maintain at least 0.2 degrees separation from DBS space stations to minimize space path interference. GSO FSS space stations however, have historically been subject to a two-degree spacing requirement. Compliance with the two-degree orbital separation requirements for FSS space stations is verified by the information certifications and technical showings required by 47 CFR 25.140(a) of our rules.

[7] Under this approach, GSO FSS space stations would adhere to a two-degree separation regimen between each other, and a four degree separation from neighboring 17/24 GHz BSS space stations.

interference to the incumbent 17/24 GHz BSS receiver will not increase over levels expected in the four-degree spacing environment. Hughes similarly argues that six degrees of separation between FSS and 17/24 GHz satellites is unnecessary, citing the technical analysis provided with the SES–17 application and the Commission's approval of that application. As a remedy to concerns of aggregate interference, Hughes proposes that only one FSS space station be permitted within six degrees of a 17/24 GHz BSS satellite.

We adopt a two-degree orbital separation requirement between transmitting FSS space stations, while simultaneously requiring that FSS space stations locate at least four degrees from adjacent 17/24 GHz BSS space stations. We do not believe that transmissions from FSS space stations at PFD levels that are either the same or reduced relative to those now required from 17/24 GHz BSS space stations in a four-degree environment will result in additional harmful interference to 17/24 GHz BSS receiving earth stations as there is no reason to suppose that the 17/24 GHz BSS system would be affected any differently by downlinking FSS transmissions than it would be from a neighboring 17/24 GHz BSS station in the current four-degree spacing environment. Accordingly, we believe that six degrees of separation between 17/24 GHz BSS and FSS satellites is unwarranted and would result in an inefficient use of scarce orbital resources.

We find, however, that there is some increased potential for aggregate interference into 17/24 GHz BSS systems if two transmitting FSS space stations were to locate within six degrees on either side of such an incumbent operator. Although relatively unlikely in the immediate operating environment, it remains a possibility, should future 17/24 GHz BSS space stations choose to locate at different orbital positions where two or more existing, or licensed but not yet launched, FSS space stations are within six degrees on either side of the 17/24 GHz BSS space station location. To address this concern, we will require that where an FSS satellite is located within four degrees of a previously authorized or proposed 17/24 GHz BSS satellite, and an applicant seeks to deploy another FSS satellite between four and eight degrees from the same 17/24 GHz BSS satellite in the same direction of separation as the existing FSS satellite, the applicant must either coordinate its operations with the affected incumbent 17/24 GHz BSS system or provide a showing in its application to demonstrate that aggregate interference into the 17/24 GHz BSS incumbent system will not exceed that which would be expected in a four-degree spacing environment. Hughes' proposal, as worded, would allow the second FSS satellite to locate just beyond six degrees away (*e.g.,* 6.05°), an orbital separation unlikely to remedy AT&T's aggregate interference concerns. We adopt eight degrees rather than the six degrees proposed by Hughes because we believe this orbital separation accurately represents the maximum separation that would be applicable for two transmitting satellites (FSS or 17/24 GHz BSS) in a four-degree spacing environment so that our decision is consistent with the current rules governing17/24 GHz BSS space stations proposing to locate at separations of less than four degrees from one another. To implement these rule changes, we will update §§ 25.140(a), (b), and (d) and 25.262.

Downlink Power Limits. The Commission has typically employed downlink PFD limits for space stations transmissions to facilitate both inter-service and intra-service sharing. Although the Commission's current rules include PFD limits for 17/24 GHz BSS systems transmitting in the 17.3–17.7 GHz band, the rules do not include PFD limits for FSS space stations in the 17.3–17.7 GHz band. To remedy this, the *17 GHz FSS NPRM* proposed to apply regional PFD limits to 17.3–17.8 GHz FSS space station transmissions, to harmonize them with those now applicable to the 17/24 GHz BSS. The Commission proposed adopting specific regional limits as follows:

(1) In the region of the contiguous United States, located east of 100° West Longitude and including Alaska and Hawaii: -118 dBW/m^2/MHz; and

(2) In the region of the contiguous United States, located west of 100° West Longitude: -121 dBW/m^2/MHz.

Because the PFD limits contained in section 25.208 are generally angle-dependent and largely intended to facilitate sharing between space and terrestrial services, rather than amend this section to include these new regional PFD requirements, the *17 GHz FSS NPRM* instead proposed to include them in § 25.140(a)(3), which contains rules to facilitate FSS intra-service operations in a two-degree orbital spacing environment. Further, to improve the organizational coherence of our part 25 rules, the *17GHz FSS NPRM* also proposed to likewise move the regional PFD limits for 17/24 GHz BSS space stations now contained in § 25.208(w) to § 25.140(b)(3). As a consequence of this move, the *17 GHz FSS NPRM* also proposed conforming updates to other paragraphs in § 25.140(b)(3) and to rule sections that currently refer to § 25.208(w) including §§ 25.114(d)(15)(i) and (ii), 25.140(b)(5), and 25.262(b)(1) and (2), (c), and (d).

Commenters generally support the Commission's proposals to apply regional PFD limits to transmitting FSS space stations. As discussed above, AT&T states that in conjunction with the proposed orbital spacing regimen, the proposed PFD limits would be too high in the northeast and west regions. As discussed herein, we are modifying the orbital spacing requirements, and these modifications should alleviate AT&T's concerns with respect to aggregate interference and the proposed regional PFD limits. Accordingly, we adopt the proposed modifications to § 25.140(a)(3) to include these regional PFD limits for transmitting FSS space stations to adequately facilitate both inter-service and intra-service sharing. In addition, no commenters object to the Commission's proposal to move the analogous regional PFD limits applicable to 17/24 GHz BSS systems in § 25.208(w) to § 25.140(b)(3) and we make this change to our rules along with the associated conforming modifications.

Some commenters question whether the PFD limits in the 17.7–17.8 GHz band are sufficient to protect incumbent fixed service operations, noting among other things that the (1) this PFD mask has not been studied by the Commission since 1983; (2) the internationally adopted PFD limits proposed herein assume that fixed service and FSS have equal status in the band, but the GSO FSS service in the 17 GHz band would be secondary to incumbent fixed operations (3) further detailed study is required to understand the full extent of the issue, but at minimum the Commission should take a similar protective measure to account for aggregate interference as it did in the C-band proceeding and reduce the PFD limit by 4 dB; and that (4) both the existing and proposed new § 25.140(b)(3) would permit a space station applicant to exceed the regional PFD to protect satellite operations, so long as the applicant coordinated with affected satellite operators, but without regard to the impact on terrestrial operations. As discussed above, with the modified orbital spacing requirements, the PFD limits we adopt herein should be sufficient to protect all incumbent services and alleviate aggregate interference concerns. We note that there is no evidence in the record that the current PFD mask

applicable to these services need to be revised, nor has any evidence been introduced that terrestrial services have experienced any interference issues in either the 17.7–17.8 GHz band or adjacent 17.8–18.3 GHz band, despite the fact that satellite and terrestrial services have co-existed in this spectrum for years, using these PFD limits. We note that although FSS allocation will be primary in the 17.3–17.8 GHz band and subject to the adopted PFD limits to protect fixed services from harmful interference, earth stations operating in the FSS (space-to-Earth) in the 17.7–17.8 GHz band shall not claim protection from stations in the fixed service that operate in that band. We also clarify that although we allow an FSS space station to exceed the PFD limits pursuant to § 25.140(b)(3) vis-à-vis other space stations, our adopted PFD limits will continue to apply vis-à-vis fixed services in the 17.7–17.8 GHz band or adjacent 17.8–18.3 GHz band.[8]

Polarization and Full Frequency Re-Use Requirements. The *17 GHz FSS NPRM* proposed to amend § 25.210(f) of our rules to include 17.3–17.8 GHz in the list of specified frequencies in which FSS operators are required to employ state-of-the-art full frequency reuse, either through the use of orthogonal polarizations within the same beam and/or the use of spatially independent beams. Commenters support this proposal with no objections. Accordingly, we adopt this proposal.

Cross-Polarization Isolation Requirements. The *17 GHz FSS NPRM* proposed not to extend the cross-polarization requirements contained in § 25.210(i) to FSS space station antennas transmitting in the 17.3–17.8 GHz band. The Commission sought comment on whether these requirements might be obsolete in the current digital transmission environment and could be eliminated for 17/24 GHz BSS space station transmissions as well. The Satellite Companies and Hughes agree that cross-polarization requirements are not necessary for downlinking FSS space stations, and further agree that these requirements could be eliminated for 17/24 GHz BSS transmissions as well, as they have become obsolete in today's digital transmission environment. We received no other comments on this issue. Accordingly, we will not extend these requirements to FSS space stations downlinking in the 17.3–17.8 GHz band, and we further eliminate the obsolete cross-polarization isolation requirement for 17/24 GHz space stations in § 25.210(i).

2. Measures To Mitigate Space Path Interference

In the 17.3–17.8 GHz reverse-band sharing environment, receiving DBS space stations are vulnerable to space path interference[9] from nearby co-frequency 17/24 GHz BSS space station transmissions.[10] To mitigate space path interference into DBS receivers, the *17 GHz FSS NPRM* proposed to apply to FSS space stations an approach similar to the one now applicable to 17/24 GHz BSS space stations. As discussed in detail below, we adopt these proposals. As discussed below, however, we are not increasing the minimum orbital separation distance between FSS and DBS space stations to 0.5 degrees. We also are not relaxing the angular measurement range over which FSS applicants are required to submit off-axis antenna gain data and associated PFD calculations. Rather, as discussed below, we extend the requirements contained in § 25.264(a) to FSS applicants. In addition, we amend § 25.264(a)(4) to require that measurements for both FSS and 17/24 GHz BSS transmitting antennas be made only at a single frequency in the middle of the band in which the applicant proposes to operate.

Off-Axis Power Flux Density Coordination Trigger. To avoid harmful levels of space path interference into DBS space station antennas from FSS transmissions, the *17 GHz FSS NPRM* proposed modifications to § 25.264(a) through (i) of our rules to extend the current PFD coordination trigger of –117 dBW/m^2/100 kHz to downlinking FSS space stations in the 17.3–17.8 GHz band. Recognizing that current space station design often employs multiple spot beams and may result in a cumulative interference level at the DBS receiver, the Commission also proposed to amend § 25.264(b)(1) and (2) and (e) to require that the PFD calculations at the DBS receiver from both 17/24 GHz BSS and FSS consider the *aggregate* power flux density from *all* 17.3–17.8 GHz transmitting beams on the adjacent space station.

All commenters supported our proposal to extend the current PFD coordination trigger to downlinking FSS space stations and felt that it was reasonable to require that the associated PFD calculations consider the aggregate power flux density value. We adopt these proposals and amend § 25.264(b)(1) and (2) accordingly.

Requirements for Antenna Off-Axis Gain, Angular Measurement Ranges, and Minimum Longitudinal Separation. The *17 GHz FSS NPRM* proposed to amend § 25.264(g) of our rules to apply 0.5 degrees as the minimum orbital longitude separation[11] that transmitting FSS space stations must maintain relative to DBS space stations, and to amend § 25.264(a) to reflect the corresponding off-axis measurement angles, *i.e.,* ±10 degrees in the X–Z plane and ±20 degrees in planes rotated about the Z axis. The Commission proposed to retain the current requirements for orbital inclination and eccentricity and proposed to amend § 25.264(h) to extend these values to FSS space stations. Further, the Commission tentatively concluded that this same change in the required minimum orbital separation value and corresponding antenna measurement angles could be extended to 17/24 GHz BSS space stations transmitting in the 17.3–17.8 GHz band and proposed to similarly amend § 25.264(a) and (g) with respect to 17/24 GHz BSS space stations.

The majority of commenters oppose our proposal to increase the minimum orbital separation distance between FSS and DBS space stations to 0.5 degrees. The Satellite Companies urge us to adopt the 0.2 degree minimum orbital separation requirement now applicable between 17/24 GHz BSS and DBS space stations, arguing that a reduction in the angular range over which measurements would be required does not justify blocking significant portions of the

[8] See, *e.g.,* 47 CFR 25.208(c). The fixed service stations would be protected from harmful interference from GSO FSS downlink operations, given the existing PFD limits for GSO space stations in § 25.208(c) of the Commission rules. 47 CFR 25.208(c). These PFD limits comport with established international standards for preventing harmful interference to fixed service stations and are applicable in the entire 17.7–19.7 GHz band.

[9] This type of interference may occur when the off-axis downlinked signals from one space station are detected by the receiving antenna of a nearby co-frequency space station. The severity of space path interference will depend upon the transmitted signal power level; the off-axis gain discrimination characteristics of the transmitting and receiving antennas; and on the specific orientation of, and separation between, the transmitting and receiving antennas on both space stations. This latter factor in turn depends upon various inter-dependent parameters including longitudinal separation and the inclination and eccentricity of both space station orbits. Management of space path interference is typically more challenging when a receiving DBS space station is located within a few tenths of a degree in orbital longitude from a transmitting co-frequency space station.

[10] Analogously, ground path interference arises between earth stations when the off-axis transmissions in the Earth-to-space direction of one service are received by a nearby co-frequency receiving earth station in another service.

[11] The angular separation, in conjunction with limits on certain orbital parameters of space stations in both the DBS and FSS services, bounds the range over which FSS applicants or licensees must provide off-axis angular gain and PFD data.

orbital arc near DBS locations, thereby impeding efficient use of orbital resources. They argue further that while waivers of these measurement angles may have proven problematic in the past, there is no evidence that these difficulties persist today. The Satellite Companies further state that allowing simulated measurement data would serve to alleviate obstacles associated with providing data responsive to § 25.264. Hughes argues that the 0.5 degree separation is overly restrictive, placing too great a burden on an already crowded orbital arc. Rather, Hughes proposes that to ensure the most efficient use of the orbital arc we should adopt a minimum orbital separation of 0.2 degrees between downlinking FSS space stations and the nearest DBS satellite. In contrast, AT&T supports our proposal to increase the minimum separation distance to 0.5 degrees. It notes that although our current rules permit separations as small as 0.2 degrees between 17/24 GHz BSS and DBS spacecraft, that no operator has sought to provide service from such proximity. AT&T further argues that the marginal increase in orbital separation distance will both reduce that angular measurement range over which data is required but will also improve overall on-orbit mission safety, including space path interference risks.

We will not adopt the proposal to require a minimum orbital separation of 0.5 degrees between downlinking FSS space stations and DBS satellites. The primary reason for the proposal of this value was to relieve FSS applicants from the angular range measurement requirements, which had proven problematic in the past for some applicants. In addition, the Commission believed it might enhance the acceptability of simulated data, thereby further relieving applicants from measured data requirements. The 0.2 degree value is the minimum longitudinal separation requirement currently applicable in our rules for 17/24 GHz BSS operators (who also downlink in the 17.3–17.7 GHz band) relative to DBS satellites. In adopting that requirement, the Commission determined that taking into account an east/west stationkeeping tolerance of 0.05 degrees, a minimum 0.2 degree spacing between the assigned locations of 17/24 GHz BSS and DBS space stations was required to maintain a longitudinal separation of 0.1 degrees between 17/24 GHz BSS and DBS space stations at all times. No space stations in the DBS and BSS services have been placed so near each other, and FSS operators, for whose benefit the Commission proposed the 0.5 degree separation requirement in this proceeding, clearly prefer the flexibility associated with the narrower orbital spacing requirement of 0.2 degrees. Thus, we consider it to be sufficient to protect DBS receivers from space path interference when combined with the appropriate PFD coordination trigger, orbital constraints, and angular range measurement requirements for off-axis antenna gain. For this reason, we are not relaxing the angular measurement range over which FSS applicants are required to submit off-axis antenna gain data and associated PFD calculations. Rather, we extend the requirements contained in § 25.264(a) for 17/24 GHz BSS operators to FSS applicants. Specifically, measurements must be made over a range of ±30° from the X axis in the X–Z plane, and over a range of ±60° in planes rotated about the Z axis. All commenters addressing the angular measurement range issue supported our proposal to extend our current requirements for orbital inclination and eccentricity to FSS space stations. We amend § 25.264(h) accordingly.

Measurement Frequencies. Our current rules require 17/24 GHz BSS applicants to make off-axis angular measurements at a minimum of three measurement frequencies determined with respect to the entire portion of the 17.3–17.8 GHz band over which the space station is designed to transmit. In the *17 GHz FSS NPRM,* the Commission sought comment on whether this requirement should be revised.

Both the Satellite Companies and Hughes assert that, to simplify the information to be provided by both GSO FSS and 17/24 GHz BSS operators, we should update § 25.264(a)(4) and (5) to require submission of gain data based only on a single mid-band frequency, because gain values do not vary materially across the 17.3–17.8 GHz band. No other commenters addressed this question. We agree that the antenna gain typically varies little across the 17.3–17.8 GHz band and that multiple measurement frequencies often result in large amounts of repetitive information. Accordingly, we amend § 25.264(a)(4) to require that measurements for both FSS and 17/24 GHz BSS transmitting antennas be made only at a single frequency in the middle of the band in which the applicant proposes to operate. Recognizing however, that instances may arise when additional measurement data may be warranted (*e.g.,* when the aggregate PFD is near the coordination trigger value), we will also include a requirement that applicants must be prepared to provide additional measurement information at 5 MHz above, and 5 MHz below the band edge, upon request.

Measured vs. Simulated Off-Axis Antenna Gain Data. The *17 GHz FSS NPRM* sought comment on whether the Commission should modify the two-part submission process to also accept simulated data in lieu of measured data to allow operators to demonstrate compliance with the requirements of § 25.264. Specifically, the Commission asked what requirements for simulated data would ensure accuracy of the required calculations. The *17 GHz FSS NPRM* sought comment on specific software programs that should be required, input assumptions, conditions or other parameters that we should specify, or information that we should require applicants to include with their showing. The *17 GHz FSS NPRM* also asked how the use of simulated data might affect the current two-part information submission process. The Commission recognized that accepting simulated gain and PFD data could obviate a need to reduce the angular ranges over which such measurements are made, while also recognizing that adoption of an increased orbital separation between space-to-Earth transmitting FSS or BSS and DBS space stations could alleviate concerns associated with relying upon simulated off-axis gain data.

Commenters offered differing opinions. Hughes encourages us to permit the use of simulated data, arguing that simulated antenna pattern data is routinely used in on-board satellite antenna design and testing. It explains that predicted patterns are compared with measured patterns in compact antenna test ranges with agreement well beyond 30 dB sidelobes, and that simulated patterns are often preferred over measured data when the test range accuracy is in question as is often the case with high frequency and large antennas. The Satellite Companies similarly advocate for the use of simulated data, asserting that permitting its use will address prior difficulties in supplying the information mandated by this rule while still providing the Commission and interested parties with the information needed to assess compliance with relevant requirements.

In contrast, AT&T encourages us to continue to require operators to submit actual, measured data and associated PFD calculations in satisfaction of § 25.264, and to extend these requirements to any new GSO FSS service in the 17 GHz band. It argues that measured data is invaluable in guarding against inaccuracies resulting from errors in software simulations, and that relying only on simulations may

risk infidelities in the analysis or modelling to account for scattering effects or other interactions between the antenna and spacecraft structures. AT&T asserts that validation of first-stage results through submission of actual measured data will increase operator confidence in the predicted on-orbit performance. AT&T further argues that there is no evidence to support the GSO FSS operators' assertions that simulated data can provide ''the information needed to assess compliance with relevant requirements.''

We modify *our* rules to require 17/24 GHz BSS and GSO FSS operators to submit measured off-axis antenna gain data as part of the information submission process, with certain exceptions allowing for simulated data. Specifically, we will permit the use of simulated data *only* in those instances where the 17/24 GHz BSS operator or GSO FSS operator's space station will be located at an orbital separation of at least one degree from a prior-filed or licensed U.S. DBS operator's space station. Apart from providing increased flexibility for all operators, a primary consideration in permitting GSO FSS use of the band is to ensure that incumbent systems are adequately protected from harmful interference. While permitting simulated data submission will certainly provide greater flexibility to 17/24 GHz BSS and GSO FSS applicants, the potential victim, (*i.e.,* the DBS operator) is not fully confident in its reliability. We believe however, that at orbital separations greater than one degree from a DBS space station, the potential for space path interference is negligible because of the attenuation of potentially interfering off-axis emissions. Thus, over the remaining portions of the orbital arc, we will permit applicants the option to rely upon simulated off-axis antenna gain rather than measured data to satisfy the requirements of § 25.264.

In addition, we sought comment on the use of simulated data while simultaneously proposing to require a minimum orbital separation of 0.5 degrees between DBS and transmitting GSO FSS space stations—a scenario in which the potential for space path interference would be greatly diminished. These rule changes were considered as a means to relieve applicants of some of the measurement requirements which in the past had proved difficult for 17/24 GHz operators. GSO FSS commenters, however, assert that there is no evidence that these difficulties exist today, and cite as an example the recently SES–17 application which included off-axis gain measurements made over the full required range. Accordingly, we believe that under this approach GSO FSS and 17/24 GHz BSS operators will be able to make the full range of necessary measurements when required by our rules but will have the added option to rely upon simulated data in some instances. Moreover, by first allowing use of simulated data in finite portions of the orbital arc, we may better assess and develop confidence in its reliability in a relatively low-risk scenario. We believe this approach represents the best compromise between our competing goals of providing operator flexibility and protecting incumbent services from harmful interference, and we amend § 25.264(c) accordingly.

Two-Part Data Submission Process. In the *17 GHz FSS NPRM,* the Commission proposed to amend § 25.264(a) through (e) of our rules to extend the two-part data submission process requirements [12] to FSS applicants proposing space-to-Earth transmissions in the 17.3–17.8 GHz band. The Commission also sought comment on whether we should retain, update, or modify any part of the process for 17/24 GHz BSS applicants. Finally, to correct an existing uncertainty regarding the timing of the PFD information submission, the Commission proposed to replace the phrase ''within 60 days after completion of critical design review'' in § 25.264(a)(6) and (b)(4) with a requirement to submit information ''within two years after license grant'' in these rule sections.

Commenters generally support the proposal to extend the two-part data submission process to FSS systems in the 17.3–17.8 GHz band and agree that redefining the deadline for first-phase (predicted) information to be provided ''within two years after license grant'' instead of linking it to the critical design review is appropriate. AT&T also supports extending the two-part data submission process to GSO FSS applicants but recommends that the deadline for the second (measured) data submission be moved forward from the current two months prior to launch, to six months prior to launch. It argues that this extension would afford DBS operators sufficient time to review the information and seek remediation when necessary without disrupting critical launch schedules.

We modify § 25.264(a) through (e) to extend the two-part data submission process to GSO FSS applicants in the 17.3–17.8 GHz band. As part of this modification, we replace the phrase ''within 60 days after completion of critical design review in § 25.264(a)(6) and (b)(4) with a phrase requiring submission of predicted data ''within two years after license grant.'' We are not adopting AT&T's recommendation that we move the deadline for submission for the second phase information from two to six months prior to launch because, based on our experience, we are not convinced that a full six months is required to evaluate the data presented at this stage. Moreover, operators who are concerned about delays to their launch schedules may always submit the measured data in advance of the two-month deadline. The two-month deadline was adopted by amending § 25.264(c) and (d) in the *Part 25 Second Report and Order (R&O)* (81 FR 55316 (Aug. 18, 2016)), moving it closer to the launch date to allow licensees to measure an antenna's off-axis gain after it has been integrated with the satellite bus. There is no supporting evidence in the record that this previously adopted timeline is no longer appropriate. Accordingly, we decline to modify the existing timeline and find that keeping the two-month prior to launch deadline for the second phase information submission would continue to serve the public interest.

3. Measures To Mitigate Ground Path Interference and Earth Station Operations

To protect 17.3–17.8 GHz band receiving FSS earth stations from ground path interference arising from the Earth-to-space transmissions from nearby co-frequency DBS feeder link earth stations, the Commission proposed in the *17 GHz FSS NPRM* to apply generally to receiving FSS earth stations the same coordination approach the Commission uses to facilitate operations between DBS and 17/24 GHz BSS earth stations. Specifically, the Commission proposed to amend § 25.203 of our rules to apply the coordination approach contained in paragraph (m) to FSS earth stations in the entire 17.3–17.8 GHz band, although in the 17.7–17.8 GHz band such earth stations would not be entitled to protection from fixed service stations. The Commission sought comment on modifications to the parameters used with the ITU Radio Regulations Appendix 7 coordination methodology

[12] The two-part submission process for antenna off-axis gain data and associated PFD calculations demonstrates conformance with the off-axis PFD coordination trigger. Under this approach at an early stage in the process, operators submit predicted antenna off-axis gain data and associated PFD calculations at any identified victim (DBS) space station receiver. No later than two months prior to launch this predicted data is confirmed by submission of measured data and associated PFD calculations.

to account for differences between the receiving antennas employed in the two services.

Commenters supported our proposal to apply generally the same coordination approach contained in § 25.203(m) of our rules, and used to facilitate operations between DBS and 17/24 GHz BSS earth stations, to coordination with receiving FSS earth stations. Accordingly, we modify this rule section to extend this approach to FSS earth station coordination, as discussed further below.

Upgrades and Modifications to Grandfathered DBS Facilities. The Commission proposed in the *17 GHz FSS NPRM* proposed to retain the grandfathered status for existing DBS feeder link earth stations relative to FSS receiving earth stations, and to apply relative to the FSS the same criteria for permitting DBS operators to modify or add antennas to their existing networks that apply with respect to 17/24 GHz BSS. Commenters who addressed this issue all agreed with the proposed approach, although Hughes stresses that grandfathered status should apply only to existing and specific modifications to DBS earth stations. Hughes' comments are consistent with the Commission's proposal. Based on the record we adopt the Commission's proposal and retain the grandfathered status for existing DBS feeder link earth stations relative to FSS receiving earth stations, and apply relative to the FSS the same criteria for permitting DBS operators to modify or add antennas to their existing networks.

Coordination between DBS and FSS Receiving Earth Stations. The Commission's rules include a coordination methodology to permit licensing of new DBS feeder link earth stations in the 17.3–17.8 GHz band while protecting co-frequency receiving 17/24 GHz BSS earth stations in the 17.3–17.7 GHz band. This rule requires a DBS operator with a new or modified earth station to complete frequency coordination with existing and planned 17/24 GHz BSS receive earth stations within an established coordination zone around its proposed site using the methodology outlined in Appendix 7 of the ITU Radio Regulations. Recognizing that the specific parameter values to be used in determining this coordination zone were based upon some characteristics specific to BSS receiving earth stations, the Commission proposed in the *17 GHz FSS NPRM* to modify § 25.203(m)(1) to include new values for use in determining the coordination zone for DBS feeder link earth stations relative to FSS earth stations. The Commission sought comment on this decision and, in particular, on what these values should be.

Commenters generally agree that the existing coordination methodology specified in § 25.203(m)(1) of our rules to facilitate coordination between DBS feeder uplink stations and 17/24 GHz BSS earth stations should be extended to FSS earth stations. FSS satellite operators also agree that some parameters in the table in this section need to be modified for use in calculating the coordination zone for use with FSS earth stations, as the current parameters are specific to 17/24 GHz BSS receiving earth stations. To update § 25.203(m)(1), satellite operators also provide proposed FSS-specific parameters, which they state were calculated using ITU reference documents, although they are not specific as to which documents or methodology were used to derive these parameters.

In contrast, AT&T advocates that ''to reduce the burden on incumbents'' § 25.203(m) should be modified using the same parameters applicable to coordination with 17/24 GHz earth stations.

We adopt the proposal to extend the ITU Radio Regulations Appendix 7 coordination methodology currently in our rules to FSS earth stations, but with amended parameters. We do not agree with AT&T's assertion that performing this calculation with different parameters will be significantly burdensome to DBS operators. As noted in the *17 GHz FSS NPRM,* the current parameters used in the coordination zone calculation were derived specifically with BSS receiving earth stations in mind and are not appropriate for coordination with FSS earth stations because of differences between FSS and BSS receiving earth stations, including in the abilities of the respective earth station antennas to reject unwanted or interfering signals. In fact, some parameters applicable to BSS receiving earth stations in the existing table have no function in calculations involving FSS receiving earth stations. AT&T's objection may rest with the need to make a different calculation depending upon the type of earth station with which coordination may be required, rather than with the actual proposed FSS-specific parameters themselves. We determine, however, that in order to yield an effective coordination outcome, to facilitate the most efficient and effective use of the spectrum, the receiving earth station interference parameters used in the underlying calculations must also be specific to FSS. Accordingly, we adopt the modified parameters specified above, filed in the record as FSS-specific parameters.

Section 25.203(m)(2) identifies specific information that DBS applicants proposing new feeder link earth station must provide to a third-party coordinator prior to licensing to resolve any potential interference issues with affected receiving earth stations. The Commission proposed in the *17 GHz FSS NPRM* to apply this rule to coordination with FSS earth stations with no additional changes to the requested information. Commenters addressing this issue all support this approach, and we extend these information requirements to coordination with FSS receiving earth stations without changes.

Because receive-only earth stations are not required to apply for licenses nor to be registered with the Commission, the *17 GHz FSS NPRM* sought comment on how to facilitate coordination with DBS operators and to ensure protection from DBS feeder link earth station ground path interference. The Commission proposed that interference protection be afforded to individual FSS receiving earth stations from DBS feeder link transmissions only if they have been licensed with the Commission, and to amend § 25.203(m)(3) of our rules to reflect this requirement. We further proposed, however, to allow blanket-licensed FSS earth stations on an unprotected basis in the 17.3–17.8 GHz band and proposed to amend § 25.115(e) to reflect this.

Commenters expressed differing opinions regarding the types of FSS earth stations that should be permitted to operate in the band, and the extent of protection that they should be afforded. Viasat urges the Commission to protect blanket-licensed earth stations in the band consistent with § 25.209(c), arguing that there is no reason to treat individually or blanket-licensed earth stations differently. Viasat argues that protecting such earth stations would pose no threat to incumbent services, would ''facilitate the ability of operators to utilize the 17.3–17.8 GHz band to support user terminals,'' and would encourage intensive use of the band. The Satellite Companies support our proposal to afford interference protection only to licensed FSS receiving earth stations, asserting that this approach will ensure that DBS feeder link operators have access to the information regarding the FSS earth station sites that require protection.

We adopt the proposals to extend interference protection only to individually-licensed FSS receiving earth stations in the 17.3–17.8 GHz band. We disagree with Viasat's

assertion that we should extend interference protection to blanket-licensed earth stations. By definition, a blanket earth station license can encompass multiple stations that may be operated anywhere within a geographic area, and as such are not amenable to the reverse-band coordination process outlined in § 25.203(m) of our rules. While we agree with Viasat that blanket-licensed receive-only earth stations may pose no interference threat to incumbent operators, the lack of precise location coordinates precludes the ability to protect them from ground path interference from DBS feeder link earth stations through the coordination process. Although we are limiting interference protection to individually licensed earth stations, consistent with our approach in other frequency bands we will not further restrict such licenses by function (*e.g.,* gateways or feeder links).

Blanket-Licensed Earth Stations and Earth Stations in Motion (ESIMs). As mentioned above, the Commission also proposed to amend § 25.115(e) of the rules to facilitate blanket-licensed FSS earth stations other than ESIMs to operate on an unprotected basis in the 17.3–17.8 GHz band. In addition, the Commission sought comment on whether operation of ESIMs in the 17.3–17.8 GHz band could increase FSS operators' flexibility to use the band more efficiently and what modifications to our rules might be required to permit operation of ESIMs while protecting incumbent services.

Commenters expressed differing opinions on these issues. AT&T believes that FSS downlink operations should be limited to individually-licensed, gateway-type earth stations, whose precise locations are known and whose typically large-diameter antennas facilitate coordination. AT&T does not support allowing blanket-licensed earth stations prior to the completion of ITU WRC–23 studies. AT&T argues that permitting a service that could receive interference on a regular basis could result in substandard service, contrary to the public interest. CTIA focuses its objections on the 17.7–17.8 GHz band, where it opposes allowing FSS receiving earth stations generally, and more specifically opposes blanket-licensed earth stations, arguing that it would unnecessarily hamper future increased terrestrial use. Specifically, CTIA asserts that it is difficult to get accurate information on the location of blanket-licensed earth stations, which could make reallocation of spectrum difficult in the future. CTIA also argues that, should the Commission wish to make the 17 GHz band available for increased terrestrial use in the future, giving priority to the fixed service via footnote would not address any future mobile service operations.

In contrast, the Satellite Companies support our proposal to allow blanket-licensed earth stations to operate on an unprotected basis in the band, and refer to other commenter's objections as ''baseless'' because any interference would affect only FSS providers. The Satellite Companies refute CTIA's argument that the Commission should restrict use of the 17.7–17.8 GHz band segment today in case there is a future desire to introduce terrestrial mobile service in the band, claiming it directly conflicts with the Commission's commitments to meeting demand for additional satellite spectrum and promoting efficient use of the 17 GHz band. Hughes supports permitting GSO FSS downlink operations to earth stations, including blanket-licensed earth stations and ESIMs, provided they do not cause interference to incumbent services. Viasat claims that CTIA's objections are based upon ill-defined concerns that future mobile operations would be impeded, noting that no part of the 17.3–17.8 GHz band is allocated to the mobile service in the United States, nor has the Commission proposed such an allocation.

Commenters also express very differing opinions on operations of ESIMs in the 17.3–17.8 GHz band. AT&T and CTIA oppose permitting ESIMs in the band, consistent with their rationale for opposing blanket licensed earth stations more generally. CTIA further argues that ESIM operation presents a coexistence challenge different from fixed FSS earth stations, and that such operations would be incompatible with any future mobile operations in the 17.7–17.8 GHz band. It claims that comprehensive studies are needed to evaluate if spectrum could be shared without risking harmful interference to incumbent services, and it urges the Commission to prohibit ESIM operations in the band, both to protect critical incumbent uses and to preserve flexibility in the band for any future increased terrestrial use.

Hughes, The Satellite Companies, and Viasat all urge the Commission to permit ESIMs operations in the 17.3–17.8 GHz band. The Satellite Companies claim that there is no reason to limit FSS operators' flexibility, given that ESIMs pose no interference risk to incumbent services and place no constraints upon such services if they are not entitled to protection. Viasat similarly argues that permitting ESIM operations would pose no interference threat to incumbent services and would allow the band to be used more productively in the public interest. Hughes claims that ESIM receiving earth stations can be accommodated in the 17.3–17.8 GHz band without interference protections and argues that there is no need to limit FSS network flexibility in determining how to operate in the 17 GHz band, particularly as DBS site locations are well known and receiving ESIM stations pose no interference threat themselves to other users. Viasat rejects CTIA's assertion that ESIMs present a different coexistence challenge from other FSS receiving earth stations, or that they would further complicate an already complex sharing situation, as AT&T has argued. Viasat further argues that sharing studies are not needed as a prerequisite to allowing receiving ESIM operations. As with blanket-licensed earth stations generally, Viasat urges the Commission to extend full interference protection to ESIM earth stations.

We will adopt the proposals to facilitate authorization of blanket-licensed earth stations and ESIMs to operate in the 17.3–17.8 GHz band on an unprotected basis. As stated above, such (receiving) stations pose no interference threat to other services, nor will they place any undue coordination burden on incumbent operators if operating on an unprotected basis. AT&T states that a ''service that could potentially be interfered into on a regular basis, resulting in a substandard service, would be contrary to the public interest.'' Given the well-established locations of DBS feeder uplink and the ability to design satellite networks to avoid interfering signals and switch operations to other available frequencies, we believe that FSS earth station operators can avoid subjecting their operations to regular unwanted interference. Thus, we see no justification to prohibit blanket-licensed earth stations or ESIMs and limit FSS operators' flexibility in designing their networks, or a need to delay our decision as AT&T and CTIA suggest. We find that it would serve the public interest to allow blanket-licensed earth stations and ESIMs in the band, subject to conditions discussed herein, including that operations are on an unprotected basis, to increase FSS operators' flexibility to use the band more efficiently for provisioning of advanced satellite services for the benefit of American consumers.

We reject CTIA's concerns about future terrestrial use as speculative. There is no allocation of any part of the 17.3–17.8 GHz band to the mobile service in the United States, nor is there

currently any plan, a proceeding or proposal before us to make such an allocation. Based on the record, allowing blanket-licensed earth stations or ESIMs in the band would be consistent with sound spectrum policy principles increasing efficient and effective use of the spectrum without causing harmful interreference to incumbent users today. With respect to any potential for harmful interference from FSS (space-to-Earth) operations to fixed service operations, we find that the risk is minimal, and the technical standards adopted herein to prevent harmful interference to other services, including the fixed service, are sufficient to protect those services irrespective of whether or not we permit blanket-licensed earth stations or ESIMs in the band. Accordingly, we modify our rules to facilitate authorization of blanket-licensed receiving earth stations as well as FSS ESIMs in the 17.3–17.8 GHz band on an unprotected basis. There is nothing in the record to demonstrate that receiving ESIM earth stations could pose interference threat to incumbent users in the band. Accordingly, we do not believe that completion of ITU sharing and feasibility studies for receiving ESIMs are needed before we allow receiving ESIMs in the band on an unprotected basis, as AT&T appears to suggest. Moreover, because ESIMs will not be afforded interference protection, they should not increase the coordination burden on incumbent users in the band either. As with other types of blanket-licensed earth stations however, ESIMs operations will only be allowed on an unprotected basis with respect to DBS feeder link operations as well as terrestrial operations in the 17.7–17.8 GHz band. Accordingly, we amend § 25.202 and footnote NG527A to streamline authorization of receiving ESIM earth stations on an unprotected basis in the 17.3–17.8 GHz band.

4. Other Proposed Rule Changes

The Commission proposed various conforming modifications to our rules that are required as a result of the changes proposed above. Specifically, the Commission proposed to modify the definition of a two-degree compliant space station in § 25.103 to include FSS satellites transmitting in the 17.3–17.8 GHz band. In addition, the Commission proposed to modify § 25.114 to identify 17.3–17.8 GHz space-to-Earth FSS applicants alongside information requirements applicable to such applications, specifically in § 25.114(d)(7), (15), and (18). Similarly, the *17 GHz FSS NPRM* proposed to modify § 25.115(e) to identify the information required for receiving earth station applicants in this band. Finally, the Commission proposed to modify § 25.117(d)(2)(v) to permit 17.3–17.8 GHz FSS operators to modify certain restrictions that might be associated with their licenses according to the same procedures afforded to 17/24 GHz BSS operators. No commenters opposed these proposed conforming modifications, and we adopt them.

Radio Astronomy. The Commission sought comment on whether there was a need for any additional measures that the Commission should consider with respect to radio astronomy in the adjacent 17.2–17.3 GHz band. No commenter proposed any new rule or changes to our existing rules. The Satellite Companies stated that no new rules were necessary, noting that there were no concerns regarding adverse effects to radio astronomy from the 17/24 GHz downlink transmissions already using the band which are functionally equivalent to FSS downlinks. Accordingly, we find that no rule change is necessary with respect to Radio Astronomy.

C. Defining the Extended Ka-Band and Creating Rules for Routine License Application Processing in This Band

In the *17 GHz FSS NPRM,* the Commission proposed adding a definition for the extended Ka-band in section 25.103. Specifically, the *17 GHz FSS NPRM* proposed to define the extended Ka-band as 17.3–18.3 GHz (space-to-Earth), 18.8–19.4 GHz (space-to-Earth), 19.6–19.7 GHz (space-to-Earth), 27.5–28.35 GHz (Earth-to-space) and 28.6–29.1 GHz, (Earth-to-space). The Commission also proposed two approaches to facilitate routine licensing of extended Ka-band earth stations communicating with GSO FSS space stations to streamline and harmonize extended Ka-band earth station licensing with licensing in other FSS bands. The first proposal was to extend the routine license off-axis EIRP density limits for conventional Ka-band earth stations contained in § 25.218(i) to extended Ka-band earth stations. The second proposal was to extend an alternative approach to routine licensing now contained in § 25.212(e) to extended Ka-band earth stations. To implement this alternative approach the *17 GHz FSS NPRM* proposed modifying § 25.212(e) and (h) to permit such applicants to similarly demonstrate compliance with the off-axis gain requirements in § 25.209(a) and (b) combined with an input power density limit of 3.5 dBW/MHz. In the *17 GHz FSS NPRM,* the Commission also proposed modifications to § 25.209(a) and (b) to extend the Ka-band off-axis antenna gain requirements across the full 27.5–30 GHz band, and to reference these alternative routine license application processing requirements in §§ 25.115(g) and (k) and 25.220(a).

Most commenters supported these proposals, arguing that they would facilitate streamlined licensing of extended Ka-band FSS earth stations. We add a definition of extended Ka-band and adopt the rule changes proposed in the *17 GHz FSS NPRM* to facilitate streamlined earth station licensing in the extended Ka-band similar to licensing in other FSS bands. CTIA argues, however, that the proposed rules lack clarity, and because the Commission has not adequately considered the downstream consequences or explained any impact on affected stakeholders, we should provide further explanation and opportunity for comment before adopting them. CTIA questions in particular what filing requirements in lieu of § 25.220 would apply, or whether these earth stations might be newly eligible for autogrant under § 25.115(a)(3).

We note that the uplink power levels in question are defined at the geostationary orbit and are intended to obviate the need for coordination between co-frequency GSO FSS space station operations in a two-degree spacing environment. Lacking any extended Ka-band uplink off-axis power limits in our current rules with which to demonstrate conformance—and which our rules currently define for GSO earth station applicants in most other FSS bands—extended Ka-band earth station applicants have no choice but to make the more burdensome off-axis EIRP density showings relative to the geostationary arc, as defined in § 25.115(g)(1).

Under our current rules, extended Ka-band transmitting earth station applications in bands shared with terrestrial services (*i.e.,* 27.5–28.35 GHz) must be filed on FCC Form 312, Main Form, and Schedule B. Filing requirements include any relevant information required by paragraphs (a)(5) through (10) or paragraph (g) or (j) of § 25.115. Although we are not changing this, we adopt the Commission's proposals in the *17 GHz NPRM* to allow conforming extended Ka-band applicants to file in accordance with the requirements of § 25.115(g)(1), instead of paragraph (g)(2). CTIA erroneously suggests that extended Ka-band earth station applicants should comply with the requirements of § 25.220. This rule currently applies to the conventional Ka-band, but not the

extended Ka-band. We also adopt the proposals in the *17 GHz FSS NPRM,* to apply the process in § 25.220 if extended Ka-band applicants do not conform to the uplink off-axis power limits adopted herein. With regard to an autogrant procedure in § 25.115(a)(3), to be eligible, earth stations must meet the criteria specified in § 25.115(a)(2), which among other things list specific qualifying frequency bands. The extended Ka-band frequency ranges are not included in this list, nor has the Commission proposed any modification to add them. Accordingly, extended Ka-band applicants are not eligible for that procedure.

We believe that CTIA's concerns may stem from an erroneous assumption that the uplink power limits adopted herein and the associated routine processing would somehow permit FSS earth station applicants in the extended Ka-bands to bypass other existing Commission rules. In particular, in the 27.5–28.35 GHz extended Ka-band segment, transmitting FSS earth stations will be sharing the band with Upper Microwave Flexible Use Service (UMFUS) stations, and the requirements of § 25.136(a) for FSS earth stations seeking to operate in this band include a requirement to coordinate, when warranted, in accordance with the procedures of §§ 25.136(a) and 101.103(d).[13] We make clear that as defined in our rules, routine licensing requires qualifying applications to be consistent *with all Commission rules,* and will continue to include all requirements contained in § 25.136(a) for earth station applicants in the 27.5–28.35 GHz band. Accordingly, we can envision no adverse effect on terrestrial Ka-band stakeholders with these rule changes. These rule changes will streamline and harmonize extended Ka-band earth station licensing with licensing in other FSS bands. Accordingly, we find that it would serve the public interest to adopt the conforming and streamlining changes proposed in the *17 GHz FSS NPRM.*

Procedural Matters

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[14] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in *Amendment of Parts 2 and 25 of the Commission's Rules to Enable GSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3–17.8 GHz Band, to Modernize Certain Rules Applicable to 17/24 GHz BSS Space Stations, and to Establish Off-Axis Uplink Power Limits for Extended Ka-Band FSS Operations,* Notice of Proposed Rulemaking (86 FR 7660 (Feb. 1, 2021)). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were received on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[15]

A. Need for, and Objectives of, the Final Rule

This final rule creates a new allocation for the fixed-satellite service (FSS) (space-to-Earth) in the 17.3–17.8 GHz frequency band, adopts technical rules for the use of this band by GSO FSS satellites and for sharing the band between satellites of different satellite services and stations in the terrestrial fixed service, and defines the ''extended Ka-band'' and adopts rules to harmonize extended Ka-band licensing with licensing in other FSS bands.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[16] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[17] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [18] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[19] A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[20] Below, we describe and estimate the number of small entities that may be affected by adoption of the final rules.

Satellite Telecommunications. This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' [21] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $35 million or less in annual receipts as small.[22] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[23] Of this number, 242 firms

[13] This latter section requires that coordination notifications include relevant technical details of the proposal. At minimum, this should include, as applicable, the following: Applicant's name and address; Transmitting station name; Transmitting station coordinates; Frequencies and polarizations to be added, changed or deleted; Transmitting equipment type, its stability, actual output power, emission designator, and type of modulation(s) (loading); An indication if modulations lower than the values listed in the table to § 101.141(a)(3) of the Commission's rules will be used; Transmitting antenna type(s), model, gain and, if required, a radiation pattern provided or certified by the manufacturer; Transmitting antenna center line height(s) above ground level and ground elevation above mean sea level; Receiving station name; Receiving station coordinates; Receiving antenna type(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer; Receiving antenna center line height(s) above ground level and ground elevation above mean sea level; Path azimuth and distance; Estimated transmitter transmission line loss expressed in dB; Estimated receiver transmission line loss expressed in dB.

[14] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II, 110 Stat. 857 (1996).

[15] *See* 5 U.S.C. 604.

[16] 5 U.S.C. 604(a)(3).

[17] *Id.*

[18] 5 U.S.C. 601(6).

[19] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[20] 15 U.S.C. 632.

[21] *See* U.S. Census Bureau, *2017 NAICS Definition, ''517410 Satellite Telecommunications,'' https://www.census.gov/naics/?input=517410&year=2017&details=517410.*

[22] *See* 13 CFR 121.201, NAICS Code 517410.

[23] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales,*

Continued

had revenue of less than $25 million.[24] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services.[25] Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees.[26] Consequently using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

All Other Telecommunications. The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[27] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[28] Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[29] The SBA has developed a small business size standard for ''All Other Telecommunications'', which consists of all such firms with annual receipts of $35 million or less.[30] For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.[31] Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999.[32] Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

This final rule adopts several rule changes that would affect compliance requirements for space station and earth station operators. For example, this final rule adopts rules for operations by space station FSS operators in the 17.3–17.8 GHz band, including revisions to some existing technical requirements that would now apply to these FSS operations. This final rule also adopts changes that would affect earth station operator licensing. The Commission adopts changes to harmonize extended Ka-band earth station licensing with licensing in other FSS bands. In total, the actions in this final rule are designed to achieve the Commission's mandate to regulate in the public interest while imposing the lowest necessary burden on all affected parties, including small entities.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.[33]

In this final rule, the Commission considered whether and how to apply various technical rules to enable GSO FSS operations to share the 17.3–17.8 GHz band with other services in an efficient and effective manner. This include consideration, for example, of power levels, orbital spacing, and other technical considerations, and what information the Commission may need to assess compliance with technical requirements, taking into consideration potential impact on the applicant or operator. As one example, the Commission declines to require submission of certain measured data six months before satellite launch, instead requiring the data submission only two months prior to launch. As another example, the Commission considered whether to streamline certain earth station application rules to enable more routine processing of applications for the extended Ka-band. Overall, the actions in this document will reduce burdens on the affected licensees, including small entities.

G. Report to Congress

The Commission will send a copy of the *Report and Order,* including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[34] In addition, the Commission will send a copy of the *Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.[35]

Ordering Clauses

Accordingly, *It is ordered* that, pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), the Report and Order *is hereby adopted.*

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center will send a copy of the Report and Order, including the final and initial regulatory flexibility analyses, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects

47 CFR Part 2

Radio, Table of Frequency Allocations.

47 CFR Part 25

Administrative practice and procedure, Earth stations, Satellites.

Value of Shipments, or Revenue Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, *https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.*

[24] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.*

[25] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), *https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf.*

[26] *Id.*

[27] *See* U.S. Census Bureau, *2017 NAICS Definition, ''517919 All Other Telecommunications'', https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017.*

[28] *Id.*

[29] *Id.*

[30] *See* 13 CFR 121.201, NAICS Code 517919.

[31] *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1251SSSZ4, *Information: Subject Series—Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012,* NAICS Code 517919, *https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false.*

[32] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $35 million or less.

[33] 5 U.S.C. 603(c)(1)–(4).

[34] 5 U.S.C. 801(a)(1)(A).

[35] *See* 5 U.S.C. 604(b).

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 25 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise page 52;

■ b. In the list of United States (US) Footnotes, remove footnote US271 and revise footnote US402; and

■ c. In the list of Non-Federal Government (NG) Footnotes, add footnote NG58, remove footnote NG163, and revise footnote NG527A.

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	FCC Rule Part(s)
15.63-15.7 RADIOLOCATION 5.511E 5.511F AERONAUTICAL RADIONAVIGATION			15.63-15.7 RADIOLOCATION 5.511E 5.511F US511E AERONAUTICAL RADIONAVIGATION US260 US211	15.63-15.7 AERONAUTICAL RADIONAVIGATION US260 US211 US511E	Aviation (87)
15.7-16.6 RADIOLOCATION 5.512 5.513			15.7-16.6 RADIOLOCATION G59	15.7-17.2 Radiolocation	Private Land Mobile (90)
16.6-17.1 RADIOLOCATION Space research (deep space) (Earth-to-space) 5.512 5.513			16.6-17.1 RADIOLOCATION G59 Space research (deep space) (Earth-to-space)		
17.1-17.2 RADIOLOCATION 5.512 5.513			17.1-17.2 RADIOLOCATION G59		
17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.512 5.513 5.513A			17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	17.2-17.3 Earth exploration-satellite (active) Radiolocation Space research (active)	
17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 (space-to-Earth) 5.516A 5.516B Radiolocation 5.514	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 BROADCASTING-SATELLITE Radiolocation 5.514 5.515	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 Radiolocation 5.514	17.3-17.7 Radiolocation US259 G59 US402 G117	17.3-17.7 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) NG527A BROADCASTING-SATELLITE US259 US402 NG58	Satellite Communications (25)
17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) 5.517 (Earth-to-space) 5.516 BROADCASTING-SATELLITE Mobile 5.515	17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 US334 G117	17.7-17.8 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) NG527A US334 NG58	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
	17.8-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE 5.519		17.8-18.3 FIXED-SATELLITE (space-to-Earth) US334 G117 US519	17.8-18.3 FIXED Fixed-satellite (space-to-Earth) NG527A US334 US519	
18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B (Earth-to-space) 5.520 MOBILE 5.519 5.521			18.3-18.6 FIXED-SATELLITE (space-to-Earth) US334 G117 US139	18.3-18.6 FIXED-SATELLITE (space-to-Earth) NG527A US139 US334	Satellite Communications (25)
18.4-18.6 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE					

BILLING CODE 6712–01–C

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United States (US) Footnotes

* * * * *

US402 In the band 17.3–17.7 GHz, existing Federal satellites and associated earth stations in the fixed-satellite service (Earth-to-space) are authorized to operate on a primary basis in the frequency bands and areas listed below. Non-Federal receiving earth stations in the broadcasting-satellite and fixed-satellite services within the bands and areas listed below shall not claim protection from Federal earth stations in the fixed-satellite service.

(a) 17.600–17.700 GHz for stations within a 120 km radius of 38°49′ N latitude and 76°52′ W longitude.

(b) 17.375–17.475 GHz for stations within a 160 km radius of 39°42′ N latitude and 104°45′ W longitude.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG58 In the band 17.3–17.8 GHz, the following provisions shall apply to the broadcasting-satellite, fixed, and fixed-satellite services:

(a) The use of the band 17.3–17.8 GHz by the broadcasting-satellite and fixed-satellite (space-to-Earth) services is limited to geostationary satellites.

(b) The use of the band 17.3–17.8 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for broadcasting-satellite service.

(c) The use of the band 17.7–17.8 GHz by the broadcasting-satellite service is limited to receiving earth stations located outside of the United States and its insular areas.

(d) In the band 17.7–17.8 GHz, earth stations in the fixed-satellite service may be authorized for the reception of FSS emissions from geostationary satellites, subject to the condition that these earth stations shall not claim protection from transmissions of non-Federal stations in the fixed service that operate in that band.

* * * * *

NG527A Earth Stations in Motion (ESIMs), as regulated under 47 CFR part 25, are an application of the fixed-satellite service (FSS) and the following provisions shall apply:

(a) In the bands 10.7–11.7 GHz, 19.3–19.4 GHz, and 19.6–19.7 GHz, ESIMs may be authorized for the reception of FSS emissions from geostationary and non-geostationary satellites, subject to the conditions that these earth stations may not claim protection from transmissions of non-Federal stations in the fixed service and that non-geostationary-satellite systems not cause unacceptable interference to, or claim protection from, geostationary-satellite networks.

(b) In the bands 11.7–12.2 GHz (space-to-Earth), 14.0–14.5 GHz (Earth-to-space), 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space), ESIMs may be authorized to communicate with geostationary satellites on a primary basis.

(c) In the bands 11.7–12.2 GHz (space-to-Earth), 14.0–14.5 GHz (Earth-to-space), 18.3–18.6 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.4–28.6 GHz (Earth-to-space), and 29.5–30.0 GHz (Earth-to-space), ESIMs may be authorized to communicate with non-geostationary satellites, subject to the condition that non-geostationary-satellite systems may not cause unacceptable interference to, or claim protection from, geostationary-satellite networks.

(d) In the band 17.8–18.3 GHz, ESIMs may be authorized for the reception of FSS emissions from geostationary and non-geostationary satellites on a secondary basis, subject to the condition that non-geostationary-satellite systems not cause unacceptable interference to, or claim protection from, geostationary-satellite networks.

(e) In the bands 18.8–19.3 GHz (space-to-Earth) and 28.6–29.1 GHz (Earth-to-space), ESIMs may be authorized to communicate with geostationary and non-geostationary satellites, subject to the condition that geostationary-satellite networks may not cause unacceptable interference to, or claim protection from, non-geostationary satellite systems in the fixed-satellite service.

(f) In the band 17.3–17.8 GHz, ESIMs may be authorized for the reception of FSS emissions from geostationary satellites on an unprotected basis.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 4. Amend § 25.103 by adding a definition for ''Extended Ka-band'' in alphabetical order and revising the definition of ''Two-degree-compliant space station'' to read as follows:

§ 25.103 Definitions.

* * * * *

Extended Ka-band. The 17.3–18.3 GHz (space-to-Earth), 18.8–19.4 GHz (space-to-Earth), 19.6–19.7 GHz (space-to-Earth), 27.5–28.35 GHz (Earth-to-space), and 28.6–29.1 GHz (Earth-to-space) FSS frequency bands.

* * * * *

Two-degree-compliant space station. A GSO FSS space station operating in the conventional or extended C-bands, the conventional or extended Ku-bands, the 24.75–25.25 GHz band, or the conventional or extended Ka-bands within the limits on downlink equivalent isotropically radiated power (EIRP) density or PFD specified in § 25.140(a)(3) or (b)(3) and communicating only with earth stations operating in conformance with routine uplink parameters specified in § 25.211(d), § 25.212(c), (d), or (f), or § 25.218.

* * * * *

■ 5. Amend § 25.114 by revising paragraphs (d)(7), (15), and (18) to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(d) * * *

(7) Applicants for authorizations for space stations in the Fixed-Satellite Service, including applicants proposing feeder links for space stations operating in the 17/24 GHz Broadcasting-Satellite Service, must also include the information specified in § 25.140(a). Applicants for authorizations for space stations in the 17/24 GHz Broadcasting-Satellite Service or applicants seeking authorization for FSS space stations transmitting in the 17.3–17.8 GHz band (space-to-Earth), must also include the information specified in § 25.140(b);

* * * * *

(15) Each applicant for a space station license in the 17/24 GHz Broadcasting-Satellite Service or the FSS transmitting in the 17.3–17.8 GHz band, shall include the following information as an attachment to its application:

(i) If the applicant proposes to operate in the 17.3–17.8 GHz band, a demonstration that the proposed space station will comply with the applicable power flux density limits in § 25.140(a)(3)(iii) or (b)(3) unless the applicant provides a certification under paragraph (d)(15)(ii) of this section.

(ii) In cases where the proposed space station will not comply with the applicable power flux density limits set forth in § 25.140(a)(3)(iii) or (b)(3), the applicant will be required to provide a certification that all potentially affected parties acknowledge and do not object to the use of the applicant's higher power flux densities. The affected parties with whom the applicant must

coordinate are those GSO 17/24 GHz BSS satellite networks or FSS satellite networks with space stations transmitting in the 17.3–17.8 GHz band that are located up to ±6° away. Excesses of more than 3 dB above the applicable power flux density levels specified in § 25.140(a)(3)(iii) or (b)(3), must also be coordinated with 17/24 GHz BSS satellite networks located up to ±10° away.

(iii) Any information required by § 25.264(a)(6), (b)(4), or (d).

* * * * *

(18) For space stations in the Direct Broadcast Satellite service, the 17/24 GHz Broadcasting-Satellite Service, or FSS space stations transmitting in the 17.3–17.8 GHz band, maximum orbital eccentricity.

■ 6. Amend § 25.115 by revising paragraphs (e), (g) introductory text, and (k) to read as follows:

§ 25.115 Applications for earth station authorizations.

* * * * *

(e) *GSO FSS earth stations in 17.3–30 GHz.* (1) An application for a GSO FSS earth station license in the 17.3–19.4 GHz, 19.6–20.2 GHz, 27.5–29.1 GHz, or 29.25–30 GHz bands not filed on FCC Form 312EZ pursuant to paragraph (a)(2) of this section must be filed on FCC Form 312, Main Form and Schedule B, and must include any information required by paragraphs (a)(5) through (10) or paragraph (g) or (j) of this section.

(2) Individual or blanket license applications may be filed for operation in the 17.3–17.8 GHz band; however, blanket licensed earth stations shall operate on an unprotected basis with respect to DBS feeder link earth stations. All receiving FSS earth stations shall operate on an unprotected basis with respect to the Fixed Service in the 17.7–17.8 GHz band.

* * * * *

(g) *Additional requirements for certain GSO earth stations.* Applications for earth stations that will transmit to GSO space stations in any portion of the 5850–6725 MHz, 13.75–14.5 GHz, 24.75–25.25 GHz, 27.5–29.1 GHz, or 29.25–30.0 GHz bands must include, in addition to the particulars of operation identified on FCC Form 312 and associated Schedule B, the information specified in either paragraph (g)(1) or (2) of this section for each earth station antenna type.

* * * * *

(k) *Permitted Space Station List.* (1) Applicants for FSS earth stations that qualify for routine processing in the conventional or extended C-bands, the conventional or extended Ku-bands, the conventional or extended Ka-bands, or the 24.75–25.25 GHz band, including ESV applications filed pursuant to paragraph (m)(1) or (n)(1) of this section, VMES applications filed pursuant to paragraph (m)(1) or (n)(1) of this section, and ESAA applications filed pursuant to paragraph (m)(1) or (n)(1) of this section, may designate the Permitted Space Station List as a point of communication. Once such an application is granted, the earth station operator may communicate with any space station on the Permitted Space Station List, provided that the operation is consistent with the technical parameters and conditions in the earth station license and any limitations placed on the space station authorization or noted in the Permitted Space Station List.

(2) Notwithstanding paragraph (k)(1) of this section, an earth station that would receive signals in the 17.7–20.2 GHz band may not communicate with a space station on the Permitted Space Station List in that band until the space station operator has completed coordination under Footnote US334 to § 2.106 of this chapter.

* * * * *

■ 7. Amend § 25.117 by revising paragraph (d)(2)(v) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(d) * * *

(2) * * *

(v) Any operator of a space station transmitting in the 17.3–17.8 GHz band, whose license is conditioned to operate at less than the power level otherwise permitted by § 25.140(a)(3)(iii) and/or (b)(3), and is conditioned to accept interference from a neighboring 17/24 GHz BSS space station, may file a modification application to remove those two conditions in the event that the license for that neighboring space station is cancelled or surrendered. In the event that two or more such modification applications are filed, and those applications are mutually exclusive, the modification applications will be considered on a first-come, first-served basis pursuant to the procedure set forth in § 25.158.

* * * * *

■ 8. Amend § 25.140 by revising paragraphs (a)(2), (a)(3)(iii), and (b)(3) through (5), adding paragraph (b)(6), and revising the introductory text of paragraph (d) to read as follows:

§ 25.140 Further requirements for license applications for GSO space station operation in the FSS and the 17/24 GHz BSS.

(a) * * *

(2) In addition to the information required by § 25.114, an applicant for GSO FSS space station operation, including applicants proposing feeder links for space stations operating in the 17/24 GHz BSS, that will be located at an orbital location less than two degrees from the assigned location of an authorized co-frequency GSO space station, must either certify that the proposed operation has been coordinated with the operator of the co-frequency space station or submit an interference analysis demonstrating the compatibility of the proposed system with the co-frequency space station. Such an analysis must include, for each type of radio frequency carrier, the link noise budget, modulation parameters, and overall link performance analysis. (See Appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service, FCC 83–184, and the following public notices, copies of which are available in the Commission's EDOCS database, available at *https://www.fcc.gov/edocs:* DA 03–3863 and DA 04–1708.) The provisions in this paragraph (a)(2) do not apply to proposed analog video operation, which is subject to the requirement in paragraph (a)(1) of this section. Proposed GSO FSS space-to-Earth transmissions in the 17.3–17.8 GHz band are subject to the requirements of paragraphs (b)(4) through (6) of this section with respect to possible interference into 17/24 GHz BSS networks. Proposed GSO FSS space-to-Earth transmissions in the 17.3–17.8 GHz band are subject to the requirements of § 25.264 with respect to possible interference to the reception of DBS feeder link transmissions (Earth-to-space) in this band.

(3) * * *

(iii) With respect to proposed FSS operation in the conventional or extended Ka-bands, a certification that the proposed space station will not generate power flux density at the Earth's surface in excess of the limits in paragraphs (a)(3)(iii)(A) and (B) of this section, and that associated uplink operation will not exceed applicable EIRP density envelopes in § 25.218(i) unless the non-routine uplink and/or downlink operation is coordinated with operators of authorized co-frequency space stations at assigned locations within six degrees of the orbital location and except as provided in paragraph (d) of this section.

(A) −118 dBW/m²/MHz, except as provided in paragraph (a)(3)(iii)(B) of this section.

(B) For space-to-Earth FSS transmissions in the 17.3–18.8 GHz band in the region of the contiguous United States, located west of 100 West Longitude: −121 dBW/m²/MHz.

* * * * *

(b) * * *

(3) An applicant for a license to operate a 17/24 GHz BSS space station transmitting in the 17.3–17.8 GHz band must certify that the downlink power flux density on the Earth's surface will not exceed the regional power flux density limits given in paragraphs (b)(3)(i) through (iv) of this section, or must provide the certification specified in § 25.114(d)(15)(ii):

(i) In the region of the contiguous United States, located south of 38° North Latitude and east of 100° West Longitude: −115 dBW/m²/MHz.

(ii) In the region of the contiguous United States, located north of 38° North Latitude and east of 100° West Longitude: −118 dBW/m²/MHz.

(iii) In the region of the contiguous United States, located west of 100° West Longitude: −121 dBW/m²/MHz.

(iv) For all regions outside of the contiguous United States including Alaska and Hawaii: −115 dBW/m²/MHz.

(4) Except as described in paragraph (b)(5) of this section, the following applicants must either certify that their proposed operations have been coordinated with the adjacent operator of a previously authorized or proposed co-frequency space station, or must provide an interference analysis of the kind described in paragraph (a) of this section, except that the applicant must demonstrate that its proposed network will not cause more interference to the adjacent space station transmitting in the 17.3–17.8 GHz band operating in compliance with the technical requirements of this part, than if the applicant were located at an orbital separation of four degrees from the previously licensed or proposed space station.

(i) Applicants for a 17/24 GHz BSS space station transmitting in the 17.3–17.8 GHz band to be located less than four degrees from a previously authorized or proposed co-frequency 17/24 GHz BSS space station;

(ii) Applicants for a FSS space station transmitting in the 17.3–17.8 GHz band to be located less than four degrees from a previously authorized or proposed co-frequency 17/24 GHz BSS space station; and

(iii) Applicants for a 17/24 GHz BSS space station transmitting in the 17.3–17.8 GHz band to be located less than four degrees from a previously authorized or proposed co-frequency FSS space station transmitting in the 17.3–17.8 GHz band.

(5) Where an authorized or proposed 17/24 GHz BSS or FSS space station is located within four degrees of a previously authorized or proposed 17/24 GHz BSS space station, no new third proposed 17/24 GHz BSS or FSS space station may be located within eight degrees of the first authorized or proposed space station in the same direction as the second authorized or proposed space station, unless the applicant for the third space station certifies that its proposed operation has been coordinated with the operator of the first previously authorized or proposed 17/24 GHz BSS space station, or the applicant for the third proposed space station provides an interference analysis of the kind described in paragraph (a) of this section, or the applicant for the third proposed space station demonstrates that its proposed network will not cause more interference to the first previously authorized or proposed space station than if the applicant for the third proposed space station were located at an orbital separation of eight degrees from the first previously authorized or proposed 17/24 GHz BSS space station.

(6) In addition to the requirements of paragraphs (b)(3), (4), and (5) of this section, the link budget for any satellite transmitting in the 17.3–17.8 GHz band (space-to-Earth) must take into account longitudinal station-keeping tolerances. Any applicant for a space station transmitting in the 17.3–17.8 GHz band that has reached a coordination agreement with an operator of another space station to allow that operator to exceed the pfd levels specified in paragraph (a)(3)(iii) or (b)(3) of this section, must use those higher pfd levels for the purpose of this showing.

* * * * *

(d) An operator of a GSO FSS space station in the conventional or extended C-bands, conventional or extended Ku-bands, 24.75–25.25 GHz band (Earth-to-space), or conventional or extended Ka-bands may notify the Commission of its non-routine transmission levels and be relieved of the obligation to coordinate such levels with later applicants and petitioners.

* * * * *

■ 9. Amend § 25.202 by:

■ a. Redesignating paragraphs (a)(10) introductory text, (a)(10)(i), and (a)(10)(ii) as paragraphs (a)(10)(i), (ii), and (iii), respectively; and

■ b. Revising newly redesignated paragraph (a)(10)(ii).

The revision reads as follows:

§ 25.202 Frequencies, frequency tolerance, and emission limits.

(a) * * *

(10) * * *

(ii) The following frequencies are available for use by Earth Stations in Motion (ESIMs) communicating with GSO FSS space stations, subject to the provisions in § 2.106 of this chapter:

(A) 10.7–11.7 GHz (space-to-Earth).
(B) 11.7–12.2 GHz (space-to-Earth).
(C) 14.0–14.5 GHz (Earth-to-space).
(D) 17.3–17.7 GHz (space-to-Earth).
(E) 17.7–17.8 GHz (space-to-Earth).
(F) 17.8–18.3 GHz (space-to-Earth).
(G) 18.3–18.8 GHz (space-to-Earth).
(H) 18.8–19.3 GHz (space-to-Earth)
(I) 19.3–19.4 GHz (space-to-Earth).
(J) 19.6–19.7 GHz (space-to-Earth).
(K) 19.7–20.2 GHz (space-to-Earth).
(L) 28.35–28.6 GHz (Earth-to-space).
(M) 28.6–29.1 GHz (Earth-to-space).
(N) 29.25–30.0 GHz (Earth-to-space).

* * * * *

■ 10. Amend § 25.203 by revising the table in paragraph (m)(1) and paragraph (m)(3) to read as follows:

§ 25.203 Choice of sites and frequencies.

* * * * *

(m) * * *

(1) * * *

TABLE 2 TO PARAGRAPH (m)(1)

Space service designation in which the transmitting earth station operates	Fixed-Satellite	
Frequency bands (GHz)	17.3–17.7	17.3–17.8
Space service designation in which the receiving earth station operates	Broadcasting-Satellite	Fixed-Satellite
Orbit	GSO	GSO
Modulation at receiving earth station	N (digital)	N (digital)

TABLE 2 TO PARAGRAPH (m)(1)—Continued

Receiving earth station interference parameters and criteria:	17/24 GHZ BSS			FSS	
p_0 (%)	0.015			0.003	
n	2			2	
p (%)	0.015			0.0015	
N_L(dB)	1			1	
M_s (dB)	In the area specified in § 25.140(b)(3)			In the area specified in § 25.140(a)(3)(iii)	
	(i) and (iv)	(ii)	(iii)	(A)	(B)
	4.8	3.0	1.8	2.5	0.8
W(dB)	4			0	
Receiving earth station parameters:	17/24 GHz BSS			FSS	
G_m (dBi)	36			N/A	
G_r	0			0	
ε_{min}	20°			5°	
T_e (K)	150			300	
Reference bandwidth: B (Hz)	10^6				
Permissible interference power: P_r(p) (dBW) in B	In the area specified in § 25.140(b)(3)			In the area specified in § 25.140(a)(3)(iii)	
	(i) and (iv)	(ii)	(iii)	(A)	(B)
	−146.8	−149.8	−152.8	−144	−150.1

* * * * *

(3) Each applicant for such new or modified feeder-link earth stations shall file with its application memoranda of coordination with each co-frequency licensee authorized to construct BSS receive earth stations or an individually licensed FSS receive earth station within the coordination zone. Feeder link earth station applicants are not required to complete coordination with blanket-licensed receiving FSS earth stations in the 17.3–17.8 GHz band.

* * * * *

§ 25.208 [Amended]

■ 11. Amend § 25.208 by removing and reserving paragraph (w).

■ 12. Amend § 25.209 by revising the introductory text of paragraphs (a)(1), (3), (4), and (6) and (b)(1) through (3) to read as follows:

§ 25.209 Earth station antenna performance standards.

(a) * * *

(1) In the plane tangent to the GSO arc, as defined in § 25.103, for earth stations not operating in the conventional Ku-band, the 24.75–25.25 GHz band, or the 27.5–30 GHz band:

* * * * *

(3) In the plane tangent to the GSO arc, for earth stations operating in the 24.75–25.25 GHz or 27.5–30 GHz bands:

* * * * *

(4) In the plane perpendicular to the GSO arc, as defined in § 25.103, for earth stations not operating in the conventional Ku-band, the 24.75–25.25 GHz band, or the 27.5–30 GHz band:

* * * * *

(6) In the plane perpendicular to the GSO arc, for earth stations operating in the 24.75–25.25 GHz or 27.5–30 GHz bands:

* * * * *

(b) * * *

(1) In the plane tangent to the GSO arc, for earth stations not operating in the 24.75–25.25 GHz or 27.5–30 GHz bands:

* * * * *

(2) In the plane perpendicular to the GSO arc, for earth stations not operating in the 24.75–25.25 GHz or 27.5–30 GHz bands:

* * * * *

(3) In the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc, for earth stations operating in the 24.75–25.25 GHz or 27.5–30 GHz bands:

* * * * *

■ 13. Amend § 25.210 by:

■ a. Revising paragraph (f); and

■ b. Removing and reserving paragraph (i).

The revision reads as follows:

§ 25.210 Technical requirements for space stations.

* * * * *

(f) All space stations in the Fixed-Satellite Service operating in any portion of the 3600–4200 MHz, 5091–5250 MHz, 5850–7025 MHz, 10.7–12.7 GHz, 12.75–13.25 GHz, 13.75–14.5 GHz, 15.43–15.63 GHz, 17.3–17.8 GHz (space-to-Earth), 18.3–20.2 GHz, 24.75–25.25 GHz, or 27.5–30.0 GHz bands, including feeder links for other space services, and in the Broadcasting-Satellite Service in the 17.3–17.8 GHz band (space-to-Earth), shall employ state-of-the-art full frequency reuse, either through the use of orthogonal polarizations within the same beam and/or the use of spatially independent beams. This requirement does not apply to telemetry, tracking, and command operation.

* * * * *

■ 14. Amend § 25.212 by revising paragraphs (e) and (h) to read as follows:

§ 25.212 Narrowband analog transmissions and digital transmissions in the GSO FSS.

* * * * *

(e) An earth station may be routinely licensed for digital transmission in the conventional or extended Ka-bands if

the input power spectral density into the antenna will not exceed 3.5 dBW/MHz and the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna gain performance requirements in § 25.209(a) and (b).

* * * * *

(h) Applications for authority for fixed earth station operation in the conventional C-band, the extended C-band, the conventional Ku-band, the extended Ku-band, the conventional Ka-band, or the extended Ka-band that do not qualify for routine processing under relevant criteria in this section, § 25.211, or § 25.218 are subject to the requirements in § 25.220.

■ 15. Amend § 25.218 by revising paragraph (a), adding a heading for paragraph (b), and revising paragraphs (i) heading and (j) to read as follows:

§ 25.218 Off-axis EIRP density envelopes for FSS earth stations transmitting in certain frequency bands.

(a) *Applicability.* This section applies to applications for fixed and temporary-fixed FSS earth stations transmitting to geostationary space stations in the conventional C-band, extended C-band, conventional Ku-band, extended Ku-band, conventional Ka-band, extended Ka-band, or 24.75–25.25 GHz, and applications for ESIMs transmitting in the conventional C-band, conventional Ku-band, conventional Ka-band, except for applications proposing transmission of analog command signals at a band edge with bandwidths greater than 1 MHz or transmission of any other type of analog signal with bandwidths greater than 200 kHz.

(b) *Routine processing.* * * *

(i) *Digital earth station operation in the conventional or extended Ka-band.* * * *

(j) *Non-qualifying applications.* Applications for authority for fixed earth station operation in the conventional C-band, extended C-band, conventional Ku-band, extended Ku-band, conventional Ka-band, extended Ka-band, or 24.75–25.25 GHz, that do not qualify for routine processing under relevant criteria in this section, § 25.211, or § 25.212 are subject to the requirements in § 25.220.

■ 16. Amend § 25.220 by revising paragraph (a) to read as follows:

§ 25.220 Non-routine transmit/receive earth station operations.

(a) The requirements in this section apply to applications for, and operation of, earth stations transmitting in the conventional or extended C-bands, the conventional or extended Ku-bands, or the conventional or extended Ka -bands that do not qualify for routine licensing under relevant criteria in § 25.211, § 25.212, or § 25.218.

* * * * *

■ 17. Revise § 25.262 to read as follows:

§ 25.262 Licensing and domestic coordination requirements for 17/24 GHz BSS space stations and FSS space stations transmitting in the 17.3–17.8 GHz band.

(a) A 17/24 GHz BSS or FSS applicant seeking to transmit in the 17.3–17.8 GHz band may be authorized to operate a space station at levels up to the maximum power flux density limits defined in paragraphs (a)(1) and (2) of this section without coordinating its power flux density levels with adjacent licensed or permitted operators, as follows:

(1) For 17/24 GHz BSS applicants, up to the power flux density levels specified in § 25.140(b)(3) only if there is no licensed space station, or prior-filed application for a space station transmitting in the 17.3–17.8 GHz band at a location less than four degrees from the orbital location at which the applicant proposes to operate; and

(2) For FSS space station applicants transmitting in the 17.3–17.8 GHz band, up to the maximum power flux density levels in § 25.140(a)(3)(iii), only if there is no licensed 17/24 GHz BSS space station, or prior-filed application for a 17/24 GHz BSS space station, at a location less than four degrees from the orbital location at which the FSS applicant proposes to operate, and there is no licensed FSS space station, or prior-filed application for an FSS space station transmitting in the 17.3–17.8 GHz band, at a location less than two degrees from the orbital location at which the applicant proposes to operate.

(b) Any U.S. licensee or permittee authorized to transmit in the 17.3–17.8 GHz band that does not comply with the applicable power flux-density limits set forth in § 25.140(a)(3)(iii) and/or (b)(3) shall bear the burden of coordinating with any future co-frequency licensees and permittees of a space station transmitting in the 17.3–17.8 GHz band as required in § 25.114(d)(15)(ii).

(c) If no good faith agreement can be reached, the operator of the FSS space station transmitting in the 17.3–17.8 GHz band that does not comply with § 25.140(a)(3)(iii) or the operator of the 17/24 GHz BSS space station that does not comply with § 25.140(b)(3), shall reduce its power flux-density levels to be compliant with those specified in § 25.140(a)(3)(iii) and/or (b)(3) as appropriate.

(d) Any U.S. licensee or permittee of a space station transmitting in the 17.3–17.8 GHz band that is required to provide information in its application pursuant to § 25.140(a)(2) or (b)(4) must accept any increased interference that may result from adjacent space stations transmitting in the 17.3–17.8 GHz band that are operating in compliance with the rules for such space stations specified in §§ 25.140(a) and (b), 25.202(a)(9) and (e) through (g), 25.210(i) through (j), 25.224, 25.262, 25.264(h), and 25.273(a)(3).

(e) Notwithstanding the provisions of this section, licensees and permittees will be allowed to apply for a license or authorization for a replacement satellite that will be operated at the same power level and interference protection as the satellite to be replaced.

■ 18. Amend § 25.264 by revising the section heading and the introductory text to paragraph (a), paragraphs (a)(4) and (6), the introductory text to paragraph (b), the introductory text to paragraph (b)(2), paragraphs (b)(2)(ii), (b)(3) and (4), and (c), the introductory text to paragraph (d), paragraph (d)(1)(ii), the introductory text to paragraph (d)(2), the introductory text to paragraphs (e) and (e)(1) and (2), paragraph (e)(3), the introductory text to paragraph (f), paragraphs (f)(2) and (g), and the introductory text to paragraphs (h) and (i) to read as follows:

§ 25.264 Requirements to facilitate reverse-band operation in the 17.3–17.8 GHz band.

(a) Each applicant or licensee for a space station transmitting in the 17.3–17.8 GHz band must submit a series of tables or graphs containing predicted off-axis gain data for each antenna that will transmit in any portion of the 17.3–17.8 GHz band, in accordance with the following specifications. Using a Cartesian coordinate system wherein the X axis is tangent to the geostationary orbital arc with the positive direction pointing east, *i.e.,* in the direction of travel of the satellite; the Y axis is parallel to a line passing through the geographic north and south poles of the Earth, with the positive direction pointing south; and the Z axis passes through the satellite and the center of the Earth, with the positive direction pointing toward the Earth, the applicant or licensee must provide the predicted transmitting antenna off-axis antenna gain information:

* * * * *

(4) At a minimum of one measurement frequency at the center of the portion of the 17.3–17.8 GHz frequency band over which the space station is designed to transmit. Applicants or licensees must provide additional measurement data at 5 MHz

above the lower edge of the band and/or at 5 MHz below the upper edge of the band, upon request by the Commission staff.

* * * * *

(6) The predictive gain information must be submitted to the Commission for each license application that is filed for a space station transmitting in any portion of the 17.3–18.8 GHz band no later than two years after license grant for the space station.

(b) A space station applicant or licensee transmitting in any portion of the 17.3–17.8 GHz band must submit power flux density (pfd) calculations based on the predicted gain data submitted in accordance with paragraph (a) of this section, as follows:

* * * * *

(2) The calculations must take into account the aggregate pfd levels at the DBS receiver at each measurement frequency arising from all antenna beams on the space station transmitting in the 17.3–17.8 GHz band. They must also take into account the maximum permitted longitudinal station-keeping tolerance, orbital inclination and orbital eccentricity of both the space station transmitting in the 17.3–17.8 GHz band and DBS space stations, and must:

* * * * *

(ii) Indicate the extent to which the calculated pfd of the space station's transmissions in the 17.3–17.8 GHz band exceed the threshold pfd level of −117 dBW/m2/100 kHz at those prior-filed U.S. DBS space station locations.

(3) If the calculated pfd exceeds the threshold level of −117 dBW/m2/100 kHz at the location of any prior-filed U.S. DBS space station, the applicant or licensee must also provide with the pfd calculations a certification that all affected DBS operators acknowledge and do not object to such higher off-axis pfd levels. No such certification is required in cases where the frequencies assigned to the DBS and to the space station transmitting in the 17.3–17.8 GHz band do not overlap.

(4) The information and any certification required by paragraph (b) of this section must be submitted to the Commission for each license application that is filed for a space station transmitting in any portion of the 17.3–17.8 GHz band no later than two years after license grant for the space station.

(c) No later than two months prior to launch, each licensee of a space station transmitting in any portion of the 17.3–17.8 GHz band must update the predicted transmitting antenna off-axis gain information provided in accordance with paragraph (a) of this section by submitting measured transmitting antenna off-axis gain information over the angular ranges, measurement frequencies and polarizations specified in paragraphs (a)(1) through (5) of this section. The transmitting antenna off-axis gain information should be measured under conditions as close to flight configuration as possible. As an alternative, licensees authorized to operate at locations one degree or greater from a prior-filed DBS space station may submit simulated transmitting antenna off-axis gain data in lieu of measured data, over the same angular ranges, frequencies and polarizations.

(d) No later than two months prior to launch, or when applying for authority to change the location of a space station transmitting in any portion of the 17.3–17.8 GHz band that is already in orbit, each such space station licensee must provide pfd calculations based on the measured off-axis gain data submitted in accordance with paragraph (c) of this section, as follows:

(1) * * *

(ii) At the location of any subsequently filed U.S. DBS space station where the pfd level in the 17.3–17.8 GHz band calculated on the basis of measured gain data exceeds −117 dBW/m^2/100 kHz. In this paragraph (d)(1)(ii), the term ''subsequently filed U.S. DBS space station'' refers to any co-frequency Direct Broadcast Satellite service space station proposed in a license application filed with the Commission after the operator of a space station transmitting in any portion of the 17.3–17.8 GHz band submitted the predicted data required by paragraphs (a) and (b) of this section but before submission of the measured data required by this paragraph. Subsequently filed U.S. DBS space stations may include foreign-licensed DBS space stations seeking authority to serve the United States market. The term does not include any applications (or authorizations) that have been denied, dismissed, or are otherwise no longer valid, nor does it include foreign-licensed DBS space stations that have not filed applications with the Commission for market access in the United States.

(2) The pfd calculations must take into account the maximum permitted longitudinal station-keeping tolerance, orbital inclination and orbital eccentricity of both the transmitting 17.3–17.8 GHz and DBS space stations, and must:

* * * * *

(e) If the aggregate pfd level calculated from the measured data submitted in accordance with paragraph (d) of this section is in excess of the threshold pfd level of −117 dBW/m2/100 kHz:

(1) At the location of any prior-filed U.S. DBS space station as defined in paragraph (b)(1) of this section, then the operator of the space station transmitting in any portion of the 17.3–17.8 GHz band must either:

* * * * *

(2) At the location of any subsequently filed U.S. DBS space station as defined in paragraph (d)(1) of this section, where the aggregate pfd level submitted in accordance with paragraph (d) of this section is also in excess of the pfd level calculated on the basis of the predicted data submitted in accordance with paragraph (a) of this section that were on file with the Commission at the time the DBS space station application was filed, then the operator of the space station transmitting in the 17.3–17.8 GHz band must either:

* * * * *

(3) No coordination or adjustment of operating parameters is required in cases where there is no overlap in frequencies assigned to the DBS and the space station transmitting in the 17.3–17.8 GH band.

(f) The applicant or licensee for the space station transmitting in the 17.3–17.8 GHz band must modify its license, or amend its application, as appropriate, based upon new information:

* * * * *

(2) If the operator of the space station transmitting in the 17.3–17.8 GHz band adjusts its operating parameters in accordance with paragraph (e)(1)(ii) or (e)(2)(ii) or this section.

(g) Absent an explicit agreement between operators to permit more closely spaced operations, U.S. authorized 17/24 GHz BSS or FSS space stations transmitting in the 17.3–17.8 GHz band and U.S. authorized DBS space stations with co-frequency assignments may not be licensed to operate at locations separated by less than 0.2 degrees in orbital longitude.

(h) All operational space stations transmitting in the 17.3–17.8 GHz band must be maintained in geostationary orbits that:

* * * * *

(i) U.S. authorized DBS networks may claim protection from space path interference arising from the reverse-band operations of U.S. authorized space stations transmitting in the 17.3–17.8 GHz band to the extent that the DBS space station operates within the bounds of inclination and eccentricity listed in paragraphs (i)(1) and (2) of this section. When the geostationary orbit of

the DBS space station exceeds these bounds on inclination and eccentricity, it may not claim protection from any additional space path interference arising as a result of its inclined or eccentric operations and may only claim protection as if it were operating within the bounds listed in paragraphs (i)(1) and (2) of this section:

* * * * *

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03–123, 10–51, 12–38; FCC 22–49; FR ID 114537]

TRS Fund Contributions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (Commission) modifies the cost recovery rules for funding two forms of internet-based telecommunications relay services (TRS)—video relay service (VRS) and internet Protocol Relay Service (IP Relay). The Commission expands the Interstate TRS Fund (TRS Fund or Fund) contribution base for support of those services to include intrastate as well as interstate end-user revenues of TRS Fund contributors. This action will ensure fair treatment of intrastate and interstate communications services and users in the funding of relay services.

DATES:

Effective date: This rule is effective December 27, 2022.

Compliance date: July 1, 2023.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Disability Rights Office, Consumer & Governmental Affairs Bureau, at (202) 418–1264 or *Michael.Scott@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Report and Order, document FCC 22–49, adopted June 26, 2022, released June 30, 2022, in CG Docket Nos. 03–123, 10–51, and 12–38. The Commission previously sought comment on these issues in *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program, Misuse of internet Protocol (IP) Relay Service,* Notice of Proposed Rulemaking (*NPRM*), CG Docket Nos. 03–123, 10–51, and 12–38, FCC 20–161, published at 86 FR 14859, March 19, 2021. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov,* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Synopsis

1. *Background.* Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure that both ''interstate and intrastate'' TRS are available ''to the extent possible and in the most efficient manner.'' 47 U.S.C. 225(b)(1). The Act directs the Commission to adopt, administer, and enforce regulations governing the provision of interstate and intrastate TRS, including rules on cost separation, which ''shall generally provide'' that interstate TRS costs are recovered from all subscribers for every interstate service and intrastate TRS costs are recovered from the intrastate jurisdiction. The Act also authorizes, but does not require, the establishment of state-administered TRS programs, subject to approval by the Commission. Currently, all 50 states, the District of Columbia, and several United States territories have TRS programs approved by the Commission. For ease of reference, The Commission refers to all state and territory TRS programs as state TRS programs. The Commission requires that state TRS programs include text-based TRS and speech-to-speech relay (STS).

2. To provide for the recovery of interstate TRS costs, the Commission established the interstate TRS Fund in 1993. Telecommunications carriers, as well as providers of interconnected and non-interconnected voice-over-internet-Protocol (VoIP) service, are required to contribute to the TRS Fund, on a quarterly basis, a specified percentage of their end-user revenues for the prior year. Providers of international as well as interstate services are currently required to contribute to the TRS Fund. For ease of reference, the Commission uses the term ''interstate'' to mean ''interstate and international.''

3. Although initially limited to supporting interstate TRS, the scope of the TRS Fund changed beginning in 2000, as the Commission authorized internet-based forms of TRS—VRS, IP Relay, and internet Protocol Captioned Telephone Service (IP CTS). VRS is a form of TRS that enables people with hearing or speech disabilities who use sign language to make telephone calls over broadband with a videophone. IP Relay is a form of TRS that permits an individual with a hearing or a speech disability to communicate in text using an internet Protocol-enabled device via the internet. IP CTS is a form of TRS that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an internet Protocol-enabled device via the internet to simultaneously listen to the other party and read captions of what the other party is saying.

4. When the Commission first authorized use of internet-based forms of TRS, it decided, as an interim measure to speed the development of these services, that all of the costs of providing internet-based TRS should be paid by contributors to the TRS Fund, based only on their interstate end-user revenues. This approach was deemed preferable to burdening state relay programs with the responsibility to fund and supervise, on a state-by-state basis, the provision of intrastate relay services via these nascent technologies. In those proceedings, the Commission did not consider the alternative, adopted here, of expanding the TRS Fund contribution base to include intrastate end-user revenues. However, the Commission stated an intention to revisit these interim funding arrangements in the future.

5. In 2019, the Commission revisited the funding arrangement for one form of internet-based TRS, IP CTS. Recognizing that the ''interim'' funding mechanism for IP CTS disproportionately burdens providers and users of interstate services, the Commission concluded it was no longer justifiable. Therefore, the Commission amended its rules to expand the TRS Fund contribution base for that service to include intrastate as well as interstate end-user revenues. TRS Fund Contributions, Document FCC 19–118, published at 85 FR 462, January 6, 2020 (*IP CTS Contributions Order*).

6. *Discussion.* The Commission amends its rules to provide that TRS Fund contributions for the support of VRS and IP Relay shall be calculated based on the total interstate and intrastate end-user revenues of each telecommunications carrier and VoIP service provider. The Commission thereby replaces ''interim'' funding measures adopted nearly two decades ago. The record supports the Commission's conclusion that the rules it adopts will provide a fair allocation of TRS Fund contribution obligations among those entities subject to its TRS funding authority. The total contributions needed to support the TRS Fund will not be affected, but the Commission anticipates that (assuming there is no unrelated change in the TRS Fund budget for supporting these

services) TRS Fund contributions paid as a percentage of interstate end-user revenues for the support of VRS and IP Relay will decline by approximately 55%.

7. The Commission adopts this rule change for the reasons set forth in the *NPRM. First,* the current funding arrangements for VRS and IP Relay were authorized some 20 years ago as interim measures to speed the development of these services, and that purpose has been achieved. VRS is the second largest TRS program, and IP Relay's annual minutes exceed the annual TRS Fund-supported minutes of all state TRS programs combined.

8. *Second,* the Commission's action corrects the inherent inequity of the current funding arrangements. VRS and IP Relay, which cumulatively require close to $540 million in TRS Fund backing, are supported entirely from interstate end-user telecommunications and VoIP revenues, with 0% contribution from intrastate revenues. By contrast, approximately 76% of the costs of relay services provided through state TRS programs are funded from intrastate sources, and, since the Commission's 2019 IP CTS funding reforms were implemented, approximately 55% of IP CTS costs are funded from intrastate end-user revenues. The Commission notes that contributions to support IP CTS are divided between interstate and intrastate sources in the same percentages as the reported end-user revenue. According to the 2021 USF Monitoring Report, approximately 55% of total end-user telecommunications and interconnected VoIP revenues are intrastate, and 45% are interstate. Although the contribution base for TRS includes *non-interconnected* VoIP end-user revenues, while the USF contribution base does not, the inclusion of this relatively small category is unlikely to have a major impact on the Commission's estimate of the relative percentages of intrastate and interstate end-user revenues in the TRS contribution base.

9. As a result, the burden of supporting VRS and IP Relay has widely disparate impacts on TRS Fund contributors, based solely on the extent of interstate usage of their services. For TRS Fund Year 2022–23, for example, the administrator has recommended a contribution factor of 0.01125, meaning that a provider of interstate-only services must contribute approximately 1.11% of its total annual end-user revenues to support VRS and IP Relay. By contrast, the average TRS Fund contributor pays only 0.50% of its total annual end-user revenues to support those services. And providers of intrastate-only services contribute nothing, despite the availability of VRS and IP Relay for intrastate as well as interstate calling.

10. *Third,* recovering VRS and IP Relay costs based on total end-user revenues reduces the likelihood of distortions in the pricing of interstate and intrastate voice services due to inaccurate market signals regarding their relative costs. As the Commission has recognized in various contexts, applying artificial regulatory distinctions or other disparate treatment to providers of similar services may create unintended market distortions, which can reduce the effectiveness of competition in ensuring efficient pricing of telecommunications services.

11. *Fourth,* the total amount of end-user revenues from which TRS Fund contributions can be drawn has been steadily decreasing over time, worsening the impact of the current funding arrangement on interstate service providers and users and increasing any resulting distortions in the pricing of intrastate and interstate service. Expanding contributions to support VRS and IP Relay to encompass intrastate as well as interstate revenues may strengthen the sustainability of these services.

12. *Fifth,* no state TRS program offers VRS or IP Relay, and there continue to be impediments to any state successfully administering and funding intrastate VRS and IP Relay. Accordingly, the Commission has no reason to believe that encouraging or mandating state program support of VRS and IP Relay would be a practical alternative. The Commission notes that its action today does not preclude any state from seeking certification to provide VRS or IP Relay, but given the lack of indication in the record that any state agency intends to do so, the Commission need not address at this time what changes in funding arrangements could be appropriate in the event of such a change in state policies.

13. *Finally,* no party has identified any differences between VRS and IP Relay, on the one hand, and IP CTS, on the other, that would support maintaining different funding arrangements for these services.

14. *Legal Authority.* The Commission finds that it has statutory authority to include the intrastate end-user revenues of telecommunications carriers and VoIP service providers in the calculation of TRS Fund contributions to support VRS and IP Relay. Section 225 of the Act expressly directs the Commission to ensure that both interstate and intrastate TRS are available and grants the Commission broad authority to establish regulations governing both interstate and intrastate TRS, including TRS cost recovery. Further, the Act affords the Commission, without limitation, ''the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this [Act] with respect to any common carrier engaged in interstate communication.'' 47 U.S.C. 225(b)(2). In addition, section 715 of the Act requires that VoIP service providers ''participate in and contribute to the Telecommunications Relay Services Fund . . . in a manner prescribed by the Commission . . . consistent with and comparable to the obligations of other contributors to such Fund.'' 47 U.S.C. 616. The Commission also notes that Congress expressly carved out section 225 of the Act from the Act's general reservation of state authority over intrastate communications, and that responsibility for administering TRS is shared with the states only to the extent that a state applies for and receives Commission approval to exercise such authority. The Commission concludes that, where a form of TRS is not offered in state TRS programs, the Commission may adopt reasonable measures to ensure equitably distributed contributions from all interstate and intrastate service providers subject to the Commission's authority under sections 225 and 715 of the Act.

15. To collect TRS Fund contributions for VRS and IP Relay from intrastate and interstate end-user revenues, the administrator will follow the same procedure currently used for IP CTS, except that a single contribution factor will be used to determine the total level of support required for all three services. The interstate-only contribution factor will continue to be used, but only to support the interstate costs of services provided in state TRS programs (currently TTY-based TRS, STS, and non-internet-based CTS). The TRS Fund administrator will determine a revenue requirement for the three services, based on the applicable compensation formulas and projected demand for each service. Next, the TRS Fund administrator will compute a TRS Fund contribution factor for the three services, by dividing the revenue requirement by the total intrastate and interstate end-user revenues reported by TRS Fund contributors on Forms 499–A.

16. This approach is simple and feasible to administer, requires only

minor modification of our rules, and distributes the funding obligation among TRS Fund contributors in a reasonably equitable manner, with each contributor paying the same percentage of its total interstate and intrastate end-user revenues for support of internet-based TRS. Further, this approach does not require jurisdictional separation of TRS costs. As under the current funding mechanism for VRS and IP Relay, no cost separation is needed because all costs of the service will be supported by the TRS Fund, and the amounts paid by each Fund contributor are unaffected by the proportion of TRS costs that might be deemed interstate or intrastate. Accordingly, the Commission finds it unnecessary to refer this matter to a Federal-State Joint Board.

17. *Economic Impact.* The Commission adopts its tentative conclusion that the benefits of more efficient production and consumption exceed the costs of the proposed rule change. Broadening the TRS funding base will tend to reduce any current distortions in the relative prices of intrastate and interstate telecommunications and VoIP services, increasing economic efficiency by more accurately signaling relative costs to purchasers, which in turn will generate more efficient provider investment signals.

18. Further, this transfer results in no net increase in contributions for TRS Fund contributors as a whole. Expanding the TRS Fund contribution base for VRS and IP Relay to include intrastate revenues will reduce the TRS funding contributions paid by providers of interstate telecommunications and VoIP services and concomitantly increase the contributions paid by providers of intrastate services. To the extent this would occur, it is not a cost of the Commission's rule change, but a transfer of the contribution burden from some providers and their customers to other providers and their customers. As an example, based on the administrator's recommended budget for TRS Fund Year 2022–23, approximately 55% of TRS Fund expenditures on VRS and IP Relay in 2022–23, or $297 million—which under the existing rules would be collected from contributors' interstate end-user revenues—will be collected from intrastate end-user revenues instead. This represents a $297 million transfer in the incidence of TRS Fund contributions from the interstate to the intrastate jurisdiction, but the total funding requirement is unaffected. In addition, the record does not indicate that any transitional costs of this transfer, which the Commission mitigates by extending the implementation timeline, as discussed further below, could be so substantial as to outweigh the long-lasting efficiency benefits described above.

19. The Commission is cognizant that this change will have disparate impacts on carriers and service providers, as each provider's contribution may be adjusted up or down depending on the percentage of their end-user revenues that is classified as intrastate. NTCA—The Rural Broadband Association suggests that such changes may have ''inequitable'' effects on some rural service providers and customers, pointing out that the analogous change in IP CTS funding adopted in 2019 led to significant increases in contribution obligations for rural providers. However, NTCA does not dispute that such changes are necessary to correct more pervasive, longstanding inequities in TRS funding, or that those service providers who now face increased costs—as a result of our action to equalize each contributor's percentage contribution from total end-user revenues—have derived offsetting benefits over the preceding two decades, by paying a much *lower than average* share of their total end-user revenues to support TRS. While the Commission is mindful of the increased contribution cost that some entities must bear, it does not consider such increases inequitable. Therefore, the Commission denies NTCA's request to adjust the contribution formula for rural service providers to limit their required contributions from intrastate end-user revenues. The Commission also notes that NTCA has not provided specific evidence that any provider would be unable to recover such increased costs. Further, given that the cost of TRS Fund support for VRS and IP Relay is approximately 25% lower than for IP CTS, the Commission expects the net effect on any provider's total TRS Fund contribution to be less burdensome than the impact of the analogous rule change adopted in 2019 with regard to IP CTS funding.

20. The Commission does not address NTCA's request for unspecified changes in access charge cost recovery rules, which is outside the scope of this proceeding and, in any event, does not provide a specific description of either the perceived problem or a proposed solution. After the Commission adopted a cap on all switched access rate elements in 2011, the Wireline Competition Bureau clarified, pursuant to its delegated authority, how incumbent local exchange carriers may recover increases in TRS Fund contribution costs and waived applicable rules to facilitate such cost recovery. To the extent that any service provider believes the access charge rules unreasonably hinder its recovery of TRS Fund contribution costs, the Commission notes that specific concerns may be brought to the Commission's or Wireline Competition Bureau's attention for further clarification, waiver, or other action consistent with the 2011 order (76 FR 65965, October 25, 2011) and the Commission's rules.

21. *Compliance Deadline.* Telecommunications carriers and VoIP service providers shall be required to contribute a percentage of intrastate as well as interstate end-user revenues to fund VRS and IP Relay beginning July 1, 2023. Based on the record, the Commission finds good cause to establish a more extended compliance timeline than the seven months allowed in the *IP CTS Contribution Order.* The Commission is persuaded by commenters that a transition period of substantially less than one year could subject some TRS Fund contributors to undue economic stress. A longer period will allow additional time for carriers and providers facing changes in required contributions to adjust budgets, proposals, billing and compliance systems, and other planning processes. Setting a compliance date of July 1, 2023, will afford contributors close to one year from the effective date of this final rule to prepare for compliance. In addition, it is administratively efficient to tie the compliance date to the start of a new TRS Fund year. As an additional administrative benefit, a July 1 compliance date aligns with the filing date for incumbent local exchange carriers' annual tariffs. Although IDT Corporation (IDT) argues that administrative efficiency should not be the Commission's primary concern, the Commission's decision takes account of other factors in addition to administrative efficiency. To avoid unnecessarily complicating the TRS Fund contribution process and the cost recovery adjustments that must be made by affected contributors, the Commission finds it appropriate to align the implementation of this change with the beginning of TRS Fund Year 2023–24 on July 1, 2023.

Final Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *NPRM* and sought written public comment on the proposals in that document, including comment on the IRFA.

23. *Need For, and Objectives of, the Rules.* The Commission modifies the cost recovery rules for VRS and IP Relay to provide a fair and reasonable allocation of the funding burden for TRS. Specifically, providers of intrastate as well as interstate telecommunications and VoIP services must contribute to the TRS Fund for the support of VRS and IP Relay, based on a percentage of their total annual end-user revenues from intrastate, interstate, and international services. Requiring that contributions to support VRS and IP Relay include contributions from intrastate end-user revenues removes contribution asymmetry and ensures intrastate revenue is available to support intrastate VRS and IP Relay. This action addresses the interim cost recovery rules for VRS and IP Relay and better aligns the cost recovery rules with the terms of section 225 of the Act. *See* 47 U.S.C. 225. It also both reduces the inequitable burden on providers of interstate telecommunications and VoIP services and strengthens the funding base for these critical services.

24. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. No comments were filed in response to the IRFA.

25. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the proposed rules in this proceeding.

26. *Small Entities to which the Rules will Apply.* The rules adopted in the *Report and Order* will affect the following types of small entities: wired telecommunications carriers; interexchange carriers; local resellers; toll resellers; other toll carriers; wireless telecommunications carriers (except satellite); satellite telecommunications service providers; and providers of all other telecommunications.

27. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The rules adopted in the *Report and Order* do not impose new or additional reporting, recordkeeping, or other compliance requirements on small entities.

28. *Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* Expanding the TRS Fund contribution base for VRS and IP Relay to include intrastate end-user revenues will cause a corresponding reduction in the contributions required from interstate and international end-user revenues. As a result, while small entities with mostly intrastate revenue will be required to make increased payments to the TRS Fund, other small entities with mostly interstate revenue will experience a reduction in TRS Fund contributions. This change will not increase the total contributions required. The additional costs incurred by some small entities are justified by the benefits of appropriately allocating the funding of the provision of VRS and IP Relay among all telecommunications carriers and VoIP providers.

29. The Commission considered whether to revise the contribution formula or the cost recovery mechanisms available to small rural carriers and providers as suggested by NTCA. The Commission determined that the record did not contain sufficient evidence to justify such changes. The Commission left open the ability for an adversely affected carrier or provider to petition the Commission for waiver with specific evidence showing that current rules inhibited said carrier or provider from fully recovering contribution costs. The Commission also modified the proposed compliance deadline in response to comments filed in the proceeding to provide affected entities close to one year to comply with the modified contribution obligations. This should allow small entities sufficient time to adjust budgets, proposals, billing and compliance systems, and other planning processes for meeting their funding obligations.

30. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.* None.

Ordering Clauses

31. Pursuant to sections 1, 2, 225, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225, 616, the *Report and Order* is adopted, and part 64 of title 47 is amended.

Congressional Review Act

32. The Commission sent a copy of the *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

33. The *Report and Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

List of Subjects in 47 CFR Part 64

Communications, Communications common carriers, Individuals with disabilities, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Regulations

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Amend § 64.604 by revising paragraphs (c)(5)(ii) and (c)(5)(iii)(A) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph (c)(5)(ii), costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.606, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate IP CTS, and (beginning July 1, 2023) for VRS and IP Relay, if not provided through a certified state program under § 64.606, shall be recovered from all subscribers for every interstate and intrastate service, using a shared-funding cost recovery mechanism.

(iii) * * *

(A) *Contributions.* (*1*) Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP service providers pursuant to § 64.601(b)) and every provider of non-interconnected VoIP service shall contribute to the TRS Fund, as described in this paragraph (c)(5)(iii)(A):

(*i*) For the support of TRS other than IP CTS, VRS, and IP Relay, on the basis of interstate end-user revenues; and

(*ii*) For the support of IP CTS, and (beginning July 1, 2023) for VRS and IP Relay, on the basis of interstate and intrastate end-user revenues.

(*2*) Contributions shall be made by all carriers who provide interstate or intrastate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international, and resale services.

* * * * *

[FR Doc. 2022–25294 Filed 11–23–22; 8:45 am]

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Proposed Rules

Federal Register

Vol. 87, No. 226

Friday, November 25, 2022

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1487; Project Identifier MCAI–2022–00688–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 certain Airbus SAS Model A350–941 airplanes. This proposed AD was prompted by a report that an interference was detected between the installed nut and the foot radius of frame (FR) 96, between stringer 6 and stringer 7, on the right-hand side. This proposed AD would require removing the affected fasteners and inspecting the affected area for damage, and applicable corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 January 9, 2023.

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* by searching for and locating Docket No. FAA–2022–1487; 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 material that is proposed for IBR in this NPRM, 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* by searching for and locating Docket No. FAA–2022–1487.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@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–2022–1487; Project Identifier MCAI–2022–00688–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 *www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@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 2022–0093, dated May 25, 2022 (EASA AD 2022–0093) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes.

This proposed AD was prompted by a report that an interference was detected between the installed nut and the foot radius of FR 96, between stringer 6 and stringer 7, on the right-hand side. Further investigation showed that the minimum distances for nut installation were not fulfilled, and some airplanes were damaged in the FR 96 foot radius area. The FAA is proposing this AD to address possible damage at the FR 96 foot radius area. This condition, if not addressed, may affect the structural integrity of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0093 specifies procedures for removing the affected fasteners and doing detailed, high frequency eddy current, and rototest inspections for damage (either superficial, limited to the paint, *e.g.,* discoloration to the paint or protective layer; or non-superficial, *e.g.,* dents, cracks, bends, nicks, and discoloration to the metal) of the fastener hole, fillet radius, and collar areas at FR96, stringers 6 and 7 on the right-hand side, and applicable corrective actions. Corrective actions include installing new fasteners and nuts with adapted aluminum washers and repair.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0093 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 2022–0093 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0093 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 2022–0093 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 2022–0093. Service information required by EASA AD 2022–0093 for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2022–1487 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 5 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
3 work-hours × $85 per hour = $255	$0	$255	$1,275

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × $85 per hour = $255	$240	$495

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2022–1487; Project Identifier MCAI–2022–00688–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0093, dated May 25, 2022 (EASA AD 2022–0093).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that an interference was detected between the installed nut and the foot radius of frame (FR) 96, between stringer 6 and stringer 7, on the right-hand side. The FAA is issuing this AD to address possible damage at the FR 96 foot radius area. This condition, if not addressed, may affect the structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0093.

(h) Exceptions to EASA AD 2022–0093

(1) Where EASA AD 2022–0093 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where the definitions of ''Affected part'' and ''Affected area'' in EASA AD 2022–0093 specify ''the SB,'' for this AD, replace the text ''the SB'' with ''the inspection SB.''

(3) The ''Remarks'' section of EASA AD 2022–0093 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, 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 (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, 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 (i)(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.

(j) Related Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0093, dated May 25, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0093, 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.*

(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 November 16, 2022.

Christina Underwood,

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

[FR Doc. 2022–25697 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1483; Project Identifier MCAI–2022–00435–T]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This proposed AD was prompted by a report from the supplier of a manufacturing quality escape in which some sensing elements were manufactured with insufficient salt fill. This could result in an inability to detect hot bleed air leaks. This proposed AD would require, depending on airplane serial number, reviewing the airplane maintenance records for affected bleed leak detection system sensing elements, testing the sensing elements, replacing those that fail, and witness marking those that pass, as specified in a Transport Canada Civil Aviation (TCCA) AD, which is proposed for incorporation by reference. This proposed AD would also prohibit the installation of affected parts under certain conditions. The FAA is

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

DATES: The FAA must receive comments on this proposed AD by January 9, 2023.

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–2022–1483; 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 TCCA material that will be incorporated by reference (IBR) in this AD, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* website *tc.canada.ca/en/aviation.*
- For Kidde Aerospace & Defense service information identified in this NPRM, 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 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.

FOR FURTHER INFORMATION CONTACT: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1483; Project Identifier MCAI–2022–00435–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 Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

TCCA, which is the aviation authority for Canada, has issued TCCA AD CF–2022–13, dated March 28, 2022 (TCCA AD CF–2022–13) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The MCAI states that Airbus Canada Limited Partnership received disclosure letters from the supplier that reported a manufacturing quality escape in which some of the overheat detection sensing elements were manufactured with insufficient salt fill. These sensing elements are used by the bleed air leak detection system for temperature detection in the event of a hot bleed air leak. Insufficient salt fill can result in an inability to detect hot bleed air leaks, which can cause damage to surrounding structures and systems that could prevent continued safe flight and landing.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1483.

Related Service Information Under 1 CFR Part 51

TCCA AD CF–2022–13 specifies procedures for, depending on airplane serial number, reviewing the airplane maintenance records for affected bleed leak detection system sensing elements, testing the sensing elements, replacing those that fail, and witness marking those that pass. TCCA AD CF–2022–13 also prohibits the installation of any affected parts unless it is a serviceable part.

Kidde Aerospace & Defense Service Bulletin CFD–26–1, Revision 6, dated February 28, 2022, specifies affected continuous fire detector (CFD) part numbers and testing procedures.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in TCCA AD CF–2022–13 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 TCCA AD CF–2022–13 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with TCCA AD CF–2022–13 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by TCCA AD CF–2022–13 for compliance will be available at regulations.gov under Docket No. FAA–2022–1483 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 69 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 125 work-hours × $85 per hour = $10,625 (for Group A, 52 airplanes)	0	Up to $10,625	Up to $552,500.
Up to 1 work-hours × $85 per hour = $85 (for Group B, 17 airplanes)	0	Up to $85	Up to $1,445.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 58 work-hours × $85 per hour = $4,930 (for Group A airplanes)	Up to $101,045	Up to $105,975.
Up to 183 work-hours × $85 per hour = $15,555 (for Group B airplanes)	Up to $101,045	Up to $116,600.

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 Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2022–1483; Project Identifier MCAI–2022–00435–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada Civil Aviation (TCCA) AD CF–2022–13, dated March 28, 2022 (TCCA AD CF–2022–13).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report from the supplier of overheat detection sensing elements that there was a manufacturing quality escape in which some sensing elements were manufactured with insufficient salt fill. The FAA is issuing this AD to address insufficient salt fill of the

overheat detection sensing elements. The unsafe condition, if not addressed, could result in an inability to detect hot bleed air leaks, which can cause damage to surrounding structures and systems that could prevent continued safe flight and landing.

(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, TCCA AD CF–2022–13.

(h) Exception to TCCA AD CF–2022–13

(1) Where TCCA AD CF–2022–13 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where TCCA AD CF–2022–13 refers to hours air time, this AD requires using flight hours.

(3) Where TCCA AD CF–2022–13 defines ''Affected part'' and refers to part numbers in a certain service bulletin, for this AD, operators must use Kidde Aerospace and Defense Service Bulletin CFD–26–1, Revision 6, dated February 28, 2022, to determine the part number.

(4) Where ''Part I'' of TCCA AD CF–2022–13 specifies the parts installation prohibition for certain airplanes, replace the text ''associated with Part A through Part J of the first SB or Part A through Part C of the second SB'' with ''associated with Part A through Part J of ACLP SB BD500–362002 Issue 001, dated February 18, 2022, or Part A through Part C of ACLP SB BD500–362003 Issue 001, dated February 18, 2022.''

(i) Additional 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 Airbus Canada Limited Partnership's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(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.

(j) Additional Information

For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Transport Canada Civil Aviation (TCCA) AD CF–2022–13, dated March 28, 2022.

(ii) Kidde Aerospace & Defense Service Bulletin CFD–26–1 Revision 6, dated February 28, 2022.

(3) For TCCA AD CF–2022–13, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* website *tc.canada.ca/en/aviation.*

(4) 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.*

(5) 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.

(6) 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 November 16, 2022.

Christina Underwood,

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

[FR Doc. 2022–25695 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1485; Project Identifier MCAI–2022–00522–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–2A12 airplanes. This proposed AD was prompted by a report that certain fasteners attaching the fuselage skin to a certain stringer may be missing. This proposed AD would require inspecting for missing fasteners and damage, including cracking, of the affected area, and repair or installation of fasteners if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 9, 2023.

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–2022–1485; 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 service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website bombardier.com.
- 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.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ‘‘Docket No. FAA–2022–1485; Project Identifier MCAI–2022–00522–T’’ at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

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

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2022–17, dated April 13, 2022 (TCCA AD CF–2022–17) (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–700–2A12 airplanes. The MCAI states that certain fasteners attaching the fuselage skin to stringer 19 between fuselage station (FS) FS945.75 and FS961.45 may be missing. The affected area of the fuselage is a build-up of skin, stringers, and frames, and is identified as a principal structural element for which missing fasteners could significantly reduce safety margins. The FAA is proposing this AD to address missing fasteners, which may subject the skin to inter-rivet buckling under compressive load, creating a hazard of permanent deformation and/or cracking of the skin. The MCAI requires an inspection for missing fasteners and damage, repair of damage, and installation of any fasteners that were missing. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 700–53–7547, dated July 21, 2021. This service information specifies procedures for inspecting the affected area of the fuselage skin attached to stringer 19 between fuselage station (FS) FS945.75 and FS961.45 for missing fasteners and associated damage, and for installing missing fasteners and repairing any damage. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

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

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 11 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
5 work-hours × $85 per hour = $425	$0	$425	$4,675

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
27 work-hours × $85 per hour = $2,295	$5,792	$8,087

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:

Bombardier, Inc.: Docket No. FAA–2022–1485; Project Identifier MCAI–2022–00522–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category, serial numbers 70020 through 70039 inclusive, 70041, 70046, and 70047.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that certain fasteners attaching the fuselage skin to a certain stringer may be missing. The FAA is issuing this AD to address missing fasteners, which may subject the skin to inter-rivet buckling under compressive load. The unsafe condition, if not addressed, could create a hazard of permanent deformation and/or cracking of the skin.

(f) Compliance

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

(g) Required Actions

Within 32 months from the effective date of this AD: Do a detailed visual inspection for missing fasteners and damage, including cracking, in the fuselage skin attached to stringer 19 between fuselage station (FS) FS945.75 and FS961.45. Repair any damage found, and install fasteners where missing, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–53–7547, dated July 21, 2021.

(h) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(i) Additional Information

(1) Refer to TCCA AD CF–2022–17, dated April 13, 2022, for related information. This TCCA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1485.

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

(j) 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 Service Bulletin 700–53–7547, dated July 21, 2021.

(ii) [Reserved]

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

ac.yul@aero.bombardier.com; website *bombardier.com.*

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

(5) You may view this 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 November 16, 2022.

Christina Underwood,

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

[FR Doc. 2022–25694 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1486; Project Identifier AD–2022–01026–T]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Model G–1159A, G–1159B and all G–IV, and GIV–X airplanes. This proposed AD was prompted by a report that the ground spoiler actuator installation allows improper hydraulic line connections that could result in unintended asymmetrical spoiler deployment. This proposed AD would require incorporating corrective actions that physically prevent improper connection of the hydraulic lines to the ground spoiler actuator. 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 January 9, 2023.

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–2022–1486; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Samuel Belete, Aerospace Engineer, Systems and Equipment Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5580; email: *9-ASO-ATLACO-ADs@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–2022–1486; Project Identifier AD–2022–01026–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Samuel Belete, Aerospace Engineer, Systems and Equipment Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5580; email: *9-ASO-ATLACO-ADs@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report that a Gulfstream Model G–IV airplane was involved in a fatal accident on December 15, 2021 after spoilers deployed in an asymmetrical manner. The asymmetrical spoiler deployment resulted in in-flight loss of control of the airplane. The fatal flight was the first flight after maintenance actions where the spoiler hydraulic lines were improperly connected (reversed) to the ground spoiler actuator. The ground spoiler actuator configuration allows improper hydraulic line connections during maintenance action as a result of identically threaded connections in close proximity to each other. Improper connection of the ground spoiler hydraulic lines, if not addressed, could result in unintended asymmetrical spoiler deployment, leading to reduced controllability of the airplane, or loss of control of the airplane in-flight or upon landing.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require incorporating corrective actions (includes replacing a ground spoiler actuator hydraulic hose and associated fittings) that physically prevent improper connection of the hydraulic lines to the ground spoiler actuator.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 550 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
Incorporating corrective actions (includes replacing the hydraulic hose to the ground spoiler actuator and associated fittings).	16 work-hours × $85 per hour = $1,360.	$500	$1,860	$1,023,000

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 airplane 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, Airplane, 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]

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

Gulfstream Aerospace Corporation: Docket No. FAA–2022–1486; Project Identifier AD–2022–01026–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Gulfstream Aerospace Corporation airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

(1) Model G–1159A airplanes having S/Ns 385, 387, 388, and 390 through 498 inclusive.

(2) Model G–1159B airplanes having S/Ns 009, 016, 042, 048, 054, 064, 086, 088, 095, 098, 102, 119, 123, 125, 131, 140, 151, 154, 155, 156, 165, 166, 189, 198, 199, 207, 219, 237, 245, 254, 255, and 257

(3) Model G–IV airplanes, all serial numbers.

(4) Model GIV–X airplanes, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by a report that a Gulfstream Model G–IV airplane was involved in a fatal accident on December 15, 2021 after spoilers deployed in an asymmetrical manner. The asymmetrical spoiler deployment resulted in in-flight loss of control of the airplane. The fatal flight was the first flight after maintenance actions where the spoiler hydraulic lines were improperly connected (reversed) to the ground spoiler actuator. The ground spoiler actuator configuration allows an incorrect connection of the ground spoiler hydraulic lines. The FAA is issuing this AD to prevent incorrect connection of the hydraulic lines to the ground spoiler actuator. The unsafe condition, if not addressed, could result in unintended asymmetrical spoiler deployment leading to reduced controllability of the airplane, or loss of control of the airplane in-flight or upon landing.

(f) Compliance

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

(g) Required Actions

At the applicable time specified in paragraph (g)(1) or (2) of this AD, incorporate corrective actions (includes replacing a ground spoiler actuator hydraulic hose and associated fittings) that physically prevent improper connection of the hydraulic lines to the ground spoiler actuator, in accordance with a method approved by the Manager, Atlanta ACO Branch, FAA.

(1) For Model G–1159A, G–1159B, and G–IV airplanes: Within 18 months after the effective date of this AD.

(2) For Model GIV–X airplanes: Within 60 months after the effective date of this AD.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Atlanta ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i) of this AD.

(i) Related Information

For more information about this AD, contact Samuel Belete, Aerospace Engineer, Systems and Equipment Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5580; email: *9-ASO-ATLACO-ADs@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued on November 16, 2022.

Christina Underwood,

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

[FR Doc. 2022–25693 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1482; Project Identifier MCAI–2022–00697–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. This proposed AD was prompted by an investigation of incorrectly manufactured sleeves that were potentially installed in the main landing gear (MLG) forward door linkage assembly. This proposed AD would require review of technical records and inspections to determine if a discrepant sleeve is installed, replacement of any discrepant sleeve and re-identification of the MLG forward door linkage assembly. This proposed AD would also prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 9, 2023.

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–2022–1482; 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 service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone North America (toll-free): 855–310–1013, Direct: 647–277–5820; email *thd@dehavilland.com;* website *dehavilland.com*.
- For service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone North America (toll-free): 855–310–1013, Direct: 647–277–5820; email *thd@dehavilland.com;* website *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.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1482; Project Identifier MCAI–2022–00697–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 Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued AD CF–2022–29, dated May 27, 2022 (Transport Canada AD CF–2022–29) (also referred to as the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) airplanes. The MCAI states that some forward door linkage sleeves, part number (P/N) 46878–1, have been manufactured without lubrication grooves on the outer diameter. An investigation confirmed that incorrectly manufactured sleeves were potentially supplied from October 2019 to July 2021. A discrepant sleeve with missing lubrication grooves can result in the fatigue failure of the forward door linkage, leading to possible interference with the extension or retraction of the corresponding MLG. This condition, if not corrected and when combined with other failures, could result in an asymmetric MLG configuration at landing and a subsequent runway excursion.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1482.

Related Service Information Under 1 CFR Part 51

The FAA reviewed De Havilland Aircraft of Canada Limited Service Bulletin (SB) 84–32–169, dated February 28, 2022. This service information specifies procedures for

review of the airplane records to determine the date of replacement, if any, of sleeve P/N 46878–1, a visual inspection of affected sleeves for the presence of lubrication grooves, and a visual inspection of the swivel link, clevis assembly, and swivel end assembly for discrepancies including signs of damage, deformation, erosion, and corrosion. Corrective actions include replacement of any sleeve that has missing lubrication grooves; repair or replacement of any discrepant swivel link, clevis assembly, and swivel end assembly; and re-identification of the forward door linkage. Assemble the forward door linkage, torque self-locking nuts, and re-install the forward door linkage assemblies.

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 ADDRESSES.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described. This proposed AD would also prohibit the installation of affected parts.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 56 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
3 work-hours × $85 per hour = $255	$0	$255	$14,280

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × $85 per hour = $255 to replace the sleeve	$1,284	$1,539

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

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this 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:

De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2022–1482; Project Identifier MCAI–2022–00697–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 9, 2023.

(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–8–401 and –402 airplanes, certificated in any category, serial numbers 4001, 4003 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by an investigation of incorrectly manufactured sleeves that were potentially installed in the main landing gear (MLG) forward door linkages. The FAA is issuing this AD to address the discrepant sleeves with missing lubrication grooves, which can result in the fatigue failure of the forward door linkage, leading to possible interference with the extension or retraction of the corresponding MLG. The unsafe condition, if not corrected and when combined with other failures, could result in an asymmetric MLG configuration at landing and a subsequent runway excursion.

(f) Compliance

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

(g) Airplane Records Review

Within 30 days after the effective date of this AD, review the airplane records to determine whether any sleeve P/N 46878–1 was replaced after October 29, 2019, on any MLG forward door linkage assembly P/N 46860.

(1) For any sleeve P/N 46878–1 that was replaced after October 29, 2019, and for any sleeve for which its replacement date cannot be conclusively determined from the records: Within 1,500 flight cycles after the effective date of this AD, do the actions specified in paragraphs (g)(1)(i) and (ii) of this AD, in accordance with Section 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin (SB) 84–32–169, dated February 28, 2022.

(i) Do a general visual inspection of the sleeve for the presence of lubrication grooves, and before further flight replace any sleeve that does not have lubrication grooves.

(ii) Do a general visual inspection of the MLG forward door linkage assemblies (swivel link, clevis assembly, and swivel end assembly) for damage, deformation, erosion, and corrosion, and before further flight repair or replace the discrepant parts.

(2) If the records confirm that no maintenance was performed on the MLG forward door linkage assembly P/N 46860 after October 29, 2019, no further action is required by this paragraph.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, a sleeve P/N 46878–1 with missing lubrication grooves.

(i) Additional 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 the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov* or send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Additional Information

(1) Refer to Transport Canada AD CF–2022–29, dated May 27, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1482.

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

(k) Material Incorporated by Reference

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

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

(i) De Havilland Aircraft of Canada Limited Service Bulletin (SB) 84–32–169, dated February 28, 2022.

(ii) [Reserved]

(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 North America (toll-free): 855–310–1013, Direct: 647–277–5820; email *thd@dehavilland.com;* website *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 November 15, 2022.

Ross Landes,

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

[FR Doc. 2022–25692 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1399; Airspace Docket No. 22–AGL–22]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airways V–126, V–156, V–233, and V–422, and Revocation of V–340 and V–371 in the Vicinity of Knox, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–126, V–156, V–233, and V–422, and revoke VOR Federal airways V–340 and V–371. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Knox, IN (OXI), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Knox VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before January 9, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–1399; Airspace Docket No. 22–AGL–22 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the ATS route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2022–1399; Airspace Docket No. 22–AGL–22) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–1399; Airspace Docket No. 22–AGL–22.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning to decommission the Knox, IN, VOR in June 2023. The Knox VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Knox, IN, VOR/DME is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support NextGen PBN flight procedure requirements.

The VOR Federal airways effected by the Knox VOR decommissioning are VOR Federal airways V–126, V–156, V–233, V–340, V–371, and V–422. With the planned decommissioning of the Knox VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected airways. As such, proposed modifications to the affected VOR Federal airways would result in creating gaps in three of the airways (V–156, V–233, and V–422), redefining an airway end point in one of the airways (V–126), and revoking two of the airways (V–340 and V–371).

To overcome the proposed modifications to the affected airways, instrument flight rules (IFR) traffic could use portions of VOR Federal airways V–7, V–8, V–38, V–51, V–92, V–97, and V–285 for conventional navigation or RNAV routes T–215 and T–265 for GPS navigation by properly equipped aircraft. Additionally, pilots equipped with RNAV capabilities could also navigate point to point using the existing NAVAIDs and fixes that would remain in place to support continued operations though the affected area. IFR aircraft may also receive air traffic control (ATC) radar vectors to fly around or through the affected area, upon request. Visual flight rules (VFR) pilots who elect to navigate via the affected VOR Federal airways could also take advantage of the adjacent ATS routes or ATC services listed previously.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airways V–126, V–156, V–233, and V–422, and revoke VOR Federal airways V–340 and V–371 due to the planned decommissioning of the VOR portion of the Knox, IN, VOR/DME. The proposed VOR Federal airway actions are described below.

V–126: V–126 currently extends between the intersection of the Peotone, IL, VOR/Tactical Air Navigation (VORTAC) 053° and Knox, IN, VOR/DME 297° radials (BEARZ Fix) and the intersection of the Goshen, IN, VORTAC 092° and Fort Wayne, IN, VORTAC 016°

radials (ILTON Fix). The FAA proposes to remove the airway segment between the BEARZ Fix and the Goshen, IN, VORTAC. As amended, the airway would extend between Goshen VORTAC and the intersection of the Goshen VORTAC 092° and the Fort Wayne VORTAC 016° radials (ILTON Fix).

V–156: V–156 currently extends between the Cedar Rapids, IA, VOR/DME and the Kalamazoo, MI, VOR/DME. The FAA proposes to remove the airway segment between the Peotone, IL, VORTAC and the Gipper, MI, VORTAC. Additional changes to other portions of the airway have been proposed in a separate NPRM. As amended, the airway would extend between the Cedar Rapids VOR/DME and the Peotone VORTAC, and between the Gipper VORTAC and the Kalamazoo VOR/DME.

V–233: V–233 currently extends between the Spinner, IL, VORTAC and the Litchfield, MI, VOR/DME; and between the Mount Pleasant, MI, VOR/DME and the Pellston, MI, VORTAC. The FAA proposes to remove the airway segment between the Roberts, IL, VOR/DME and the Goshen, IN, VORTAC. Additional changes to other portions of the airway have been proposed in a separate NPRM. As amended, the airway would extend between the Spinner VORTAC and the Roberts VOR/DME, between the Goshen VORTAC and the Litchfield VOR/DME, and between the Mount Pleasant VOR/DME and the Pellston VORTAC.

V–340: V–340 currently extends between the intersection of the Peotone, IL, VORTAC 053° and Knox, IN, VOR/DME 297° radials (BEARZ Fix) and the Fort Wayne, IN, VORTAC. The FAA proposes to remove the airway in its entirety.

V–371: V–371 currently extends between the Boiler, IN, VORTAC and the Knox, IN, VOR/DME. The FAA proposes to remove the airway in its entirety.

V–422: V–422 currently extends between the intersection of the DuPage, IL, VOR/DME 101° and Chicago Heights, IL, VORTAC 358° radials (NILES Fix) and the Flag City, OH, VORTAC. The FAA proposes to remove the airway segment between the NILES Fix and the Webster Lake, IN, VOR. The proposed removal of the airway segment between the NILES Fix and the Chicago Heights VORTAC would be mitigated by VOR Federal airways V–7 and V–97 which overlap V–422; however, the proposed removal of the airway segment between the Chicago Heights VORTAC and Webster Lake VOR is due to the planned decommissioning of the Knox VOR. As amended, the airway would extend between the Webster Lake VOR and the Flag City VORTAC.

The NAVAID radials listed in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–126 [Amended]

From Goshen, IN; to INT Goshen 092° and Fort Wayne, IN, 016° radials.

* * * * *

V–156 [Amended]

From Cedar Rapids, IA; Moline, IL; Bradford, IL; to Peotone, IL. From Gipper, MI; to Kalamazoo, MI.

* * * * *

V–233 [Amended]

From Spinner, IL; INT Spinner 061° and Roberts, IL, 233° radials; to Roberts. From Goshen, IN; to Litchfield, MI. From Mount Pleasant, MI; INT Mount Pleasant 351° and Gaylord, MI, 207° radials; Gaylord; to Pellston, MI.

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V–340 [Removed]

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V–371 [Removed]

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V–422 [Amended]

From Webster Lake, IN; INT Webster Lake 097° and Flag City, OH, 289° radials; to Flag City.

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Issued in Washington, DC, on November 18, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–25526 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 437

RIN 3084–AB04

Business Opportunity Rule

AGENCY: Federal Trade Commission.

ACTION: Regulatory review; advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is requesting public comment on its ''Business Opportunity Rule'' (''Rule''), the trade regulation rule governing the

sale of certain business opportunities. The Commission is soliciting comments about the efficiency, costs, benefits, and regulatory impact of the Rule, as part of its ten-year regulatory review plan. The Commission is also soliciting comments to inform its consideration of whether the Rule should be extended to include business opportunities and other money-making opportunity programs not currently covered by the Rule, including business coaching and work-from-home programs, investment coaching programs, and e-commerce opportunities. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Written comments must be received on or before January 24, 2023.

ADDRESSES: Interested parties may file a comment online or on paper by following the Instructions for Submitting Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Business Opportunity Rule ANPR, Project No. R511993'' on your comment, and file your comment online through *https://www.regulations.gov.* If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro, (202) 326–3711, *ctodaro@ftc.gov,* Melissa Dickey, (202) 326–2662, *mdickey@ftc.gov,* or Andrew Hudson, (202) 326–2213, *ahudson@ftc.gov,* Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Mailstop CC–5201, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Business Opportunity Rule pursuant to its authority under Sections 5 and 18 of the Federal Trade Commission Act to proscribe unfair or deceptive acts or practices.[1] The Business Opportunity Rule requires business opportunity sellers to furnish prospective purchasers[2] a disclosure document that provides information regarding the seller, the seller's business, and the nature of the proposed business opportunity, as well as additional information to substantiate any claims about actual or potential sales, income, or profits for a prospective business opportunity purchaser. The seller must also preserve information that forms a reasonable basis for such claims.

The Rule is designed to ensure that prospective purchasers receive information to help them evaluate business opportunities. Sellers must disclose five key items of information in a simple, one-page document: (1) the seller's identifying information; (2) whether the seller makes a claim about the purchaser's likely earnings (and, if yes, the seller must provide information supporting any such claims); (3) whether the seller, its affiliates, or key personnel have been involved in certain legal actions (and, if yes, the seller must provide a separate list of those actions); (4) whether the seller has a cancellation or refund policy (and, if yes, the seller must provide a separate document stating the material terms of such policies); and (5) a list of persons who have purchased the business opportunity within the previous three years. Misrepresentations and omissions are prohibited under the Rule, and, for sales conducted in languages other than English, all disclosures must be provided in the language in which the sale is conducted.

Under the Rule, a ''business opportunity'' means a ''commercial arrangement'' in which a ''seller solicits a prospective purchaser to enter into a new business''; the ''prospective purchaser makes a required payment''; and the ''seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will'' either (1) provide locations for the purchaser's equipment, such as a vending machine; (2) provide outlets, accounts, or customers for the purchaser's goods or services; or (3) buy back any or all of the goods or services that the purchaser makes or provides.[3]

The Business Opportunity Rule arose out of the Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures Rule (''Original Rule''), which addressed deceptive and unfair practices in the sale of franchises and business opportunity ventures.[4] In March 2007, the FTC bifurcated the Original Rule into a Franchise Rule and Interim Business Opportunity Rule in order to require different kinds of pre-sale disclosures and related regulatory provisions.[5] The Interim Business Opportunity Rule was similar in substance to the Original Rule. On March 1, 2012, the Commission's Revised Business Opportunity Rule took effect and, among other things, expanded the types of covered business opportunities and simplified and streamlined the disclosures provided to prospective business opportunity purchasers.[6]

Since the Rule took effect, the Commission has continued to vigorously challenge misleading earnings claims. For example, the FTC has brought cases under section 5 of the FTC Act, 15 U.S.C. 45, against business coaching and work-from-home programs, investment coaching programs, and e-commerce opportunities.[7] Despite the aggressive enforcement program at the Commission, deceptive earnings claims continue to proliferate in the marketplace, and many of them are not covered by the Rule. Among other things, this advance notice of proposed rulemaking (ANPR) solicits input on whether the Rule should be expanded.

II. Regulatory Review of the Business Opportunity Rule

The Commission reviews its rules and guides periodically to seek information about their costs and benefits, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry to avoid deceptive or unfair practices. These reviews assist the Commission in identifying rules and guides that may warrant modification or rescission.

With this advance notice of proposed rulemaking, the Commission initiates such a review. The Commission solicits comments on, among other things: (1) the economic impact of, and the continuing need for, the Rule; (2) the Rule's benefits to consumers; (3) and the burden it places on industry members

[1] Business Opportunity Rule Statement of Basis and Purpose, 76 FR 76858 (Dec. 8, 2011). Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), prohibits ''unfair or deceptive acts or practices in or affecting commerce.'' Section 18 of the FTC Act, 15 U.S.C. 57a, permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5.

[2] Prospective business opportunity purchaser'' is a broad term; it includes individuals seeking to purchase a business or money-making opportunity but can also include job seekers who encounter marketing for business opportunities.

[3] 16 CFR 437.1(c).

[4] Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures Rule Statement of Basis and Purpose, 43 FR 59614 (Dec. 21, 1978).

[5] Disclosure Requirements and Prohibitions Concerning Franchising & Disclosure Requirements and Prohibitions Concerning Business Opportunities, 72 FR 15444 (Mar. 30, 2007).

[6] Business Opportunity Rule Statement of Basis and Purpose, 76 FR 76817 (Dec. 8, 2011).

[7] *See* Advance Notice of Proposed Rulemaking Concerning Deceptive or Unfair Earnings Claims, 87 FR 13951, 13952 n.16.

subject to the requirements, in particular small businesses.

III. Issues for Comment

To aid commenters in submitting information, the Commission has prepared the following questions related to the Business Opportunity Rule. The Commission seeks comments on these and any other issues related to the Rule's current requirements. The Commission will also consider any comments previously submitted in response to the Advance Notice of Proposed Rulemaking Concerning Deceptive or Unfair Earnings Claims [8] that are relevant to these questions or any other issues related to the Business Opportunity Rule's current requirements. The Commission requests that responses to its questions be as specific as possible. Commenters should provide any available evidence, including empirical analyses, that supports their position. Where comments advocate a change to the Rule, please be specific in stating the unfair or deceptive act or practice to which the change relates, provide evidence of the pervasiveness of the act or practice, and describe the suggested change and any potential costs or benefits the change might create for prospective purchasers and business opportunity sellers.

A. General Regulatory Review Questions

1. *Need:* Is there a continuing need for the Rule? Why or why not?

2. *Benefits and Costs to Consumers:* What benefits has the Rule provided to consumers, and does the Rule impose any significant costs on consumers? Please quantify these benefits and costs wherever possible.

3. *Benefits and Costs to Industry Members:* What benefits has the Rule provided to businesses, and does the Rule impose any significant costs, including costs of compliance, on businesses and in particular small businesses? Please quantify these benefits and costs wherever possible.

4. *Impact on Information:* What impact has the Rule had on the flow of truthful information to consumers and on the flow of misleading information to consumers?

5. *Compliance:* Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why and how? If not, why not?

6. *Possible Recommended Changes:* What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs? How would these modifications affect the costs and benefits of the Rule for consumers? How would these modifications affect the costs and benefits of the Rule for businesses, and in particular small businesses?

7. *Unnecessary Provisions:* Provide any evidence, including empirical analyses, concerning whether any of the Rule's provisions are no longer necessary. Explain why these provisions are unnecessary.

8. *Additional Unfair or Deceptive Practices:* What potentially unfair or deceptive practices, related to business opportunities and not covered by the current Rule, are occurring in the marketplace? Are any such practices prevalent in the market? If so, please describe such practices, including their impact on consumers. Provide any evidence, such as empirical data, consumer perception studies, or consumer reports, that demonstrates the extent of such practices. Provide any evidence that demonstrates whether such practices cause consumer injury, and quantify or estimate that injury if possible. With reference to such practices, should the Rule be modified? If so, why and how? If not, why not?

9. *Rule Coverage:* Should the Commission broaden the Rule to include business or money-making opportunities not currently covered? Provide any evidence that supports your position. What potentially unfair or deceptive practices related to business or money-making opportunities not covered by the Rule are occurring in the marketplace? Are any such practices prevalent in the market? If so, please describe such practices, including their impact on consumers. Provide any evidence, such as empirical data, consumer perception studies, or consumer reports, that demonstrates the extent of such practices. Provide any evidence that demonstrates whether such practices cause consumer injury, and quantify or estimate that injury if possible.

10. *Technological or Economic Changes:* What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions? How would these modifications affect the costs and benefits of the Rule for consumers and businesses, and in particular small businesses?

11. *Conflicts with Other Requirements:* Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how? Provide any evidence that supports your position. With reference to the asserted conflicts, should the Rule be modified? If so, why and how? If not, why not? Are there any Rule changes necessary to help state law enforcement agencies combat unfair or deceptive practices in the business opportunity market?

12. *Other State or Local Laws or Regulations:* Are there state or local laws or regulations that lessen competition or impede consumer protection in the business opportunity market? Provide any evidence that supports your position. Should the Commission, through its advocacy work, encourage changes to these state or local laws or regulations? If so, what changes?

B. Specific Questions Related to the Business Opportunity Rule

13. Should the Rule be expanded to more broadly include coaching or mentoring programs,[9] work-from-home opportunities,[10] e-commerce opportunities,[11] other investment opportunities,[12] or other types of business or money-making opportunities not currently covered by the Business Opportunity Rule? [13] Why or why not?

a. What evidence supports such a modification?

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[8] *Id.* (comment period closed May 10, 2022). In that matter, No. R111003, the Commission solicited and received comments about the following industries: multilevel marketers, for-profit schools, and gig platforms. The Commission will consider whether to propose one or more rules addressing the topics raised in those comments as part of that rulemaking, where it may also address other topics raised in that advance notice of proposed rulemaking relating to deceptive or unfair earnings claims.

[9] *See, e.g., FTC* v. *OTA Franchise Corp.,* No. 8:20–cv–287 (C.D. Cal. filed 2020); *FTC* v. *Ragingbull.com, LLC,* No. 1:20–cv–3538 (D. Md. filed 2020); *FTC* v. *Zurixx LLC,* No. 2:19–cv–713 (D. Utah filed 2019); *FTC* v. *Nudge LLC,* No. 2:19–cv–867 (D. Utah filed 2019); *FTC* v. *Mobe Ltd.,* No. 6:18–cv–862 (M.D. Fla. filed 2018); *FTC* v. *Digit. Altitude,* No. 2:18–cv–0729 (C.D. Cal. filed 2018).

[10] *See, e.g., FTC* v. *Moda Latina BZ Inc.,* No. 2:20–cv–10832 (C.D. Cal. filed 2020); *FTC* v. *8 Figure Dream Lifestyle LLC,* No. 8:19–cv–1165 (C.D. Cal. filed 2019).

[11] *See, e.g., FTC* v. *Nat'l Web Design, LLC,* No. 2:20–cv–846 (D. Utah filed 2020); *FTC* v. *Advert. Strategies, LLC,* No. 2:16–cv–3353 (D. Ariz. filed 2016).

[12] *See, e.g., FTC* v. *Warrior Trading,* No. 3:22–cv–30048 (D. Mass. filed 2022); *SEC* v. *Senderov,* No. 19–cv–5242 (E.D. Wa. filed 2019); *SEC* v. *Peterson,* No. 19–cv–8334 (C.D. Cal. filed 2019); *In re Spectrum Concepts LLC,* SEC No. 3–16358 (SEC filed 2015); *In re Pankaj Kumar Srivastava,* SEC No. 3–1267 (SEC filed 2014); *SEC* v. *Butts,* No. 13–23115 (S.D. Fla. filed 2013); *SEC* v. *Shavers,* No. 4:13–cv–416 (E.D. Tex. filed 2013).

[13] *See, e.g., FTC* v. *Position Gurus, LLC,* No. 2:20–cv–710 (filed W.D. Wash. 2020) (marketing and other business-related services); *FTC* v. *Montano,* No. 6:17–cv–2203 (filed M.D. Fla. 2017) (''automatic money systems'' and ''secret codes''); *FTC* v. *World Patent Mktg.,* No. 17–cv–20848 (filed S.D. Fla. 2017) (invention promotion); *FTC* v. *Blue Saguaro Marketing, LLC,* No. 2:16–cv–3406 (D. Ariz. filed 2016) (grant scheme).

b. How would this modification affect the costs the Rule imposes on businesses and, in particular, small businesses?

c. How would this modification benefit consumers?

14. If the Rule is modified, should the Rule's disclosure requirements be applied to any of the types of money-making opportunities or business opportunities described in question 13, above? Why or why not?

a. What evidence supports such a modification?

b. How would this modification affect the costs the Rule imposes on businesses and, in particular, small businesses?

c. How would this modification benefit consumers?

15. Do any practices of business opportunities or money-making opportunities, either currently covered or identified in question 13 above, disproportionately target or affect certain communities or groups, including but not limited to people living in lower-income communities, communities of color, or other historically underserved communities? If so, why and how? Provide all evidence that supports your answer.

16. Should any of the Rule's provisions be amended to avoid disproportionately affecting certain groups, including but not limited to people living in lower-income communities, communities of color, or other historically underserved communities? If so, why and how? If not, why not?

17. Should any of the Rule's definitions be modified in any way? If so, how? Provide any evidence that supports your position.

18. Should Rule § 437.2, which requires sellers of a business opportunity to furnish prospective purchasers with a disclosure document at least seven calendar days before the earlier of the time that the prospective purchaser (a) signs any contract in connection with the business opportunity sale or (b) makes a payment or provides other consideration to the seller, directly or indirectly through a third party, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.

19. Should Rule § 437.3, which outlines the information that must be included in the disclosure document and requires sellers to update their disclosures periodically, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.

20. Should Rule § 437.4, which governs earnings claims by sellers of business opportunities, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, and in particular small businesses.

21. Should Rule § 437.5, which speaks to sales conducted in languages other than English, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.

22. Should Rule § 437.6, which prohibits sellers from engaging in a number of deceptive practices that are common in the sale of fraudulent business opportunities, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.

23. Should Rule § 437.7, which contains the Rule's record retention requirements, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.

24. Should Rule § 437.8, the franchise exemption, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses from the current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.

25. Should Rule § 437.9, which discusses how the Rule interacts with state law and the effect of the Rule on existing Commission orders, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.

IV. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 24, 2023. Write ''Business Opportunity Rule ANPR, Project No. R511993,'' on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on *https://www.regulations.gov.*

Because of public health measures and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through *https://www.regulations.gov.* To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Business Opportunity Rule ANPR, Project No. R511993'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information such as your or anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card

number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *https://www.regulations.gov*—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this request for comment and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 24, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

By direction of the Commission.

April J. Tabor,

Secretary.

Note: The following statement will not appear in the Code of Federal Regulations.

Statement of Chair Lina M. Khan

The Business Opportunity Rule protects Americans from false promises of easy riches. A business opportunity may be pitched as a way for a buyer to immediately get a business up and running. The point of the rule is to make sure people know what they're getting into, with a realistic sense of how much they're likely to earn. It requires sellers to honestly disclose key information up front.

The rule has served the public well over the years.[1] But it's written in a way that doesn't necessarily capture some business models and practices that have become more widespread in the decade since it was last amended. That's why I'm glad to see that the Commission is seeking public comment on whether to modify the Business Opportunity Rule. This is the first review since the Commission approved amendments to the rule in December 2011. A lot has changed since then.

The ANPR notes several varieties of scams that may fall outside the scope of the existing rule. These include certain kinds of business coaching and work-from-home programs, investment programs, and e-commerce opportunities. A classic example is someone selling an online course that purports to teach you how to make big profits trading stocks or cryptocurrency in your home—risk-free. These scams may not meet the precise definition of a business opportunity under the letter of the rule. But they can violate its spirit by luring consumers with false promises of easy money.

Sometimes, the Commission can use other authorities to crack down on these types of scams. But case-by-case enforcement has key limitations—especially after the Supreme Court's *AMG* decision, which took off the table one of the Commission's most effective ways of getting money back to consumers harmed by businesses that cheat or deceive them.[2] Now, it's difficult for the FTC to seek refunds for defrauded consumers unless the deception violates an existing rule. That's one additional reason why it may be especially necessary to update the Business Opportunity Rule. Keeping rules up-to-date and relevant is a crucial tool in our effort to protect consumers and honest businesses alike.

I am grateful to the FTC staff for their hard work on this matter and will look forward to reviewing public comments as we determine next steps.

[1] *See, e.g.* Press Release, Fed. Trade Comm'n, Operators of Business Opportunity Scheme That Falsely Promised Big Earnings Will be Banned From Offering Any Business or Investment Services, Under FTC Settlement (July 2, 2021), *https://www.ftc.gov/news-events/news/press-releases/2021/07/operators-business-opportunity-scheme-falsely-promised-big-earnings-will-be-banned-offering-any.*

[2] *AMG Capital Mgmt., LLC.* v. *FTC,* 141 S. Ct. 1341 (2021).

[FR Doc. 2022–25587 Filed 11–23–22; 8:45 am]

BILLING CODE 6750–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R10–OAR–2020–0361; FRL–5565–03–R10]

RIN 2012–AA02

Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: On October 12, 2022, the Environmental Protection Agency (EPA) published a proposed rulemaking to revise the Federal Air Rules for Reservations (FARR), a collection of Federal Implementation Plans (FIPs) under the Clean Air Act for Indian reservations in Idaho, Oregon, and Washington. In the preamble of that publication, the description of the proposed changes to one of the rules in the FARR, the general open burning rule, was inadvertently replaced with a duplicate of the description of the proposed changes to a different rule. We are publishing this document to supply the correct preamble description of the proposed changes to the general open burning rule to the public. We note that there are no corrections to the proposed amendments to the rule language.

DATES: Comments for the proposed rule that was published in the **Federal Register** on October 12, 2022 (87 FR 61870) must be received on or before January 10, 2023.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–R10–OAR–2020–0361, using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and

should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information on submitting comments, please see our October 12, 2022, **Federal Register** publication at 87 FR 61870. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section if you need assistance.

FOR FURTHER INFORMATION CONTACT: Sandra Brozusky, Air and Radiation Division, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101–1128, (206) 553–5317, *brozusky.sandra@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 12, 2022 (87 FR 61870), the EPA published a proposed rulemaking to revise the Federal Air Rules for Reservations (FARR), a collection of Federal Implementation Plans (FIPs) under the Clean Air Act for Indian reservations in Idaho, Oregon, and Washington. In the preamble of that document on page 61878, column 2, where the EPA described the proposed changes to the regulatory requirements in the Code of Federal Regulations (CFR) at 40 CFR 49.131 General rule for open burning, the EPA inadvertently duplicated the text describing the proposed changes to a different rule. We are publishing this document to supply the correct preamble text to the public. We note that there are no corrections to the proposed amendments to the rule language in 40 CFR 49.131. For additional details on the proposed rulemaking, please see our October 12, 2022, **Federal Register** publication at 87 FR 61870.

Correction

In the proposed rule document FR Doc. 2022–20486 (87 FR 61870, October 12, 2022), on page 61878, in the second column, correct the document to replace the existing last paragraph with the following:

Section 49.131 General rule for open burning. This section limits the types of materials that can be openly burned within an Indian reservation to control emissions of particulate matter. The EPA is proposing to simplify the approach to the General rule for open burning from one that prohibits the open burning of a long list of materials to one that identifies the materials that can be openly burned. The proposed revisions prohibit open burning with exceptions for certain materials, during specific situations, and under certain conditions. The intent of this revision is to more clearly delineate the materials that may be burned, thereby simplifying the regulatory scheme for the public, the EPA, and delegated Tribes. The proposed revisions to 40 CFR 49.131 will better ensure that only those materials that do not significantly degrade air quality are allowed to be burned.

More specifically, with limited exceptions, the proposed revisions prohibit all open burning except the open burning of natural vegetation; untreated wood; paper products generated and burned on site at a single-family residence or residential building with four or fewer dwelling units; and paper and manufactured fire starters used to start a fire. With this proposed revision, certain definitions, such as ''garbage,'' are no longer used and are being eliminated. The EPA is proposing to define ''untreated wood'' as wood of any species that has not been chemically impregnated, painted, coated, or similarly modified to prevent weathering and deterioration.

The EPA is also proposing to expand the scope of the regulated entities under this rulemaking to include the lessee of the property on which open burning is conducted to ensure parties that may be responsible for burning decisions on a given property are responsible for complying with the requirements of this section. As under the existing rule, all but specified exempt open burning continues to be prohibited when a burn ban, air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency is declared due to deteriorating air quality. The EPA is however, proposing to add language clarifying that, in addition to extinguishing a fire and withholding additional material from a fire when such an event is declared, a person must also discontinue lighting a fire (*e.g.,* cease using a drip torch to light the edge of an agricultural field).

The current exemptions from the prohibition on open burning remain, with some revisions. Open fires continue to be exempt in all respects if set for cultural or traditional purposes, including fires within structures such as sweat houses or sweat lodges. The proposed revisions clarify that fires set for cultural or traditional purposes in smoke houses are covered by this exclusion. Open burning for the disposal of diseased animals or other material by order of a public health official continues to be exempt except during burn bans and specified periods of deteriorating air quality, as under the current rule. In addition, we retain exceptions for outdoor fires used for the training of firefighters and the disposal of fireworks by Tribal governments. Both firefighting training fires and fireworks disposal fires continue to require prior written permission from the Regional Administrator to allow for the burning of materials not otherwise authorized under the open burning rule. The EPA is proposing to add language to the provisions for fire fighter training fires to ensure that EPA's requirements for removal of asbestos containing materials are met prior to burning a structure and also to revise the deadline for requesting permission to be the same 10 days as the notification requirement in the asbestos rule (see 40 CFR part 61, subpart M).

In addition, if the large open burning permit rule applies on the Indian reservation where the burn is occurring and the burn meets the definition of ''large open burn,'' outdoor fires used for the training of firefighters and outdoor fires used for the disposal of fireworks by Tribal governments also require a large open burning permit under 40 CFR 49.132 Rule for large open burning permits to ensure air quality concerns are taken into account in deciding when to allow such burns. In the unlikely event such burns do not meet the definition of a ''large open burn,'' a small open burn permit would not be required for such burns. As revised, the General rule for open burning clarifies that requests for permission for fires for the disposal of fireworks is limited to Tribes, but no longer limits such fires to a single outdoor fire per year. The proposed revisions also provide increased specificity of the approval process for such burns.

An exemption for ''cooking fires'' has been added, along with a definition of that term, to distinguish such fires from ''recreational fires,'' which term is now also defined. A cooking fire is an open burn in a fire pit or outdoor appliance for the purpose of cooking food and may burn firewood, charcoal briquettes, wood pellets, or other fuels suitable for cooking food. This list of permissible fuels for cooking fires is broader than under the General rule for open burning. Because cooking fires are exempt from the rule, cooking fires are not subject to the prohibition that applies to recreational fires during burn bans. The proposed revisions define recreational fires as campfires and bonfires burning

materials authorized under the General rule for open burning for pleasure or celebratory purposes but excludes cooking fires and fires used for debris disposal purposes. Although recreational fires are no longer included in the list of exemptions, there is no substantive difference in how they are addressed under the proposed revisions. As under the current rule, the materials that may be burned in a recreational fire have not changed and recreational fires remain prohibited when burn bans are in effect. Recreational fires remain exempt from the more specific requirements in paragraph (e)(1) of this section that apply to open burns, such as the provisions regarding smoldering.

The EPA has also added a proposed exemption for fires set as part of a firefighting strategy (*e.g.,* back burn, fire break, or safety perimeter burn), but only if approved by the appropriate fire safety jurisdiction and under an emergency or incident command situation. Such fires may reduce the duration or size of uncontrolled fires and therefore may have a positive impact on levels of particulate matter overall.

The EPA is also proposing revisions to the provisions of this rulemaking that specify the requirements for conducting open burning. The proposed revisions clarify that a burn ban declared by the Regional Administrator remains in effect until the Regional Administrator makes a new determination and terminates the burn ban, as well as to describe the methods the EPA uses to announce a burn ban and its termination. The EPA is also adding language to clarify that a burn ban can be declared for specific geographic areas within an Indian reservation. We are also clarifying that burn bans are based on the 24-hour PM NAAQS and that the time period for projections of air quality levels is a maximum of 72 hours. These clarifications are consistent with the intent of the rule and how it has been implemented in practice.

The EPA has heard concerns that the criterion for triggering burn bans, specifically 75% of any 24-hour PM NAAQS, could be overly conservative and impede the increased use of prescribed fire to help reduce the risk of wildfire within the Indian reservations covered by the FARR by reducing the number of available burn days. As mentioned previously, the EPA is currently reviewing the PM NAAQS and there are additional concerns that if that review results in a lower level of the 24-hour PM NAAQS, the number of available burn days could be further reduced.

The purpose of a burn ban is to protect human health and air quality by preventing emissions from open burning from pushing PM concentrations above the level of the NAAQS, so it is important to call a burn ban before concentrations reach the level of the NAAQS. The EPA acknowledges that there are a number of other criteria for declaring burn bans that could also accomplish this objective. The EPA is therefore soliciting comment on changing the criteria to whether PM concentrations exceed or are projected to exceed the NAAQS anytime during the next 72 hours. Because the meteorological forecasting tools and availability of real-time air monitoring data have improved significantly since 2005 when the FARR was promulgated, relying on projections of the PM NAAQS, rather than a percentage below the PM NAAQS, for calling burn bans may also provide reasonable assurance that emissions from open burning will not cause or contribute to an exceedance of the PM NAAQS. This revision would potentially reduce the number of burn bans and thus increase the available days during which prescribed burning could be conducted.

The EPA is also proposing revisions to account for the fact that, in certain defined instances (*e.g.,* multi-day fires) and with the appropriate permits, a fire is allowed to smolder when it would have less impact on air quality than putting the fire out and relighting it. The revisions would also explicitly require that a person 18 years of age or older must be in attendance of the fire at all times; that there be means available for extinguishing the fire, such as water or chemical fire suppressant; and that a fire be extinguished if safe to do so, at the request of the EPA based on a determination that the open burning is causing or has the potential to cause or contribute to an exceedance of a national ambient air quality standard. When relevant, the EPA will also request that a fire be extinguished if safe to do so, based on a determination that the open burning is causing any other adverse impact on air quality. These simple precautions help ensure that fires are responsibly managed, considering changing adverse meteorological conditions, other scheduled burning activities in the surrounding area and other factors that could impact a burn. For burns that could significantly impair visibility on roadways, coordination with traffic safety authorities must take place before igniting a burn in order to provide an opportunity for such authorities to require appropriate transportation safety measures. ''Small open burns'', as defined in 40 CFR 49.123, are exempt from this requirement. Because of the limited size of small open burns, the amount of material consumed would not be expected to cause a plume large enough and dense enough to impair visibility on roadways.

Finally, the EPA is clarifying that nothing in the open burning rule exempts or excuses any person from complying with applicable laws and ordinances of Tribal governments. This was already encompassed in the language in the existing rule stating that nothing in the open burning rule ''exempts or excuses any person from complying with applicable laws and ordinances of . . . other governmental jurisdictions.'' The proposed revision is being made for clarity here, as well as in the following burn permit sections.[4]

Dated: November 17, 2022.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2022–25584 Filed 11–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0338; FRL–10269–01–R9]

Approval, Limited Approval and Limited Disapproval of California Air Plan Revisions; Mojave Desert Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing an approval and a limited approval and limited disapproval of a revision to the Mojave Desert Air Quality Management District (MDAQMD or ''District'') portion of the California State Implementation Plan (SIP). We are proposing approval of five rules and a limited approval and limited disapproval of five rules. These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution under part D of title I of the Clean Air Act (CAA or ''Act''). If finalized, this action will update the MDAQMD's current SIP with ten revised rules. We are taking comments

[4] The EPA also notes that nothing in the FARR or the proposed revisions restricts the exclusion of air quality monitoring data influenced by exceptional events as provided in 40 CFR 50.14.

on this proposal and plan to follow with a final action.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0338 at *https://www.regulations.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.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Weeda Ward, Permits Office (Air–3–1), U.S. Environmental Protection Agency, Region IX, (213) 244–1812, *ward.laweeda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. The State's Submittal

A. What rules are in the current SIP?

Table 1 lists the rules in the current SIP with the dates they were adopted or amended by the MDAQMD, submitted by the California Air Resources Board (CARB) (the governor's designee for California SIP submittals), and approved by the EPA.

TABLE 1—RULES IN THE CURRENT SIP

Rule No.	Rule title	Adoption date	Submittal date	EPA action date	**Federal Register** citation
206—San Bernardino County.	Posting of Permit to Operate	[a] 02/01/1977	06/06/1977	11/09/1978	43 FR 52237.
206—Riverside County	Posting of Permit to Operate	02/06/1976	04/21/1976	11/09/1978	43 FR 52237.
219—San Bernadino County.	Equipment Not Requiring a Permit	[a] 02/01/1977	6/6/1977	11/9/1978	43 FR 52237.
219—Riverside County	Equipment Not Requiring a Written Permit Pursuant to Regulation II.	09/04/1981	10/23/1981	07/06/1982	47 FR 29231.
1300	General	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1301	Definitions	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1302	Procedure	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1303	Requirements	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1304	Emissions Calculations	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1305	Emission Offsets	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1306	Electric Energy Generating Facilities	03/25/1996	7/23/1996	11/13/1996	61 FR 58133.
1402	Emission Reduction Credit Registry	06/28/1995	8/10/1995	01/22/1997	62 FR 3215.

[a] These rules were adopted by CARB Ex. Ord. G–73 on 2/1/1977 and substituted into the 6/6/1977 submittal to the EPA after the original adoption date of 1/9/1976 because the two versions were identical, and the earlier version was submitted on behalf of the SoCalAPCD (42 FR 1273).

B. What rules did the State submit?

Table 2 lists the rules addressed by this proposal with the dates they were adopted by the MDAQMD or predecessor agency and submitted by the CARB.

TABLE 2—SUBMITTED RULES

Rule No.	Rule title	Adopted date	Submitted date [a]
206	Posting of Permit to Operate	02/22/2021	10/15/2021
219	Equipment Not Requiring a Permit	01/25/2021	07/23/2021
1300	General	03/22/2021	07/23/2021
1301	Definitions	03/22/2021	07/23/2021
1302	Procedure	03/22/2021	07/23/2021
1303	Requirements	03/22/2021	07/23/2021
1304	Emissions Calculations	03/22/2021	07/23/2021
1305	Emission Offsets	03/22/2021	07/23/2021

TABLE 2—SUBMITTED RULES—Continued

Rule No.	Rule title	Adopted date	Submitted date [a]
1306	Electric Energy Generating Facilities	03/22/2021	07/23/2021
1402	Emission Reduction Credit Registry	05/19/1997	08/05/1997

[a] The submittal for Rules 219, 1300, 1301, 1302, 1303, 1304, 1305, and 1306 was transmitted to the EPA via a letter from CARB dated July 22, 2021, and received by the EPA on July 23, 2021. Rule 206 was transmitted electronically on October 15, 2021 as an attachment to a letter dated October 14, 2021. Rule 1402 was submitted on August 1, 1997 and received by EPA on August 5, 1997.

The EPA has promulgated specific procedural requirements for the completeness determination of SIP submissions pursuant to 40 CFR part 51, subpart F and Appendix V which must be met before formal EPA review. The completeness criteria pursuant to 40 CFR part 51 Appendix V were met as follows:

1. On January 23, 2022, the submittal of the MDAQMD Rules 219, 1300, 1301, 1302, 1303, 1304, and 1305 on July 23, 2021, was deemed complete by operation of law.

2. On April 15, 2022, the submittal of the MDAQMD Rule 206 on October 15, 2021, was deemed complete by operation of law.

3. On February 5, 1998, the submittal of Rule 1402 on August 5, 1997, was deemed complete by operation of law.

C. What is the purpose of the submitted rule revisions?

The rules listed in Table 2 are intended to replace the SIP-approved rules listed in Table 1. The submitted rules are intended to satisfy the minor NSR and non-attainment NSR (NNSR) requirements of section 110(a)(2)(C) and part D of title I of the Act, and the EPA's implementing regulations at title 40 of the Code of Federal Regulations (CFR) part 51, subpart I.[1] Minor NSR requirements are generally applicable for SIPs in all areas, while NNSR requirements apply only in areas designated as nonattainment for one or more National Ambient Air Quality Standards (NAAQS). The MDAQMD is currently designated Severe nonattainment for the 2008 and 2015 ozone NAAQS, and Moderate nonattainment for the 1987 PM_{10} NAAQS.[2] Therefore, the designation of MDAQMD as federal ozone and PM_{10} nonattainment areas triggered the requirement for the District to develop and submit an NNSR program to the EPA for approval into the California SIP.

II. The EPA's Evaluation and Action

A. What is the background for this proposal?

On October 26, 2015, the EPA finalized a revised 8-hour NAAQS for ozone, which was lowered from 0.75 parts per billion (ppb) to 0.70 ppb.[3] On June 4, 2018, portions of the West Mojave Desert, under the jurisdiction of the MDAQMD, were designated as nonattainment for 2015 8-hour ozone NAAQS[4] and classified Severe-15.[5] This designation became effective on August 3, 2018. On December 6, 2018, the EPA finalized the implementation rule for the 2015 ozone NAAQS, which required the MDAQMD to submit a New Source Review (NSR) certification to the EPA by August 3, 2021.[6] The District's July 23, 2021 submittal is intended to satisfy this requirement.

B. How is the EPA evaluating the rules?

The EPA reviewed the rules listed in Table 2 for compliance with the CAA requirements as follows: (1) stationary source preconstruction permitting programs as set forth in CAA part D of title I, including CAA sections 172(c)(5), 173, 182(c)(6), and 182(d); (2) the review and modification of major sources in accordance with 40 CFR 51.160–51.165 as applicable in Severe ozone and Moderate PM_{10} nonattainment areas; (3) the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I Federal Area in accordance with 40 CFR 51.307; (4) SIPs in general as set forth in CAA section 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i); and (5) SIP revisions as set forth in CAA sections 110(l) and 193; and (6) the definition of "stationary source" pursuant to CAA section 302(z). We also evaluated the submittal for compliance with the NNSR requirements applicable to Severe ozone and Moderate PM_{10} nonattainment areas and ensured that the submittal addressed the NNSR requirements for the 2008 and 2015 ozone NAAQS.

C. Do the rules meet the evaluation criteria?

The EPA has reviewed the submitted rules listed in Table 2 in accordance with the rule evaluation criteria described in Section II.B of this notice.

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included for the rules listed in Table 2, we find that the MDAQMD has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of these rules to the EPA.

With respect to the substantive requirements found in part D of title 1 of the Act (including sections 172, 173, 182(c), and 182(d)); part A of title 1 of the Act (including sections 110(a)(2) and 110(a)(2)(E)(i)); section 302(z) contained in title III the Act; and 40 CFR 51.160–51.165 and 51.307, we have determined that the submitted District

[1] CARB, at the request of the District, also submitted a PSD rule for SIP inclusion (MDAQMD Rule 1600, "Prevention of Significant Deterioration (PSD)"). We intend to take action on the District's PSD rule in a subsequent rulemaking.

[2] 40 CFR 81.305.

[3] 80 FR 65292.

[4] Both the 1979 1-hour ozone standard and the 1997 8-hour ozone standard are revoked in most areas of California including in the MDAQMD jurisdiction. Footnote 4 in 40 CFR 81.305 states: "The 1-hour ozone standard is revoked effective June 15, 2005, for all areas in California. The Monterey Bay, San Diego, and Santa Barbara-Santa Maria-Lompoc areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X." The 1997 Ozone standard was revoked with the implementation of the 2008 Ozone standard (see 80 FR 12263, March 6, 2015), however the preamble makes the following distinction: "After revocation of the 1997 standard, the designations (and the classifications associated with those designations) for that standard are no longer in effect, and the sole designations that remain in effect are those for the 2008 ozone NAAQS. However, the EPA is retaining the listing of the designated areas for the revoked 1997 ozone NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas at the time of revocation. Accordingly, such references to historical designations for the revoked standard should not be viewed as current designations under CAA section 107(d)." It is also important to note that most of the SIP elements per the 2008 Ozone NAAQS are included in the plan elements per the 2015 Ozone NAAQS. The list of anti-backsliding provisions required for areas transitioning from the 1997 Ozone standard to the 2008 Standard are codified at 40 CFR 51.1105.

[5] 83 FR 25776. A classification of Severe-15 under the 2015 Ozone NAAQS is an area with a design value of 0.105 up to but not including 0.111 ppm.

[6] 83 FR 62998.

Rules 206, 219, 1300, 1306, and 1402 meet the evaluation criteria, while District Rules 1301, 1302, 1303, 1304, and 1305 mostly meet the criteria but contain deficiencies as detailed in Section II.D.

D. What are the rule deficiencies?

The EPA identified six deficiencies in the rules proposed for inclusion in the SIP. The first deficiency is the use of the term ''contract'' as interchangeable with the term ''permit.'' Specifically, the MDAQMD Rules 1302(D)(6)(a)(iii) and 1304(C)(4)(c) allow an owner and/or operator to obtain a valid permit or ''contract'' that would be enforceable by the District. The MDAQMD's rules define Authority to Construct Permit (ATC) and Permit to Operate (PTO), but do not define term ''contract'' as interchangeable with the term ''permit.'' The use of the terms ''ATC'' and ''PTO'' refer to written ''permits'' in SIP-approved Rules 201, 202, and 203 [7] and hence are the basis for enforceable mechanisms to implement the NSR program in the District. We find the term ''contract'' is not an acceptable alternative to the term ''permit'' and thus the language in MDAQMD Rules 1302(D)(6)(a)(iii) and 1304(C)(4)(c) is not approvable as a SIP revision.

The second deficiency is the calculation procedures specified to determine the amount of offsets required in certain situations. Specifically, the requirements at 40 CFR 51.165(a)(3)(ii)(J) state that the total tonnage of increased emissions resulting from a major modification that must be offset shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit. In other words, federal regulations require an ''actual-to-potential'' test using a baseline of actual emissions when determining the amount of offsets required for a project. Rule 1304 allows a potential-to-potential test for calculating the quantity of offsets required in some situations. Specifically, the calculation procedures for Simultaneous Emission Reductions (SERs) at Rule 1304(C)(2)(d), applies a potential-to-potential test under certain circumstances.[8] Rule 1304 uses a potential-to-potential test for calculating the quantity of SERs that can be used as offsets for a ''Modified Major Facility.'' Pursuant to Rule 1304(C)(2)(d), SERs at a Modified Major Facility are calculated using the potential to emit (PTE) in place of Historic Actual Emissions (HAE). Calculating emissions decreases using a potential emissions baseline allows reductions ''on paper'' that do not represent real emissions reductions. Under CAA section 173(c)(1), such paper reductions cannot be used to offset actual emission increases. Deviations from federal definitions and requirements are generally approvable only if a state specifically demonstrates that the submitted provisions are more stringent, or at least as stringent, in all respects as the corresponding federal provisions and definitions.[9] The District has not made any demonstration showing how the methodology in these rules is as stringent as the requirements of 40 CFR 51.165(a)(3)(ii)(J) and section 173(c)(1) of the Act. Furthermore, the allowance of the potential-to-potential test does not conform with the requirements of 40 CFR 51.165(a)(1)(vi)(E)(1), which states that ''[a] decrease in actual emissions is creditable only to the extent that the old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions.'' Also, the calculation method in Rule 1304(C)(2)(d) allows a source to appear as if it is not undergoing a modification as defined under Rule 1301(NN). In this scenario, a facility could circumvent the requirement to offset emissions increases if potential emissions increases from a project are negated by contemporaneous emissions decreases that utilize SERs calculated using a potential-to-potential test. We describe a related deficiency in the discussion of the ''third deficiency'' below. Thus, the provisions in Rule 1304(C)(2)(d) are inconsistent with the requirements of 40 CFR 51.165(a)(3)(ii)(J) and section 173(c)(1) of the Act. As described in the Technical Support Document (TSD), which can be found in the docket for this rulemaking, the deficiency identified in Rule 1304, through cross-references, also causes related deficiencies in Rules 1301, 1302, 1303, and 1305.

The third deficiency pertains to the definitions for ''Major Modification'' and ''Modification (Modified)'' pursuant to Rule 1301(NN) and 1301(JJ), respectively. We noted in the discussion of the second deficiency above that the methodology to determine the amount of offsets is deficient because it allows the use of SERs pursuant to Rule 1304. Specifically, a ''net emissions increase'' pursuant to Rule 1304(B)(2) allows SERs ''calculated and verified pursuant to [1304(C)(2)]'' to be subtracted from the total of all ''net emissions increases'' at any given facility. The combined effect of calculating SERs according to Rule 1304 and the District's procedure for determining a net emissions increase could allow a facility to subtract SERs, which can be paper reductions, from a proposed emission increase. This could result in an emission increase that is less than zero. The definition of ''Modification (Modified)'' excludes modifications that do not result in a ''Net Emissions Increase,'' which is defined in Rule 1301(QQ) as: ''An emission change as calculated pursuant to District Rule 1304(B)(2) which exceeds zero.'' If there is no net emissions increase, as defined in Rule 1301(QQ) and Rule 1304(B)(2), a permit applicant can avoid NSR requirements entirely (*i.e.,* BACT, offsets, visibility, etc.) because it can effectively exclude the proposed project from being considered a ''Modification'' and hence a ''Major Modification,'' using calculation procedures that do not conform to the federal definition for Major Modification pursuant to 40 CFR 51.165(a)(1)(v)(A)(1); the calculation procedures for determining offsets pursuant to 40 CFR 51.165(a)(3)(ii)(J); and the criteria for determining the emission decreases that are creditable pursuant to 40 CFR 51.165(a)(1)(vi)(E)(1). Thus, the definitions for both ''Major Modification'' and ''Modification (Modified)'' are deficient because they result in non-conformance with these aforementioned federal requirements.

The fourth deficiency is the definition of Historical Actual Emissions (HAE) pursuant to Rule 1304(D)(2)(a)(i). Rule 1304(D)(2)(a)(i) states, ''The verified Actual Emissions of an Emissions Unit(s), averaged from the two-year period which immediately *proceeds* the date of application, and which is representative of Facility operations . . .'' (emphasis added). While this appears to be a typographical error, it is a deficiency because it states it is the actual emissions averaged from the 2-year period that immediately proceeds the date of application. The actual emissions must be based on emissions emitted preceding the date of application. This deficiency may be corrected by replacing the word ''proceeds'' with ''precedes'' in MDAQMD Rule 1304(D)(2)(a)(i).

The fifth deficiency pertains to the use of interprecursor trading (IPT). Specifically, Rule 1305 section (C)(6) allows IPT between nonattainment pollutants and their precursors on a case-by-case basis. A footnote to this

[7] Rule 201, ''Permit to Construct,'' Rule 202, ''Temporary Permit to Operate,'' and Rule 203, ''Permit to Operate'' were approved into the California State Implementation Plan by the EPA on 11/9/1978, 43 FR 52237.

[8] Rule 1301(OOO) provides the definition of SER.

[9] 40 CFR 51.165(a)(1), 51.165(a)(2)(ii).

section states: ''Use of this subsection [is] subject to the Ruling in *Sierra Club* v. *USEPA* (D.C. Cir. Case #15–1465, 1/29/2021), Document #1882662 and subsequent guidance by USEPA.'' On January 29, 2021, the D.C. Circuit Court of Appeals in *Sierra Club* v. *EPA,* 21 F.4th 815, vacated provisions of the 2018 Implementation Rule that allowed IPT for the ozone precursors VOC and NO_X.[10] We note that the EPA recently revised its NNSR regulations at 40 CFR 51.165(a)(11) to make them consistent with the Court's decision,[11] thus the provision in section (C)(6) of Rule 1305 allowing for IPT for ozone precursors is no longer permissible and must be revised to make clear that IPT is not permissible for ozone precursors.

The sixth deficiency pertains to our evaluation of Rules 1300, 1301, 1302, 1303, 1304, and 1305 against the criteria contained in Clean Air Act sections 182(c)(6) and 182(d).[12] Section 182(c) of the Act, which was added by the Clean Air Act Amendments of 1990, details the plan submission and requirements for Serious non-attainment areas. Specifically, CAA section 182(c)(6) contains the ''De Minimis Rule,'' which states NSR rules ''shall ensure increased emissions of volatile organic compounds resulting from any physical change in, or change in the method of operation of, a stationary source located in the area shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this Act unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.'' Our evaluation of Rules 1300, 1301, 1302, 1303, 1304, and 1305 against the criteria contained in CAA sections 182(c)(6), and 182(d) shows the District rules are deficient as they do not contain de minimis SIP requirements. This deficiency may be corrected by incorporating de minimis SIP requirements pursuant to CAA section 182(c)(6) in the applicable Regulation XIII nonattainment NSR rule(s).

Our TSD contains a more detailed discussion of the rule deficiencies as well as a complete analysis of the District's submitted rules that form the basis for our proposed action.

E. EPA Recommendations To Further Improve the Rules

The TSD also includes recommendations for additional clarifying revisions to consider for adoption when the MDAQMD next amends Rules 1301, 1302, 1303, 1304, and 1305.

F. Proposed Action and Public Comment

The EPA is proposing approval of MDAQMD Rules 206, 219, 1300, 1306, and 1402 as authorized under Section 110(k)(3) of the Act. In addition, as authorized in sections 110(k)(3) and 301(a) of the Act,[13] we are proposing a limited approval and limited disapproval of Rules 1301, 1302, 1303, 1304, and 1305 because although they fulfill most of the relevant CAA requirements and strengthen the SIP, they also contain deficiencies as discussed in Section II.D of this notice.

We have concluded that our proposed action will result in a more stringent SIP and is consistent with the additional substantive requirements of CAA sections 110(l) and 193, while not relaxing any existing provision contained in the SIP; and will not interfere with any applicable attainment and reasonable further progress requirements; or any other applicable CAA requirement. In addition, our proposed action will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of ozone and its precursors and PM_{10} and its precursors in the District.

If finalized, this action would incorporate into the SIP the submitted rules listed in Table 2 for which we have proposed approval or limited approval/limited disapproval, codified through revisions to 40 CFR 52.220 (Identification of plan—in part), including those provisions identified as deficient. Our proposed approval of Rules 1301, 1302, 1303, 1304, and 1305 is limited and the EPA is simultaneously proposing a limited disapproval of Rules 1301, 1302, 1303, 1304, and 1305 pursuant to CAA section 110(k)(3) and 301(a).

In conjunction with our SIP approval of the District's visibility provisions for major sources subject to review under the NNSR program, we also propose to revise 40 CFR 52.281(d) regarding applicability of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 as it pertains to California to clarify that the FIP does not apply to MDAQMD. Approval of the District's visibility provisions under 40 CFR 51.307 would mean that this FIP is not needed to satisfy the CAA visibility requirements at 40 CFR 51.307 for sources subject to the District's NNSR program. This revision will clarify the application of this FIP in California following our final action.

If we finalize this action as proposed, our limited disapproval actions would trigger an obligation on the EPA to promulgate a Federal Implementation Plan (FIP) unless the State corrects the deficiencies, and the EPA approves the related plan revisions, within two years of the final action. Additionally, for the deficiencies that relate to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the West Mojave Desert[14] 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Section 179 sanctions will not be imposed under the CAA if the State submits, and we approve, prior to the implementation of the sanctions, a SIP revision that corrects the deficiencies that we identify in our final action. The EPA intends to work with the District to correct the deficiencies in a timely manner.

We will accept comments from the public on this proposal until December 27, 2022.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the MDAQMD rules listed in Table 1 of this preamble. These rules concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution under part D of title I of the Clean Air Act (CAA or ''Act''). The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER**

[10] 83 FR 62998 (December 6, 2018).

[11] 86 FR 37918 (July 19, 2021).

[12] Section 182(d), also added by the Clean Air Act Amendments of 1990, details plan submission requirements for Severe non-attainment areas and includes all the provisions under section 182(c) for Serious non-attainment areas. Therefore, an analysis against CAA section 182(c)(6) constitutes an analysis against section 182(d).

[13] If a portion of a plan revision meets all the applicable CAA requirements, CAA sections 110(k)(3) and 301(a) authorize the EPA to approve the plan revision in part and disapprove the plan revision in part.

[14] The CAA section 179 sanctions will not extend to the portion of the MDAQMD that is in Riverside County known as the Palo Verde Valley in California.

INFORMATION CONTACT section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

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

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The state did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Dated: November 4, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–25382 Filed 11–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 705

[EPA–HQ–OPPT–2020–0549; FRL–7902–04–OCSPP]

RIN 2070–AK67

TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances; Notice of Data Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and soliciting comment on an Initial Regulatory Flexibility Analysis (IRFA) and Updated Economic Analysis following the completion of a Small Business Advocacy Review (SBAR) Panel for the Toxic Substances Control Act (TSCA) proposed rule for reporting and recordkeeping requirements for per- and polyfluoroalkyl substances (PFAS). The EPA seeks public comment on all aspects of the IRFA and Updated Economic Analysis, including underlying data and assumptions in developing its estimates, as well as on certain items presented in the IRFA for public comment and related to the protection of Confidential Business Information.

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

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0549, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Stephanie Griffin, Data Gathering and

Analysis Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1463; email address: *griffin.stephanie@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 28, 2021 (86 FR 33926 (FRL–10017–78)), EPA proposed a rule pursuant to section 8(a)(7) of the Toxic Substances Control Act (TSCA). Section 7351 of the FY2020 National Defense Authorization Act (NDAA) amended TSCA by adding section 8(a)(7), which obligates EPA to promulgate a rule by January 1, 2023, that requires each person who has manufactured a chemical substance that is a PFAS in any year since January 1, 2011, to report and maintain records, for each year, information described in TSCA section 8(a)(2)(A) through (G).

EPA's proposed rule would require all manufacturers of a chemical substance or a mixture containing a chemical substance that is a PFAS (including article manufacturers (including import)) in any year since 2011 to report certain information to EPA related to chemical identity, categories of use, volumes manufactured and processed, byproducts, environmental and health effects, worker exposure, and disposal (*i.e.,* the section 8(a)(2) requirements). EPA also proposed a five-year retention period for all relevant records following the submission period. Based on information available to EPA at the time of the proposed rule's publication, EPA certified that the proposed rule did not have significant impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA).

After being extended 30 days (86 FR 41802, August 3, 2021 (FRL–7902–03–OCSPP)), the comment period for the proposed rule closed on September 27, 2021. EPA received 110 unique comments on the proposed rule representing a wide range of views. Many commenters asserted that the proposed rule lacked sufficient data to support its estimates of burden and cost, including those of small entities and article importers, such that EPA could not certify its final rule will not have a significant impact on a substantial number of small entities under the RFA. Based on public comments and additional data sources on PFAS-containing article importers, EPA convened an SBAR Panel for the proposed rule and has prepared an IRFA under the RFA, 5 U.S.C. 601 *et seq.,* and evaluated the economic impact of the proposed TSCA section 8(a)(7) rule on small entities, as well as any significant alternatives to the proposed rule that may minimize significant economic impacts on small entities while accomplishing the Agency's objectives.

EPA has updated its estimate of costs for the proposed rule as proposed from approximately $10.8M to $875M in social costs, as well as from $948,078 to $1.5M in agency costs. As discussed further in the IRFA, the affected small businesses subject to the rule are expected to incur $863,483,965 in costs for this one-time reporting. EPA is considering changes to the final rule from the regulatory proposal based on updates to the economic analysis, small business impact analysis, and significant regulatory alternatives presented in the IRFA, as well as regarding the treatment of confidential business information (CBI) for PFAS.

Since publishing the draft Economic Analysis, EPA has also updated the discussion of the benefits of the proposed rule. The IRFA details the many activities in the Office of Pollution Prevention and Toxics and in other offices across the Agency that will use and benefit from the data collected under this proposed rule. The proposed rule will provide information on PFAS to which the Agency (or the public) does not currently have access. By increasing the data supplied to Agency programs, including risk-screening programs across different media, EPA expects to more effectively and expeditiously evaluate any potential risks posed by PFAS. Ultimately, enhancing the risk screening process will have positive consequences for human and environmental health and may enable a more efficient allocation of EPA's and society's resources. The IRFA also details the potential benefits of the proposed rule to external stakeholders, such as tribal, state, and local governments, non-governmental organizations, and private-sector organizations, based on comments submitted during the proposed rule's public comment period. The proposed rule is an information-collecting rule and does not attempt to reduce risks related to PFAS. The IRFA's benefits analysis does not seek to quantitatively measure the associated benefits and does not formally identify or define the universe of recipients of those benefits.

II. Request for Public Comments

EPA welcomes public comment on all aspects of the IRFA and Updated Economic Analysis, including underlying data and assumptions in developing its estimates, as well as on certain items identified in the IRFA and Updated Economic Analysis for public comment:

- The number of potential small article manufacturers (including import) that may be subject to the proposed rule;
- The number of PFAS for which small entities may submit reports under this rule, including information related to potential outliers of the industry-wide average estimate and the estimated distribution of PFAS per firm;
- The number of hours small entities will spend on understanding the structural definition of PFAS proposed for this rule;
- The number of entities that would be affected by implementing a reporting threshold for this proposed rule of either 2,500 lbs or 25,000 lbs manufactured per year.

Additionally, EPA welcomes public comment on items in the IRFA that were not available for public comment during the proposed rule's comment period:

- Regulatory flexibility alternatives, such as exemptions for businesses with less than $12 million or $6 million in revenue, exemptions for article importers with less than $6 million in revenue, limiting the scope of PFAS to a finite list, establishing reporting thresholds, simplified reporting forms for certain entities (*i.e.,* article importers and manufacturers of research and development (R&D) substances in volumes less than 10 kg per year) (see alternatives in the IRFA (Ref. 1)).
- Reporting exemptions common to other chemical reporting programs, such as for research and development substances, byproducts, impurities, recyclers, and intermediates. EPA particularly seeks information on the potential impacts of such exemptions, which it did not quantify in the IRFA.
- Potentially duplicative or overlapping reporting requirements with this proposed rule (see ''Other Federal Rules that may Duplicate, Overlap, or Conflict with the Rule'' in the IRFA (Ref. 1)). EPA specifically requests comment on potential duplication with any reporting requirements that have been implemented since the publication of the proposed rule.

EPA also welcomes comments on whether any of the significant regulatory alternatives considered in the IRFA, such as de minimis or research and development exemptions, would be

appropriate to extend to more broadly to each person who has manufactured a chemical substance that is a perfluoroalkyl or polyfluoroalkyl substance in any year since January 1, 2011.

Lastly, EPA also welcomes public comment on the following items pertaining to confidential business information (CBI) that are not in the IRFA and Updated Economic Analysis:

• *Treatment of chemical identity claims.* EPA seeks to clarify and add to language included in the PFAS proposed rule based on comments received in response to the TSCA CBI Procedures proposed rule about an entity's knowledge of a specific chemical identity. PFAS proposed rule Section 705.30(a)(2)(iii) indicates that confidentiality claims cannot be asserted when a response is left blank or designated as ''not known or reasonably ascertainable.'' EPA seeks to explain how it will handle such a response in the context of a specific chemical identity. If any entity reports a PFAS substance by specific chemical identity and does not claim the specific chemical identity as CBI, EPA expects to determine that the specific chemical identity is no longer entitled to confidential treatment. However, EPA would not make this determination where an entity attests that it does not have knowledge of the specific chemical identity. Instead, an entity that does not have knowledge of a specific chemical identity must initiate a joint submission with its supplier or other manufacturer. In these cases, the secondary submitter would be responsible for providing the specific chemical identity and for asserting and substantiating any CBI claims concerning the specific chemical identity. See, *e.g.,* 40 CFR 711.15(b)(3); 711.30(c). If an entity (likely an article importer) attests that it lacks knowledge of the specific chemical identity and also that it lacks knowledge of the identity of the manufacturer of the substance, the joint submission provisions would not apply, and the entity would not be able to make or waive a CBI claim for the specific chemical identity.

• *Notice prior to publication on the public Inventory.* The Agency seeks to further clarify and add to language in the PFAS proposed rule at 40 CFR 705.30 to explain which entities, if any, should expect to receive notice before a chemical identity is moved to the public portion of the TSCA inventory. In PFAS proposed rule 40 CFR 705.30(g), EPA indicated that information not claimed as confidential may be made public without further notice to the submitter. EPA seeks to clarify that if a submitter reports a PFAS substance by specific chemical identity, but does not assert a CBI claim on that specific chemical identity, then EPA *will* move that chemical identity to the public portion of the TSCA Inventory without further notice to the submitter. EPA is also requesting comment on aligning this provision in the final PFAS rule with language in the proposed TSCA CBI Procedures rule, by indicating that persons who previously made a CBI claim for the same specific chemical identity will also not receive prior notice before the specific chemical identity is moved to the public portion of the Inventory. See 87 FR 29078, 29081 and proposed 40 CFR 703.5; rule docket including comments available at *https://www.regulations.gov* (docket ID EPA–HQ–OPPT–2021–0419).

• *Generic names without ''fluor.''* Generic names must be sufficiently detailed to identify the reported chemical as a PFAS. Specifically, any generic name reported for a PFAS that does not contain ''fluor'' in the name would be rejected by EPA as insufficient under TSCA section 14(c)(1)(C). Additionally, any previously existing generic names from earlier TSCA section 5 submissions for PFAS without ''fluor'' are insufficient. Further, even if a generic name reported under the TSCA 8(a)(7) rule lacks the structural unit ''fluor,'' the Agency will identify the chemical substance as a PFAS.

III. References

The following is a listing of the documents that are specifically referenced in this document. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. US EPA. (2022). Initial Regulatory Flexibility Analysis and Updated Economic Analysis for TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances.

List of Subjects in 40 CFR Part 705

Environmental protection, Chemicals, Hazardous materials, Recordkeeping, and Reporting requirements.

Dated: November 18, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2022–25583 Filed 11–23–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 87, No. 226
Friday, November 25, 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

Agricultural Marketing Service

[Doc. No. AMS–TM–22–0081]

Transportation and Marketing Program; Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for extension of a currently approved collection titled ''Local Food Directories and Survey'' (OMB 0581–0169). Under the Agricultural Marketing Act of 1946, as amended, AMS is responsible for conducting research to enhance market access for small and medium sized farmers. The role of the Marketing Services Division (MSD) of AMS is to facilitate distribution of U.S. agricultural products. This information is used to populate USDA's National Farmers Market Directory and periodically market managers are invited to participate in a comprehensive survey assessing the farmers market sector.

DATES: Comments on this notice must be received by January 24, 2023.

ADDRESSES: Interested persons are invited to submit comments concerning this notice. Comments should be submitted online at *https://www.regulations.gov* or mailed to Edward Ragland, Marketing Services Division, Transportation and Marketing Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 1529, South Building, Ag Stop 0269, Washington, DC 20250–0269. All comments should reference docket number (AMS–TM–22–0081), the date, and the page number of this issue of the **Federal Register**. All comments submitted in response to this notice will be posted without change, including any personal information provided, at *https://www.regulations.gov* and will be included in the record and made available to the public.

FOR FURTHER INFORMATION CONTACT: Edward Ragland, Marketing Services Division, Transportation and Marketing Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 1529, South Building, Ag Stop 0269, Washington, DC 20250–0269; Telephone (202) 720–8317; Email: *edward.ragland@usda.gov.*

SUPPLEMENTARY INFORMATION: In 2020, the survey of the farmers market sector was administered by the National Agricultural Statistical Service, (NASS). AMS plans to partner again with NASS in 2025 to survey the farmers market sector. Information will also be collected by AMS to populate the National Farmers Market Directory, as well as three additional local food directories: Community Supported Agriculture Directory, Food Hub Directory, and On-Farm Market Directory. All four directories are national in scope and provide free advertising for producers of local agricultural products. The directories also assist customers to locate local food enterprises.

Title: Local Food Directories and Survey.

OMB Number: 0581–0169.

Expiration Date of Approval: January 31, 2023.

Type of Request: Extension of a currently approved information collection.

Abstract: Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), AMS is responsible for conducting research to enhance market access for small- and medium-sized farmers. To facilitate distribution of U.S. agricultural products, MSD identifies marketing opportunities; provides analysis to help take advantage of those opportunities; and develops and evaluates solutions, including improving farmers markets and other direct-to-consumer marketing activities. Various types of direct-to-customer local food enterprises serve different parts of the food marketing chain but all focus on the small-to medium-sized agricultural producers that have difficulty obtaining access to large scale commercial distribution channels.

The definitions of farmers markets, on-farm markets, community-supported agriculture (CSA), and food hubs, as utilized by AMS for the purposes of the Local Food Directories and Survey are listed below.

Topic areas in USDA's National Farmers Market Managers Survey include: characteristics and history of farmers markets, types of products sold, including fresh, locally-grown produce, location of the markets, programs to encourage healthy eating, special events, marketing methods, participation in Federal programs designed to increase consumption of fresh fruits and vegetables, vendor retention and recruitment, market growth and enhancement, information farmers market managers have and how they derive estimates of the number of customers, sales, and number of vendors.

A farmers market is a collection of two or more farm vendors selling agricultural products directly to customers at a common, recurrent physical location. This marketing channel allows farm vendors to receive retail prices for their products, capturing a larger share of customers' food dollar.

An on-farm market is a single farm operation that sells agricultural and/or horticultural products directly to customers on its farm property or on property adjacent to its farm. Most products sold at the on-farm market are either grown on the proprietor's farm or are sourced from neighboring farms. An on-farm market may operate seasonally or year-round. On-farm markets are an important component of direct marketing, adding value by offering customers a visit to the farm and the opportunity to purchase products from the people who grew them.

A CSA enterprise is defined as a farm or network/association of multiple farms that offer customers regular (usually weekly) deliveries of locally-grown farm products during one or more harvest season(s) on a subscription or membership basis. Customers have access to a selected share or range of farm products offered by a single farm

or group of farmers based on partial or total advance payment of a subscription or membership fee. The up-front working capital generated by selling shares reduces the financial risk to the farmer(s). Generally, farmers receive better prices for their crops and have reduced marketing costs. Consumers benefit by receiving a periodic (usually weekly) delivery of fresh locally-grown fruits, vegetables, meats, eggs and other produce. They also benefit from the ability to collectively support the sustainability of local farmers.

A food hub is a business or organization that actively manages the aggregation, distribution, and marketing of source-identified food products to multiple buyers from multiple producers, primarily local and regional producers, to strengthen the ability of these producers to satisfy local and regional wholesale, retail, and institutional demand. This marketing channel also allows farm operators to capture a larger share of consumers' food dollar.

On-farm markets, CSA, as well as food hubs, comprise an integral part of the urban/farm linkage and have continued to rise in popularity, mostly due to the growing consumer interest in obtaining fresh products directly from the farm. On-farm markets, CSA, and food hubs allow consumers to have access to locally grown, farm fresh produce, enable farmers the opportunity to develop a personal relationship with their customers, and cultivate consumer loyalty with the farmers. They are also providing greater access to fresh locally-grown fruits and vegetables, as well as playing an increasing role in encouraging healthier eating.

Local Food Directories and Survey—0581–0169

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.26 hours per response, (rounded).

Respondents: Farmers market managers, farm operators that operate on-farm stores, operators of CSA, farm operations, and operators of food hubs.

Estimated Number of Respondents: 66,250.

Estimated Total Annual Responses: 8,025.

Estimated Number of Responses per Respondent: 0.26.

Estimated Total Annual Burden on Respondents: 2,069 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–25744 Filed 11–23–22; 8:45 am]

BILLING CODE 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 required 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 December 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.

Farm Service Agency

Title: On-line Registration for FSA-Hosted Events and Conferences.

OMB Control Number: 0560–0226.

Summary of Collection: The collect of information is necessary for people to register on-line to make payment and reservation to attend Farm Service Agency (FSA) hosted events and conferences. The respondents will need to submit the information on-line to pay and to make reservation prior to attending any conferences and events. Respondents that do not have access to the internet can register by mail or fax.

Need and Use of the Information: FSA will collect the name, organization, organizations address, country, phone number, State, payment options and special accommodations from respondents and how they learned of the conference. The information collection element also includes race, ethnicity, gender and veteran status. FSA will use the information to get payment, confirm and make hotel and other necessary arrangement for the respondents. If this information is not collected, FSA would be unable to host virtual events as online registration is required. Additionally, this registration data allows us to analyze outreach program participation and use data to improve our continuing outreach and education efforts.

Description of Respondents: Individuals or households; farms: business or other for-profit; Federal Government, not-for-profit institutions; State, local or Tribal government

Number of Respondents: 273,700.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 41,250.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–25731 Filed 11–23–22; 8:45 am]

BILLING CODE 3410–05–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 December 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.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program: Reporting of Lottery and Gambling, and Resource Verification.

OMB Control Number: 0584–0621.

Summary of Collection: In accordance with Section 4009 of the Agricultural Act of 2014, households in which members receive substantial lottery and gambling winnings are ineligible for SNAP until they meet allowable financial resources and income eligibility requirements. Substantial winnings are defined as winnings that are equal to or greater than the resource limit for elderly or disabled households as defined in 7 CFR 273.8(b). States are also required to work cooperatively with entities responsible for gaming in their State to identify individuals and households with substantial winnings. SNAP households must report substantial winnings to State SNAP agencies. These requirements at 7 CFR 273.11(r) were implemented in 2019 through final rulemaking titled ''Supplemental Nutrition Assistance Program: Student Eligibility, Convicted Felons, Lottery and Gambling, and State Verification Provisions of the Agricultural Act of 2014'', published on April 15, 2019 (84 FR 15083, RIN 0584–AE41). A technical correction to the 60-Day Notice associated with this rulemaking was published on June 21, 2019 (84 FR 29029, RIN 0584–AE41).

Per Section 5(g) of the Food and Nutrition Act, all applicant households must meet the SNAP resource limits unless they are considered categorically eligible (Section 5(j) of the Food and Nutrition Act) for SNAP benefits. State eligibility workers must evaluate the resources available to each household to determine whether these households meet the SNAP resource limits as defined by 7 CFR 273.8(b). Resources are one of several criteria that SNAP State agencies use to determine SNAP eligibility and States may elect to mandate verification of resources (7 CFR 273.2(f)(3)). All States must verify any resource information that appears to be questionable, in accordance with 7 CFR 273.2(f)(2)(i).

Need and Use of the Information: Food and Nutrition Service (FNS), Supplemental Nutrition Assistance Program (SNAP) information collection captures the burden associated with the requirement States SNAP Agencies make ineligible SNAP participants with substantial lottery or gambling winnings and establish cooperative agreements with public and private business gaming entities within their States to identify SNAP participants with substantial winnings. Individuals and households are required to report substantial winnings.

Description of Respondents: State Agencies (100); Business (200); Individuals/households (1,842,588).

Number of Respondents: 1,842,888.

Frequency of Responses: Reporting: Other (as desired).

Total Burden Hours: 789,267.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–25736 Filed 11–23–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Inyo National Forest; California; Mammoth Mountain Ski Area Main Lodge Redevelopment

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Mammoth Mountain Ski Area (MMSA) has submitted a proposal to the Inyo National Forest (the Forest) to pursue approval of select projects from its 2022 Master Development Plan (MDP) on National Forest System (NFS) lands, in accordance with its existing Special Use Permit (SUP). The Proposed Action includes: new lifts, lift replacements and realignments, additional ski terrain development, new buildings and parking lots for guest and employee use, road reconstruction and construction of a new road, trail construction for pedestrians and bike connectivity, extensions of existing utilities and on-mountain infrastructure, and other infrastructure improvements to support base area development on private parcels. The Inyo National Forest plans to complete a combined environmental impact statement (EIS)/Environmental Impact Report (EIR) with the Town of Mammoth Lakes because a number of projects proposed are entirely on private lands.

DATES: Comments concerning the scope of the analysis must be received by December 27, 2022. A separate notice (Notice of Preparation) with concurrent review has been published by the Town under CEQA. The draft EIS/EIR is expected in late 2023 and the final EIS is expected in 2024.

ADDRESSES: Comments may be sent by the following methods:

- *Online: https://www.fs.usda.gov/project/?project=62406.* Click on ''Comment/Object on Project'' on the right side of the page.
- *Mail:* Lesley Yen, Forest Supervisor, c/o Fred Wong, Mammoth Lakes District Ranger, Inyo National Forest, 351 Pacu Lane, Suite 200, Bishop, CA 93514.

FOR FURTHER INFORMATION CONTACT: Additional information related to the proposed projects on NFS lands can be obtained from: Tyler Lee, Mountain Resort Specialist, Inyo National Forest. Mr. Lee can be reached by phone at 760–924–5508 or by email at *tyler.lee@usda.gov.*

Individuals who use telecommunication devices for the deaf (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:

Purpose and Need for Action

The Forest Service is responding to an application submitted under the National Forest Ski Area Permit Action of 1986 and Ski Area Recreational Opportunity Enhancement Act of 2011 (SAROEA) by MMSA to implement certain projects from their accepted MDP. MMSA proposes key infrastructural changes to meet the needs of its day-use and overnight clientele and best utilize public and private lands within the Main Lodge Base area. These changes are necessary to address aging infrastructure, meet anticipated recreation demands, and attain the desired conditions for this management area. These changes are intended to improve guest circulation, operational efficiencies, fire safety, and ski area access.

The Forest, through consideration and acceptance of the proposal, has identified a need to:

- Renew and improve guest services, guest circulation, accommodations, and portal staging capacity in the Main Lodge Base area;
- Replace aging infrastructure;
- Expand guest services offerings to meet increased demands; and
- Offer learning progression opportunities for lower ability level skiers through enhanced skier services, improved terrain, and additional lifts.

Proposed Action

The Proposed Action on NFS land includes the following:

- Construction of one new lift, two new magic carpets, one new surface platter lift, and replacement of the existing Discovery Chair, Broadway Chair, and Panorama Gondola;
- Terrain enhancements including new trails, trail extensions, and grading that would result in approximately 10 acres of new ski trails within the existing SUP;
- Installation of new snowmaking infrastructure to provide approximately 9 additional acres of snowmaking coverage;
- Construction of a roadway connecting private parcels that includes a snowmobile crossing;
- Reroute of the existing Highway 203 (within the boundary of private parcel);
- An additional parking lot in ''Big Bend'' area adjacent Highway 203 that would accommodate approximately 360 vehicles;
- Upgrades to existing utility lines and construction of new utility lines to serve the proposed projects;
- Construction of a gravity fed water storage tank for domestic water storage needs;
- Construction of a new reclaimed water treatment plant and associated infrastructure on public and private lands;
- Construction of one new mountain operations facility (at the Big Bend parking lot) and replacement of the existing Main Lodge;
- Enhancements to existing summer activities; and
- Creation of wildfire defensible space around the Main Lodge Base area.

A number of projects proposed entirely on private lands that are subject to authorization by the Town of Mammoth Lakes, evaluated under CEQA, and analyzed alongside the previous list of proposed projects in a forthcoming combined EIS/EIR. A full description can be found at: *https://www.fs.usda.gov/project/?project=62406.*

Lead and Cooperating Agencies

While there are no identified cooperating agencies for this project, the Town of Mammoth Lakes will be lead for the CEQA decision and will be responsible for the CEQA compliance in a joint EIR/EIS.

Responsible Official

The Responsible Official is Lesley Yen, Forest Supervisor for the Inyo National Forest.

Scoping Comments and the Objection Process

This notice of intent initiates the NEPA scoping process, which guides the development of the environmental analysis. The Agency requests comments on potential alternatives and impacts and identification of any relevant information, studies, or analyses concerning impacts affecting the quality of the environment. Concurrently, the Town of Mammoth Lakes has issued a notice of preparation of an EIR, initiating the scoping process under CEQA. A public open house regarding this proposal including projects on private lands will be held on November 30, 2022, from 6 p.m. to 8:30 p.m. at the Town of Mammoth Lakes, CA Council Chambers, Suite Z at 437 Old Mammoth Road. This meeting will be held jointly with the Town of Mammoth Lakes regarding their analysis of the project under CEQA. Representatives from the Forest, Town of Mammoth Lakes, and MMSA will be present to answer questions and provide additional information on this project.

To be most helpful, comments should be specific to the project area and should identify resources or effects that should be considered by the Forest Service. Reviewers must provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Submitting timely, specific written comments during this scoping period or any other official comment period establishes standing for filing objections under 36 CFR parts 218A and B. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however, they will not be used to establish standing for the objection process.

Permits, Licenses or Other Authorizations Required

Activities proposed on private lands will be subject to lead agency authorization by the Town of Mammoth Lakes with analysis under the CEQA. The reroute of Highway 203 will require authorization from the California Department of Transportation (CalTrans). Other permits or licenses may be identified through scoping and the EIS analysis process.

Nature of Decision To Be Made

Given the purpose and need, the Responsible Official will review the proposed action, the other alternatives, and the environmental consequences to decide the following:

- Whether to approve, approve with modifications, or deny the proposed activities within MMSA's existing SUP.
- Whether to prescribe conditions needed for the protection of the environment on NFS lands.

Dated: November 18, 2022.

Sandra Watts,

Associate Deputy Chief, National Forest System.

[FR Doc. 2022–25688 Filed 11–23–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–31–2022]

Foreign-Trade Zone (FTZ) 222—Birmingham, Alabama, Authorization of Production Activity, Hyundai Motor Manufacturing Alabama, LLC (Passenger Automobiles, Trucks, and Cargo Trucks), Montgomery, Alabama

On July 22, 2022, Hyundai Motor Manufacturing Alabama, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 222A, in Montgomery, Alabama.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 47962, August 5, 2022). On November 21, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: November 21, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–25728 Filed 11–23–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–55–2022]

Foreign-Trade Zone (FTZ) 125—South Bend, Indiana, Notification of Proposed Production Activity, REV Recreation Group, Inc. d/b/a Midwest Automotive Designs (Passenger Vehicles), Elkhart, Indiana

REV Recreation Group, Inc. d/b/a Midwest Automotive Designs submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Elkhart, Indiana, within FTZ 125. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on November 17, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished product is passenger vans (duty rate is 2.5%).

The proposed foreign-status materials and components include cargo and passenger van bodies with chassis and drivetrain (duty rate ranges from 2.5% to 25%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 4, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: November 21, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–25729 Filed 11–23–22; 8:45 am]

BILLING CODE 3510–DS–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; Entity List and Unverified List Requests

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 24, 2023.

ADDRESSES: Interested persons are invited to submit comments by email to Mark Crace, IC Liaison, Bureau of Industry and Security, at *mark.crace@bis.doc.gov* or to *PRAcomments@doc.gov*). Please reference OMB Control Number 0694–0134 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mark Crace, IC Liaison, Bureau of Industry and Security, phone 202–482–8093 or by email at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is needed to provide a procedure for persons or organizations listed on the Entity List and Unverified List to request removal or modification of the entry that affects them. The Entity List appears at 15 CFR part 744, Supp. No. 4, and the Unverified List appears at 15 CFR part 744, Supp. No. 6. The Entity List and Unverified List are used to inform the public of certain parties whose presence in a transaction that is subject to the Export Administration Regulations (15 CFR parts 730–799) requires a license from the Bureau of Industry and Security (BIS). Requests for removal from the Entity List would be reviewed by the Departments of Commerce, State, and Defense, and Energy and Treasury as appropriate. The interagency decision, as communicated to the requesting entity by BIS, would be the final agency action on such a request. Requests for removal from the Unverified List would be reviewed by the Department of Commerce. The decision, as communicated to the requesting entity by BIS, would be the final agency action on such a request. This is a voluntary collection.

II. Method of Collection

Electronic.

III. Data

OMB Control Number: 0694–0134.

Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 15.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Voluntary.

Legal Authority: Sections 744.15, and 744.16 of the EAR.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

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

[FR Doc. 2022–25700 Filed 11–23–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 221020–0223]

RIN 0648–BL36

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Ocean Wind 1 Offshore Wind Energy Project Offshore of New Jersey; Extension of Public Comment Period

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

ACTION: Notice; extension of public comment period.

SUMMARY: On October 26, 2022, NMFS published a proposed rule, with a 30-day public comment period ending November 25, 2022, in response to a request by Ocean Wind, LLC (Ocean Wind) for regulations and associated Letter of Authorization (LOA), pursuant to the Marine Mammal Protection Act (MMPA), that would authorize the take of marine mammals, by Level A harassment and Level B harassment, incidental to the Ocean Wind Offshore Wind Energy Project (Ocean Wind 1), offshore of New Jersey. In response to a request, NMFS is announcing an extension of the public comment period by an additional 15 days ending on December 10, 2022.

DATES: The deadline for receipt of comments on the proposed rule published on October 26, 2022 (87 FR 64868), is extended from November 25, 2022, to December 10, 2022.

ADDRESSES: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2022–0109 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2022, NMFS published a proposed rulemaking in response to a request from Ocean Wind that NMFS authorize the taking, by Level A harassment and Level B harassment, of marine mammals incidental to the construction of Ocean Wind 1, located off of New Jersey in and around lease area OCS–A–0498. When published, the proposed rule (87 FR 64868; October 26, 2022) allowed for a 30-day public comment period, ending on November 25, 2022. On November 10, 2022, we received a request from the Natural Resource Defense Council (NRDC) for a 15-day extension of the public comment period. NMFS considered the request and the targeted timelines for this project and, in this case, is extending the comment period on the proposed rule for an additional 15 days to provide further opportunity for public comment. This extension provides a total of 45 days for public input on the proposed rule.

All comments and information submitted previously regarding the proposed rule for Ocean Wind 1 will be fully considered during the development of the final rule and LOA, if determined to be promulgated and issued, and do not need to be resubmitted.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the proposed rulemaking for the Ocean Wind 1 project (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments from both the initial and extended public comment periods related to the request during the development of final regulations governing the incidental taking of marine mammals by Ocean Wind, if appropriate.

Dated: November 18, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–25771 Filed 11–23–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of a Final Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability of a final programmatic environmental impact statement.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service has prepared a final programmatic environmental impact

statement (PEIS) in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), to analyze the potential environmental impacts associated with NOS' recurring data collection projects to characterize submerged features (*e.g.,* habitat, bathymetry, marine debris). The ''action area'' for these projects encompasses the United States (U.S.) territorial sea, the contiguous zone, the U.S. Exclusive Economic Zone (U.S. EEZ), U.S. rivers, States' offshore waters, and coastal and riparian lands. As part of the Proposed Action, NOS may use active acoustic equipment such as sub-bottom profilers, single beam and multibeam echo sounders, side-scan sonars, and Acoustic Doppler Current Profilers. The Final PEIS analyzes NOS data collection projects for a time period of five years. In preparing the Final PEIS, NOS has considered public comments received on the Draft PEIS, which was published in June 2021.

DATES: NOS will publish a Record of Decision no sooner than 30 days after publication of the U.S. Environmental Protection Agency's Notice of Availability for this Final PEIS in the **Federal Register**.

ADDRESSES: The Final PEIS can be viewed or downloaded from the NOS website at *https://oceanservice.noaa.gov/about/environmental-compliance/surveying-mapping.html.*

FOR FURTHER INFORMATION CONTACT: Jay Nunenkamp, Environmental Compliance Coordinator, National Ocean Service, SSMC4, 1305 East West Highway, Silver Spring, MD 20910, *nosaa.ec@noaa.gov,* (302) 715–2405.

SUPPLEMENTARY INFORMATION: The Proposed Action analyzed in the Final PEIS is to continue NOS' surveying and mapping projects throughout the action area. The Final PEIS assesses the direct, indirect, and cumulative environmental impacts of a suite of surveying and mapping data collection activities.

The Final PEIS responds to, and incorporates where appropriate, agency and public comments received on the Draft PEIS, which was available for public review from June 25, 2021 to November 22, 2021. During the public comment period for the Draft PEIS, NOS received 31 comment submissions from 30 commenters via *Regulations.gov* and email. NOS responses to agency and public comments are provided in Appendix C of the Final PEIS.

NOS updated the Draft PEIS to include additional mitigation measures designed to minimize the impacts of surveying and mapping activities on the human environment. Additional mitigation measures incorporated into the Final PEIS are expected to result in a reduction of adverse environmental impacts analyzed in the Draft PEIS.

Due to the timing of the consultations and publication of the Final PEIS, the temporal scope of the Proposed Action has been reduced from six years (2022–2027) to five years (2023–2027). The annual numbers for project activities and project miles are expected to remain consistent with those estimated in the Draft PEIS; however, since the Final PEIS covers one less year than the Draft PEIS, the total estimated survey effort has decreased.

NOS has incorporated additional data sources into the calculations of marine mammal density, and made technical corrections to the acoustic exposure estimates. These data have been updated for the Final PEIS.

The Final PEIS evaluates three alternatives:

• *Alternative A—No Action:* Under Alternative A, NOS would continue to operate a variety of equipment and technologies to gather accurate and timely data on the nature and condition of the marine and coastal environment. This alternative reflects the technology, equipment, scope, and methods currently in use by NOS, at the level of effort reflecting NOS fiscal year 2019 funding levels. (NOS is using 2019 as the baseline year for funding, as that was the last year of normal NOS operations prior to COVID–19 disruptions.)

• *Alternative B:* This alternative consists of Alternative A plus the more widespread adoption of new techniques and technologies (such as remotely operated vehicles (ROVs), microwave water level (MWWL) sensors, etc.) to more efficiently perform surveying, mapping, charting and related data gathering. Specific examples of adaptive methods and equipment that NOS programs are likely to adopt under Alternative B in the next five years include:

○ Greater use of ROVs with echo sounder technologies;

○ Greater use of autonomous underwater vehicles (AUVs) and uncrewed surface vehicles (USVs) with echo sounder technologies;

○ Conversion of one or more existing 10-m (33 feet) crewed survey boats into USVs;

○ Greater use of more efficient, wide-beam sonar systems (phase-differencing bathymetric systems) for nearshore hydrographic surveys;

○ Increased field operations in the National Marine Sanctuary system with associated requirements for hydroacoustic charting, surveying, mapping and associated activities; and

○ Installation, operation, and maintenance of additional water level stations including transitioning to mostly MWWL sensors and upgraded storm strengthening to make stations more climate resilient.

Under Alternative B, all of the activities and equipment operation described in Alternative A would continue, many at a higher level of effort. The nature of these actions would not change, but the overall level of activity would be increased.

• *Alternative C:* Like Alternative B, Alternative C adopts new techniques and technologies to encourage greater program efficiencies regarding surveying, mapping, charting, and related data gathering activities. In addition, Alternative C would consist of NOS program implementation with an overall funding increase of 20 percent relative to Alternative B. Under Alternative C, all of the activities and equipment operation described in Alternative B would continue, many at a higher level of effort. The nature of these actions would not change, but the overall level of activity would be augmented.

NOS has identified Alternative B as the preferred alternative, which fully addresses the purpose and need of the Proposed Action.

NOS initiated consultations under the Magnuson-Stevens Fishery Conservation and Management Act for Essential Fish Habitat, Endangered Species Act, and National Marine Sanctuaries Act following publication of the Draft PEIS. NOS has also completed Federal consistency determinations to comply with Section 307 of the Coastal Zone Management Act (CZMA) and has received concurrence responses from several States. Under the Marine Mammal Protection Act, NOS has submitted an application for a Letter of Authorization to the National Marine Fisheries Service, and an Incidental Take Regulation request to the U.S. Fish and Wildlife Service. NOS will initiate consultation under the National Historic Preservation Act prior to conducting individual projects that may affect cultural and historic properties.

Public Review

We are not requesting public comments on the FEIS, but any written comments we receive will become part of the public record associated with this action. The entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personal information, such as account numbers or Social Security numbers, should not

be included with the comment. Comments that are not responsive or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

Authority: The preparation of the Final PEIS was conducted in accordance with the requirements of NEPA, the Council on Environmental Quality's Regulations (40 CFR 1500 *et seq.* (1978)), other applicable regulations, and NOAA's policies and procedures for compliance with those regulations. While the CEQ regulations implementing NEPA were revised as of September 14, 2020 (85 FR 43304, July 16, 2020), and further revised as of May 20, 2022 (87 FR 23453, April 20, 2022), NOS prepared this Final PEIS using the 1978 CEQ regulations because this environmental review began on December 19, 2016, when NOS published a Notice of Intent to prepare a NEPA document for its mapping program.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

Supervisory Highlights, Issue 28, Fall 2022

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supervisory Highlights.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing its twenty-eighth edition of Supervisory Highlights.

DATES: The Bureau released this edition of the Supervisory Highlights on its website on November 16, 2022. The findings in this report cover examinations in the areas of auto servicing, consumer reporting, credit card account management, debt collection, deposits, mortgage origination, mortgage servicing and payday lending completed between January 1, 2022, and June 31, 2022.

FOR FURTHER INFORMATION CONTACT: Jaclyn Sellers, Senior Counsel, at (202) 435–7449. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

1. Introduction

The CFPB's supervision program is focused on ensuring that financial institutions subject to its authority comply with Federal consumer financial laws. Where violations of law or compliance weaknesses are found, CFPB encourages compliance and deters misconduct and recidivism.[1] *Supervisory Highlights* promotes transparency of the Bureau's supervisory work and provides the public with insight into supervisory findings.

In this issue of *Supervisory Highlights* several trends are evident. The first is that examiners continue to identify the same violations of law across multiple institutions of a certain type, even though past editions of *Supervisory Highlights* have publicized such violations at other institutions of that type. Another is findings related to entities that engaged in unfair, deceptive or abusive acts or practices (UDAAP) in violation of the Consumer Financial Protection Act (CFPA).[2] In addition, there are findings on CARES Act-related or COVID–19-related issues. Finally, this issue contains certain types of novel supervisory findings that have not previously been reported in *Supervisory Highlights* involving unique factual or legal analysis.

The findings in this report cover examinations in the areas of auto servicing, consumer reporting, credit card account management, debt collection, deposits, mortgage origination, mortgage servicing and payday lending completed between January 1, 2022, and June 31, 2022. To maintain the anonymity of the supervised institutions discussed in S*upervisory Highlights,* references to institutions generally are in the plural and the related findings may pertain to one or more institutions.

Supervision is increasing its focus on repeat offenders, particularly those who violate agency or court orders. As part of that focus, Supervision has created a Repeat Offender Unit.

The Repeat Offender Unit is focused on:

- Reviewing and monitoring the activities of repeat offenders;
- Identifying the root cause of recurring violations;
- Pursuing and recommending solutions and remedies that hold entities accountable for failing to consistently comply with Federal consumer financial law; and,
- Designing a model for order review and monitoring that reduces the occurrences of repeat offenders.

The Repeat Offender Unit will focus on ways to enhance the detection of repeat offenses, develop a process for rapid review and response designed to address the root cause of violations, and recommend corrective actions designed to stop recidivist behavior. This will include closer scrutiny of corporate compliance with orders to ensure that requirements are being met and any issues are addressed in a timely manner.

We invite readers with questions or comments about *Supervisory Highlights* to contact us at *CFPB_Supervision@cfpb.gov.*

2. Supervisory Observations

2.1 Auto Servicing

The Bureau continues to evaluate auto loan servicing activities, primarily to assess whether entities have engaged in any UDAAPs prohibited by the CFPA.[3] Examiners identified unfair and deceptive acts or practices across many aspects of auto servicing, including violations related to add-on product charges, loan modifications, double billing, use of devices that interfered with driving, collection tactics, and payment allocation.

2.1.1 Overcharging for Add-On Products at Early Payoff

When consumers purchase an automobile, auto dealers and finance companies offer optional, add-on products that consumers can purchase. Some of the add-on products provide specific types of potential benefits, such as guaranteed asset protection (GAP) products that offer to help pay off an auto loan if the car is totaled or stolen and the consumer owes more than the car's depreciated value, accident and health protection, or credit life protection. The add-on products' potential benefits apply only for specific time periods, such as four years after purchase or for the term of the loan, and only under certain circumstances.

Auto dealers and finance companies often charge consumers all payments for any add-on products as a lump sum at origination of the auto loan or purchase of the vehicle. Dealers and finance companies generally include the lump sum cost of the add-on product as part of the total vehicle financing agreement, and consumers typically make payments on these products throughout the loan term, even if the product expires years earlier.

[1] If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

[2] 12 U.S.C. 5531, 5536.

[3] 12 U.S.C. 5531, 5536.

An act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.[4]

Examiners identified instances where consumers paid off their loans early, but servicers failed to ensure consumers received refunds for unearned fees related to add-on products.[5] At that point, certain products no longer offered any possible benefit to consumers. In contrast to early payoff scenarios, after repossession, servicers did ensure that refunds for unearned fees were applied to consumers' accounts either by obtaining the refunds directly or by debiting reserve accounts servicers had established for dealers.

Consumers suffered substantial injury because they were essentially required to pay for services they could no longer use, as the relevant products terminated when the loan contract terminated. Consumers could not reasonably avoid the injury because they had no control over the servicers' refund processing actions. When servicers present consumers with payoff amounts, consumers may have no reason to know that the amounts are inflated by add-on product premiums as consumers may be unaware that they paid unearned premiums, let alone that the amount could be refunded upon payoff. And reasonable consumers may not apply for refunds themselves because they may have been unaware that the contract provided that they could do so. Examiners concluded that the injury was not outweighed by any countervailing benefits to consumers or competition and that servicers engaged in unfair acts or practices by failing to ensure consumers received refunds for the specific unused add-on products.

In response to these findings, servicers are remediating impacted consumers and implementing processes to obtain refunds for consumers for add-on products with no benefit after early payoff.

2.1.2 Misleading Consumers About Loan Modification Approval

In calls where consumers who were delinquent on their loans requested payment assistance, servicers stated that the consumers were ''preliminarily approved'' for loan modifications but had to make a payment equal to the standard monthly payment before the servicers would finalize the modifications. This created a net impression that if consumers made the payments, they had a high likelihood of having the modifications finalized. In fact, servicers denied most of the modification requests after consumers made the requested payments.

Sections 1031 and 1036 of the CFPA prohibit deceptive acts or practices.[6] A representation, omission act, or practice is deceptive when: (1) the representation, omission, act, or practice misleads or is likely to mislead the consumer; (2) the consumer's interpretation of the representation, omission act, or practice is reasonable under the circumstances; and (3) the misleading representation, omission, act, or practice is material.

Examiners found that servicers engaged in deceptive acts or practices by representing to consumers that their modifications were preliminarily approved pending a ''good faith'' payment, when in fact they denied most of the modification requests. Consumers' understanding that they had a high likelihood of having the modifications finalized was reasonable under the circumstances. And the likelihood that a modification would be finalized was material to the consumer's decision regarding whether to make the good faith payment.

In response to these findings, servicers ceased making these representations, developed policies and procedures to prevent company representatives from making these representations, implemented related training, and enhanced monitoring.

2.1.3 Double Billing Consumers for Collateral Protection Insurance

When consumers enter auto finance agreements, they generally agree to maintain vehicle insurance that covers physical damage to the property in order to protect the lender's interest in the collateral. Some contracts allow servicers to purchase insurance, called Collateral Protection Insurance (CPI) or Force-Placed Insurance (FPI), if the consumer fails to maintain appropriate coverage; charges for CPI are generally passed along to consumers.

Examiners found that servicers engaged in an unfair act or practice when they double billed consumers for CPI charges. Servicers purchased CPI and billed consumers for a certain amount. Servicers then charged consumers twice for the CPI in error; billing and collecting these charges caused, or was likely to cause, substantial injury to consumers. Consumers could not reasonably avoid the injury, and it was reasonable for consumers to rely on the billed amount. The injury associated with billing consumers for erroneous amounts is not outweighed by any countervailing benefits to consumers or competition.

In response to these findings, servicers proposed implementing changes to address the violation.

2.1.4 Unfairly Engaging Devices That Interfered With Driving

When consumers enter into auto finance agreements, lenders sometimes require consumers to have technologies that interfere with driving (sometimes called starter interrupt devices) installed in their vehicles. These devices, when activated by servicers, either beep or prevent a vehicle from starting.

Examiners found that, in certain instances, servicers engaged in unfair acts or practices by activating these devices in consumers' vehicles when consumers were not past due on payment, contrary to relevant contracts and disclosures. Servicers inappropriately activated the devices due to errors with their internal systems. In these instances, servicers caused injury in one of two ways. First, in some instances they activated the devices and prevented consumers from starting their vehicles, causing substantial injury by unexpectedly depriving these consumers of their vehicles. Second, in some instances servicers caused the devices to sound late payment warning beeps despite consumers being current, often for several days. The devices sounded these beeps each time the consumer started the car. This caused, or was likely to cause, substantial injury to consumers because they may have ceased using the vehicle because they understood from the beeps that servicers might disable the vehicle. Additionally, the warning beeps were likely to harass consumers and risk harming consumers' reputations by communicating to others, the consumers' purported delinquencies. Consumers could not reasonably avoid these injuries because they had no control over servicers' activation of the devices. The harm outweighed any countervailing benefits to consumers or competition.

In response to these findings, servicers proposed implementing changes to address the violations.

2.1.5 Making Deceptive Representations During Collection Calls

Examiners found that certain servicers made deceptive representations during

[4] 12 U.S.C. 5531(c).

[5] The Bureau previously discussed similar issues with add-on product refunds after repossession in *Supervisory Highlights,* Issue 26, Spring 2022, available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf.*

[6] 12 U.S.C. 5531 and 5536(a)(1)(B).

collections calls. Specifically, servicers' representatives told delinquent consumers that their driver's licenses and tags would be or may be suspended if they did not make a prompt payment to the servicer. In fact, servicers do not have authority to suspend consumers' driver's licenses and tags. Additionally, examiners found that some representatives told consumers that their accounts had, or would be, transferred to the legal department. In fact, consumers' accounts were not at risk of imminent referral to the legal department. In these instances, servicers engaged in deceptive acts or practices. It was reasonable for consumers to believe that servicers had the authority to take the actions they threatened to take and would take those actions. And the representations were material because they were likely to impact consumers' choices regarding whether to pay their auto loans or other debts.

In response to these findings, servicers remediated impacted consumers and enhanced training, procedures, and call monitoring related to collection activity.

2.2 Consumer Reporting

Companies in the business of regularly assembling or evaluating information about consumers for the purpose of providing consumer reports to third parties are ''consumer reporting companies'' (CRCs).[7] These companies, along with the entities—such as banks, loan servicers, and others—that furnish information to the CRCs for inclusion in consumer reports, play a vital role in availability of credit and have a significant role to play in the fair and accurate reporting of credit information. They are subject to several requirements under the Fair Credit Reporting Act (FCRA)[8] and its implementing regulation, Regulation V,[9] including the requirement to reasonably investigate disputes and, for furnishers, to furnish data subject to the relevant accuracy requirements. In recent reviews, examiners found deficiencies in CRCs' compliance with FCRA dispute investigation requirements and furnisher compliance with FCRA and Regulation V accuracy and dispute investigation requirements.

2.2.1 NCRC Duty To Review and Report Determinations and Actions Taken in Response to Applicable Complaints

The FCRA requires that nationwide CRCs (NCRCs) must take certain actions in response to complaints received from consumers that the Bureau transmits to the NCRC if those complaints are about ''incomplete or inaccurate information'' that a consumer ''appears to have disputed'' with the NCRC.[10] For this category of complaints, the FCRA requires that NCRCs: (1) review such complaints to determine if all legal obligations have been met; (2) provide regular reports to the Bureau regarding the determinations and actions taken in response to the reviews; and (3) maintain records regarding the disposition of such complaints for a reasonable amount of time to demonstrate compliance with the obligation to review and report on the complaints.

In recent reviews of one or more NCRCs, examiners found that NCRCs failed to report the outcome of complaint reviews to the Bureau. Specifically, examiners found that NCRCs failed to report to the Bureau determinations about whether all legal obligations had been met and actions taken in response to complaints. Examiners also found that NCRCs failed to address applicable complaints based on the NCRCs' unsubstantiated suspicions that the complaints were submitted by unauthorized third parties (*e.g.,* credit repair organizations). In response to these findings, NCRCs revised policies and procedures for identifying applicable complaints subject to these heightened obligations. NCRCs also revised processes for notifying consumers whose complaints are identified as being submitted by unauthorized third parties to allow consumers to confirm whether the complaints were authorized.

2.2.2 Furnisher Prohibition of Reporting Information With Actual Knowledge of Errors

Examiners are continuing to find that furnishers are violating the FCRA by inaccurately reporting information despite actual knowledge of errors.[11] In reviews of auto loan furnishers, examiners found that entities furnished information to CRCs while knowing or having reasonable cause to believe such information was inaccurate because the information furnished did not accurately reflect the information in the furnishers' account servicing systems. For example, examiners found that furnishers reported a consumer's account to CRCs as delinquent despite placing the account in deferment during the time periods for which delinquent status was furnished. Examiners also found that the prohibition on furnishing inaccurate information under this provision applied because the furnishers did not clearly and conspicuously specify to consumers an address for notices relating to inaccurately furnished information. For example, furnishers disclosed a general-purpose corporate address on their websites and/or provided instructions on their websites for the submission of complaints or general concerns by consumers. However, examiners found that the furnishers did provide an address for consumers to send notices about inaccurate credit reporting information.

In response to these findings, furnishers corrected the furnished information for affected consumers. Furnishers also revised website language to specify the address for the submission by consumers of notices relating to inaccurately furnished information.[12]

2.2.3 Furnisher Duty To Correct and Update Information

Examiners are continuing to find that furnishers are violating the FCRA duty to correct and update furnished information after determining such information is not complete or accurate.[13] In reviews of third-party debt collection furnishers, examiners found that furnishers failed to send updated or corrected information to CRCs after making a determination that information the furnishers had reported was not complete or accurate. For example, examiners found that furnishers continued to report consumer accounts to CRCs with an indication that the dispute investigation was still open when, in fact, the furnisher had determined that the accounts were no longer being investigated after completing their dispute investigations. As a result, furnishers did not promptly notify CRCs of the determination that the accounts were no longer under active dispute investigation and provide CRCs with corrected information that the accounts had been corrected or had previously been disputed. In response to these findings, furnishers implemented automated processes to update and

[7] The term ''consumer reporting company'' means the same as ''consumer reporting agency,'' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), including nationwide consumer reporting agencies as defined in 15 U.S.C. 1681a(p) and nationwide specialty consumer reporting agencies as defined in 15 U.S.C. 1681a(x).

[8] 15 U.S.C. 1681 *et seq.*

[9] 12 CFR part 1022.

[10] 15 U.S.C. 1681i(e).

[11] 15 U.S.C. 1681s–2(a)(1)(A).

[12] The Bureau previously reported similar violations in *Supervisory Highlights*, Issue 20, Fall 2019, available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-20_122019.pdf.*

[13] 15 U.S.C. 1681s–2(a)(2).

provide corrections of account dispute statuses to CRCs upon the completion of dispute investigations.[14]

In addition, in reviews of auto loan furnishers, examiners found that furnishers did not promptly correct or update CRCs following the placement of consumer accounts into retroactive deferments. Upon placing consumer accounts into retroactively applicable deferments, furnishers updated their systems of record to reflect that the accounts did not have any payments due until a deferment began, and therefore had not been delinquent. However, examiners found that furnishers did not send corrections or updates to CRCs indicating that the previously reported delinquencies on such accounts were no longer accurate as a result of the accommodation. In response to these findings, furnishers are conducting lookbacks to identify and furnish corrections to the CRCs in connection with all affected consumer accounts and are implementing internal controls to ensure they promptly furnish such corrections going forward.

2.2.4 Furnisher Duty To Provide Notice of Delinquency of Accounts

Examiners are continuing to find that furnishers are violating the FCRA duty to notify CRCs of the date of first delinquency (DOFD) on applicable accounts.[15] In recent reviews of debt collection furnishers, examiners found that furnishers violated this provision by failing to establish and follow reasonable procedures to report the appropriate DOFD. Examiners found that furnishers were reporting on collections accounts that arose from unpaid utility accounts—accounts typically disconnected several months after the first missed payment causing delinquency before being sent to collections. Examiners found that reasonable procedures would prevent a furnisher from calculating a DOFD that preceded the account going to collections by only a brief window, such as less than 40 days. In response to these findings, the furnishers worked with the original creditors to ensure they received the DOFD from them directly and implemented written policies and procedures and enhanced monitoring and audit to ensure they obtain the correct DOFD and furnish it to CRCs consistent with FCRA requirements.[16]

2.2.5 Furnisher Duty To Establish and Implement Reasonable Policies and Procedures Concerning the Accuracy and Integrity of Furnished Information

Examiners are continuing to find that furnishers are violating the Regulation V duty to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information furnished to a CRC and to consider and incorporate, as appropriate, the guidelines of Appendix E to Regulation V.[17] Recent supervisory reviews identifying violations of the Regulation V requirement for reasonable written policies and procedures include:

- In reviews of auto loan furnishers, examiners found furnishers' policies and procedures did not document the basis on which dispute agents should determine consumer direct disputes reasonably qualify as frivolous or irrelevant.
- Examiners found that furnishing policies and procedures at auto loan furnishers and debt collection furnishers did not provide for adequate document retention. Specifically, furnishers' procedures failed to provide for the maintenance of records for a reasonable period of time in order to substantiate the accuracy of the information furnished that was subject to dispute investigations.
- Examiners also found that furnishers lacked reasonable written policies and procedures establishing and implementing appropriate internal controls regarding the accuracy and integrity of furnished information, such as by implementing standard procedures and verifying random samples of furnished information.

In response to these findings, furnishers are taking corrective actions including developing written policies and procedures regarding the accuracy and integrity of information furnished to CRCs and the proper handling and document retention of information related to consumer disputes.[18]

2.2.6 Furnisher Duty To Conduct Reasonable Investigations of Direct Disputes

Examiners are continuing to find that furnishers are violating the Regulation V duty to conduct a reasonable investigation of direct disputes.[19] Recent examples of failures to conduct reasonable investigations of direct disputes include:

- Debt collection furnishers failed to conduct reasonable investigations by neglecting to review relevant, underlying information and documentation. In response to these findings, the furnishers updated policies and procedures to ensure that furnishing dispute investigations are reasonable, complete, and reported within the time periods required by Regulation V.
- Auto furnishers neither conducted reasonable investigations nor sent notices that disputes were frivolous or irrelevant where direct dispute notices may have been prepared by a credit repair organization and such notices contained all of the information needed to conduct a reasonable investigation (*e.g.,* name, address, partial account number, description of information disputed, and explanation of the basis for the dispute). In response to these findings, the furnishers are revising procedures regarding documentation standards and improving training.[20]

2.3 Credit Card Account Management

The Bureau assessed the credit card account management operations of several supervised entities for compliance with applicable Federal consumer financial services laws. Examinations of these entities identified violations of Regulation Z and deceptive and unfair acts or practices prohibited by the CFPA.

2.3.1 Billing Error Resolution

Regulation Z contains billing error resolution provisions that a creditor must comply with following receipt of a billing error notice from a consumer. Examiners found that certain entities violated Regulation Z's billing error resolution provisions by:

- Failing to mail or deliver written acknowledgements to consumers within 30 days of receiving a billing error notice;[21]
- Failing to resolve disputes within two complete billing cycles, or no later

[14] The Bureau previously reported similar violations in *Supervisory Highlights,* Issue 26, Spring 2022, available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf.*

[15] 15 U.S.C. 1681s–2(a)(5).

[16] The Bureau previously reported similar violations in *Supervisory Highlights,* Issue 22, Summer 2020, available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-22_2020-09.pdf.*

[17] 12 CFR 1022.42(a), (b).

[18] The Bureau previously reported similar violations in *Supervisory Highlights,* Issue 26, Spring 2022, available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-22_2020-09.pdf.*

[19] 12 CFR 1022.43(e).

[20] The Bureau previously reported similar violations in *Supervisory Highlights,* Issue 22, Summer 2020, available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-22_2020-09.pdf.*

[21] 12 CFR 1026.13(c)(1).

than 90 days after receiving a billing error notice; [22]

- Failing to conduct reasonable investigations after receiving billing error notices; [23]
- Failing to provide explanations to consumers after determining that no billing error occurred or that a different billing error occurred from that asserted.[24]

In response to these findings, the relevant entities are implementing plans to improve compliance with Regulation Z's billing error resolution requirements, which include enhanced policies and procedures, monitoring and audit, and training. The entities also are remediating affected consumers.[25]

2.3.2 Rate Reevaluation Violations

Under Regulation Z, as revised to implement the Card Accountability Responsibility and Disclosure (CARD) Act, after increasing a consumer's Annual Percentage Rate (APR or rate), credit card issuers must periodically assess whether it is appropriate to reduce the account's APR.[26] Issuers must first reevaluate each such account no later than six months after the rate increase and at least every six months thereafter until the APR is reduced to the rate applicable immediately prior to the increase, or, if the rate applicable immediately prior to the increase was a variable rate, to a variable rate determined by the same formula (index and margin) that was used to calculate the rate applicable immediately prior to the increase, or, to a rate that is lower than the rate applicable immediately prior to the increase.[27] In reevaluating each account to determine whether it was appropriate to reduce the account's APR, the issuer must review: (a) the factors on which the rate increase was originally based (hereinafter, the original factors); or, (b) the factors the issuer currently considers when determining the APR applicable to similar, new consumer credit card accounts (hereinafter, the acquisition factors).[28]

Examiners found a number of violations of these provisions of Regulation Z. In one set of violations, the creditors failed to consider appropriate factors when performing rate reevaluations. First, in reevaluating accounts subject to default pricing, the creditors used the original factors method, but also used the acquisition rate for new customers as one of the variables in reevaluating these accounts. As such, examiners determined that the creditors improperly mixed original factors and acquisition factors when reevaluating accounts subject to a rate increase. Additionally, if the creditors, after reevaluation, determined that a consumer's rate should be reduced, the rate would be reduced, but not below the higher of the consumer's pre-default interest rate or the lowest current acquisition rate. In response to these findings, the creditors will remediate affected consumers.

Additionally, examiners found that the creditors violated these provisions by failing to evaluate the full rate increase for certain accounts converted from fixed to variable rate. Specifically, for consumer accounts that received a default rate increase and converted from fixed to variable rate, the creditors reevaluated the interest rates using original factors. However, if during the reevaluation period, the variable rate for those accounts increased due to an increase in the prime rate, the creditors did not consider that increase as part of the rate reduction reevaluation. In response to these findings, the creditors agreed to remediate affected consumers.

In a separate set of violations, the creditors failed to reevaluate all credit card accounts subject to the rate reevaluation provisions at least once every six months. For certain accounts, the creditors failed to review the accounts until they reduced the rate to the rate applicable immediately prior to the increase or to a rate that was lower than the rate applicable immediately prior to the increase. For other accounts, the creditors inadvertently excluded recently added accounts from the master list file of accounts with an increased interest rate subject to the rate reevaluation process. Additionally, once the master list file of accounts reached its file size capacity, older accounts were automatically deleted each time new accounts were added to the file. This resulted in monetary harm to consumers who were not included in the creditors' rate reevaluation process and did not receive potential rate reductions. In response to these findings, the creditors will remediate affected consumers and design and implement policies and procedures to ensure compliance.

Finally, examiners found creditors improperly removed accounts from the APR reevaluation process. Specifically, examiners found that the creditors improperly removed consumer accounts from the APR reevaluation process before the consumer had achieved either a comparable APR to what the consumer enjoyed at the time the rate was increased or the current rate offered to a new customer with similar credit characteristics. In response to these findings, the creditors will remediate affected consumers.[29]

2.3.3 Deceptive and Unfair Marketing, Sale, and Servicing of Add-On Products

The CFPA prohibits unfair and deceptive acts or practices.[30] Examiners found that certain entities engaged in deceptive acts or practices in the marketing, sale, and servicing of credit card add-on products to consumers.

Examiners found that the entities engaged in deceptive acts or practices in relation to the marketing, sale, and servicing of credit card add-on products. Specifically, examiners found that the entities misled consumers when their service providers used sales scripts that claimed that self-employed consumers were eligible for the products when they were not; when, in marketing materials, service providers claimed that consumers could cancel the product coverage simply by calling a toll-free number when, instead, they were required to take additional steps to cancel; and when, in live sales calls, service providers claimed that consumers would not be required to pay product premiums for months in which they had a zero balance when, in fact, consumers were required to carry a zero average daily balance for the billing cycle to avoid paying the premium for that month. In each instance, examiners concluded it was reasonable for consumers, under the circumstances, to believe the misrepresentations because the entities' service providers expressly stated them. These acts or practices were material because they likely made consumers more willing to purchase the products than they otherwise would have been.

Examiners also found that the entities engaged in unfair acts or practices in relation to the marketing, sale, and servicing of the credit card add-on products. Specifically, examiners found that the entities treated consumers unfairly when they omitted disclosure of the burdensome administrative requirements that consumers were

[22] 12 CFR 1026.13(c)(2).

[23] 12 CFR 1026.13(f).

[24] 12 CFR1026.13(f)(1).

[25] The Bureau previously reported similar violations in *Supervisory Highlights,* Issue 26, Spring 2022 and Issue 25, Fall 2021. These issues are available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-25_2021-12.pdf* and *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf.*

[26] 12 CFR 1026.59(a).

[27] 12 CFR 1026.59(c), (f).

[28] 12 CFR 1026.59(d)(1).

[29] The Bureau previously reported similar violations in *Supervisory Highlights,* Issue 26, Spring 2022, available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf.*

[30] 12 U.S.C. 5531 and 5536.

required to satisfy to submit benefits claims for the product. Examiners also found that the entities treated consumers unfairly when they failed to cancel the products on the date of the consumer's request and failed to issue pro rata refunds based on the date of the request as required by the insurance agreement. Examiners concluded that these acts or practices were unfair because they caused substantial injury to consumers by leading them to purchase a product that was likely of significantly less value than the consumer initially believed. The acts or practices were not reasonably avoidable by consumers since consumers were unaware of the coverage restrictions because the entities did not disclose those limitations to consumers at the time of purchase and were not outweighed by countervailing benefits to consumers or competition as the acts or practices were injurious in their net effects.[31]

2.3.4 Deceptive Representations Regarding the Fixed Payment Option for Automatic Withdrawal of the Minimum Payment Due

Examiners found that certain entities engaged in deceptive acts or practices by inaccurately representing to consumers enrolled in their fixed payment option that the entities would withdraw automatically, from the consumer's bank account, an amount equal to the minimum payment due on their credit card account whenever such payment exceeded the fixed amount designated by the consumer. The entities' inaccurate representations about the fixed payment option conveyed false messages to consumers that likely misled them to reasonably believe that the withdrawn payment amount would be increased to satisfy the minimum payment due when such amount was higher than the fixed amount designated by the consumer. These representations are material because they likely induced consumers to enroll in the fixed payment option and led them to believe they did not need to check that they made the minimum payment due. In certain instances, however, the entities failed to withdraw the minimum payment due, and only withdrew the fixed amount, resulting in the consumer failing to pay the minimum payment due. These failures resulted in consumers experiencing late charges, default pricing, and derogatory credit reporting.

In response to these findings, the entities agreed to remediate affected consumers.

2.4 Debt Collection

The Bureau has supervisory authority to examine certain institutions that engage in consumer debt collection activities, including very large depository institutions,[32] nonbanks that are larger participants in the consumer debt collection market,[33] and nonbanks that are service providers to certain covered persons.[34] Recent examinations of larger participant debt collectors identified violations of the Fair Debt Collection Practices Act (FDCPA).

2.4.1 Harassment Regarding Continued Call Conversations

During calls with consumers, examiners found that debt collectors engaged in conduct the natural consequence of which was to harass, oppress, or abuse the person with whom they were communicating. In these calls, examiners found that the debt collectors continued to engage the consumers in telephone conversations after the consumers stated that the communication was causing them to feel annoyed, harassed, or abused.

Examiners found that in at least one call, the debt collector continued to engage the consumer after the consumer stated multiple times they were driving and needed to discuss the account at another time. In another instance, examiners found that the debt collector used combative statements and continued the call after the consumer stated they were unemployed, affected by COVID–19, and unable to pay, and even after the consumer clearly stated that the call was ''making him agitated.'' By continuing the calls after the consumers expressed their desire to no longer engage with the collector, the debt collectors violated the FDCPA's prohibition against harassing and abusive conduct.[35]

In response to these findings, Supervision directed the debt collectors to enhance their training requirements to ensure compliance with Federal consumer financial law including the FDCPA.

2.4.2 Communication With Third Parties

Examiners found multiple instances in which debt collectors violated the FDCPA by communicating with a person other than the consumer about the consumer's debt, when the person had a name similar or identical to the consumer.[36]

In response to these findings, Supervision directed the debt collectors to update their identity authentication procedures to ensure that the person with whom the debt collector is communicating is the consumer obligated or allegedly obligated to pay the debt.[37]

2.5 Deposits

2.5.1 Pandemic Relief Benefits—Unfairness Risks

The Bureau conducted prioritized assessments to evaluate how financial institutions handled pandemic relief benefits deposited into consumer accounts, as detailed in the COVID–19 Prioritized Assessments Special Edition of Supervisory Highlights, Issue 23.[38] These pandemic relief benefits included enhanced unemployment insurance funds and three rounds of economic impact payments.[39] The Bureau did a broad assessment centered on whether consumers may have lost access to pandemic relief benefits due to financial institutions' garnishment or setoff practices. Generally, requirements around garnishment practices derive from state-specific laws. For one economic impact payment round, Congress mandated nationwide protection from most garnishment orders. Various State and territorial laws may have protected economic impact payments and/or unemployment insurance funds from garnishment or setoff as well.

During the initial deposits prioritized assessments review, examiners identified indicators of risk at over two dozen depository institutions. Examiners then conducted follow-up assessments at these identified institutions. The follow-up prioritized assessments analyzed whether the institutions risked committing an unfair act or practice in violation of the Dodd-Frank Act, in connection with their treatment of pandemic relief benefits.[40]

Examiners identified unfairness risks at multiple institutions due to policies

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[31] The Bureau previously reported similar violations in *Supervisory Highlights,* Issue 16 Summer 2017, available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf.*

[32] 12 U.S.C. 5515 (a)–(b).

[33] 12 U.S.C. 5514(a)(1)(B) and 12 CFR 1090.105.

[34] 12 U.S.C. 5514(e), 5514(d), 5516(e).

[35] 15 U.S.C. 1692d(5).

[36] 15 U.S.C. 1692c(b).

[37] The Bureau previously reported similar violations in *Supervisory Highlights,* Issue 24, Summer 2021, available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-24_2021-06.pdf.*

[38] This edition is available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-23_2021-01.pdf.*

[39] Congress issued three rounds of economic impact payments to many consumers under the Coronavirus Aid, Relief, and Economic Security Act; the Consolidated Appropriations Act of 2021; and the American Rescue Plan Act.

[40] 12 U.S.C. 5531, 5536.

and procedures that may have resulted in one or more of the following practices:

- Using protected unemployment insurance or economic impact payments funds to set off a negative balance in the account into which the benefits were deposited (a.k.a. same-account setoff) or to set off a balance owed to the financial institution on a separate account (a.k.a. cross-account setoff), when such practices were prohibited by applicable State or territorial protections;
- Garnishing protected economic impact payments funds in violation of the Consolidated Appropriations Act of 2021;
- Garnishing protected unemployment insurance or economic impact payments funds in violation of applicable State or territorial protections;
- In connection with out-of-state garnishment orders, processing garnishments in violation of applicable State prohibitions against out-of-state garnishment;[41] and/or
- Failing to apply the appropriate State exemptions to certain consumers' deposit accounts after receiving garnishment notices.[42]

In response to these findings, Supervision directed the institutions to: (i) refund any protected economic impact payments funds that were taken by the institution in connection with improper same-account or cross-account setoffs; (ii) refund any garnishment-related fees assessed to account holders in connection with certain out-of-state garnishment orders; (iii) review, update, and implement policies and procedures to ensure the institution complies with applicable State and territorial protections regarding its garnishment practices, including in connection with the garnishment of unemployment insurance funds, Federal benefits, any funds protected by State law where the consumer resides, and in connection with out-of-state garnishment orders; and/or (iv) review, update, and implement policies and procedures to ensure the institution complies with applicable State and territorial protections regarding its setoff practices, including in connection with the setoff of unemployment insurance funds and Federal benefits.

These prioritized assessment findings highlight the importance of State and territorial laws that protect consumer funds held in deposit accounts, including critical relief benefits. And it underscores that the failure to comply with applicable State and territorial protections may, under certain circumstances, give rise to unfair acts or practices in violation of the CFPA. One or more cited institutions raised arguments that guidance on preemption meant they need not comply with State or territorial actions. Although preemption of State and territorial laws may apply in certain situations, all depository institutions generally must comply with, among other consumer protections, applicable State and territorial laws that govern garnishment and certain setoff practices.

2.6 Mortgage Origination

Supervision assessed the mortgage origination operations of several supervised entities for compliance with applicable Federal consumer financial laws. Examinations of these entities identified violations of Regulation Z and deceptive acts or practices prohibited by the CFPA.

2.6.1 Reducing Loan Originator Compensation To Cover Settlement Cost Increases That Were Not Unforeseen

Regulation Z prohibits compensating mortgage loan originators in an amount that is based on the terms of a transaction or a proxy for the terms of a transaction.[43] This means that a ''creditor and a loan originator may not agree to set the loan originator's compensation at a certain level and then subsequently lower it in selective cases.'' [44] The rule, however, permits decreasing a loan originator's compensation due to unforeseen increases in settlement costs. An increase is unforeseen if it occurs even though the estimate provided to the consumer is consistent with the best information reasonably available to the disclosing person at the time of the estimate.[45] Thus, a loan originator may decrease its compensation ''to defray the cost, in whole or part, of an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA or an unforeseen actual settlement cost not disclosed to the consumer pursuant to section 5(c) of RESPA.'' [46]

Examiners found that certain entities provided consumers loan estimates based on fee information provided by loan originators. At closing, the entities provided consumers a lender credit when the actual costs of certain fees exceeded the applicable tolerance thresholds. The entities then reduced the amount of compensation to the loan originator after loan consummation by the amount provided to cure the tolerance violation. Examiners determined, however, that the correct fee amounts were known to the loan originators at the time of the initial disclosures, and that the fee information was incorrect as a result of clerical error. Specifically, in each instance, the settlement service had been performed and the loan originator knew the actual costs of those services. The loan originators, however, entered a cost that was completely unrelated to the actual charges that the loan originator knew had been incurred, resulting in information being entered that was not consistent with the best information reasonably available. Accordingly, the unforeseen increase exception did not apply.

As a result of these findings, the entities are revising their policies and procedures and providing training to ensure loan originator compensation is not reduced based on a term of a transaction.

2.6.2 Deceptive Waiver of Borrowers' Rights in Loan Security Agreements

Regulation Z states that a ''contract or other agreement relating to a consumer credit transaction secured by a dwelling . . . may not be applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of Federal law.'' [47] In light of this provision, examiners previously concluded that certain waiver provisions violate the CFPA's prohibition on deceptive acts or practices where reasonable consumers would construe the waivers to bar them from bringing Federal claims in court related to their mortgages.[48]

Examiners identified a waiver provision in a loan security agreement that was used by certain entities in one State. The waiver provided that borrowers who signed the agreement waived their right to initiate or participate in a class action. Examiners concluded the waiver language was misleading, and that a reasonable consumer could understand the provision to waive their right to bring a class action on any claim, including

[41] A similar practice was recently the subject of a Bureau public enforcement action. This order is available at: *https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-bank-of-america-to-pay-10-million-penalty-for-illegal-garnishments/#:~:text=The%20CFPB's%20order%20requires%20Bank,a%20%2410%20million%20civil%20penalty.*

[42] *Id.*

[43] 12 CFR 1026.36(d)(1)(i).

[44] 12 CFR part 1026, supp. I, comment 36(d)(1)–5.

[45] 12 CFR part 1026, supp. I, comment 36(d)(1)–7.

[46] *Id.*

[47] 12 CFR 1026.36(h)(2).

[48] 12 U.S.C. 5531 and 5536.

Federal claims, in Federal court. The misrepresentation was material because it was likely to affect whether a consumer would consult with a lawyer or otherwise initiate or participate in a class action involving a Federal claim in relation to the loan transaction. Thus, examiners concluded that the waiver provision was deceptive.

In response to these findings, the entities removed the waiver provision from the loan security agreements and sent a notice to affected consumers rescinding and voiding the waiver.[49]

2.7 Mortgage Servicing

The Bureau conducted examinations focused on servicers' actions as consumers experienced financial distress related to the COVID–19 pandemic. In reviewing customer service calls, examiners found that servicers engaged in abusive acts or practices by charging sizable fees for phone payments when consumers were unaware of those fees. Examiners identified unfair acts or practices and Regulation X policy and procedure violations regarding failure to provide consumers with CARES Act forbearances.[50] Examiners also found that servicers unfairly charged some consumers fees while they were in CARES Act forbearances or failed to maintain policies and procedures reasonably designed to properly evaluate loss mitigation options.[51] And servicers made deceptive misrepresentations regarding how to accept deferral offers after forbearance and how to enroll in automatic payment programs when entering a deferral.

2.7.1 Charging Sizable Phone Payment Fees When Consumers Were Unaware of the Fees

Examiners found that servicers engaged in abusive acts or practices by charging sizable phone payment fees when consumers were unaware of the fees, thus taking unreasonable advantage of consumers' lack of understanding of the fees. Servicers charged consumers $15 fees for making payments by phone with customer service representatives. During calls with consumers, representatives did not disclose the phone pay fees' existence or cost but charged them anyway.

An act or practice is abusive if it ''takes unreasonable advantage of . . . a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service.'' [52] Consumers lacked understanding of the material costs of the phone pay fees because servicer representatives failed to inform consumers of the fees during the phone call. And general disclosures, provided prior to making the payment, indicating that consumers ''may'' incur a fee for phone payments did not sufficiently inform consumers of the material costs. Servicers took unreasonable advantage of this lack of understanding because the cost of the phone pay fee was materially greater than the cost of other payment options and servicers profited from collecting the fees.[53] In response to these findings, servicers are reimbursing all consumers who paid phone payment fees when those fees were not disclosed while processing payments over the phone.

2.7.2 Charging Illegal Fees During CARES Act Forbearances

Examiners found that servicers engaged in unfair acts or practices when they charged consumers fees during forbearance plans pursuant to the CARES Act. Section 4022 of the CARES Act prohibits a mortgage servicer from imposing ''fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract'' on consumers receiving a CARES Act forbearance.[54] Here, the CARES Act establishes a consumer right that provides a baseline for measuring injury. Servicers caused, or were likely to cause, substantial injury to consumers when they imposed illegal fees on their accounts. Consumers could not reasonably avoid the injury because they had no reason to anticipate servicers would impose illegal fees. And charging illegal fees has no benefits to consumers or competition.

In response to these findings, servicers developed remediation plans to compensate injured consumers.

2.7.3 Failure To Process CARES Act Forbearance Requests

Examiners found that servicers engaged in unfair acts or practices when they failed to timely honor requests for forbearance from consumers. Section 4022 of the CARES Act provides that if a servicer of a federally backed mortgage loan receives a borrower request for a forbearance, and the borrower attests to a financial hardship caused by the COVID–19 emergency, then the servicer ''shall'' provide that borrower a forbearance.[55] During the forbearance servicers may not charge fees.[56] Here, the CARES Act establishes a consumer right that provides a baseline for measuring injury. Consumers suffered substantial injury when servicers failed to process forbearances because they did not gain the benefits of forborne payments, and the failure also resulted in additional fees being added to their accounts. Consumers could not reasonably avoid the injury because they had no reason to anticipate that servicers would fail to process their requests for forbearance. And even when consumers realized servicers had failed to process the requests, the servicers sometimes did not correct the errors. The injury was not outweighed by countervailing benefits to consumers or competition.

In response to these findings, servicers developed remediation plans to compensate injured consumers.

2.7.4 Misrepresenting That Payment Amounts Were Sufficient To Accept Deferrals

Examiners found that servicers engaged in deceptive acts or practices by misrepresenting that certain payment amounts were sufficient for consumers to accept deferral offers at the end of their forbearance periods, when in fact, they were not. When consumers were exiting forbearances, servicers sent consumers paperwork allowing them to accept a deferral offer by making a payment. The specified payment amounts were often higher than the consumers' previous monthly payments because of updated escrow payments. When consumers contacted servicer representatives to confirm the payment amount, the representatives expressly represented that consumers' old monthly payment amounts (which were less than the amounts presented in the letters) were sufficient to accept the offer, when in fact, payment of these amounts would not constitute

[49] The Bureau previously reported similar violations in *Supervisory Highlights,* Issue 24, Summer 2021, available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-24_2021-06.pdf.*

[50] 12 CFR 1024.38(b)(2)(i), (v).

[51] *Id.*

[52] 12 U.S.C. 5531(d)(2)(A).

[53] Additionally, failing to disclose the prices of all available phone pay fees when different phone pay options carry materially different fees may be unfair, and failing to disclose that a phone pay fee would be added to a consumer's payment could create the misimpression that there was no service fee and thus be deceptive. For more information, *see CFPB Compliance Bulletin, 2017–01* available at: *https://files.consumerfinance.gov/f/documents/201707_cfpb_compliance-bulletin-phone-pay-fee.pdf.*

[54] Public Law 116–136, sec. 4022(b)(3), 134 Stat. 281, 490 (Mar. 27, 2020).

[55] Public Law 116–136, sec. 4022(c)(1), 134 Stat. 281, 490 (Mar. 27, 2020).

[56] Public Law 116–136, sec. 4022(b)(3), 134 Stat. 281, 490 (Mar. 27, 2020).

acceptance. It was reasonable for consumers to conclude that servicer representatives would provide accurate information about the payment amount necessary to accept the deferrals. These misrepresentations were material because borrowers acted on them to accept the deferral offers, and they led to improper charges and other negative consequences, precisely the outcome borrowers acted to avoid when contacting servicer representatives.

In response to these findings, servicers agreed to remediate consumers for late charges and improve their training for customer service representatives handling loss mitigation issues.

2.7.5 Failing To Evaluate Consumers for All Loss Mitigation Options and Provide Accurate Information

Regulation X [57] requires servicers to maintain policies and procedures that are reasonably designed to achieve the objectives in 12 CFR 1024.38(b). Commentary to Regulation X clarifies that ''procedures'' refers to the actual practices followed by the servicer.[58] Under Regulation X,[59] servicers are required to have certain policies and procedures concerning properly evaluating loss mitigation applications. Specifically, servicers' policies and procedures must be reasonably designed to ensure that servicers can provide borrowers with accurate information regarding available loss mitigation options and properly evaluate borrowers who submit applications for all available loss mitigation options that they may be eligible for.[60]

Examiners found that some servicers violated Regulation X when they failed to maintain policies and procedures reasonably designed to achieve the objective of properly evaluating loss mitigation applications.[61] For example, servicers' policies and procedures were not reasonably designed to inform consumers of all available loss mitigation options, which resulted in some consumers not receiving information about options, such as deferral, when exiting forbearances. Additionally, servicers' policies and procedures were not reasonably designed to properly evaluate consumers for all available loss mitigation options, resulting in improper denial of deferral options.

[57] 12 CFR 1024.38(a).

[58] 12 CFR 1024.38(a)–comment 2.

[59] 12 CFR 1024.38(b)(2).

[60] 12 CFR 1024.38(b)(2)(i), (v).

[61] 12 CFR 1024.38(b)(2)(i) & (v).

2.8 Payday Lending

2.8.1 Order Violations

Examiners found lenders failed to maintain records of call recordings necessary to demonstrate full compliance with conduct provisions in consent orders generally prohibiting certain misrepresentations. Consent order provisions required creation and retention of all documents and records necessary to demonstrate full compliance with all provisions of the consent orders. Failure to maintain records of such call recordings violated the consent orders and Federal consumer financial law. To facilitate supervision for compliance with the consent orders, Supervision directed the lenders to create and retain records sufficient to capture relevant telephonic communications.

3. Supervisory Program Developments

3.1 Recent Bureau Supervision Program Developments

Set forth below are statements, circulars, advisory opinions, and rules that have been issued since the last regular edition of *Supervisory Highlights.*

3.1.1 CFPB Issues Circular—Adverse Action Notification Requirements in Connection With Credit Decisions Based on Complex Algorithms

On May 26, 2022, the CFPB confirmed in a circular [62] that the Equal Credit Opportunity Act and Regulation B require companies to explain to applicants the specific reasons for denying an application for credit or taking other adverse actions, even if the creditor is relying on credit models using complex algorithms.

3.1.2 Prohibition on Inclusion of Adverse Information in Consumer Reports for Victims of Human Trafficking

On June 24, 2022, the CFPB amended Regulation V, which implements the FCRA, to address recent legislation that assists consumers who are victims of trafficking.[63] This final rule establishes a method for a victim of trafficking to submit documentation to consumer reporting agencies, including information identifying any adverse item of information about the consumer that resulted from certain types of human trafficking, and prohibits the consumer reporting agencies from furnishing a consumer report containing the adverse item(s) of information. The Bureau is taking this action as mandated by the National Defense Authorization Act for Fiscal Year 2022 to assist consumers who are victims of trafficking in building or rebuilding financial stability and personal independence.

[62] The circular is available at: *https://www.consumerfinance.gov/compliance/circulars/circular-2022-03-adverse-action-notification-requirements-in-connection-with-credit-decisions-based-on-complex-algorithms/.*

[63] The final rule is available at: *https://files.consumerfinance.gov/f/documents/cfpb_fcra-trafficking_final-rule_2022-06.pdf.*

3.1.3 Advisory Opinion on Debt Collectors' Collection of Pay-To-Pay Fees

On June 29, 2022, CFPB issued an advisory opinion [64] to affirm that the FDCPA and Regulation F prohibit debt collectors from charging consumers pay-to-pay fees (also known as convenience fees) for making payment a particular way, such as by telephone or online, unless those fees are expressly authorized by the underlying agreement or are affirmatively permitted by law.

3.1.4 CFPB Issues Advisory To Protect Privacy When Companies Compile Personal Data

On July 7, 2022, the CFPB issued an advisory opinion [65] to ensure that companies that use and share credit reports and background reports have a permissible purpose under the FCRA. The CFPB's new advisory opinion makes clear that credit reporting companies and users of credit reports have specific obligations to protect the public's data privacy and affirms that a consumer reporting agency may not provide a consumer report to a user under FCRA section 604(a)(3) unless it has reason to believe that all of the consumer report information it includes pertains to the consumer who is the subject of the user's request. The advisory also reminds covered entities of potential criminal liability for certain misconduct.

3.1.5 CFPB Issues Circular on Insufficient Data Protection or Security for Sensitive Consumer Information

On August 11, 2022, the CFPB confirmed in a circular [66] that financial companies may violate Federal

[64] The advisory opinion is available at: *https://www.consumerfinance.gov/rules-policy/final-rules/advisory-opinion-on-debt-collectors-collection-of-pay-to-pay-fees/.*

[65] The advisory opinion is available at: *https://www.consumerfinance.gov/rules-policy/final-rules/fair-credit-reporting-permissible-purposes-for-furnishing-using-and-obtaining-consumer-reports/.*

[66] The circular is available at: *https://www.consumerfinance.gov/compliance/circulars/circular-2022-04-insufficient-data-protection-or-security-for-sensitive-consumer-information/.*

consumer financial protection law when they fail to safeguard consumer data.

3.1.6 CFPB Issues Circular on Debt Collection Credit Reporting Practices Involving Invalid Nursing Home Debts

On September 8, 2022, the CFPB issued a circular [67] confirming that debt collection and consumer reporting practices related to nursing home debts that are invalid under the Nursing Home Reform Act, can violate the FDCPA and the FCRA.

3.1.7 Advisory Opinion on Fair Credit Reporting; Facially False Data

On October 20, 2022, the CFPB issued an advisory opinion [68] to highlight that a consumer reporting agency that does not implement reasonable internal controls to prevent the inclusion of facially false data, including logically inconsistent information, in consumer reports it prepares is not using reasonable procedures to assure maximum possible accuracy under section 607(b) of the FCRA.

3.1.8 CFPB Issues Circular on Overdraft Fee Assessment Practices

On October 26, 2022, the CFPB issued a circular [69] about overdraft-related fee practices that are likely unfair under existing law. The circular highlighted financial institution practices regarding unanticipated overdraft fees and provided some examples of those practices that might trigger liability. While not an exhaustive list, these examples concerned ''authorize positive, settle negative'' transactions.

3.1.9 CFPB Issues Bulletin Regarding Unfair Returned Deposited Item Fee Assessment Practices

On October 26, 2022, the CFPB issued a bulletin [70] stating that blanket policies of charging returned deposited item fees to consumers for all returned transactions irrespective of the circumstances or patterns of behavior on the account are likely unfair under the CFPA.

3.1.10 CFPB Issues FCRA Dispute Resolution Circular

On November 10, 2022, the CFPB issued a circular [71] to affirm that neither consumer reporting companies nor information furnishers can skirt dispute investigation requirements under the FCRA. The circular affirms that consumer reporting companies and furnishers are not permitted under the FCRA to impose obstacles that deter submission of disputes and that consumer reporting companies must promptly provide to the furnisher all relevant information regarding the dispute that the consumer reporting agency receives from the consumer.

4. Remedial Actions

4.1 Public Enforcement Actions

The Bureau's supervisory activities resulted in and supported the following enforcement actions.

4.1.1 Regions Bank

On September 28, 2022, the CFPB ordered Regions Bank to pay $50 million into the CFPB's victims relief fund and to refund at least $141 million to consumers harmed by its illegal surprise overdraft fees.[72] Until July 2021, Regions charged customers surprise overdraft fees on certain ATM withdrawals and debit card purchases. The bank charged overdraft fees even after telling consumers they had sufficient funds at the time of the transactions. The CFPB also found that Regions Bank leadership knew about and could have discontinued its surprise overdraft fee practices years earlier, but they chose to wait while Regions pursued changes that would generate new fee revenue to make up for ending the illegal fees.

This is not the first time Regions Bank has been caught engaging in illegal overdraft abuses. In 2015, the CFPB found that Regions had charged $49 million in unlawful overdraft fees and ordered Regions to make sure that the fees had been fully refunded and pay a $7.5 million penalty for charging overdraft fees to consumers who had not opted into overdraft protection and to consumers who had been told they would not be charged overdraft fees.[73]

4.1.2 Trident Mortgage Company, LP

On July 27, 2022, the CFPB and U.S. Department of Justice (DOJ) took action to end Trident Mortgage Company's intentional discrimination against families living in majority-minority neighborhoods in the greater Philadelphia area. The CFPB and DOJ allege Trident redlined majority-minority neighborhoods through its marketing, sales, and hiring actions. Specifically, Trident's actions discouraged prospective applicants from applying for mortgage and refinance loans in the greater Philadelphia area's majority-minority neighborhoods. On September 14, 2022, the court entered the consent order [74] that, among other things, requires Trident to pay a $4 million civil penalty to the CFPB to use for the CFPB's victims' relief fund. The Attorneys General of Pennsylvania, New Jersey, and Delaware also finalized concurrent actions.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2022–25733 Filed 11–23–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant Partially Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant a partially exclusive patent license to Tensor Networks, a S-Corporation incorporated in the state of California, having a place of business at 1289 Reamwood Ave., Ste. G, Sunnyvale, CA 94089.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this notice.

ADDRESSES: Submit written objections to James F. McBride, Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Area B, Building 11, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–9318; or Email: *afmclo.jaz.tech@us.af.mil.* Include

[67] The circular is available at: *https://www.consumerfinance.gov/compliance/circulars/circular-2022-05-debt-collection-and-consumer-reporting-practices-involving-invalid-nursing-home-debts/.*

[68] The advisory opinion is available at: *https://files.consumerfinance.gov/f/documents/cfpb_fair-credit-reporting-facially-false-data_advisory-opinion_2022-10.pdf.*

[69] The circular is available at: *https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-06-unanticipated-overdraft-fee-assessment-practices/.*

[70] The bulletin is available at: *https://files.consumerfinance.gov/f/documents/cfpb_returned-deposited-item-fee-assessment-practice_compliance-bulletin_2022-10.pdf.*

[71] The circular is available at: *https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-07-reasonable-investigation-of-consumer-reporting-disputes/.*

[72] The consent order is available at: *https://files.consumerfinance.gov/f/documents/cfpb_Regions_Bank-_Consent-Order_2022-09.pdf.*

[73] The consent order is available at: *https://files.consumerfinance.gov/f/201504_cfpb_consent-order_regions-bank.pdf.*

[74] The consent order is available at: *https://files.consumerfinance.gov/f/documents/cfpb_trident-consent-order_2022-09.pdf.*

Docket ARX–210727A–PL in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: James F. McBride, Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Area B, Building 11, Wright-Patterson AFB, OH 45433–7109; Telephone: (937) 713–0229; Facsimile: (937) 255–9318; or Email: *afmclo.jaz.tech@us.af.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Abstract of Patents and Patent Application(s)

A new apparatus and method for tracking a moving object with a moving camera provides a real-time, narrow fieldof-view, high resolution and on target image by combining commanded motion with an optical flow algorithm for deriving motion and classifying background. Commanded motion means that movement of the pan, tilt and zoom (PTZ) unit is ''commanded'' by a computer, instead of being observed by the camera, so that the pan, tilt and zoom parameters are known, as opposed to having to be determined, significantly reducing the computational requirements for tracking a moving object. The present invention provides a single camera pan and tilt system where the known pan and tilt rotations are used to calculate predicted optical flow points in sequential images, so that resulting apparent movement can be subtracted from the movement determined by an optical flow algorithm to determine actual movement, following by use of a Kalman filter algorithm to predict subsequent locations of a determined moving object and command the pan and tilt unit to point the camera in that direction.

Intellectual Property

U.S. Patent No. U.S. Patent No. 9,696,404 B1, that issued on July 4, 2017, and entitled ''*Real-time camera tracking system using optical flow feature points.*''.

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Adriane Paris,

Air Force Federal Register Liaison Officer.

[FR Doc. 2022–25732 Filed 11–23–22; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2022–HQ–0009]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Space Force, Space Systems Command, Space Domain Awareness & Combat Power (SDACP) and Battle Management Command, Control and Communications (BMC³) Program Executive Offices (PEOs) announce a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 24, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Space Force, Space Systems Command, SDACP & BMC³ Program Executive Offices, 483 N. Aviation Blvd., El Segundo, CA 90245–2808, Brent L. Davis, Lt Col, USSF, Chief of Staff to PEO SDACP & BMC³, (310) 653–1813, *ssc.sz.exec@spaceforce.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Space Systems Command (SSC), Space Domain Awareness & Combat Power (SDACP) and Battle Management Command, Control and Communications (BMC³) Culture Assessment Survey; OMB Control Number 0701–SCAS.

Needs and Uses: SDACP and BMC³ leadership want to better understand the current culture within their two PEOs. The Culture Assessment Survey is designed to (1) collect information about the current climate to create a baseline and (2) identify potential obstacles. The voluntary Culture Assessment Survey focuses on the Space Force Values and Cultural Attributes and the questions ask whether the workforce is familiar with these values and cultural attributes and if there are barriers to achieving them. Booz Allen has been contracted to aggregate survey results to allow for anonymity. Booz Allen will highlight themes from the aggregated data and provide recommendations (*e.g.* job aids, branding, communications) to PEO leadership to help them achieve their desired culture.

Affected Public: Individuals or households.

Annual Burden Hours: 288.7.

Number of Respondents: 866.

Responses per Respondent: 1.

Annual Responses: 866.

Average Burden per Response: 20 minutes.

Frequency: Once.

Description: The SDACP & BMC³ Culture Assessment Survey co-sponsors

(Deputy Program Executive Officers) will send an email to the workforce requesting they complete the voluntary survey, and this email will include the link to the survey, which is hosted on the web-based interface SurveyMonkey. The survey captures questions pertaining to participant demographics (*e.g.,* location), Space Force values and cultural attributes, and organizational change management. Participants will submit their responses electronically and anonymously.

Dated: November 18, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25632 Filed 11–23–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2022–HQ–0017]

Proposed Collection; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the United States Army Network Enterprise Technology Command announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 24, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Headquarters, Network Enterprise Technology Command, Military Auxiliary Radio System, Salado, TX 76571, ATTN: Paul English, or call 254–947–3141.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Army Military Auxiliary Radio System (MARS) Application; Army MARS Form 1; OMB Control Number 0702–0140.

Needs and Uses: The information collection requirement is necessary to operate a Military Auxiliary Radio System (MARS) Station. The MARS program is a civilian auxiliary consisting primarily of licensed amateur radio operators who are interested in assisting the military with communications on a local, national, and international basis as an adjunct to normal communications and providing worldwide auxiliary emergency communications during times of need. The information collection requirement is necessary not only an application to join ARMY MARS, but to maintain an accurate roster of civilians enrolled in the program for the purpose of providing contingency communications support to the Department of Defense. Additionally, the collected information is used by the MARS program manager to determine an individual's eligibility for the program, as well as to initiate a background investigation should a security clearance be required. Location information may be used to show the geographic dispersion of the members who participate in the global High Frequency radio network in support of the Department of Defense and to ensure our radio spectrum authorizations cover the geographic areas from which our members will operate. The information is also used periodically to email informational updates about the MARS program.

Affected Public: Individuals or households.

Annual Burden Hours: 137.5.

Number of Respondents: 550.

Responses per Respondent: 1.

Annual Responses: 550.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Dated: November 18, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25636 Filed 11–23–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Diversity and Inclusion (DACODAI); Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the DACODAI will take place.

DATES: DACODAI will hold an open to the public—Friday, December 9, 2022 from 12:30 p.m. to 4:15 p.m. (EST).

ADDRESSES: The meeting will be held by videoconference. Participant access information will be provided after registering. Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION**, ''Meeting Accessibility.''

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Raguindin, (571) 645–6952 (voice), *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil* (email). The most up-to-date changes to the meeting agenda can be found on the website: *https://www.dhra.mil/DMOC/DACODAI.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda or any updates to the agenda, is available on the DACODAI website *https://www.dhra.mil/DMOC/DACODAI.* Materials presented in the meeting may

also be obtained on the DACODAI website.

Purpose of the Meeting: The purpose of the meeting is for the DACODAI to receive briefings and have discussions on topics related to the racial/ethnic diversity, inclusion and equal opportunity within the Armed Forces of the United States.

Agenda: Friday, December 9, 2022 from 12:30 p.m. to 4:15 p.m. (EST). DACODAI will begin in open session on December 9, 2022 from 12:30 p.m. to 4:15 p.m. with opening remarks by Ms. Shirley Raguindin, the Designated Federal Officer (DFO) and the DACODAI's Chair, Gen. (Ret.) Lester Lyle, and additional remarks by The Honorable Gilbert R. Cisneros, Under Secretary of Defense for Personnel and Readiness. The DACODAI will receive the following briefings: (1) Partnership for Public Service Assessment on Government Agencies' Status of Meeting Diversity, Equity and Inclusion Objectives by Ms. Michelle Amante, Vice President, Federal Workforce Programs, and Mr. Kevin Johnson, Director, Federal Workforce Programs; (2) Department of the Air Force (DAF) Diversity and Inclusion by Colonel Jenise Carroll, Deputy Director, Office of Diversity and Inclusion (SAF/DI), Office of the Secretary of the Air Force; and (3) DoD Workplace Equal Opportunity Survey of Active Component and Reserve Component Members. Dr. Samantha Daniel, Chief of Diversity and Inclusion Research, Office of People Analytics, will brief the results of the 2017 Workplace Equal Opportunity Survey of Active Component Members and the 2019 Workplace Equal Opportunity Survey of Reserve Component Members, alongside Dr. Lisa Arfaa, Senior Advisor to the Executive Director of Force Resiliency, Office for Diversity, Equity and Inclusion, who will provide the policy perspective on the results. Closing remarks by the Chair, Gen. (Ret.) Lyles and the DFO will adjourn the meeting.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 and 102–3.150, this meeting is open to the public from 12:30 p.m. to 4:15 p.m. (EST) on December 9, 2022. The meeting will be held by videoconference. The number of participants is limited and is on a first-come basis. Any member of the public who wish to participate must register by contacting DACODAI at *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil* or by contacting Ms. Shirley Raguindin at (571) 645–6952 no later than Friday, December 2, 2022 (by 5:00 p.m. EST). Once registered, the videoconference information and/or audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Shirley Raguindin at *shirley.s.raguindin.civ@mail.mil* (email) or (571–645–6952 (voice) no later than Friday, December 2, 2022 so that appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.140(c), and section 10(a)(3) of the FACA, the public or interested parties may submit a written statement to the DACODAI. Individuals submitting a written statement must submit their statement no later than 5:00 p.m., Friday, December 2, 2022 to Ms. Shirley Raguindin (571) 645–6952 (voice) or to *shirley.s.raguindin.civ@mail.mil* (email).

Mailing address is Attention DACODAI, Ms. Shirley Raguindin, 4800 Mark Center Drive, Suite 06E22, Alexandria, VA 22350. Members of the public interested in making an oral statement, must submit a written statement. If a statement is not received by Friday, December 2, 2022, it may not be provided to, or considered by the DACODAI during this biannual business meeting. After reviewing the written statements, the Chair and the DFO will determine if the requesting persons are permitted to make an oral presentation. The DFO will review all timely submissions with the DACODAI Chair and ensure they are provided to the members of the DACODAI.

Members of the public may also email written statements at *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil.* Written statements pertaining to the meeting agenda for the DACODAI's meeting on December 9, 2022 must be submitted no later than 5:00 p.m. EST, Friday, December 2, 2022 to be considered by the DACODAI membership prior to its December 9, 2022 meeting.

Dated: November 21, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25773 Filed 11–23–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0127]

Proposed Collection; Comment Request

AGENCY: Defense Security Cooperation Agency (DSCA), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the George C. Marshall Center for European Security Studies announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 24, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to George C. Marshall Center for European Security Studies, Gernackerstr. 2, 82467 Garmisch-Partenkirchen, Germany; ATTN: LTC Jonathan Nadler, or call 49(0)8821–750–2999.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Marshall Center Alumni Survey; OMB Control Number 0704–ALUM.

Needs and Uses: The information collection is necessary to determine the value and effectiveness of the George C. Marshall European Center for Security Studies via the feedback from the Center's Alumni population. We seek to obtain quantifiable data, while offering the ability to collect qualitative responses, to help assess the Marshall Center's immediate and long terms impacts on the security cooperation enterprise. The Marshall Center will offer the opportunity to complete this digital, on-line survey to all alumni who graduated from one of our in-resident events from 2002–2022. The Alumni Department within the Center maintains and routinely updates the contact details of our Alumni, and the Alumni technicians will utilize this database to send voluntary messages for Alumni to participate in this survey.

Affected Public: Individuals or households.

Annual Burden Hours: 2,250.

Number of Respondents: 6,750.

Responses per Respondent: 1.

Annual Responses: 6,750.

Average Burden per Response: 20 minutes.

Frequency: Annually.

Dated: November 18, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25651 Filed 11–23–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense (DoD) Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Project

AGENCY: Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)), DoD.

ACTION: This notice provides a new authority to all STRL Personnel Demonstration Projects.

SUMMARY: STRLs with published demonstration project plans may implement the flexibility of a supplemental pay provision based on criteria as defined by the STRL director.

DATES: Implementation of this **Federal Register** notice will begin no earlier than November 25, 2022.

FOR FURTHER INFORMATION CONTACT:

Department of Defense:

- Office of Under Secretary of Defense (Research and Engineering), DoD Laboratories, Federally Funded Research and Development Centers, and University-Affiliated Research Centers Office: Dr. James Petro, 571–286–6265, *James.B.Petro.civ@mail.mil.*

Department of the Air Force:

- Air Force Research Laboratory: Ms. Rosalyn Jones-Byrd, 937–656–9747, *Rosalyn.Jones-Byrd@us.af.mil.*
- Joint Warfare Analysis Center: Ms. Amy Balmaz, 540–653–8598, *Amy.T.Balmaz.civ@mail.mil.*

Department of the Army:

- Army Futures Command: Ms. Marlowe Richmond, 512–726–4397, *Marlowe.Richmond.civ@army.mil.*
- Army Research Institute for the Behavioral and Social Sciences: Dr. Scott Shadrick, 254–288–3800, *Scottie.B.Shadrick.civ@army.mil.*
- Combat Capabilities Development Command's Armaments Center: Mr. Mike Nicotra, 973–724–7764, *Michael.J.Nicotra.civ@mail.mil.*
- Combat Capabilities Development Command's Army Research Laboratory: Mr. Christopher Tahaney, 410–278–9069, *Christopher.S.Tahaney.civ@army.mil.*
- Combat Capabilities Development Command's Aviation and Missile Center: Ms. Nancy Salmon, 256–876–9647, *Nancy.C.Salmon2.civ@army.mil.*
- Combat Capabilities Development Command's Chemical Biological Center: Ms. Patricia Milwicz, 410–417–2343, *Patricia.L.Milwicz.civ@army.mil.*
- Combat Capabilities Development Command's Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center: Ms. Angela Clybourn, 443–395–2110, *Angela.M.Clybon.civ@army.mil.*
- Combat Capabilities Development Command's Ground Vehicle Systems Center: Ms. Jennifer Davis, 586–306–4166, *Jennifer.L.Davis1.civ@army.mil.*
- Combat Capabilities Development Command's Soldier Center: Ms. Joelle Montecalvo, 508–206–3421, *Joelle.K.Montecalvo.civ@army.mil.*
- Engineer Research and Development Center: Ms. Patricia Sullivan, 601–634–3065, *Patricia.M.Sullivan@usace.army.mil.*
- Medical Research and Development Command: Ms. Linda Krout, 301–619–7276, *Linda.J.Krout.civ@mail.mil.*
- Technical Center, Space, and Missile Defense Command: Dr. Chad Marshall, 256–955–5697, *Chad.J.Marshall.civ@army.mil.*

Department of the Navy:

- Naval Air Warfare Center, Weapons Division and Aircraft Division: Mr. Richard Cracraft, 760–939–8115, *Richard.A.Cracraft2.civ@us.navy.mil.*
- Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center: Ms. Lori Leigh, 805–901–5917, *Lori.A.Leigh@us.navy.mil.*
- Naval Information Warfare Centers:
  - Naval Information Warfare Center Atlantic: Mr. Michael Gagnon, 843–218–3871, *Michael.L.Gagnon2.civ@us.navy.mil.*
  - Naval Information Warfare Center Pacific: Ms. Angela Hanson, 619–553–0833, *Angela.Y.Hanson.civ@us.navy.mil.*
- Naval Medical Research Center: Dr. Jill Phan, 301–319–7645, *Jill.C.Phan.civ@mail.mil.*
- Naval Research Laboratory: Ms. Ginger Kisamore, 202–767–3792, *Ginger.Kisamore@nrl.navy.mil.*
- Naval Sea Systems Command Warfare Centers: Ms. Diane Brown, 215–897–1619, *Diane.J.Brown.civ@us.navy.mil.*
- Office of Naval Research: Ms. Margaret J. Mitchell, 703–588–2364, *Margaret.J.Mitchell@navy.mil.*

SUPPLEMENTARY INFORMATION:

1. Background

Title 10 United States Code (U.S.C.) 4121 authorizes the Secretary of Defense, through the Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)), to exercise the authorities granted to the Office of Personnel Management (OPM) under 5 U.S.C. 4703 to conduct personnel demonstration projects at DoD laboratories designated as Science and Technology Reinvention Laboratories (STRLs). All STRLs authorized pursuant to 10 U.S.C. 4121 may use the provisions described in this **Federal Register** Notice (FRN). STRLs implementing these flexibilities must have an approved personnel demonstration project plan published in an FRN and fulfill any collective bargaining obligations. Each STRL will establish internal operating procedures as appropriate.

The 21 current STRLs are:

- Air Force Research Laboratory
- Joint Warfare Analysis Center
- Army Futures Command
- Army Research Institute for the Behavioral and Social Sciences
- U.S. Army Combat Capabilities Development Command's Armaments Center
- U.S. Army Combat Capabilities Development Command's Army Research Laboratory
- U.S. Army Combat Capabilities Development Command's Aviation and Missile Center
- U.S. Army Combat Capabilities Development Command's Chemical Biological Center
- U.S. Army Combat Capabilities Development Command's Command,

Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center
- U.S. Army Combat Capabilities Development Command's Ground Vehicle Systems Center
- U.S. Army Combat Capabilities Development Command's Soldier Center
- U.S. Army Engineer Research and Development Center
- U.S. Army Medical Research and Development Command
- U.S. Army Space and Missile Defense Command's Technical Center
- Naval Air Systems Command Warfare Centers
- Naval Facilities Engineering Command Systems Engineering and Expeditionary Warfare Center
- Naval Information Warfare Centers, Atlantic and Pacific
- Naval Medical Research Center
- Naval Research Laboratory
- Naval Sea Systems Command Warfare Centers
- Office of Naval Research

2. Summary of Comments

On May 12, 2022, the Department of Defense published a notice (87 FR 29134–29137) concerning this new flexibility, for a 30-day public comment period. The public comment period ended on June 13, 2022. One commenter posed several questions concerning safeguards to ensure equitable administration of the supplemental pay authority. Specifically, the commenter inquired about how supplemental pay determinations will be made, how employees will be notified about opportunities to receive such pay, and who will review and evaluate the appropriateness of the determinations. In addition, the commenter inquired about whether and how a disparate impact analysis would be conducted to determine whether the supplemental pay flexibility results in unintentional discrimination based on race, gender, age, or another protected category.

In response, the Department notes that the criteria in Section II.A. concerning supplemental pay rate determinations are based on the criteria in 5 Code of Federal Regulations (CFR) 530.304. STRL directors will evaluate the need for establishing, increasing, decreasing, or discontinuing supplemental pay rate schedules, using these factors. The frequency and results of such evaluations will be documented in Internal Operating Procedures. As provided in the individual STRL personnel demonstration project plans and DoD instructions, STRL personnel demonstration projects are continually evaluated by external offices. Along with information about other STRL flexibilities, information about the supplemental pay flexibility will be collected and analyzed to determine whether it is a model personnel practice. In addition, each STRL may conduct internal evaluations to ensure its flexibilities are appropriately administered.

Additional changes were made to clarify which positions within the STRL are eligible for use of this flexibility. Finally, the provision concerning treatment of supplemental pay as locality pay for purposes of determining basic pay was removed.

3. Overview

I. Introduction

A. Purpose

Some STRLs have adopted supplemental pay flexibilities that are based on the OPM special salary rate tables that provide for higher salaries than the General Schedule (GS) tables. This supplemental pay flexibility permits STRLs to independently establish supplemental pay rates based on market conditions to help STRLs attract, recruit, and retain a high caliber workforce. Competing with private sector compensation is particularly challenging, especially in emerging mission areas such as hypersonics, autonomy, cybersecurity, and data science.

B. Required Waivers to Law and Regulation

Waivers and adaptations of certain title 5 U.S.C. and title 5 CFR provisions are required only to the extent that these statutory and regulatory provisions limit or are inconsistent with the actions authorized under these demonstration projects. Title 10 U.S.C. 4121(a)(5) states that the limitations on pay fixed by administrative action in 5 U.S.C. 5373 do not apply to the STRL demonstration project authority to prescribe salary schedules and other related benefits. Appendix A lists waivers needed to enact authorities described in this FRN. Nothing in this plan is intended to preclude the STRLs from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this FRN.

C. Participating Organizations and Employees

All DoD laboratories designated as STRLs pursuant to 10 U.S.C. 4121(b), as well as any additional laboratories designated as STRLs by the Secretary of Defense, through the USD(R&E), with approved personnel demonstration project plans published in FRNs may use the supplemental pay rate provisions described in this FRN. The supplemental pay flexibility may be applied to all STRL employees included within the personnel demonstration project pursuant to subsection (c) of 10 U.S.C. 4121. It may be necessary to review written agreements with respect to the project, between the STRL and a labor organization which is accorded exclusive recognition under 5 U.S.C. 7101 *et seq.,* to determine whether certain STRL employees (*e.g.,* employees whose pay is set in accordance with 5 U.S.C. 5332 or the ''General Schedule'') are included in the project and are therefore eligible for supplemental pay using this authority. Prevailing rate employees (as defined by section 5342(a)(2) of title 5 U.S.C. and senior executives (as defined by section 3132(a)(3) of such title) are not included within personnel demonstration projects and may not receive supplemental pay pursuant to this FRN.

II. Personnel System Changes

A. Description and Implementation

STRL directors may establish supplemental pay rates to be paid bi-weekly, as other pay, for those positions which warrant higher compensation than that provided by the established broadband salary ranges, STRL staffing supplements or differentials, or other recruitment or retention authorities. The STRL director may establish supplemental pay rates by occupational series, specialty, competency, broadband level, and/or geographical area. In establishing such rates, the STRL director may consider: rates of pay offered by non-Federal or other alternative pay system employers that are considerably higher than rates payable by the STRL; the remoteness of the area or location involved; the undesirability of the working conditions or nature of the work involved; evidence that the position is of such a specialized nature that very few candidates exist; numbers of existing vacant positions and the length of time vacant; numbers of employees who have voluntarily left positions; evidence to support a conclusion that recruitment or retention problems likely will develop (if such problems do not already exist) or will worsen; consideration of use of other pay flexibilities as well as the use of non-pay solutions; or any other circumstances the STRL director considers appropriate. Documentation of the determination will be maintained by the STRL.

This supplemental pay is in addition to any other pay, such as locality-based comparability payments authorized

under 5 U.S.C. 5304 and may result in maximum salary above Level IV of the Executive Schedule but may not exceed Level I of the Executive Schedule.

The STRL director has an ongoing responsibility to evaluate the need for continuing payment of the supplemental pay and shall terminate or reduce the amount if conditions warrant. Conditions to be considered include: changes in labor-market factors; whether the need for the services or skills of the employee has decreased such that it is no longer necessary to incentivize employee recruitment or retention; and budgetary considerations. The reduction or termination of the payment is not considered an adverse action and may not be appealed or grieved. The applicant or employee will sign a statement of understanding outlining that the supplement may be reduced or terminated at any time based on conditions as determined by the STRL director. The documentation of the determination will be maintained by the STRL.

B. Evaluation

Procedures for evaluating this authority will be incorporated into the STRL demonstration project evaluation processes conducted by the STRLs, OUSD(R&E), or Component headquarters, as appropriate.

C. Reports

STRLs will track and provide information and data on the use of this authority when requested by the Component headquarters or OUSD(R&E).

III. Required Waivers to Law and Regulations

APPENDIX A—WAIVERS TO TITLE 5, U.S.C.

Title 5, United States Code	Title 5, Code of Federal Regulations
5 U.S.C. 5303(f)—Annual Adjustments to pay schedules. Waived to allow pay (disregarding comparability pay) to exceed level V of the Executive Schedule.	5 CFR Part 530, subpart B—Aggregate Limitation on Pay. Waived in its entirety to allow STRL director to authorize supplemental pay as defined in this FRN.
5 U.S.C. 5304(g)(1)—Locality-based comparability payments. Waived to allow pay in excess of level IV of the Executive Schedule.	5 CFR Part 530.203—Administration of aggregate limitation on pay. Waived to allow pay and allowances, differentials, bonuses, awards, or other similar cash payments, including supplemental pay in excess of level I of the Executive Schedule.
5 U.S.C. 5304(h)(1)(D)—Locality-based comparability payments. Waived to allow pay in excess of level IV of the Executive Schedule.	5 CFR Part 531.606(a)—Maximum limits on locality rates. Waived to allow pay in excess of level IV of the Executive Schedule.
5 U.S.C. 5305—Special Pay Authority. Waived in its entirety as to allow the STRL director to establish supplemental pay and to allow pay in excess of level IV of the Executive Schedule.	5 CFR Part 531.606(b)(3)—Maximum limits on locality rates. Waived to allow pay in excess of level IV of the Executive Schedule.
5 U.S.C. 5307—Limitation on certain payments. Waived to allow pay and allowances,\, differentials, bonuses, awards, or other similar cash payments, including supplemental pay in excess of Level I of the Executive Schedule.	5 CFR Part 531.608—Relationship of locality rates to other pay rates. Waived to apply the provisions of this FRN.
5 U.S.C 5373—Limitation on pay fixed by administrative action. Waived to the extent necessary to allow basic pay and supplemental pay to exceed level IV of the Executive Schedule.	
5 U.S.C. 5547—Limitation on premium pay. Waived to the extent necessary to allow basic pay and supplemental pay to exceed level IV of the Executive Schedule.	5 CFR Part 550.105—Premium Pay Biweekly maximum earnings limitation. Waived to the extent necessary to allow basic pay and supplemental pay to exceed level IV of the Executive Schedule.

APPENDIX B—AUTHORIZED STRLS AND FEDERAL REGISTER NOTICES

STRL	**Federal Register** notice
Air Force Research Laboratory	61 FR 60400 amended by 75 FR 53076.
Joint Warfare Analysis Center	85 FR 29414.
Army Futures Command	Not yet published.
Army Research Institute for Behavioral and Social Sciences	85 FR 76038.
U.S. Army Combat Capabilities Development Command's Armaments Center.	76 FR 3744.
U.S. Army Combat Capabilities Development Command's Army Research Laboratory.	63 FR 10680.
U.S. Army Combat Capabilities Development Command's Aviation and Missile Center.	62 FR 34906 and 62 FR 34876 amended by 65 FR 53142 (AVRDEC and AMRDEC merged).
U.S. Army Combat Capabilities Development Command's Chemical Biological Center.	74 FR 68936.
U.S. Army Combat Capabilities Development Command's Command, Control, Communications, Cyber, Intelligence, Surveillance, and Reconnaissance Center.	66 FR 54872.
U.S. Army Combat Capabilities Development Command's Ground Vehicle Systems Center.	76 FR 12508.
U.S. Army Combat Capabilities Development Command's Soldier Center.	74 FR 68448.
U.S. Army Engineer Research and Development Center	63 FR 14580 amended by 65 FR 32135.
U.S. Army Medical Research and Development Command	63 FR 10440.
U.S. Army Space and Missile Defense Command's Technical Center	85 FR 3339.
Naval Air Systems Command Warfare Centers	76 FR 8530.
Naval Facilities Engineering Command Systems Engineering and Expeditionary Warfare Center.	86 FR 14084.

APPENDIX B—AUTHORIZED STRLS AND FEDERAL REGISTER NOTICES—Continued

STRL	**Federal Register** notice
Naval Information Warfare Centers, Atlantic and Pacific	76 FR 1924.
Naval Medical Research Center	Not yet published.
Naval Research Laboratory	64 FR 33970.
Naval Sea Systems Command Warfare Centers	62 FR 64050.
Office of Naval Research	75 FR 77380.

Dated: November 18, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25690 Filed 11–23–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0031]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 24, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Department of the Navy Information Management Control Officer, 2000 Navy Pentagon, Rm. 4E563, Washington, DC 20350, or call Ms. Sonya Martin at 703–614–7585.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application Forms Booklet, Naval Reserve Officers Training Corps Scholarship Program; OMB Control Number 0703–0026.

Needs and Uses: This collection of information is necessary to make a determination of an applicant's academic and/or leadership potential and eligibility for an NROTC scholarship. The information collected is used to select the best-qualified candidates.

Affected Public: Individuals or households.

Annual Burden Hours: 49,000.

Number of Respondents: 14,000.

Responses per Respondent: 7.

Annual Responses: 98,000.

Average Burden per Response: 30 minutes.

Frequency: Annually.

Dated: November 18, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25641 Filed 11–23–22; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0032]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 24, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are

received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Naval Health Research Center, Bldg. 329, Ryne Rd., San Diego, CA 92152, ATTN: Ms. Suzanne Hurtado, or call 619–553–7806.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Formative Research for the Adaptation of a Risky Drinking and Sexual Assault Prevention Program; OMB Control Number 0703–NSAP.

Needs and Uses: This information collection is necessary to collect feedback from military service members and behavioral health program staff on a sexual assault prevention program originally developed for the U.S. Air Force Academy so it can be adapted to be optimally relevant for additional service member and training academy audiences. This formative research is part of a larger collaborative study being conducted by RTI, Naval Health Research Center, and San Diego State University. The objective of the study is to modify and evaluate the effectiveness of a sexual assault prevention program for service members when it is combined with an existing alcohol misuse prevention tool. The formative research for this specific information collection will lay the groundwork for future adaptation of the integrated sexual assault and alcohol misuse prevention training in additional military settings, and is therefore critical to maximizing the effectiveness of the integrated program.

Affected Public: Individuals or households.

Annual Burden Hours: 114.

Number of Respondents: 84.

Responses per Respondent: 1.

Annual Responses: 84.

Average Burden per Response: 81.43 minutes.

Frequency: Once.

The collection effort includes focus groups and a brief survey for young enlisted personnel, as well as in-depth interviews with military leaders and staff members of sexual assault and alcohol misuse prevention programs. The focus group questions solicit perspectives and recommendations for improving sexual assault and alcohol misuse prevention trainings in which the respondents have previously participated, unique environmental factors related to sexual assault or alcohol misuse, relevance and interest level of sample content from the integrated sexual assault and alcohol misuse training program. The brief survey supplements the focus group discussion by asking participants to quantitatively rate the sample material from the program shown in the focus group and provide demographic information that will be used to describe the sample. All focus group participants will be asked to complete the brief survey during the focus group session. The in-depth interviews query leaders and program staff perceptions of existing sexual assault and alcohol misuse prevention trainings, recommendations for improving existing programs, unique environmental factors related to sexual assault or alcohol misuse, and organizational perspectives on program implementation.

Dated: November 18, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25640 Filed 11–23–22; 8:45 am]

BILLING CODE 5001–06FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0147]

Agency Information Collection Activities; Comment Request; NCES Data Security Requirements for Accessing Restricted Use Data

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education.

ACTION: Notice.

SUMMARY: The National Center for Education Statistics (NCES) within the Institute of Education Sciences, US Department of Education invites the general public and other federal agencies to comment on a proposed information collection request. NCES plans to collect information from individuals to fulfill its data security requirements when providing access to restricted-use microdata for the purpose of evidence building. NCES's data security agreements and other paperwork along with the corresponding security protocols allow the agency to maintain careful controls on confidentiality and privacy, as required by law.

DATES: Written comments on this notice must be received by January 24, 2023 to be assured of consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

ADDRESSES: 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 ED–2022–SCC–0147, 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 submitting comments. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of NCES, including whether the information will have practical utility; (b) the accuracy of NCES estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: For specific questions related to information activities, please contact Carrie Clarady, 202–245–6347 or *carrie.clarady@ed.gov.*

SUPPLEMENTARY INFORMATION: The Foundations for Evidence-Based Policymaking Act of 2018 mandates that the Office of Management and Budget (OMB) establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. While the adoption of the SAP is required for statistical agencies and units designated under the Confidential Information Protection and Statistical Efficiency Act of 2018, it is recognized that other agencies and organizational units within the Executive branch may benefit from the adoption of the SAP to accept applications for access to confidential data assets. The SAP is to be a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as

appropriate, may apply to access confidential data assets held by a federal statistical agency or unit for the purposes of developing evidence. With the Interagency Council on Statistical Policy (ICSP) as advisors, the entities upon whom this requirement is levied are working with the SAP Project Management Office (PMO) and with OMB to implement the SAP. The SAP Portal is to be a single web-based common application for requesting access to confidential data assets from federal statistical agencies and units. The National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation submitted a **Federal Register** Notice in September 2022 announcing plans to collect information through the SAP Portal (87 FR 53793). NCES will request OMB approval to use the SAP after approval is provided to NCSES.

Once an application for confidential data is approved through the SAP Portal, NCES will collect information to meet its data security requirements. This collection will occur outside of the SAP Portal.

Title of Collection: NCES Data Security Requirements for Accessing Restricted Use Data.

OMB Control Number: 1850–NEW.

Type of Request: A new information collection request.

Respondents/Affected Public: Federal Government; State, local, and Tribal governments; Individuals and Households.

Total Estimated Number of Annual Responses: 80.

Total Estimated Number of Annual Burden Hours: 60.

Abstract: Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (hereafter referred to as the Evidence Act) mandates that OMB establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. Specifically, the Evidence Act requires OMB to establish a common application process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply for access to confidential data assets collected, accessed, or acquired by a statistical agency or unit. This new process will be implemented while maintaining stringent controls to protect confidentiality and privacy, as required by law.

Data collected, accessed, or acquired by statistical agencies and units is vital for developing evidence on conditions, characteristics, and behaviors of the public and on the operations and outcomes of public programs and policies. This evidence can benefit the stakeholders in the programs, the broader public, as well as policymakers and program managers at the local, State, Tribal, and National levels. The many benefits of access to data for evidence building notwithstanding, NCES is required by law to maintain careful controls that allow it to minimize disclosure risk while protecting confidentiality and privacy. The fulfillment of NCES's data security requirements places a degree of burden on individuals, which is outlined below.

The SAP Portal is a web-based application for requesting access to confidential data assets from federal statistical agencies and units. The objective of the SAP Portal is to broaden access to confidential data for the purposes of evidence building and reduce the burden of applying for confidential data. Once an individual's application in the SAP Portal has received a positive determination, the data-owning agency(ies) or unit(s) will begin the process of collecting information to fulfill their data security requirements.

The paragraphs below outline the SAP Policy, the steps to complete an application through the SAP Portal, and the process NCES uses to collect information fulfilling its data security requirements.

The SAP Policy

At the recommendation of the ICSP, the SAP Policy establishes the SAP to be implemented by statistical agencies and units and incorporates directives from the Evidence Act. The policy is intended to provide guidance as to the application and review processes using the SAP Portal, setting forth clear standards that enable statistical agencies and units to implement a common application form and a uniform review process. The SAP Policy was submitted to the public for comment in January 2022 (87 FR 2459). The policy is currently under review and has not yet been finalized.

The SAP Portal

The SAP Portal is an application interface connecting applicants seeking data with a catalog of data assets owned by the federal statistical agencies and units. The SAP Portal is not a new data repository or warehouse; confidential data assets will continue to be stored in secure data access facilities owned and hosted by the federal statistical agencies and units. The Portal will provide a streamlined application process across agencies, reducing redundancies in the application process. This single SAP Portal will improve the process for applicants, tracking and communicating the application process throughout its lifecycle. This reduces redundancies and burden on applicants who request access to data from multiple agencies. The SAP Portal will automate key tasks to save resources and time and will bring agencies into compliance with the Evidence Act statutory requirements.

Data Discovery

Individuals begin the process of accessing restricted-use data by discovering confidential data assets through the SAP data catalog, maintained by federal statistical agencies at *www.researchdatagov.org.* Potential applicants can search by agency, topic, or keyword to identify data of interest or relevance. Once they have identified data of interest, applicants can view metadata outlining the title, description or abstract, scope and coverage, and detailed methodology related to a specific data asset to determine its relevance to their research.

While statistical agencies and units shall endeavor to include metadata in the SAP data catalog on all confidential data assets for which they accept applications, it may not be feasible to include metadata for some data assets (*e.g.,* potential curated versions of administrative data). A statistical agency or unit may still accept an application through the SAP Portal even if the requested data asset is not listed in the SAP data catalog.

SAP Application Process

Individuals who have identified and wish to access confidential data assets will be able to apply for access through the SAP Portal when it is released to the public in late 2022. Applicants must create an account and follow all steps to complete the application. Applicants begin by entering their personal, contact, and institutional information, as well as the personal, contact, and institutional information of all individuals on their research team. Applicants proceed to provide summary information about their proposed project, to include project title, duration, funding, timeline, and other details including the data asset(s) they are requesting and any proposed linkages to data not listed in the SAP data catalog, including non-federal data sources. Applicants then proceed to enter detailed information regarding their proposed project, including a project abstract, research question(s), literature review, project scope, research

methodology, project products, and anticipated output. Applicants must demonstrate a need for confidential data, outlining why their research question cannot be answered using publicly available information.

Submission for Review

Upon submission of their application, applicants will receive a notification that their application has been received and is under review by the data owning agency or agencies (in the event where data assets are requested from multiple agencies). At this point, applicants will also be notified that application approval does not alone grant access to confidential data, and that, if approved, applicants must comply with the data-owning agency's security requirements outside of the SAP Portal, which may include a background check.

In accordance with the Evidence Act and the direction of the ICSP, agencies will approve or reject an application within a prompt timeframe. In some cases, agencies may determine that additional clarity, information, or modification is needed and request the applicant to ''revise and resubmit'' their application.

Data discovery, the SAP application process, and the submission for review are planned to take place within the web-based SAP Portal. As noted above, the notice announcing plans to collect information through the SAP Portal has been published separately (87 FR 53793).

Access to Restricted-Use Data

In the event of a positive determination, the applicant will be notified that their proposal has been accepted. The positive or final adverse determination concludes the SAP Portal process. In the instance of a positive determination, the data-owning agency (or agencies) will contact the applicant to provide instructions on the agency's security requirements that must be completed to gain access to the confidential data. The completion and submission of the agency's security requirements will take place outside of the SAP Portal.

Collection of Information for Data Security Requirements

In the instance of a positive determination for an application requesting access to an IES/NCES-owned confidential data asset, NCES will contact the applicant(s) to initiate the process of collecting information to fulfill its data security requirements. This process allows NCES to place the applicant(s) in a trusted access category and includes the collection of the following information from applicant(s):

- Restricted-use licensing agreement—This document is an agreement between NCES and the applicant's organization stipulating that NCES's confidential data assets are provisioned exclusively for statistical purposes and that the applicant must handle and use the data in accordance with the terms and conditions stated in the agreement and all prevailing laws and regulations. The agreement requires signatures from the applicant(s) and a senior official at the applicant's organization who has the authority to enter the organization into a legal agreement with NCES. A Memorandum of Understanding is used in lieu of a restricted-use data licensing agreement for other government agencies.
- Security plan form—This document requests information from the applicant(s) to ensure the confidential data assets are protected from unauthorized access, disclosure, or modification. The information collected in the security plan form includes the following:
  - planned work location address(es),
  - workstation specifications (make, model, serial number, type, and operating system),
  - workstation authorized users,
  - workstation monitor position (to prevent unauthorized viewing), and
  - workstation antivirus brand and version.

In addition, the applicant(s) must initial a series of security measures to indicate compliance. Finally, the form requires signatures from the applicant(s), a senior official at the applicant's organization, and a System Security Officer (SSO) at the applicant's organization. The SSO, in signing the Security plan form, assures the inspection and integrity of the applicant's security plan.

- Affidavit of nondisclosure form—This document describes the confidentiality protections the applicant(s) must uphold and the penalties for unauthorized access or disclosure. The form requires signatures from the applicant(s) as well as the imprint of a notary public.
- Licensee training certificate—This document requests information from the applicant(s) to ensure the completion of the IES/NCES restricted-use data license training.

These documents and a more complete description of the NCES Data Security Process will be available for public view during the 30D public comment period.

Estimate of Burden

The amount of time to complete the agreements and other paperwork that comprise NCES's security requirements will vary based on the confidential data assets requested. To obtain access to NCES confidential data assets, it is estimated that the average time to complete and submit NCES's data security agreements and other paperwork and to complete the required training is 45 minutes. This estimate does not include the time needed to complete and submit an application within the SAP Portal. All efforts related to SAP Portal applications occur prior to and separate from NCES's effort to collect information related to data security requirements.

The expected number of applications in the SAP Portal that receive a positive determination from NCES in a given year may vary. Overall, per year, NCES estimates it will collect data security information for 80 application submissions that received a positive determination within the SAP Portal. NCES estimates that the total burden for the collection of information for data security requirements over the course of the three-year OMB clearance will be about 180 hours and, as a result, an average annual burden of 60 hours.

Dated: November 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. 2022–25767 Filed 11–23–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Quantum Initiative Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the National Quantum Initiative Advisory Committee (NQIAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, December 16, 2022; 2 p.m. to 4 p.m. EST.

ADDRESSES: Virtual Meeting: Instructions to participate remotely will be posted on the National Quantum Initiative Advisory Committee website at: (*https://www.quantum.gov/about/nqiac/*) prior to the meeting and can also be obtained by contacting Thomas

Wong, (240) 220–4668 or email: *NQIAC@quantum.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Wong, Designated Federal Officer, NQIAC, (240) 220–4668 or email: *NQIAC@quantum.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The NQIAC has been established to provide advice and guidance on a continuing basis to the President, the Secretary of Energy, and the National Science and Technology Council Subcommittee on Quantum Information Science (QIS), the National Quantum Initiative (NQI) program, and on trends and developments in quantum information science and technology, in accordance with the National Quantum Initiative Act (Pub. L. 115–368) and Executive Order 13885.

Tentative Agenda

- Member Introductions
- Status of the National Quantum Initiative
- NQIAC Charge

Public Participation: The meeting is open to the public. It is the policy of the NQIAC to accept written public comments no longer than 5 pages and to accommodate oral public comments, whenever possible. The NQIAC expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. The public comment period for this meeting will take place on December 16, 2022 at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on NQIAC's work, not for business marketing purposes. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *NQIAC@quantum.gov,* no later than 12 p.m. eastern time on December 9, 2022. To accommodate as many speakers as possible, the time for public comments will be limited to three (3) minutes per person, with a total public comment period of up to 15 minutes. If more speakers register than there is space available on the agenda, NQIAC will select speakers on a first-come, first-served basis from those who applied. Those not able to present oral comments may always file written comments with the committee.

Written Comments: Although written comments are accepted continuously, written comments relevant to the subjects of the meeting should be submitted to *NQIAC@quantum.gov* no later than 12 p.m. eastern time on December 9, 2022, so that the comments may be made available to the NQIAC members for their consideration prior to the meeting. Please note that because NQIAC operates under the provisions of FACA, all public comments and related materials will be treated as public documents and will be made available for public inspection, including being posted on the NQIAC website.

Minutes: The minutes of this meeting will be available on the National Quantum Initiative Advisory Committee website at: *https://www.quantum.gov/about/nqiac/.*

Signed in Washington, DC, on November 18, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–25721 Filed 11–23–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: R22–67–001.
Applicants: Comanche Trail Pipeline, LLC.
Description: Amendment Filing: Comanche Trail Pipeline, LLC Amended SOC Effective 10/1/2022 to be effective 10/1/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5097.
Comment Date: 5 p.m. ET 12/9/22.
284.123(g) Protest: 5 p.m. ET 1/17/23.

Docket Numbers: PR22–68–001.
Applicants: Trans-Pecos Pipeline, LLC.
Description: Amendment Filing: Trans-Pecos Pipeline, LLC Amended SOC Effective 10/1/2022 to be effective 10/1/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5118.
Comment Date: 5 p.m. ET 12/9/22.
284.123(g) Protest: 5 p.m. ET 1/17/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

Filings Instituting Proceedings

Docket Numbers: PR23–7–000.
Applicants: ONEOK WesTex Transmission, L.L.C.
Description: § 284.123(g) Rate Filing: Rate Revision and Update to Periodic Rate Review to be effective 12/1/2022.
Filed Date: 11/17/22.
Accession Number: 20221117–5166.
Comment Date: 5 p.m. ET 12/8/22.
284.123(g) Protest: 5 p.m. ET 1/16/23.

Docket Numbers: PR23–8–000.
Applicants: Louisville Gas and Electric Company.
Description: § 284.123(g) Rate Filing: Revised Statement of Operating Conditions Exhibit A to be effective 11/1/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5102.
Comment Date: 5 p.m. ET 12/9/22.
284.123(g) Protest: 5 p.m. ET 1/17/23.

Docket Numbers: RP23–196–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Eastman to OPC Release to be effective 11/17/2022.
Filed Date: 11/17/22.
Accession Number: 20221117–5163.
Comment Date: 5 p.m. ET 11/29/22.

Docket Numbers: RP23–197–000.
Applicants: Stagecoach Pipeline & Storage Company LLC.
Description: § 4(d) Rate Filing: Stagecoach Pipeline & Storage Company LLC—EQT Energy, LLC SP382179 to be effective 12/1/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5050.
Comment Date: 5 p.m. ET 11/30/22.

Docket Numbers: RP23–198–000.
Applicants: Tampa Electric Company, Peoples Gas System.
Description: Joint Petition for Temporary Limited Waivers of Capacity Release Regulations, et al. of Tampa Electric Company, et al.
Filed Date: 11/18/22.
Accession Number: 20221118–5063.
Comment Date: 5 p.m. ET 11/30/22.

Docket Numbers: RP23–199–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Compliance filing: Annual Cash-Out Activity Report 2022 to be effective N/A.
Filed Date: 11/18/22.
Accession Number: 20221118–5069.
Comment Date: 5 p.m. ET 11/30/22.

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: November 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25716 Filed 11–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD23–3–000]

Establishing Interregional Transfer Capability Transmission Planning and Cost Allocation Requirements; Supplemental Notice of Staff-Led Workshop

As announced in the Notice of Staff-Led Workshop issued in this proceeding on October 6, 2022, Federal Energy Regulatory Commission (Commission) staff will convene a workshop to discuss whether and how the Commission could establish a minimum requirement for Interregional Transfer Capability for public utility transmission providers in transmission planning and cost allocation processes on December 5 and 6, 2022, from approximately 12:00 p.m. to 5:00 p.m. Eastern Time.

The purpose of this workshop is to consider the question of whether and how to establish a minimum requirement for Interregional Transfer Capability. Topics for discussion may include: how to determine the need for and benefit of setting a minimum requirement for Interregional Transfer Capability; what to consider in establishing a potential Interregional Transfer Capability requirement, including who would be responsible for determining a minimum Interregional Transfer Capability requirement and what would be the objective and drivers of such a requirement; what process could be used in establishing a minimum Interregional Transfer Capability requirement to determine key data inputs, modeling techniques, and relevant metrics; and how costs for transmission facilities intended to increase Interregional Transfer Capability should be allocated and how to ensure a minimum amount of Interregional Transfer Capability is achieved and maintained.

While the workshop is not for the purpose of discussing any specific matters before the Commission, some workshop discussions may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

	Docket Nos.
Invenergy Transmission LLC	AD22–13–000.
Invenergy Transmission LLC v. Midcontinent Independent System Operator, Inc	EL22–83–000.
SOO Green HVDC Link ProjectCo, LLC v. PJM Interconnection, LLC	EL21–85–000, EL21–103–000.
PPL Electric Utilities Corporation, PJM Interconnection, L.L.C	ER22–2690–000, ER22–2690–001.
Appalachian Power Company, PJM Interconnection, L.L.C	ER19–2105–005.
Neptune Regional Transmission System, LLC and Long Island Power Authority v. PJM Interconnection, L.L.C	EL21–39–000.
WestConnect Public Utilities	ER22–1105–000.
PPL Electric Utilities Corporation	ER22–1606–000.
Southwest Power Pool, Inc	ER22–1846–000.

Attached to this Supplemental Notice is an agenda for the workshop, which includes the workshop program and expected panelists.

Panelists are asked to submit advance materials to provide any information related to their respective panel (*e.g.,* summary statements, reports, whitepapers, studies, or testimonies) that panelists believe should be included in the record of this proceeding by November 21, 2022. Panelists should file all advance materials in the AD23–3–000 docket.

The workshop will take place virtually, with remote participation from both presenters and attendees. The workshop will be open to the public and there is no fee for attendance. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The workshop will be transcribed and webcast. Transcripts will be available for a fee from Ace Reporting (202–347–3700). A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Commission workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this workshop, please contact Jessica Cockrell at *jessica.cockrell@ferc.gov* or (202) 502–8190. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: November 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25717 Filed 11–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM19–12–000]

Revisions to the Filing Process for Commission Forms; Notice of Eforms Updates

Notice is hereby given that, on March 31, 2023, the eXtensible Business Reporting Language (XBRL) taxonomies, validation rules, and rendering files needed to file the FERC Form Nos. 1, 1–F, 2, 2–A, 3–Q electric, 3–Q natural gas, 6, 60, and 714,[1] will be updated to Version 2023–01–01.[2] Version 2023–01–01 will be effective starting with the first quarter 2023 forms.

The draft updated (Version 2023–01–01) taxonomies, validation rules, and rendering files are currently available for download in the eForms portal (*https://ecollection.ferc.gov/taxonomyHistory*) and are available for testing in the eForms portal. Suggestions on the draft Version 2023–01–01 taxonomies can be provided through *https://XBRLview.ferc.gov/.*

The 2023 FERC Form Nos. 1, 1–F, 2, 2–A, 3–Q electric, 3–Q natural gas, 6, 60, and 714 must be filed using the Version 2023–01–01 taxonomies, validation rules, and rendering files.

Dated: November 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25719 Filed 11–23–22; 8:45 am]

BILLING CODE 6717–01–P

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[1] The Commission adopted the XBRL process for filing these forms in Order No. 859. *Revisions to the Filing Process for Comm'n Forms,* Order No. 859, 167 FERC ¶ 61,241 (2019).

[2] The Commission adopted the final XBRL taxonomies, protocols, implementation guide, and other supporting documents, and established the implementation schedule for filing the Commission Forms following a technical conference in this proceeding. *Revisions to the Filing Process for Comm'n Forms,* 172 FERC ¶ 61,059 (2020). The Commission also stated that technical updates, such as the updates referenced here, will not take effect until at least 60 days after issuance of a notice from the Office of the Secretary. *Id.* P 26.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ23–1–000]

Western Area Power Administration; Notice of Filing

Take notice that on November 3, 2022, Western Area Power Administration submits tariff filing: Open Access Transmission Tariff 2022–1–20221102, to be effective February 1, 2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on December 5, 2022.

Dated: November 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25712 Filed 11–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–451–000]

TN Solar 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of TN Solar 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 8, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number

field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: November 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25714 Filed 11–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–2–000]

Gas Transmission Northwest LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed GTN Xpress Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the GTN XPress Project (Project), proposed by Gas Transmission Northwest LLC (GTN) in the above-referenced docket. GTN proposes to modify existing compressor stations in Idaho, Washington, and Oregon. This Project would increase the capacity of GTN's existing natural gas transmission system by about 150 million standard cubic feet per day between Idaho and Oregon. According to GTN, the Project is necessary to serve the growing market demand its system is experiencing.

The final EIS assesses the potential environmental effects of modifying and installing new facilities at the existing compressor stations in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts, but none that are considered significant. Regarding climate change impacts, the EIS is not characterizing the Project's greenhouse gas emissions as significant or insignificant because the Commission is conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward.[1] The EIS also concludes that no system or other alternative would meet the Project objectives while providing a significant environmental advantage over the Project as proposed.

The U.S. Environmental Protection Agency participated as a cooperating agency in the preparation of the EIS. A cooperating agency has jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participates in the NEPA analysis.

The final EIS addresses the potential environmental effects of construction and operation of the following Project facilities at GTN's existing compressor stations:

Athol Compressor Station (Kootenai County, Idaho)

- Uprate an existing Solar Turban Titan 130 gas-fired turbine compressor from 14,300 horsepower (HP) to 23,470 HP via a software upgrade only, no mechanical work or ground disturbance would occur at this location.

Starbuck Compressor Station (Walla Walla County, Washington)

- Uprate an existing Solar Turban Titan 130 gas-fired turbine compressor from 14,300 HP to 23,470 HP; and
- Install a new 23,470 HP Solar Turbine Titan 130 gas-fired turbine compressor, 3 new gas cooling bays, and associated piping.

Kent Compressor Station (Sherman County, Oregon)

- Uprate an existing Solar Turban Titan 130 gas-fired turbine compressor from 14,300 HP to 23,470 HP;
- Install 4 new gas cooling bays and associated piping; and
- Improve an existing access road.

The new Starbuck Compressor Station facilities would be located within the fenced boundaries of the existing site. The new Kent Compressor Station facilities would be located in an expanded and fenced area abutting the existing site.

The Commission mailed a copy of the *Notice of Availability* of the final EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Indian tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP22–2). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding.

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: November 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25715 Filed 11–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 346–071; 2454–084; 2532–092; 2663–061]

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests; ALLETE, Inc.

Take notice that the following hydroelectric application has been filed

[1] *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews,* 178 FERC ¶ 61,108 (2022); 178 FERC ¶ 61,197 (2022).

with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License Terms.

b. *Project Nos.:* P–346–071, P–2454–084, P–2532–092, and P–2663–061.

c. *Date Filed:* October 20, 2022.

d. *Applicant:* ALLETE, Inc.

e. *Name of Project:* Blanchard (P–346), Sylvan (P–2454), Little Falls (P–2532), and Pillager (P–2663) Hydroelectric Projects.

f. *Location:* The Blanchard and Little Falls projects are located on the Mississippi River in Morrison County, Minnesota; the Sylvan and Pillager projects are located on the Crow Wing River, in Cass, Crow Wing, and Morrison Counties, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Greg Prom, Senior Environmental Compliance Specialist, Minnesota Power, 30 West Superior Street, Duluth, Minnesota 55802, (218) 355–3191, *gprom@allete.com.*

i. *FERC Contact:* Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov*

j. *Deadline for filing comments, motions to intervene, and protests:* December 19, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket numbers P–346–071, P–2454–084, P–2532–092, or P–2663–061. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Allete, Inc., licensee for the Blanchard Project No. 346, Sylvan Project No. 2454, Little Falls Project No. 2532, and the Pillager Project No. 2663, filed a request to accelerate the license term for the Blanchard Project and extend the license terms for the Sylvan, Little Falls, and Pillager projects to August 24, 2040, so that they would be relicensed concurrently. Currently the licenses for the Sylvan, Little Falls, and Pillager projects expire on March 31, 2028, and the license for the Blanchard Project expires on August 24, 2043. The licensee states that aligning the expiration dates for the projects would significantly enhance process efficiencies and allow for the combining of relicensing efforts for all the projects. In addition, the licensee states that aligning the expiration dates of adjacent projects would facilitate a more comprehensive analysis of common resources.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: November 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25720 Filed 11–23–22; 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: EC23–29–000.

Applicants: Brantley Farm Solar, LLC, Buckleberry Solar, LLC, Fox Creek Farm Solar, LLC, Innovative Solar 54, LLC, Innovative Solar 67, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Brantley Farm Solar, LLC, et al.

Filed Date: 11/17/22.

Accession Number: 20221117–5193.

Comment Date: 5 p.m. ET 12/8/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2575–001.

Applicants: Transource Missouri, LLC, American Electric Power Service Corporation, Southwest Power Pool, Inc.

Description: Compliance filing: Transource Missouri, LLC submits tariff filing per 35: AEP on behalf of affiliate Transource Missouri, Amended Order No. 864 Compliance to be effective 1/27/2020.

Filed Date: 11/18/22.
Accession Number: 20221118–5101.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER20–2582–001.
Applicants: Transource West Virginia, LLC, American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: Compliance filing: American Electric Power Service Corporation submits tariff filing per 35: Transource WV submits Order No. 864 Compliance Filing, Att. H–26 to be effective 1/27/2020.
Filed Date: 11/18/22.
Accession Number: 20221118–5072.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER20–2584–001.
Applicants: Transource Maryland, LLC, American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: Compliance filing: American Electric Power Service Corporation submits tariff filing per 35: Transource MD submits Order No. 864 Compliance Filing, Att. H–30A to be effective 1/27/2020.
Filed Date: 11/18/22.
Accession Number: 20221118–5068.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER20–2585–001.
Applicants: Transource Pennsylvania, LLC, American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: Compliance filing: American Electric Power Service Corporation submits tariff filing per 35: Transource PA submits Order No. 864 Compliance Filing, Att. H–29A to be effective 1/27/2020.
Filed Date: 11/18/22.
Accession Number: 20221118–5071.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER21–1280–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits Morongo Transmission Annual Formula Transmission Rate Filing for Rate Year 2023.
Filed Date: 11/18/22.
Accession Number: 20221118–5093.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER22–2125–001.
Applicants: Duke Energy Progress, LLC.
Description: Compliance filing: DEP—NCEMC—RS No. 182 Compliance Filing to be effective 1/1/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5166.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER22–2701–000.
Applicants: Mechanicsville Solar, LLC.
Description: Refund Report: Refund report to be effective N/A.
Filed Date: 11/18/22.
Accession Number: 20221118–5061.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER22–2806–002.
Applicants: American Electric Power Service Corporation, Appalachian Power Company, PJM Interconnection, L.L.C.
Description: Tariff Amendment: American Electric Power Service Corporation submits tariff filing per 35.17(b): AEP submits second amendment to amended ILDSA, SA No. 1252 in ER22–2806 to be effective 9/1/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5062.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER23–109–000.
Applicants: San Diego Gas & Electric.
Description: Annual Informational Appendix X, Formula Rate of the Transmission Owner Tariff of San Diego Gas & Electric Company.
Filed Date: 10/14/22.
Accession Number: 20221014–5235.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER23–110–000.
Applicants: San Diego Gas & Electric.
Description: Annual Informational Appendix XII, Formula Rate of the Transmission Owner Tariff, of San Diego Gas & Electric Company.
Filed Date: 10/14/22.
Accession Number: 20221014–5236.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER23–456–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2022–11–17 WAPA Const Fac Agmt 359–PSCo-Exh No. 15 Amnd to be effective 12/28/2022.
Filed Date: 11/17/22.
Accession Number: 20221117–5147.
Comment Date: 5 p.m. ET 12/8/22.

Docket Numbers: ER23–457–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 380 LGIA with Hecate Energy Santa Teresa LLC (Hecate 1) to be effective 7/6/2022.
Filed Date: 11/17/22.
Accession Number: 20221117–5153.
Comment Date: 5 p.m. ET 12/8/22.

Docket Numbers: ER23–458–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 381 LGIA with Hecate Energy Santa Teresa 2 LLC (Hecate 2) to be effective 10/25/2022.
Filed Date: 11/17/22.
Accession Number: 20221117–5156.
Comment Date: 5 p.m. ET 12/8/22.

Docket Numbers: ER23–459–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5294; Queue No. AC2–120 to be effective 2/7/2019.
Filed Date: 11/18/22.
Accession Number: 20221118–5023.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER23–460–000.
Applicants: Georgia Power Company
Description: § 205(d) Rate Filing: GPCo 2022 PBOP Filing to be effective 1/1/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5031.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER23–461–000.
Applicants: Mississippi Power Company.
Description: § 205(d) Rate Filing: MPCo PBOP 2022 Filing to be effective 1/1/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5032.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER23–462–000.
Applicants: Southern Electric Generating Company.
Description: § 205(d) Rate Filing: SEGCo 2022 PBOP Filing to be effective 1/1/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5033.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER23–463–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3915 Midway Wind Project and ITC Great Plains E&P Agr Cancel to be effective 6/14/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5064.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER23–464–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ISA, SA No. 6688; Queue No. AE1–105 to be effective 10/21/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5075.
Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ER23–465–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: 3rd Amended LGIA Willy 9 SA No. 216 TOT793 to be effective 11/19/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5078.
Comment Date: 5 p.m. ET 12/9/22.

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: November 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25718 Filed 11–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–452–000]

EEC Skyhawk Lessee LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of EEC Skyhawk Lessee LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 8, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: November 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25713 Filed 11–23–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0132; FRL–9411–10–OCSPP]

Certain New Chemicals; Receipt and Status Information for October 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 10/1/2022 to 10/31/2022.

DATES: Comments identified by the specific case number provided in this document must be received on or before December 27, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2022–0132, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 10/01/2022 to 10/31/2022. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report

on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *https://www.epa.gov/chemicals-under-tsca.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL–4942–7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.,* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 10/1/2022 TO 10/31/2022

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–22–0019	2	10/3/2022	CBI	(G) Production of a chemical	(G) Saccharomyces cerevisiae, chromosomal integration modification.
J–22–0020	2	10/3/2022	CBI	(G) Production of a chemical	(G) Saccharomyces cerevisiae, chromosomal integration modification.
J–22–0022	1	9/23/2022	RWDC Industries	(G) Production of PHA	(G) Microorganisms stably transformed to manufacture PHA.
J–22–0023	1	9/23/2022	RWDC Industries	(G) Production of PHA	(G) Microorganisms stably transformed to manufacture PHA.
J–22–0024	1	9/23/2022	RWDC Industries	(G) Production of PHA	(G) Microorganisms stably transformed to manufacture PHA.
J–22–0025	1	9/23/2022	RWDC Industries	(G) Production of PHA	(G) Microorganisms stably transformed to manufacture PHA.
P–16–0512A	5	9/30/2022	CBI	(S) Component of a UV curable printing inks.	(G) Fatty acid dimers, polymer with acrylic acid and pentaerythritol reaction products.
P–17–0194A	2	10/20/2022	CBI	(G) Pigment additive for industrial coatings.	(G) Hydrogenated dihalo dialkyl diindolotriphenodioxazine, dihydrodisubstituted isoindolyl alkyl derivs.
P–18–0070A	11	10/24/2022	Arrowstar, LLC	(G) Chemical intermediate for polyurethane industry.	(G) Waste plastics, polyester, depolymd. with glycols, polymers with dicarboxylic acids.
P–20–0060A	6	10/6/2022	CBI	(S) Solvent-based pigmented one- and two-component polyurethane coatings Automotive Refinish General Industrial Coil.	(G) Bismuth Carboxylate complexes.
P–20–0060A	8	10/20/2022	CBI	(S) Catalyst for polyurethane foam manufacturing.	(G) Bismuth Carboxylate complexes.
P–22–0080A	4	10/7/2022	Huntsman International LLC.	(S) As an industrial intermediate used in the manufacture of polyamides as a monomer.	(S) Poly(oxy-1,2-ethanediyl), ,′-(iminodi-2,1-ethanediyl)bis[-(2-aminoethoxy)-;(S) Poly(oxy-1,2-ethanediyl), -(2-aminoethyl)-(2-aminoethoxy)-;.
P–22–0121A	3	10/4/2022	CBI	(G) Process Intermediate: New chemical substance will be used as a process intermediate.	(G) polychloroalkene.
P–22–0148A	3	10/27/2022	CBI	(G) Intermediate	(G) Substituted benzonitrile.
P–22–0153A	3	10/6/2022	Huntsman International LLC.	(S) Notified substance will be used as an adhesion promoter in a resin used for adhesive and/or sealants in industrial assembly or manufacturing operations, in outdoor repair. Through small scale application on assembly line, manual use, or automated use by dispensing unit.	(S) 2-Propenoic acid, 2-methyl-, 2-hydroxyethyl ester, reaction products with 2-oxepanone homopolymer 2-[(2-methyl-1-oxo-2-propen-1-yl)oxy]ethyl] ester and phosphorous oxide (P2O5).
P–22–0175	2	10/26/2022	Wacker Chemical Corporation.	(S) Polymer Resin Binder for composite stone (Engineered Stone).	(G) Modified Silsesquioxane, alkoxy-terminated.
P–22–0187	2	9/29/2022	LG Energy Solution Michigan Inc.	(G) Substance for use in the manufacture of battery components.	(G) Mixed metal oxide.
P–22–0192	2	10/11/2022	CBI	(G) Photolithography	(G) Sulfonium, tricarbocyclic-, polyfluoro-heteroatom-substituted polycarbocyclicalkanesulfonate (1:1).
P–23–0001	1	10/3/2022	Solugen Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–23–0002	1	10/3/2022	Solugen Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–23–0003	1	10/3/2022	Solugen Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–23–0004	1	10/3/2022	Solugen Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–23–0005	1	10/3/2022	Solugen Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–23–0006	2	10/13/2022	Siltech Inc	(G) additive	(S) Siloxanes and silicones, di-Me, Me hydrogen, reaction products with vinyl group-terminated di-Me siloxanes.
P–23–0009	1	10/5/2022	Givaudan Fragrances Corp.	(G) Fragrance ingredient for use in laundry applications.	(G) Cysteine, cyclic alkyl, ethyl ester.
P–23–0010	1	10/5/2022	Givaudan Fragrances Corp.	(G) Fragrance ingredient for use in laundry applications.	(G) Alkylthio ketone.
P–23–0011	1	10/10/2022	CBI	(G) Cross-linking agent	(G) divinylperfluoroalkane.
P–23–0012	1	10/11/2022	CBI	(S) Polymer for use in concrete applications.	(G) Starch, polymer with alkenoic acid, salt.
P–23–0013	1	10/12/2022	Honeycomb Techno Research USA Inc.	(S) Epoxy molding compound for electronic device.	(S) Phenol, polymer with 4,4′-bis(chloromethyl)-1,1′-biphenyl.
P–23–0015	1	10/26/2022	CBI	(G) Water treatment chemical	(G) Amines, polyalkylenepoly, (disubstitutedcarboxy) derivs., alkali metal salts.
P–23–0016	1	10/26/2022	Kuraray America, Inc	(G) Additive for paints, UV inks, coatings, etc.	(S) 2-Propanol, 1,3-bis[(3-methyl-2-buten-1-yl)oxy]-.
SN–21–0003A	4	10/26/2022	Norquay Technology Inc	(G) Intermediate	(S) 1,1′-Biphenyl, 4,4′-dibromo-.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90 day review period, and in no way reflects the final status of a complete submission review.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not subject to a CBI claim) on the TMEs and/or Biotech Exemptions received by EPA during this period: The EPA case number assigned to the TME and/or Biotech Exemption, the submission document type (initial or amended), the version number, the date the TME and/ or Biotech Exemption was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the TME and/or Biotech Exemption, and the chemical substance identity.

TABLE II—TMES AND BIOTECH EXEMPTIONS RECEIVED FROM 10/1/2022 TO 10/31/2022

Case No.	Submission type	Version	Received date	Manufacturer	Use	Chemical substance
T–22–0001A	Test Marketing Exemption Application (TMEA).	3	10/4/2022	CBI	(G) Functional mineral in automotive components, and mineral for plastics.	(G) Mica-group minerals, reaction products with triethoxysilyl substituted-alkane.

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE III—NOCS APPROVED * FROM 10/1/2022 TO 10/31/2022

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–12–0346	10/20/2022	10/17/2022	N	(S) 2-propanone, 2,2′,2''-[o,o′,o''-(ethylsilylidyne)trioxime].
P–15–0691A	10/7/2022	7/22/2022	Amended generic chemical name.	(G) Polyamidoamine n-carbodithioate, sodium salt.
P–18–0282A	10/25/2022	10/6/2021	Amended generic chemical name.	(G) Fatty acid ester, polyether, poly[di(ethylene glycol) adipate], methylene diphenyl diisocyanate.
P–21–0023	10/5/2022	9/7/2022	N	(G) Sulfonium, carbocyclic-, salt with 1-(alkyl) 2-[4-[polyhydro-2-carbomonocyclic-5-(polyfluoro-2-sulfoalkyl)-4,7-methano-1,3-benzodioxol-2-yl]carbomonocyclic oxy]acetate (1:1).
P–21–0068	10/6/2022	9/8/2022	N	(G) Metalloxanes, alkyl, alkyl group-terminated, reaction products with dihalo-dialkylalkylaryl-alkyl-polycyclic-ylidene(dialkylsilylene)-dialkylalkylarylalkylalkyl-polycyclic-ylidene, metal oxide and nonmetallic oxide.
P–21–0085	10/11/2022	9/15/2022	N	(S) 1-propanethiol, 3-(triethoxysilyl)-, reaction products with polybutadiene.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table IV of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE IV—TEST INFORMATION RECEIVED FROM 10/1/2022 TO 10/31/2022

Case No.	Received date	Type of test information	Chemical substance
P–16–0543	10/14/2022	Industrial Hygiene Exposure Report	(G) Halogenophosphoric acid metal salt.
P–21–0011	10/14/2022	Test Scheduling Notification	(G) Hexane, 1,6-diisocyanato-, homopolymer, alkyl epoxy ether- and polyethylene glycol mono-me ether-blocked, reaction products with propylenimine.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: November 21, 2022.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2022–25743 Filed 11–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0390; FRL–10451–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Hazardous Waste Generator Standards (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Hazardous Waste Generator Standards (EPA ICR Number 0820.15, OMB Control Number 2050–0035) 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 January 31, 2023. Public comments were previously requested via the **Federal Register** on June 17, 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 not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 27, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2018–0390, to EPA, either online using *www.regulations.gov* (our preferred method), or by mail to: RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

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: Brian Knieser, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0516; email address: *knieser.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov.* Materials can also be viewed at the Reading Room located at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays). The telephone number for the Docket Center is 202–566–1744.

Abstract: Under the Resource Conservation and Recovery Act (RCRA), as amended, Congress directed EPA to implement a comprehensive program for the safe management of hazardous waste. The core of the national waste management program is the regulation of hazardous waste from generation to transport to treatment and eventual disposal, or from ''cradle to grave.'' Section 3001(d) of RCRA requires EPA to develop standards for small quantity generators. Section 3002 of RCRA states, among other things, that EPA shall establish requirements for hazardous waste generators regarding recordkeeping practices. Section 3002 also requires EPA to establish standards on appropriate use of containers by generators. Finally, Section 3017 of RCRA specifies requirements for individuals exporting hazardous waste from the United States, including a notification of the intent to export, and an annual report summarizing the types, quantities, frequency, and ultimate destination of all exported hazardous waste.

Form Numbers: None.

Respondents/affected entities: Private business or other for-profit.

Respondent's obligation to respond: Mandatory (40 CFR part 262 and 265).

Estimated number of respondents: 393,049.

Frequency of response: On occasion.

Total estimated burden: 526,035 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $42,607,731 (per year), which includes $72,394 in annualized capital or operation & maintenance costs.

Changes in the estimates: There is a decrease of 954 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to an adjustment in the universe number.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–25654 Filed 11–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0758, FRL–10447–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Part B Permit Application, Permit Modifications, and Special Permits (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Part B Permit Application, Permit Modifications, and Special Permits (EPA ICR Number 1573.16, OMB Control Number 2050–0009) 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 January 31, 2023. Public comments were previously requested via the **Federal Register** on June 13, 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 not conduct or sponsor and a person is not required to respond to a collection

of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 27, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2018–0758, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

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: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0453; email address: *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov.* Materials can also be viewed at the Reading Room located at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays). The telephone number for the Docket Center is 202–566–1744.

Abstract: Section 3005 of subtitle C of RCRA requires treatment, storage or disposal facilities (TSDFs) to obtain a permit. To obtain the permit, the TSDFs must submit an application describing the facility's operation. There are two parts to the RCRA permit application—Part A and Part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. Part B requires detailed site-specific information such as geologic, hydrologic, and engineering data. In the event that permit modifications are proposed by the applicant or the EPA, modifications must conform to the requirements under sections 3004 and 3005.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are private sector and State, local, or Tribal governments.

Respondent's obligation to respond: Mandatory (RCRA Section 3005).

Estimated number of respondents: 154.

Frequency of response: On occasion.

Total estimated burden: 19,437 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,916,736 (per year), includes $3,761,703 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 649 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a decrease in the respondent universe.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–25630 Filed 11–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0023; FRL–10271–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Small Municipal Waste Combustors (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Small Municipal Waste Combustors (EPA ICR Number 1900.08, OMB Control Number 2060–0423), 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 December 27, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0023, to: (1) EPA 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. 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 New Source Performance Standards (NSPS) for Small Municipal Waste Combustors (40 CFR part 60, subpart AAAA) apply to both existing facilities and new facilities with small municipal waste combustors (MWCs) that combust greater than 35 tons per day (tpd), but with less than 250 tpd of municipal solid waste. In general, all NSPS standards require initial notifications, 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 NSPS.

Form Numbers: None.

Respondents/affected entities: Owners and operators of small municipal waste combustors.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart AAAA).

Estimated number of respondents: 6 (total).

Frequency of response: Annually, semiannually.

Total estimated burden: 18,700 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,180,000 (per year), which includes $154,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most-recently approved ICR is due to an adjustment. The adjustment increase in respondent burden from the most-recently approved ICR is due to an increase in the number of respondents. The number of respondents reflects one new facility over the past three years. There is an increase in the operation and maintenance (O&M) costs due to the increase in the number of respondents over the past three years. However, no additional respondents are predicted during the three-year period of this ICR.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–25635 Filed 11–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0018; FRL–10270–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emission Guidelines for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Emission Guidelines for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (EPA ICR Number 1847.09, OMB Control Number 2060–0390), 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 December 27, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0018, 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. 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: *https://www.epa.gov/dockets.*

Abstract: The Emission Guidelines for Large Municipal Waste Combustors at 40 CFR part 60, subpart Cb apply to existing facilities constructed on or before September 20, 1994 that own and operate municipal waste combustion (MWC) units with a combustion capacity greater than 250 tons per day of municipal solid waste (large MWC units). In general, all Emission Guidelines standards require initial notifications, 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 Emission Guidelines.

Form Numbers: None.

Respondents/affected entities: Owners and operators of large municipal waste combustors constructed on or before September 20, 1994.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Cb).

Estimated number of respondents: 72 (total).

Frequency of response: Initially, occasionally, semiannually, and annually.

Total estimated burden: 353,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $60,700,000 (per year), which includes $1,400,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: The decrease in burden from the most-recently approved ICR is due to an adjustment(s). There is an adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This decrease in labor hours is not due to any program changes. Instead, the decrease is due to a decrease in the number of respondents to reflect facility closures, corrections to the burden associated with familiarization with regulatory requirements for existing sources, and corrections to the number of facilities performing dioxin/furan testing based on the current number of respondents. There is a decrease in the operation and maintenance (O&M) costs due to the decrease in the number of respondents over the past three years.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–25648 Filed 11–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–045]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed November 14, 2022 10 a.m. EST Through November 18, 2022 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20220172, Draft, USACE, OR, Willamette Valley System Operations and Maintenance, Comment Period Ends: 01/19/2023, *Contact:* Nicklas Knudson 503–808–4739.

EIS No. 20220173, Final, NOAA, PRO, Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition, *Review Period Ends:* 12/27/2022, *Contact:* Jay Nunenkamp 302–715–2405.

EIS No. 20220174, Final, BIA, DOI, WA, Confederated Tribes of the Colville Reservation Integrated Resource Management Plan 2015, *Review Period Ends:* 12/27/2022, *Contact:* Tobiah Mogavero 435–210–0509.

EIS No. 20220175, Draft, BIA, DOI, OR, Coquille Indian Tribe Fee to Trust Gaming Facility Project, *Comment Period Ends:* 01/09/2023, *Contact:* Tobiah Mogavero 435–210–0509.

EIS No. 20220176, Final, FERC, ID, GTN XPress Project, *Review Period Ends:* 12/27/2022, *Contact:* Office of External Affairs 866–208–3372.

EIS No. 20220177, Final, DOE, LA, ADOPTION—Commonwealth LNG Project, *Contact:* Amy Sweeney 202–586–2627. The Department of Energy (DOE) has adopted the Federal Energy Regulatory Commission's Final EIS No. 20220134, filed 9/9/2022 with the Environmental Protection Agency. The DOE was a cooperating agency on this project. Therefore, republication of the document is not necessary under Section 1506.3(b)(2) of the CEQ regulations.

Dated: November 18, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–25725 Filed 11–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0080; FR–10446–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Magnetic Tape Manufacturing Operations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Magnetic Tape Manufacturing Operations (EPA ICR Number 1678.11, OMB Control Nunber 2060–0326) 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 January 31, 2023. 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 December 27, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0080, to EPA 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. 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 National Emission Standards for Hazardous Air Pollutants (NESHAP) for Magnetic Tape Manufacturing Operations (40 CFR part

63, subpart EE) were proposed on March 11, 1994; promulgated on December 15, 1994; and amended on April 9, 1999. These regulations apply to existing and new magnetic tape manufacturing operations facilities, including solvent storage tanks, mix preparation equipment, coating operations, waste handling devices, and condenser vents associated with solvent recovery. New facilities include those that commenced either construction, modification, or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart EE.

Form Numbers: None.

Respondents/affected entities: Existing and new magnetic tape manufacturing operations facilities, including solvent storage tanks, mix preparation equipment, coating operations, waste handling devices, and condenser vents associated with solvent recovery.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart EE).

Estimated number of respondents: 3 (total).

Frequency of response: Initially, quarterly, and semiannually.

Total estimated burden: 2,240 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $302,000 (per year), which includes $33,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is decrease in the total estimated respondent burden compared with the ICR currently approved by OMB. The adjustment decrease in burden from the most recently approved ICR is due to a decrease in the number of sources. Based on a review of ECHO sources and consultations with the Agency's internal industry experts, three sources are identified to be subject to this rule. The previous ICR indicated four sources. The overall result is a decrease in burden and operation and maintenance costs. This ICR continues to assume that at least one existing source will construct a new line with enclosure each year, therefore, there is no change the capital costs estimated in the currently approved ICR.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–25626 Filed 11–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0067; FRL–10444–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Magnetic Tape Coating Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Magnetic Tape Coating Facilities (EPA ICR Number 1135.14, OMB Control Number 2060–0171), 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 January 31, 2023. 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 December 27, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0067, to: (1) EPA 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.

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 New Source Performance Standards (NSPS) for Magnetic Tape Coating Facilities (40 CFR part 60, subpart SSS) were proposed on January 22, 1986; promulgated on October 3, 1988; and most-recently amended on February 12, 1999. These regulations apply to both existing and new coating operation and coating mixing equipment at magnetic tape coating facilities. New facilities include those that commenced construction, modification, or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart SSS.

In general, all NSPS standards require initial notifications, 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 NSPS.

Form Numbers: None.

Respondents/affected entities: Magnetic tape coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart SSS).

Estimated number of respondents: 4 (total).

Frequency of response: Initially, quarterly, and semiannually.

Total estimated burden: 811 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $132,000 (per year), which includes $34,900 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The decrease in burden from the most-recently approved ICR is due to an adjustment(s). The adjustment decrease in burden from the most-recently approved ICR is due to a decrease in the number of sources. The number of respondents decreased by approximately 33%. The adjustment decrease in the number of respondents is due to a review of the EPA's Enforcement and Compliance History Online (ECHO) database, a list of

facilities from a 2003 EPA Residual Risk Analysis, and facility permits. Additionally, the previous ICR included capital/startup costs in the estimated burden due to the addition of new coating lines to existing facilities. For the next three years, we do not expect new coating lines to be added, but the existing continuous monitoring equipment are expected to have O&M costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–25629 Filed 11–23–22; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of Open Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (EXIM).

TIME AND DATE: Monday, December 12th 2022 from 2:00–5:30 p.m. EST.

A joint meeting of the EXIM Sub-Saharan Africa Advisory Committee, EXIM Advisory Committee, and EXIM Advisory Councils will be held from 2:00–4:00 p.m. EST followed by a separate meeting of the Sub-Saharan Africa Advisory Committee from 4:15–5:30 p.m. EST.

PLACE: Hybrid meeting—Omni Shoreham Hotel, 2500 Calvert St. NW, Washington, DC 20008 and Virtual. The meeting will be held in person for committee members, EXIM's Board of Directors and support staff, and virtually for all other participants.

Registration and Public Comment

Virtual Public Participation: The meeting will be open to public participation virtually and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *advisory@exim.gov.*

Interested parties may register for the meeting at: *https://www.surveymonkey.com/r/SAACRegistration.*

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services in Sub-Saharan Africa.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Engagement Specialist, at 202–480–0062 or *india.walker@exim.gov.*

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2022–25888 Filed 11–22–22; 4:15 pm]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (EXIM).

TIME AND DATE: Monday, December 12th 2022 from 2:00–5:30 p.m. EST.

A joint meeting of the EXIM Advisory Committee, Sub-Saharan Africa Advisory Committee, and EXIM Advisory Councils will be held from 2:00–4:00 p.m. EST followed by a separate meeting of the Advisory Committee from 4:15–5:30 p.m. EST.

PLACE: Hybrid meeting—Omni Shoreham Hotel, 2500 Calvert St. NW, Washington, DC 20008 and Virtual. The meeting will be held in person for committee members, EXIM's Board of Directors and support staff, and virtually for all other participants.

Registration and Public Comment

Virtual Public Participation: The meeting will be open to public participation virtually and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *advisory@exim.gov.*

Interested parties may register for the meeting at: *https://www.surveymonkey.com/r/EXIMAdvCom.*

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs to provide competitive financing to expand United States exports and comments for inclusion in EXIM's Report to the U.S. Congress on Global Export Credit Competition.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Engagement Specialist, at 202–480–0062 or *india.walker@exim.gov.*

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2022–25889 Filed 11–22–22; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 115313]

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) VIII will hold its sixth meeting on December 15, 2022 at 1 p.m. EST.

DATES: December 15, 2022.

ADDRESSES: The meeting will be held at 45 L Street NE, Washington, DC, and via conference call. The meeting is open to the public and is available via WebEx at *http://www.fcc.gov/live* and on the FCC's YouTube channel.

FOR FURTHER INFORMATION CONTACT: Suzon Cameron, Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418–1916 or email: *suzon.cameron@fcc.gov,* or Kurian Jacob, Deputy Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418–2040 or email: *kurian.jacob@fcc.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be held on December 15, 2022, at 1 p.m. EST, in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC. While the CSRIC VIII meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *https://www.fcc.gov/visit.*

The CSRIC is a Federal Advisory Committee that will provide recommendations to the Commission to improve the security, reliability, and interoperability of communications systems. On June 30, 2021, the Commission, pursuant to the Federal Advisory Committee Act, renewed the charter for CSRIC VII for a period of two years through June 29, 2023. The meeting on December 15, 2022, will be the sixth meeting of CSRIC VIII under the current charter.

The Commission will provide audio and/or video coverage of the meeting over the internet from the FCC's web page at *http://www.fcc.gov/live* and on the FCC's YouTube channel. The public may submit written comments before the meeting to Suzon Cameron, CSRIC VIII Designated Federal Officer, by email to *CSRIC@fcc.gov.*

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the Commission can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted but may be impossible to fill.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2022–25746 Filed 11–23–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 10:01 a.m. on Tuesday, November 22, 2022.

PLACE: The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Board of Directors of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's supervision, corporate, and resolution activities. In calling the meeting, the Board determined, on motion of Director Michael J. Hsu (Acting Comptroller of the Currency), seconded by Director Rohit Chopra (Director, Consumer Financial Protection Bureau), and concurred in by Acting Chairman Martin J. Gruenberg, that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated this the 22nd day of November, 2022.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–25867 Filed 11–22–22; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

National Shipper Advisory Committee December 2022 Meeting

AGENCY: Federal Maritime Commission.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: Notice is hereby given of a meeting of the National Shipper Advisory Commission (NSAC), pursuant to the Federal Advisory Committee Act.

DATES: The Committee will meet in-person at the offices of Port of Oakland, in Oakland, CA, on December 8, 2022, from 1:00 p.m. until 4:00 p.m. Pacific Time. Please note that this meeting may adjourn early if the Committee has completed its business.

ADDRESSES: The meeting will be held at the Port of Oakland located at 530 Water Street, Oakland, CA 94607. Requests to register should be submitted to *nsac@fmc.gov* and contain ''REGISTER FOR NSAC MEETING'' in the subject line. The deadline for members of the public to register to attend the meeting in-person is Friday, December 2, at 5 p.m. Eastern Time. Members of the public are encouraged to submit registration requests via email in advance of the deadline. Seating for members of the public is limited and will be available on a first-come, first-served basis for those who register in advance. We will note when the limit of in-person attendees has been reached.

FOR FURTHER INFORMATION CONTACT: Mr. Dylan Richmond, Designated Federal Officer of the National Shipper Advisory Committee, phone: (202) 523–5810; email: *drichmond@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The National Shipper Advisory Committee is a federal advisory committee. It operates under the provisions of the Federal Advisory Committee Act, 5 U.S.C. app., and 46 U.S.C. chapter 425. The Committee was established on January 1, 2021, when the National Defense Authorization Act for Fiscal Year 2021 became law. Public Law 116–283, section 8604, 134 Stat. 3388 (2021). The Committee will provide information, insight, and expertise pertaining to conditions in the ocean freight delivery system to the Commission. Specifically, the Committee will advise the Federal Maritime Commission on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. 46 U.S.C. 42502(b).

The Committee will receive updates from each of its subcommittees. The Committee will receive proposals for recommendations to the Federal Maritime Commission and may vote on these recommendations. These recommendations will also be available for the public to view in advance of the meeting on the NSAC's website, *https://www.fmc.gov/industry-oversight/national-shipper-advisory-committee/.* The Committee may also vote on the election of a Chair and Vice Chair.

Public Comments: Members of the public may submit written comments to NSAC at any time. Comments should be addressed to NSAC, c/o Dylan Richmond, Federal Maritime Commission, 800 North Capitol St. NW, Washington, DC 20573 or *nsac@fmc.gov.*

The Committee will also take public comment at its meeting. If attending the meeting and providing comments, please note that in the registration request. Comments are most helpful if they address the Committee's objectives or their proposed recommendations. Comments at the meeting will be limited to 3 minutes each.

A copy of all meeting documentation, including meeting minutes, will be available at *www.fmc.gov* following the meeting.

By the Commission.

Dated: November 18, 2022.

William Cody,

Secretary.

[FR Doc. 2022–25696 Filed 11–23–22; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10816, CMS–R–131, CMS–10415 and CMS–1957]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by December 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing*.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Part C and Medicare Part D Enrollment Form Interviews; *Use:* As CMS moves towards stratified reporting of quality measures and addressing healthcare inequity, highlighted by the COVID–19 pandemic, the ability to analyze disparities across Medicare programs and policies depends on the ability to access and collect reliable race and ethnicity data consistently from Medicare Part C and Part D plans. The recent Executive Orders (E.O.) 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and E.O. 14031 on Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders, have focused attention on the need for CMS to improve the collection and quality of its enrollees' race and ethnicity data, especially at the disaggregated level.

Collecting complete race/ethnicity data is important to CMS because CMS has interest in identifying patterns of differences across many key process and care outcomes by sociodemographic characteristics, including race and ethnicity.

CMS' primary objective for the interviews is to identify the drivers of nonresponse to the race and ethnicity questions. Specifically, we aim to solicit detail on whether and what concerns drove individuals' nonresponse to these items, including (but not limited to) (a) concerns about confidentiality of their data, (b) concerns about how their race and ethnicity data would be used, including concerns about whether disclosing such information could in any way affect eligibility for Medicare benefits (which it would not), or (c) concerns about response options (*e.g.,* missing response options for race or ethnicity groups in which they may identify). We also intend to explore whether it is possible to amend the race and ethnicity elements on Part C/D enrollment form to address any of those concerns, and if so, how. Additionally, we plan to ask whether there are other—beyond the Part C/D enrollment form—vehicles for collecting race and ethnicity information that would be more acceptable to non-responders, and if so, what those are.; *Form Number:* CMS–10816 (OMB control number: 0938-New); *Frequency:* Annually; *Affected Public:* Individuals and households; *Number of Respondents:* 120; *Total Annual Responses:* 120; *Total Annual Hours:* 114. (For policy questions regarding this collection contact Deme Umo at 410–786–8854).

2. *Type of Information Collection Request:* Extension of a previously approved information collection; *Title of Information Collection:* Advance Beneficiary Notice of Noncoverage (ABN); *Use:* The use of the written Advance Beneficiary Notice of Non-coverage (ABN) is to inform Medicare beneficiaries of their liability under specific conditions. This has been available since the "limitation on liability" provisions in section 1879 of the Social Security Act (the Act) were enacted in 1972 (Pub. L. 92–603).

The ABNs are not given every time items and services are delivered. Rather, ABNs are given only when a physician, provider, practitioner, or supplier anticipates that Medicare will not provide payment in specific cases. An ABN may be given, and the beneficiary may subsequently choose not to receive the item or service. An ABN may also be issued because of other applicable statutory requirements other than § 1862(a)(1) such as when a beneficiary wants to obtain an item from a supplier who has not met Medicare supplier number requirements, as listed in section 1834(j)(1) of the Act or when statutory requirements for issuance specific to HHAs are applicable. *Form Number:* CMS–R–131 (OMB control number: 0938–0566); *Frequency:* Occasionally; *Affected Public:* Private sector; businesses or other for-profits, not-for-profits institutions; *Number of Respondents:* 1,701,558; *Total Annual Responses:* 323,947,630; *Total Annual Hours:* 37,794,970. (For policy questions regarding this collection contact Jennifer McCormick at 410–786–2852.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery; *Use:* This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders

will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Collecting voluntary customer feedback is the least burdensome, most effective way for the Agency to determine whether or not its public websites are useful to and used by its customers. Generic clearance is needed to ensure that the Agency can continuously improve its websites through regular surveys developed from these pre-defined questions. Surveying the Agency websites on a regular, ongoing basis will help ensure that users have an effective, efficient, and satisfying experience on any of the websites, maximizing the impact of the information and resulting in optimum benefit for the public. The surveys will ensure that this communication channel meets customer and partner priorities, builds the Agency's brands, and contributes to the Agency's health and human services impact goals. *Form Number:* CMS–10415 (OMB control number 0938–1185); *Frequency:* Occasionally; *Affected Public:* Individuals and households; *Number of Respondents:* 2,000,000; *Number of Responses:* 2,000,000; *Total Annual Hours:* 50,000. (For policy questions regarding this collection contact Aaron Lartey at 410–786–7866.)

4. Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Social Security Office (SSO) Report of State Buy-In Problem; *Use:* The statutory authority for the State Buy-in program is section 1843 of the Social Security Act, amended through 1989. Under section 1843, a State can enter into an agreement to provide Medicare protection to individuals who are members of a Buy-in coverage group, as specified in the State's Buy-in agreement. The Code of Federal Regulations at 42 CFR 407.40 provides for States to enroll in Medicare and pay the premiums for all eligible members covered under a Buy in coverage group. Individuals enrolled in Medicare through the Buy-in program must be eligible for Medicare and be an eligible member of a Buy-in coverage group. The day to day operations of the State Buy-in program is accomplished through an automated data exchange process. The automated data exchange process is used to exchange Medicare and Buy-in entitlement information between the Social Security District Offices, State Medicaid Agencies and the Centers for Medicare & Medicaid Services (CMS). When problems arise that cannot be resolved though the normal data exchange process, clerical actions are required. The CMS–1957, ''SSO Report of State Buy-In Problem'' is used to report Buy-in problems cases. The CMS–1957 is the only standardized form available for communications between the aforementioned agencies for the resolution of beneficiary complaints and inquiries regarding State Buy-in eligibility. *Form Number:* CMS–1957 (OMB control number 0938–0035); *Frequency:* Occasionally; *Affected Public:* Individuals and households; *Number of Respondents:* 1,400; *Number of Responses:* 1,400; *Total Annual Hours:* 467. (For policy questions regarding this collection contact Keith Johnson at 410–786–2262.)

Dated: November 21, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–25738 Filed 11–23–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[OMB Control Number 0985–0044]

Agency Information Collection Activities; Proposed Collection; Public Comment Request; State Plan for Independent Living Instrument and Instructions

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This Proposed Extension of a Currently Approved Collection (ICR Ext) solicits comments on the information collection requirements related to the State Plan for Independent Living under the Rehabilitation Act of 1973, as amended.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by January 24, 2023.

ADDRESSES: Submit electronic comments on the information collection request to: Peter Nye at *OILPPRAComments@acl.hhs.gov.* Submit written comments on the collection of information to Administration for Community Living, Washington, DC 20201, Attention: Peter Nye.

FOR FURTHER INFORMATION CONTACT: Peter Nye, Administration for Community Living, Washington, DC 20201, (202) 795–7606, or *OILPPRAComments@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Legal authority for the State Plan for Independent Living (SPIL) is contained in Chapter 1 of Title VII of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act ([the Act], Pub. L. 113–128). Section 704 of the Rehabilitation Act requires that, to be eligible to receive financial assistance under Chapter 1, ''a State shall submit to the Department, and obtain approval of, a State plan containing such provisions as the Department may require.'' ACL approval of the SPIL is required for states to receive federal funding for both the Independent Living Services State grants and Centers for Independent Living (CIL) programs. Federal statute and regulations require the collection of this information every three years. The current three-year approval period for the SPIL expires March 31, 2023. The SPIL Instrument is the template for SPILs; the SPIL Instructions explain the Instrument and give tips about how to draft SPILs.

The Office of Independent Living Programs (OILP) is proposing minor revisions based on OILP and the technical assistance provider revising the Instrument and Instructions to resolve issues that SILCs have reported having with their SPILs, and to increase the Instrument's and Instructions' clarity, conciseness, and precision. For example,

- The revised Instrument and Instructions correct grammatical and punctuation errors.
- The revised Instructions add lines for each core service.
- The revised Instrument and Instructions clarify the definition, and example, of state match.

These updates were recommended by the technical assistance provider and analyzed by all the independent living project officers who work directly with SPILs and the issues that they plan for. The SPIL is jointly developed by the chairperson of the Statewide Independent Living Council and the directors of the CILs in the state, after receiving public input from individuals throughout the State, and signed by the chairperson of the SILC, acting on behalf of—and at the direction of—the SILC, the director of the designated State entity, and not less than 51 percent of the directors of the CILs in the State. ACL reviews the SPIL for compliance with the Rehabilitation Act and 45 CFR part 1329 and approves the SPIL. The SPIL serves as a primary planning document for continuous monitoring of, and technical assistance to, the state independent living (IL) programs to ensure appropriate planning, financial support and coordination, and other assistance to appropriately address, statewide, needs for the provision of IL services in the state.

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden: ACL estimates the burden associated with this collection of information as follows: 56 Statewide Independent Living Councils (SILCs) will respond to the requirement for a SPIL every three years. Each state's SILC will take approximately 60 hours to develop the SPIL for a total of approximately 3,360 hours. This estimate is based on amounts of time SILCs have reported previously spending to complete the SPIL. ACL does not expect the change in Instrument and Instructions to take more or less time than the currently approved information collection. Therefore, there is no change to the estimated reporting burden.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Statewide Independent Living Councils	56	1	60	3,360
Total	56	1	60	3,360

Dated: November 19, 2022.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2022–25691 Filed 11–23–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; Prevention and Public Health Fund Evidence-Based Chronic Disease Self-Management Education Program Information Collection; OMB# 0985–0036

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under section 506(c)(2)(A) of the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the requirements related to the Prevention and Public Health Fund Evidence-Based Chronic Disease Self-Management Education Program Information Collection OMB# 0985–0036.

DATES: Submit written comments on the collection of information by December 27, 2022.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Shannon Skowronski (*Shannon.skowronski@acl.hhs.gov*). Administration for Community Living, Washington, DC 20201, Attention: Shannon Skowronski.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. The Administration for Community Living (ACL) is requesting approval to collect data for the Prevention and Public Health Fund Evidence-Based Chronic Disease Self-Management Education Program Information Collection OMB# 0985–0036. The Evidence-Based

Chronic Disease Self-Management Education (CDSME) Grant Program is financed through the Prevention and Public Health Fund (PPHF). The statutory authority for cooperative agreements under the most recent program announcement (FY 2022) is contained in the Older Americans Act, Title IV; and the Patient Protection and Affordable Care Act, 42 U.S.C. 300u–11 (Prevention and Public Health Fund). The CDSME Grant Program supports a National CDSME Resource Center that provides technical assistance, education, and resources for the national CDSME network of partners, and awards competitive grants to implement and promote the sustainability of evidence-based CDSME programs that have been proven to provide older adults and adults with disabilities with education and tools to help them better manage chronic conditions such as diabetes, heart disease, arthritis, chronic pain, and depression. OMB approval of the existing set of CDSME data collection tools (OMB Control Number, 0985–0036) expires on 11/30/2022. This data collection continues to be necessary for the monitoring of program operations and outcomes. ACL currently uses and proposes to continue to use a set of tools to collect information for each program including: (1) Program Information Cover Sheet and Attendance Log, to be completed by the program leaders; and a (2) Participant Information Survey to be completed by participants on a voluntary basis before or at the beginning of the first program session and at the last session or post program to document their demographic and health characteristics. ACL/AoA intends to continue using an online data entry system for the program and participant survey data.

ACL collected public comments for analysis, conducted focus groups that included a sub-set of current CDSME grantees, as well as consulted with subject-matter experts to gather feedback and determine if changes to the data collection tools are warranted.

Comments in Response to the 60-Day Federal Register Notice

A notice published in the **Federal Register** *Vol. 87, No. 137 on July 19, 2022.* Five (5) public comments were received during the 60-day FRN. ACL's responses to these comments, along with feedback from grantee focus groups, National CDSME Resource Center and ACL's Center for Policy and Evaluation, are included below.

PARTICIPANT INFORMATION SURVEY

Topic/issue	Comment	ACL response
Survey Purpose	Suggestion to add a purpose statement to the forms to better inform participants of why this specific data collection is pertinent.	ACL will not adopt this suggestion. The purpose of this data collection is multi-fold—with different benefits and potential uses of the data by federal, state, and local stakeholders.
Survey Format	Multiple comments were received as detailed below: (a) Suggestion to change the type of bullet used for the response options from a circle to a text box. (b) Suggestion to group the disability-related questions and present in a table/grid format.	(a) ACL will incorporate this suggested revision. (b) ACL will incorporate this suggested revision.
Sexual Orientation and Gender Identity (SOGI).	Multiple respondents suggested the incorporation of inclusive sexual orientation and gender identity question(s).	HHS, and ACL as an operating division of HHS, recognize the importance of collecting SOGI data to better assess diversity and equity in evidence-based program scaling and participation. ACL intends to update this question to incorporate more inclusive questions and responses.
Race/Ethnicity	Multiple comments were received as detailed below: Suggestion to combine the race and ethnicity questions into one item. Suggestion to "Include Middle Eastern/North African (MENA) as a response option. This race does not roll up to the current categories (maybe white) and could be a cause for not answering the question".	ACL works to align data collection with what is currently collected across the Federal Government, specifically the U.S. Census. The questions as presented reflect how race/ethnicity is asked. ACL will not incorporate the suggestion to combine the race and ethnicity questions. Similarly, ACL will not incorporate the suggestion to include the MENA group for the reason mentioned above. However, ACL will incorporate the "some other race" option to allow for inclusion of additional responses.
Chronic Conditions List.	Multiple comments were received as detailed below: (a) Suggestion to expand the list of conditions to include post-traumatic stress disorder (PTSD), substance use disorder, urinary incontinence, malnutrition and Alzheimer's Disease or other dementia. (b) Suggestion to alphabetize the list to facilitate data entry	(a) ACL will incorporate these conditions based on the growing prevalence of these conditions in the aging population. For example, an estimated 6.5 million older adults are living with Alzheimer's dementia in 2022, 73% of which are 75 years and older; 50% of older adults are at risk for becoming malnourished; and nearly 1 million adults aged 65 and older live with a substance use disorder. (b) ACL will incorporate this suggested revision.
Social Isolation/Loneliness.	Multiple respondents suggested that this question be revised as it is asking about two different constructs—isolation and loneliness. Many respondents suggested "replacing the question with the UCLA loneliness questions"—a three part question.	ACL appreciates the suggestion to collect more data around social isolation and loneliness but has decided in the interest of balancing data collection and burden to not include these specific questions in the survey. Instead, the constructs will be separated into their own questions in efforts to better analyze and report the information collected.
Participant Outcomes Questions.	(a) Multiple suggestions to add outcomes questions to better understand the impact of participating in a program and what participants might have done since the program to manage their chronic condition. (b) Suggestions to add elements from the Patient Activation Measure, Healthy Days Measures and RAPID3.	(a) ACL is interested in assessing impact of the program as well as activities that participants may be using to manage their condition as a result of their participation. ACL will therefore include a question that will assess what participants have done as it relates to talking with their healthcare provider, reviewing medications with appreciate healthcare personnel, increasing physical activity, eating healthy foods, participating in other health and wellness programming, and talking to their friends and family about their health. (b) ACL will not incorporate these suggestions at this time as these measures are: too general; lack direct applicability to assessing impact of participating in a CDSME program; or are too specific to particular chronic conditions or symptom.

PARTICIPANT INFORMATION SURVEY—Continued

Topic/issue	Comment	ACL response
Satisfaction Question	Request to add satisfaction question into the post-survey. Summary of respondents justification include "Many organizations may be offering multiple programs, or just getting their programs off the ground. Measuring participants' satisfaction and overall experience with the program can help identify strengths and challenges across programs and implementation sites, including satisfaction with the leaders, time the program was offered, location, and other factors that impact delivery and sustainability".	Although a satisfaction question has not been part of the required data collection elements, ACL agrees with this suggestion and will include a satisfaction question in the survey to assess the extent to which a program is meeting the needs of the participant, as well as overall program delivery.
Additional Questions	Suggestion to incorporate questions specific to language other than English spoken at home, language preference for reading or speaking about health/medical information, how well someone speaks English.	ACL appreciates the suggestion to collect more data but has decided in the interest of balancing data collection and burden to not include these additional elements on the survey.

PROGRAM INFORMATION COVER SHEET

Topic/issue	Comment	ACL response
Size of Implementation Site.	Suggestion to include the question "How many older adults does your organization serve on an annual basis?" as this would be helpful in analyzing the differences in how small and large sites implement programs.	ACL will not be incorporating this element at this time. Being able to scale and sustain programs depend on a variety of factors. The number of older adults served is not an adequate measure of success in program implementation.
Consent to Receive Information from National CDSME Resources Center.	A comment was received that this question seems unnecessary to have as a standard question, since it should only be asked once of each leader.	Requesting this consent through a standard data collection form is the most direct manner ACL can use to ensure that program facilitators can opt in to receiving technical assistance communications from our National CDSME Resource Center.
Facilitator Demographics.	Suggestion to include demographic questions such as age, race/ethnicity as facilitator demographics can have a large impact on the effectiveness of program implementation. Knowing some demographic characteristics about the leaders could inform equity, diversity, and inclusion initiatives and add value to understanding program adoption and sustainability.	ACL agrees and will incorporate this suggestion by including the same questions as outlined in the participant information survey.
Facilitator Status	Suggestion to include a question to better understand how facilitators are compensated as organizations use a mix of paid and volunteer staff. It would be helpful to analyze whether a certain model is used more frequently depending on the program or whether the leader's employment status has an impact on completion of the workshop.	ACL agrees and will incorporate this suggestion.
Program Delivery Format.	Suggestion to include a question that asks about the delivery format for a program— "With many programs now offered in multiple formats, it is important to know how program format impacts the demographic of participants who elect one format vs another, completion rates, and mapping the growth of these alternate program formats".	ACL agrees and will incorporate this suggestion.
Network Status	A suggestion was made to ask a question about network status—"Is this workshop implemented as a part of a centralized, coordinated Community-Integrated Health Network? Yes/No. If yes, provide the name of the Community—Integrated Network: (open-ended)".	Although Community Care Hubs/Community Integrated Health Network are increasing across the country, ACL will not incorporate this suggestion at this time. This may cause undue burden on a program facilitator or implementation site coordinator and possibly delay the return of data.

ATTENDANCE LOG

Topic/issue	Comment	ACL response
Format	Suggestions to: (a) Modify format to add the following: survey completion, liability form completion, attendance to other programs at site, and an example row. (b) Make participant ID column smaller so participants do not write their names.	(a) This form is to be completed by the program facilitator who should clearly print the program information and participant IDs. As a part of their training, facilitators should be instructed to not put participant name or other identifying information in the participant ID column. (b) ACL will not incorporate this suggestion to reduce burden on the program facilitator. If a grantee would like to collect additional information, they may choose to do so independently.

Estimated Program Burden: ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Program facilitators (Program Information Cover Sheet, Attendance Log).	680	Twice per year (one set per program).	.34	462.40
Program participants (Participant Information Survey)	14,000	1	.20	2,800.00

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Data entry staff (Program Information Cover Sheet, Attendance Log, Participant Information Survey).	70	Once per program times 1,360 programs.	.20	272.0
Total Burden Hours				** 3,534

** Rounded to the nearest hour.

Dated: November 18, 2022.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2022–25698 Filed 11–23–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of a product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of priority review vouchers as well as the approval of products redeeming a priority review voucher. FDA has determined that the supplemental application for SKYRIZI (risankizumab-rzaa), approved June 16, 2022, meets the criteria for redeeming a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394, email: *Cathryn.Lee@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the approval of a product redeeming a rare pediatric disease priority review voucher. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that the supplemental application for SKYRIZI (risankizumab-rzaa), approved June 16, 2022, meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about SKYRIZI (risankizumab-rzaa), approved June 16, 2022, go to the ''Drugs@FDA'' website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: November 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–25644 Filed 11–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2782]

Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

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

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Antimicrobial Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on January 24, 2023, from 9 a.m. to 4:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–2782. Please note that late, untimely filed comments will not be considered. The docket will close on January 23, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 23, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before January 9, 2023, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

comments, that information will be posted on *https://www.regulations.gov.*

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2022–N–2782 for ''Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' 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.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information 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 the 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: Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–7973, *AMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss new drug application 217417, for rezafungin lyophilized powder for injection, submitted by Cidara Therapeutics, Inc., for treatment of candidemia and invasive candidiasis in adults.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before January 9, 2023, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 29, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 30, 2022.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Joyce Frimpong (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–25643 Filed 11–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2825]

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

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

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Dermatologic and Ophthalmic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on January 9, 2023, from 9:30 a.m. to 5 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–2825. Please note that late, untimely filed comments will not be considered. The docket will close on January 6, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 6, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before December 22, 2022, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2022–N–2825 for ''Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' 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.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information 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 the 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: LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2855, email: *DODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and

recorded through an online teleconferencing platform. The committee will discuss supplemental biologics license application (sBLA) 125387, aflibercept solution for intravitreal injection, submitted by Regeneron Pharmaceuticals, Inc. The supplement was submitted in response to FDA's pediatric written request. FDA's written request was for studies of aflibercept in the treatment of retinopathy of prematurity.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before December 22, 2022, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 3 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 14, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 15, 2022.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact LaToya Bonner (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–25642 Filed 11–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Imaging, Surgery and Bioengineering.

Date: November 22, 2022.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, (301) 379–5632, *hfriedman@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: November 21, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–25708 Filed 11–23–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Transplantation, Tolerance, and Tumor Immunology.

Date: December 6, 2022.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carmen Angeles Ufret-Vincenty, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0912, *carmen.ufret-vincenty@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: November 16, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–25383 Filed 11–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4652–DR; Docket ID FEMA–2022–0001]

New Mexico; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–4652–DR), dated May 4, 2022, and related determinations.

DATES: This change occurred on October 12, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gerard M. Stolar, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Sandra L. Eslinger as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25758 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3586–EM; Docket ID FEMA–2022–0001]

North Carolina; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of North Carolina (FEMA–3586–EM), dated October 1, 2022, and related determinations.

DATES: This amendment was issued October 21, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 4, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25756 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0041 OMB No. 1660–0100]

Agency Information Collection Activities: Proposed Collection; Comment Request; General Admissions Applications (Long and Short) and Stipend Forms

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, with change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the admission applications and student stipend agreements for FEMA courses and programs that are delivered on-campus and throughout the Nation, in coordination with state and local training officials and local colleges and universities.

DATES: Comments must be submitted on or before January 24, 2023.

ADDRESSES: Please submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0041. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Smiley White, Supervisory Program Specialist, United States Fire Administration, at *Smiley.White@fema.dhs.gov* or 301–447–1055. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA offers courses and programs that are delivered at National Emergency Training Center (NETC) in Emmitsburg, Maryland, the Center for Domestic Preparedness (CDP) in Anniston, Alabama, and throughout the Nation in coordination with state and local training officials and local colleges and universities to carry out the authorities listed below. To facilitate meeting these requirements, FEMA collects information necessary to be accepted for courses and for the student stipend or travel reimbursement program for these courses. There are several organizations within FEMA that deliver training and education in support of the FEMA mission.

1. Section 7 of Public Law 93–498, the Federal Fire Prevention and Control Act, as amended, 15 U.S.C. 2206, established the National Fire Academy (NFA) to advance the professional development of fire service personnel and of other persons engaged in fire prevention and control activities.

2. Section 611(f) of Public Law 93–288, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5196(f), authorizes FEMA to conduct or arrange, by contract or otherwise, training programs for the instruction of emergency preparedness officials and other persons in the organization, operation, and techniques of emergency preparedness; conduct or operate schools or classes, including the payment of travel expenses and per diem allowances for these purposes, in lieu of subsistence for trainees in attendance or the furnishing of subsistence and quarters for trainees and instructors on terms prescribed by the Director; and provide instructors and training aids as deemed necessary. This training is conducted through the Emergency Management Institute (EMI).

3. Title XIV of the National Defense Authorization Act of 1997, Public Law 104–201, 110 Stat. 2432; Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998, Public Law 105–119, 111 Stat. 2440; Sections 403 and 430 of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135; and Section 611 of the Post-Katrina Emergency Management Reform Act of 2006, Public Law 109–295, 120 Stat. 1355, all authorize CDP to serve as a training facility for all relevant Federally supported training efforts that target state and local law enforcement, firefighters, emergency medical personnel, and other key agencies such as public works and state and local emergency management. The focus of the training is to prepare relevant state and local officials to deal with chemical, biological, or nuclear terrorist acts and handle incidents dealing with hazardous materials.

4. Public Law 110–53, the Implementing Recommendations of the 9/11 Commission Act of 2007, 6 U.S.C. 1102, established a National Domestic Preparedness Consortium within the Department of Homeland Security. The Consortium is mandated to identify, test, and deliver training to state, local, and tribal emergency response providers, provide on-site and mobile training at the performance, management, and planning levels, and facilitate the delivery of training by the training partners of the Department.

5. US Code Title I, consistent with requirements under Occupational Safety and Health Administration (OSHA) Appendix C Respirator Medical Evaluation Questionnaire (29 CFR 1910.134, Respiratory Protection), in any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use. The employer shall include in the program the following provisions of this section, as applicable: 1910.134(c)(1)(ii) Medical evaluations of employees required to use respirators.

FEMA is revising this collection to add a new instrument, FEMA Form FF–008–FY–22–125, Respiratory Medical Evaluation Questionnaire For Students, to comply with OSHA's requirements under 29 CFR 1910.134.

Collection of Information

Title: General Admissions Applications (Long and Short) and Stipend Forms.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0100.

FEMA Forms: FEMA Form FF–USFA–FY–21–101 (formerly 119–25–0–1), General Admissions Application; FEMA Form FF–USFA–FY–21–102 (formerly 119–25–0–6), Training Registration Form; FEMA Form FF–USFA–FY–21–103 (formerly 119–25–3), Student Stipend Agreement; FEMA Form FF–USFA–FY–21–104 (formerly 119–25–4), Student Stipend Agreement (Amendment); FEMA Form FF–USFA–FY–21–105 (formerly 119–25–5), National Fire Academy Executive Fire Officer Program Application Admission; and FEMA Form FF–008–FY–22–125, Respiratory Medical Evaluation Questionnaire For Students.

Abstract: FEMA provides training to advance the professional development of personnel engaged in fire prevention and control and emergency management activities through CDP, Emergency Management Institute, NFA, National Training and Education Division, National Domestic Preparedness Consortium, and Rural Domestic Preparedness Consortium.

Affected Public: Business or other for-profit, not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Number of Respondents: 223,300.

Number of Responses: 223,300.

Estimated Total Annual Burden Hours: 21,644.

Estimated Total Annual Respondent Cost: $1,204,641.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $238,912.

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. 2022–25742 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–74–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 29, 2022.

Glades and Pasco Counties for Individual Assistance (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Sumter County for debris removal [Category A] and permanent work [Categories C–G] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25762 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3586–EM; Docket ID FEMA–2022–0001]

North Carolina; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of North Carolina (FEMA–3586–EM), dated October 1, 2022, and related determinations.

DATES: This change occurred on October 11, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin A. Wallace Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of John F. Boyle as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25755 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0044; OMB No. 1660–0029]

Agency Information Collection Activities: Proposed Collection; Comment Request; Request for Use of NETC Facilities

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on this extension with change of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the removal of use of the FEMA Form FF–USFA–FY–21–108 (formerly 119–17–2), Request for Use of NETC Facilities due to its antiquated information collection method and requirement. There is no longer a need to formally require the use of this form in order for a requestor to receive support for special groups using the National Emergency Training Center (NETC).

DATES: Comments must be submitted on or before January 24, 2023.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0044. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Merril Sollenberger, Administrative Specialist, FEMA, U.S. Fire Administration, 301–447–1179, or at *merril.sollenberger@fema.dhs.gov.* You may contact the Information

Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5121–5207) authorizes the President to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes training and exercises. Section 611 of the Stafford Act (42 U.S.C. 5196) provides that the Federal Emergency Management Agency (FEMA) may conduct training for the purpose of emergency preparedness. In response, FEMA established the National Emergency Training Center (NETC), located in Emmitsburg, Maryland. The NETC site has facilities and housing available for those participating in preparedness training and a request for use of these areas is required to be made in advance for the need for such. The primary means of making advanced requests for use of space at NETC is the use of email communication and this typically includes the specifics for the use of NETC for date of arrival and departure, how many participants, the requirement for lodging to include how many people, room space required, meals required, and equipment needed. These items that were required to be captured by completing the Request For Use of NETC Facilities Form are now captured within the content of the email communication. The secondary means of making requests to use NETC space is by telephone communication and those requirements are discussed in that manner.

The NETC is a FEMA facility which houses all FEMA employees at headquarters, regions, field establishments, and other individuals and organizations authorized to use the facilities. The responsibilities, procedures, and potential fees charged for using the NETC facilities are identified in accordance with FEMA Directive Number 119–3, *Facility Use and Expenses at the National Emergency Training Center* dated May 21, 2018. The NETC provides training and educational programs in emergency response, preparedness, fire prevention and control, disaster response, and long-term disaster recovery. The principal purpose of FEMA Form FF–USFA–FY–21–107 (formerly 119–17–1), Request for Housing Accommodations, is to request housing at the NETC, and the principal purpose of FEMA Form FF–USFA–FY–21–108 (formerly 119–17–2), Request for Use of NETC Facilities, is to conduct official business at the NETC.

In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the removal of use of the FEMA Form FF–USFA–FY–21–108 (formerly 119–17–2), Request For Use of NETC Facilities, due to its antiquated information collection method and requirement. There is no longer a need to formally require the use of this form in order for a requestor to receive support for special groups using the NETC.

Collection of Information

Title: Approval and Coordination of Requirements to Use the NETC Extracurricular for Training Activities.

Type of Information Collection: Extension, with change, of a currently approved collection.

OMB Number: 1660–0029.

FEMA Forms: FEMA Form FF–USFA–FY–21–107 (formerly 119–17–1), Request for Housing Accommodations.

Abstract: In accordance with FEMA Directive 119–3: *Facility Use and Expenses at the National Emergency Training Center* dated May 21, 2018, FEMA Form USFA–FY–21–107 (formerly 119–17–1), Request for Housing Accommodations, has been applied for functions at NETC.

Affected Public: Individuals or households, Not-for-profit institutions, Federal Government.

Estimated Number of Respondents: 60.

Estimated Number of Responses: 60.

Estimated Total Annual Burden Hours: 6.

Estimated Total Annual Respondent Cost: $182.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $841.

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. 2022–25739 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4674–DR; Docket ID FEMA–2022–0001]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4674–DR), dated September 30, 2022, and related determinations.

DATES: This change occurred on October 28, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark K. O'Hanlon, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Charles M. Maltbie III as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25764 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued October 20, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 20, 2022, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico resulting from Hurricane Fiona during the period of September 17 to September 21, 2022, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declaration of September 21, 2022, to authorize an extension of the period of 100 percent Federal funding for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program from 30 to 60 days from the start of the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25760 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4675–DR; Docket ID FEMA–2022–0001]

Seminole Tribe of Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Seminole Tribe of Florida (FEMA–4675–DR), dated September 30, 2022, and related determinations.

DATES: The declaration was issued September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 30, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage to the lands associated with the Seminole Tribe of Florida resulting from Hurricane Ian beginning on September 23, 2022, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists for the Seminole Tribe of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, Hazard Mitigation for the Tribe, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. For a period of 30 days from the start of the incident period, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Seminole Tribe of Florida have been designated as adversely affected by this major disaster:

Individual Assistance for the Seminole Tribe of Florida and associated lands.

Debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program for the Seminole Tribe of Florida and associated lands.

All areas within the Seminole Tribe of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25765 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4644–DR; Docket ID FEMA–2022–0001]

Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4644–DR), dated March 11, 2022, and related determinations.

DATES: This change occurred on October 28, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark K. O'Hanlon, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Charles M. Maltbie III as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25757 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0001]

New Mexico; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Mexico (FEMA–4652–DR), dated May 4, 2022, and related determinations.

DATES: This amendment was issued September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that certain cost share provisions for Public Assistance, Individual Assistance, and Hazard Mitigation grant programs under the major disaster declaration were waived in accordance with the Hermit's Peak/Calf Canyon Fire Assistance Act, Public Law 117–180, 136 Stat. 2114 (2022). The waiver applies to projects and programs undertaken in response to the Hermit's Peak and Calf Canyon fires. The Federal share of eligible costs will be 100 percent for the following affected areas and programs:

Mora and San Miguel Counties for Public Assistance including direct Federal, Hazard Mitigation, and Other Needs Assistance under the Individuals and Households Program in response to the Hermit's Peak and Calf Canyon Fires.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25759 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued October 27, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 29, 2022.

Duval County for debris removal [Category A] and permanent work [Categories C–G] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Pinellas County for permanent work (Categories C–G) (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049,

Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25763 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3585–EM; Docket ID FEMA–2022–0001]

South Carolina; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of South Carolina (FEMA–3585–EM), dated September 29, 2022, and related determinations.

DATES: This amendment was issued October 21, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 4, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25754 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4676–DR; Docket ID FEMA–2022–0001]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–4676–DR), dated October 14, 2022, and related determinations.

DATES: The declaration was issued October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 14, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from a severe storm and flooding during the period of July 25 to July 28, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Waddy Gonzalez, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Illinois have been designated as adversely affected by this major disaster:

St. Clair County for Individual Assistance.

St. Clair is eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25766 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 13 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued October 27, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby

amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2022.

The municipalities of Aguadilla and Carolina for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25761 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3581–EM; Docket ID FEMA–2022–0001]

Virgin Islands; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the territory of the U.S. Virgin Islands (FEMA–3581–DR), dated July 25, 2022, and related determinations.

DATES: This amendment was issued October 31, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 13, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–25753 Filed 11–23–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2022–N066; FXES11130800000–234–FF08E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before December 27, 2022.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* XXXXXX or PER0001234).

- *Email: permitsR8ES@fws.gov.*
- *U.S. Mail:* Susie Tharratt, Regional Recovery Permit Coordinator, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Susie Tharratt, via phone at 916–414–6561, or via email at *permitsR8ES@fws.gov.* 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: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these

applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, City, State	Species	Location	Take activity	Permit action
97717A	Melissa Blundell, Oxnard, California.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CA	Play recorded vocalizations.	Renew.
789255	Robert Patton, San Diego, California.	• California least tern (*Sterna antillarum browni*)	CA	Survey, locate and monitor nests, handle/mark eggs, capture, band, and release.	Renew.
PER0057236	Sophie Siegel, Sacramento, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*) • Vernal pool tadpole shrimp (*Lepidurus packardi*) • Riverside fairy shrimp (*Streptocephalus woottoni*) • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, collect adult vouchers.	New.
177979	Allison Rudalevige, Garden Grove, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*) • Vernal pool tadpole shrimp (*Lepidurus packardi*) • Riverside fairy shrimp (*Streptocephalus woottoni*) • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts.	Renew.
PER0057237	Steven Pruett, Bakersfield, CA.	• Fresno kangaroo rat (*Dipodomys nitratoides exilis*) • Giant kangaroo rat (*Dipodomys ingens*) • Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*). • Morro Bay kangaroo rat (*Dipodomys heermannii morroensis*).	CA	Survey, capture, handle, and release.	New.
PER0057548	Laura Burris, Sutter Creek, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*) • Vernal pool tadpole shrimp (*Lepidurus packardi*) • Riverside fairy shrimp (*Streptocephalus woottoni*) • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County Distinct Population Segments.	CA	Survey, capture, handle, release, collect adult vouchers.	Renew.
PER0057261	Dalton Stanfield, Las Vegas, Nevada.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*) • Vernal pool tadpole shrimp (*Lepidurus packardi*) • Riverside fairy shrimp (*Streptocephalus woottoni*) • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, and collect adult vouchers.	New.
776608	Monk & Associates Inc., Walnut Creek, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*) • Vernal pool tadpole shrimp (*Lepidurus packardi*) • Riverside fairy shrimp (*Streptocephalus woottoni*) • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County Distinct Population Segments. • Salt marsh harvest mouse (*Reithrodontomys raviventris*).	CA	Survey, capture, handle, collect tissue samples, release, and deploy egg laying substrates, collect adult vouchers, and collect branchiopod cysts.	Renew.
046262	Blake Claypool, San Diego, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*) • Vernal pool tadpole shrimp (*Lepidurus packardi*) • Riverside fairy shrimp (*Streptocephalus woottoni*) • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, and collect adult vouchers.	Renew.
PER0057269	Natalie Reeder, San Bruno, California.	• San Francisco garter snake (*Thamonophis sirtalis tetrataenia*).	CA	Survey, capture, handle, measure, and release.	New.
027422	Brian Pittman, Rohnert Park, California.	• San Francisco garter snake (*Thamonophis sirtalis tetrataenia*).	CA	Survey, capture, handle, measure, and release.	Amend.
PER0057547	Shelley Jaramillo, San Diego, California.	• Quino checkerspot butterfly (*Euphydryas editha quino* [=*E.e. wrighti*]).	CA	Pursue	New.

Application No.	Applicant, City, State	Species	Location	Take activity	Permit action
95006A	Steven Chen, San Luis Obispo, California.	• Fresno kangaroo rat (*Dipodomys nitratoides exilis*) • Giant kangaroo rat (*Dipodomys ingens*) • Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*). • Morro Bay kangaroo rat (*Dipodomys heermannii morroensis*). • San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*). • Quino checkerspot butterfly (*Euphydryas editha quino*). • Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). • California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County Distinct Population Segments.	CA	Survey, pursue, capture, handle, and release.	Renew.
068072	Philippe Vergne, Boulder, Colorado.	• San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*).	CA	Survey, capture, handle, and release.	Renew.
068072	Condor Country Consulting, Inc., Martinez, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*) • Vernal pool tadpole shrimp (*Lepidurus packardi*) • Riverside fairy shrimp (*Streptocephalus wootton*i) • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County Distinct Population Segments.	CA	Survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts.	Renew.
06677C	Sadie McGarvey, Brisbane, California.	• California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County Distinct Population Segments.	CA	Survey, capture, handle, and release.	Renew.
780566	Ruben Ramirez, Oceanside, California.	• Pacific pocket mouse (*Perognathus longimembris pacificus*). • San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*). • Arroyo toad (*Anaxyrus californicus*)	CA	Survey, capture, handle, take biological samples, and release.	Renew.
052404	Amy Palkovic, Marina, California.	• Smith's blue butterfly (*Euphilotes enoptes smithi*)	CA	Capture, handle, relocate, and release.	Amend.
022230	Jeff Kidd, Laguna Hills, California.	• Quino checkerspot butterfly (*Euphydryas editha quino*). • California least tern (*Sterna antillarum browni*)	CA	Pursue, survey	Renew.
796284	David Christopher Rogers, Lawrence, Kansas.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*) • Vernal pool tadpole shrimp (*Lepidurus packardi*) • Riverside fairy shrimp (*Streptocephalus woottoni*) • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • California freshwater shrimp (*Syncaris pacifica*)	CA, OR	Survey, capture, handle, release, collect adult vouchers, collect branchiopod eggs, retain in captivity and propagate for research, process soil samples, perform hatching experiments, and conduct training workshops.	Renew.
57065B	Steven Morris, Huntington Beach, California.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CA	Play recorded vocalizations.	Renew.
074955	Susan Scatollini, San Diego, California.	• Riverside fairy shrimp (*Streptocephalus woottoni*) • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts.	Renew.
79454A	San Diego Zoo Wildlife Alliance, Santa Barbara, California.	• California condor (*Gymnogyps californianus*)	CA	Receive, hold in captivity, handle, provide veterinarian care for, transport, and transfer.	Renew.
20160B	Brennan Vettes, San Diego, California.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CA	Play recorded vocalizations.	Renew.
181713	Cynthia Hartley, Ventura, California.	• California least tern (*Sterna antillarum browni*)	CA	Survey, locate and monitor nests.	Renew.
59559C	McCormick Biological, Inc., Bakersfield, CA.	• Buena Vista Lake ornate shrew (*Sorex ornatus relictus*). • Giant kangaroo rat (*Dipodomys ingens*) • Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*). • California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County Distinct Population Segments.	CA	Survey, capture, handle, take biological samples, and release.	Amend.
96471A–2	Mason Holmes, San Ramon, California.	• California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County Distinct Population Segments.	CA	Survey, capture, handle, and release.	Renew.
92462A	Ryan Quilley, San Diego, California.	• Light-footed Ridgway's rail (*Rallus obsoletus levipes*). • Yuma Ridgway's rail (*Rallus obsoletus yumanensis*).	CA	Play recorded vocalizations.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Peter Erickson,

Acting Regional Ecological Services Program Manager, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2022–25734 Filed 11–23–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Fourth Amendment to the Confederated Tribes and Bands of the Yakama Nation and the State of Washington Gaming Compact (Amendment) providing for Class III gaming between the Yakama Nation (Nation) and the State of Washington (State).

DATES: The Amendment takes effect on November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment permits the Nation to establish an additional gaming facility and engage in sports wagering. The Amendment makes technical amendments to update and add various definitions in the compact. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–25634 Filed 11–23–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Draft Environmental Impact Statement for the Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project, City of Medford, Jackson County, Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency intends to file a draft environmental impact statement (DEIS) with the U.S. Environmental Protection Agency (EPA) for the Coquille Indian Tribe fee-to-trust and Gaming Facility Project, City of Medford, Jackson County, Oregon. This notice also announces that the DEIS is now available for public review and that a virtual public hearing will be held to receive comments on the DEIS.

DATES: Comments on the DEIS must arrive within 45 days after the EPA publishes its Notice of Availability in the **Federal Register**. The date and time of the virtual public hearing on the DEIS will be announced at least 15 days in advance through a notice to be published in a local newspaper (the Medford Mail Tribune) and online at *www.coquille-eis.com.*

ADDRESSES: You may mail or hand-deliver written comments to:

- *By mail to:* Mr. Bryan Mercier, Northwest Regional Director, Bureau of Indian Affairs, Northwest Region, 911 Northeast 11th Avenue, Portland, Oregon 97232. Please include your name, return address, and the caption: ''DEIS Comments, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project,'' on the first page of your written comments.
- *By email to:* Mr. Brian Haug, Bureau of Indian Affairs, at *CoquilleCasinoEIS@bia.gov,* using ''DEIS Comments, Coquille Tribe Medford Gaming Facility Project'' as the subject of your email.

The DEIS will be available for public review at:

- Medford Branch Library of Jackson County Library Services, 205 South Central Avenue, Medford, Oregon 97501; and *www.coquille-eis.com.*

FOR FURTHER INFORMATION CONTACT: Mr. Brian Haug, Bureau of Indian Affairs, Northwest Region, (503) 231–6780 (Office), (503) 231–2201 (Fax), *CoquilleCasinoEIS@bia.gov.*

SUPPLEMENTARY INFORMATION: Public review of the DEIS is part of the administrative process for BIA's evaluation of the Tribe's application to acquire approximately 2.4 acres of land in trust in the City of Medford, Jackson County, Oregon, for gaming purposes. Pursuant to Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations (40 CFR 1506.10), the publication of the Notice of Availability by the EPA in the **Federal Register** initiates the 45-day public comment period. A Notice of Intent to prepare an environmental impact statement was published in the Medford Mail Tribune on January 16 and 18, 2015, and the **Federal Register** on January 15, 2015 (80 FR 2120). The BIA held a public scoping meeting for the project on February 3, 2015, at the North Medford High School, Medford, Oregon.

Background

The Tribe requested that the Department acquire 2.4 acres of land in trust City of Medford, Jackson County, Oregon, for gaming purposes. The Tribe's Proposed Project consists of the retrofit and remodel of an existing bowling alley on the proposed trust parcel into a 30,300-square foot gaming facility with class II gaming machines, food and beverage facilities, administrative space, associated parking on adjacent fee land, and ancillary facilities. Access to the site would be provided via two existing driveways along Highway 99.

The following alternatives are considered in the DEIS: (1) Proposed

Project; (2) Phoenix Site (alternative site); (3) Expansion of the Tribe's existing Mill Casino; (4) No Action/No Development. Environmental issues addressed in the DEIS include geology and soils, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions (including environmental justice), transportation and circulation, land use, public services, noise, hazardous materials, aesthetics, cumulative effects, and indirect and growth inducing effects.

Public Comment Availability

Comments, including names and addresses of respondents, will be included as part of the administrative record and responses to comments on the Final EIS. 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 in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and the Department of the Interior regulations (43 CFR part 46) implementing the procedural requirements of the NEPA (42 U.S.C. 4321 *et seq.*), and in accordance with the exercise of authority delegated to the Assistant Secretary—Indian Affairs by part 209 of the Department Manual.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–25727 Filed 11–23–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/ A0A501010.999900; OMB Control Number 1076–0155]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Leases and Permits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA), are proposing renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 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 Review—Open for Public Comments" or by using the search function. Please provide a copy of your comments to Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; or by email to *comments@bia.gov.* Please reference OMB Control Number 1076–0155 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Steven Mullen, Information Collection Clearance Officer, *comments@bia.gov,* (202) 924–2650. 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. 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 general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 10, 2021 (86 FR 50737). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. 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: Generally trust and restricted land may be leased by Indian land owners, with the approval of the Secretary of the Interior, except when specified by statute. Submission of this information allows BIA to review applications for obtaining, modifying and assigning leases and permits of land that the United States holds in trust or restricted status for individual Indians and Indian Tribes. The information is used to determine approval of a lease, amendment, assignment, sublease, mortgage or related document. A response is required to obtain or retain a benefit.

Title of Collection: Leases and Permits.

OMB Control Number: 1076–0155.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individual Indians and Indian Tribes seeking to lease their trust or restricted land and businesses that lease trust and restricted land.

Total Estimated Number of Annual Respondents: 99,340.

Total Estimated Number of Annual Responses: 99,340.

Estimated Completion Time per Response: Varies from 15 minutes to 2 hours.

Total Estimated Number of Annual Burden Hours: 81,899.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: In general, once per approval per lease. Some collections occur upon request for modification or assignment or upon a trespass violation, which occur, on average, fewer than once per lease. Additionally, rent payments occur, on average, once per month.

Total Estimated Annual Non-hour Burden Cost: $1,813,000.

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*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2022–25633 Filed 11–23–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–ES–2022–N050; FVHC98220410150–XXX–FF04H00000]

Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Final Phase 2 Restoration Plan/Environmental Assessment #7.1: Terrebonne HNC Island Restoration Project; and Finding of No Significant Impact

AGENCY: Department of the Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act of 1969 (NEPA), the *Deepwater Horizon* Oil Spill *Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement* (Final PDARP/PEIS), Record of Decision (ROD) and the Consent Decree, the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (LA TIG) have prepared the *Final Phase 2 Restoration Plan/Environmental Assessment #7.1: Terrebonne HNC Island Restoration Project* (Final RP/EA #7.1) and Finding of No Significant Impact (FONSI). The Terrebonne HNC Restoration Project (HNC Island project) was approved for engineering and design (E&D) in a 2020 restoration plan entitled *Louisiana Trustee Implementation Group Final Restoration Plan #7: Wetlands, Coastal, and Nearshore Habitats and Birds* (RP/EA #7). In the Final RP/EA #7.1, the LA TIG analyzes a reasonable range of design alternatives for the HNC Island project and selects design alternative 7A for construction, under the ''Birds'' restoration type. A No Action alternative is also analyzed for the project. The purpose of this notice is to inform the public of the availability of the Final RP/EA #7.1 and FONSI.

ADDRESSES: *Obtaining Documents:* You may download the Final RP/EA #7.1 at *https://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.*

FOR FURTHER INFORMATION CONTACT: Nanciann Regalado, at *nanciann_regalado@fws.gov* or 678–296–6805. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon (DWH),* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *DWH* oil spill is the largest offshore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Trustees conducted the natural resource damage assessment (NRDA) for the *DWH* oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship to baseline (the resource quality and conditions that would exist if the spill had not occurred). This includes the loss of use and services provided by those resources from the time of injury until the completion of restoration.

The *DWH* Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

On April 4, 2016, the United States District Court for the Eastern District of Louisiana entered a consent decree resolving civil claims by the Trustees against BP arising from the *DWH* oil spill: *United States* v. *BPXP et al.,* Civ. No. 10–4536, centralized in MDL 2179, In re: Oil Spill by the Oil Rig *Deepwater Horizon* in the Gulf of Mexico, on April 20, 2010 (E.D. La.) (*http://www.justice.gov/enrd/deepwater-horizon*). Pursuant to the consent decree, restoration projects in the Louisiana Restoration Area are chosen and managed by the LA TIG. The LA TIG is composed of the following Trustees: State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Departments of Environmental Quality, Wildlife and Fisheries, and Natural Resources; DOI; NOAA; EPA; and USDA.

Background

The Final PDARP/PEIS provides for TIGs to propose phasing restoration projects across multiple restoration plans. A TIG may propose in a draft restoration plan conceptual projects to fund for an information-gathering planning phase, such as E&D (phase 1). This allows TIGs to develop information needed to fully consider a subsequent implementation phase in a later restoration plan (phase 2). In the final RP/EA #7, the LA TIG selected three conceptual projects for E&D, using funds from the ''Wetlands, Coastal and Nearshore Habitats'' and ''Birds'' restoration types, as provided for in the *DWH* Consent Decree. One of the projects selected for E&D in the Final RP/EA #7, the Terrebonne HNC Island project, reached a stage of design where proposed construction alternatives (phase 2) could be analyzed under the OPA NRDA regulations and NEPA.

The LA TIG made the Draft RP/EA #7.1 available for public review and comment via publication of a notice of availability in the **Federal Register** on August 25, 2022 (87 FR 52411). The public review and comment period ran through September 26, 2022. To facilitate public understanding of the document, the LA TIG held a public webinar on September 8, 2022, during which public comment was also solicited. The LA TIG received no comments during the public comment period. After public review, the LA TIG finalized the plan and selected design alternative 7A for construction.

Overview of the Final RP/EA #7.1

The Final RP/EA #7.1 and FONSI (Appendix C of the Final RP/EA #7.1) is being released in accordance with OPA NRDA regulations found in the Code of Federal Regulations (CFR) at 15 CFR part 990, NEPA and its implementing regulations found at 40 CFR parts 1500–1508, the Final PDARP/PEIS/ROD, and the Consent Decree. The Final RP/EA #7.1 provides the LA TIG's OPA, NRDA, and NEPA analyses for a reasonable range of design alternatives for the HNC Island project and selects the LA TIG's preferred design alternative, 7A, for implementation.

Alternative 7A would increase the acreage of the island from 27.6 acres (ac) to up to approximately 45 ac of shrub nesting, ground nesting, and marsh habitat. The approximate cost to complete E&D, construct, maintain, and monitor the selected alternative is $34 million. A second design alternative, 7, is also evaluated in the restoration plan, as well as a No Action alternative. Both HNC Island action alternatives would include a rock dike around the island perimeter, breakwaters, and a bird ramp. While the non-preferred alternative would create more total habitat acres (53.3 ac), the preferred alternative would provide a balance between constructability, feasibility, and creation of optimal habitat features for nesting birds, while minimizing environmental impacts during construction.

Administrative Record

The documents comprising the Administrative Record for the RP/EA #7.1 can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord.*

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations found at 40 CFR parts 1500–1508.

Mary Josie Blanchard,

Director of Gulf of Mexico Restoration, Department of the Interior.

[FR Doc. 2022–25724 Filed 11–23–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[EEEE500000 234E1700D2 ET1SF0000.EAQ000; BOEM–2021–0043]

Programmatic Environmental Impact Statement for Oil and Gas Decommissioning Activities on the Pacific Outer Continental Shelf, Extending Comment Period

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Notice of extension of the public comment period.

SUMMARY: BSEE is extending the public comment period for the Draft Programmatic Environmental Impact Statement (PEIS) for Oil and Gas Decommissioning Activities on the Pacific Outer Continental Shelf (OCS) [EIS No. 20220156].

DATES: BSEE published the Notice of Availability (NOA) for the PEIS on October 12, 2022, and opened a public comment period through November 28, 2022. BSEE is extending this public comment period to January 10, 2023.

ADDRESSES: You may submit comments in writing or through *www.regulations.gov.* Written comments may be delivered by hand or by mail, enclosed in an envelope labeled, ''Pacific Decommissioning'' and addressed to Richard Yarde, Regional Supervisor, Office of Environment, BOEM Pacific Region, 760 Paseo Camarillo, Suite 102, Camarillo, CA, 93010. Comments may also be submitted online through the *regulations.gov* web portal: Navigate to *http://www.regulations.gov* and search for Docket No. BOEM–2021–0043. Click on the ''Comment Now!'' button to the right of the document link. Enter your information and comment, then click ''Submit.''

FOR FURTHER INFORMATION CONTACT: For information on the PEIS, contact Richard Yarde, Regional Supervisor, Office of Environment, at *richard.yarde@boem.gov* or 805–384–6379.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 12, 2022, BSEE published a notice in the **Federal Register** [87 FR 61628] that provided a 47-day public comment period on the Draft PEIS for Oil and Gas Decommissioning Activities on the Pacific OCS, which would close on November 28, 2022. On October 28, 2022, the Environmental Protection Agency (EPA) published a notice in the **Federal Register** [87 FR 65202] that also provided a 45-day public comment period on the Draft PEIS for Oil and Gas Decommissioning Activities on the Pacific OCS, which will close on December 12, 2022. BSEE has received numerous requests from the public seeking longer extensions to the comment period. In consideration of the EPA's public comment period, the numerous requests seeking extensions to the comment period, and to ensure robust public comments, BSEE is extending the public comment period by an additional twenty-nine days beyond December 12, 2022, to January 10, 2023.

Kevin Sligh,

Director, Bureau of Safety and Environmental Enforcement.

[FR Doc. 2022–25745 Filed 11–23–22; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Location-Sharing Systems, Related Software, Components Thereof, and Products Containing Same, DN 3655*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Advanced Ground Information Systems, Inc. and AGIS Software Development LLC on November 17, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain location-sharing systems, related software, components thereof, and products containing same. The complainant names as respondents: Google LLC of Mountain View, CA; Samsung Electronics, Co., Ltd. of Korea; Samsung Electronics America, Inc. of Ridgefield Park, NJ; OnePlus Technology (Shenzhen) Co., Ltd. of China; TCL Technology Group Corporation of China; TCL Electronics Holdings Limited of Hong Kong; TCL Communication Technology Holdings Limited of Hong Kong; TCT Mobile (US) Inc. of Irvine, CA; Lenovo Group Ltd. of China; Lenovo (United States) Inc. of Morrisville, NC; Motorola Mobility LLC of Chicago, IL; HMD Global of Finland; HMD Global OY of Finland; HMD America, Inc. of Miami, FL; Sony Corporation of Japan; Sony Mobile Communications, Inc. of Japan; ASUSTek Computer Inc. of Taiwan; ASUS Computer International of Fremont, CA; Caterpillar Inc. of Peoria, IL; BLU Products of Doral, FL; Panasonic Corporation of Japan; Panasonic Corporation of North America of Secaucus, NJ; Kyocera Corporation of Japan; Xiaomi Corporation of China; Xiaomi H.K. Ltd. of Hong Kong; Xiaomi Communications Co., Ltd. of China; and Xiaomi Inc. of China. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders, and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3655'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: November 18, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–25631 Filed 11–23–22; 8:45 am]

BILLING CODE 7020–02–P

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–558 and 731–TA–1316 (Review)]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) From China

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing and antidumping duty orders on 1-hydroxyethylidene-1, 1-diphosphonic acid from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on April 1, 2022 (87 FR 19125) and determined on July 5, 2022 that it would conduct expedited reviews (87 FR 64248, October 24, 2022).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on November 18, 2022. The views of the Commission are contained in USITC Publication 5386 (November 2022), entitled *1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from China: Investigation Nos. 701–TA–558 and 731–TA–1316 (Review).*

By order of the Commission.

Issued: November 18, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–25686 Filed 11–23–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1265]

Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same; Notice of Commission Determination To Review the Final Initial Determination in Part; Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''Final ID'') issued by the presiding chief administrative law judge (''CALJ'') on September 9, 2022. The Commission requests briefing from the parties on certain issues under review, as indicated in this notice. The Commission also requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on May 19, 2021, based on a complaint filed by DISH DBS Corporation of Englewood, Colorado; DISH Technologies, L.L.C., of Englewood, Colorado; and Sling TV L.L.C., of Englewood, Colorado (collectively, ''DISH''). 86 FR 27106–07 (May 19, 2021). The complaint alleged a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain fitness devices, streaming components thereof, and systems containing same by reason of infringement of certain claims of U.S. Patent Nos. 9,407,564 (''the '564 patent''); 10,469,554 (''the '554 patent''); 10,469,555 (''the '555 patent''); 10,757,156 (''the '156 patent''); and 10,951,680 (''the '680 patent''). *Id.* at 27106. The notice of investigation named as respondents ICON Health & Fitness, Inc. of Logan, Utah (''ICON'' or ''iFIT Inc.''); FreeMotion Fitness, Inc. of Logan, Utah (''FreeMotion''); NordicTrack Inc. of Logan, Utah (''NordicTrack,'' and with ICON and FreeMotion, ''iFit''); lululemon athletica inc., of Vancouver, Canada (''lululemon''); Curiouser Products Inc. d/b/a MIRROR of New York, New York (together with lululemon, ''MIRROR''); and Peloton Interactive, Inc. of New York, New York (''Peloton,'' and with the other respondents, ''Respondents''). *Id.;* Order No. 14 (Nov. 4, 2021), *unreviewed by* Comm'n Notice (Dec. 6, 2021), 86 FR 70532 (Dec. 10, 2021). The Commission's Office of Unfair Import Investigations (''OUII'') also was named as a party in this investigation. 86 FR at 27106.

Prior to the issuance of the Final ID, the complaint and notice of investigation were amended to change the name of ICON to iFIT Inc. Order No. 14 (Nov. 4, 2021), *unreviewed by* Comm'n Notice (Dec. 6, 2021), 86 FR at 70532. The investigation was also terminated in part as to claims 6, 11, and 12 of the '156 patent, claim 22 of the '554 patent, and claim 17 of the '555 patent. Order No. 15 (Nov. 19, 2021), *unreviewed by* Comm'n Notice (Dec. 20, 2021). Moreover, claims 9 and 12 of the '156 patent, claim 19 of the '554 patent, claims 12 and 13 of the '555 patent, and claim 6 of the '564 patent are no longer

asserted against iFit and Peloton. *Id.* The investigation was further terminated as to claims 6–8, 10, and 13–15 of the '564 patent, claims 3 and 6–12 of the '156 patent, claims 18, 19, 21–25, and 30 of the '554 patent, claims 12, 13, 16, 17, 26, and 27 of the '555 patent, and all asserted claims of the '680 patent. Order No. 21 (Mar. 3, 2022), *unreviewed by* Comm'n Notice (Mar. 23, 2022).

At the time of the Final ID, DISH asserted the following claims against MIRROR and iFit: claims 1, 3, and 5 of the '564 patent; claims 16, 17 and 20 of the '554 patent; claims 10, 11, 14, and 15 of the '555 patent; and claims 1, 4, and 5 of the '156 patent. DISH also asserted the following claims against Peloton: claims 1 and 3–5 of the '564 patent; claims 16, 17, and 20 of the '554 patent; claims 10, 11, 14, and 15 of the '555 patent; and claims 1, 2, 4, and 5 of the '156 patent.

On September 9, 2022, the CALJ issued the Final ID, which found that Respondents violated section 337.

The CALJ's recommendation on remedy and bonding (the ''RD'') recommended that, if the Commission finds a violation of section 337, the Commission should issue a limited exclusion order and a cease and desist order directed to each of the Respondents. The RD further recommended that the Commission impose a zero percent (0%) bond during the period of Presidential Review. The Commission did not direct the CALJ to make findings and a recommendation on the statutory public interest factors.

On September 23, 2022, Respondents and OUII filed petitions for review of the Final ID. On October 3, 2022, DISH and OUII filed responses to the petitions.

On October 11, 2022, DISH and Respondents filed their public interest comments pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

Having examined the record in this investigation, including the Final ID, the petitions for review, and the responses thereto, the Commission has determined to review the Final ID in part. In particular, the Commission has determined to review the following:

(1) whether DISH satisfied the technical prong of the domestic industry requirement as to all Asserted Patents;

(2) whether claims 16, 17, and 20 of the '554 patent and claims 14 and 15 of the '555 patent are entitled to claim priority to U.S. App. No. 60/566,831;

(3) whether claims 16, 17, and 20 of the '554 patent and claims 14 and 15 of the '555 patent are invalid as anticipated over the prior public use of the Move Media Player;

(4) whether the asserted claims of the '555 patent are invalid for misjoinder of Mr. Brueck; and

(5) whether the preamble of claim 10 of the '555 patent is limiting.

The parties are requested to brief their positions with reference to the applicable law and the evidentiary record regarding the questions provided below:

(1) Regarding whether DISH satisfied the technical prong of the domestic industry requirement as to all Asserted Patents, if the Commission determines that DISH's theory that the technical prong of the domestic industry requirement can be satisfied by the combination of its contended domestic industry products and third-party video displays (whether that combination is assembled by DISH itself or by its customers) was barred by Order No. 22 (Mar. 8, 2022):

(A) Has DISH failed to prove a violation of section 337?

(B) What is the scope and extent of factfinding that would be required for the Commission to determine whether DISH satisfied the technical prong of the domestic industry requirement?

(C) Should the Commission remand to the CALJ for further claim construction regarding whether the ''presenting'' and ''providing''/''provide'' claim limitations require a display (*see* Final ID at 109 n.18)?

(2) If the Commission determines that the final ID did not make a finding as to whether Mr. Brueck is misjoined on the '555 patent:

(A) What is the scope and extent of factfinding that would be required for the Commission to determine whether Mr. Brueck is misjoined on the '555 patent?

(B) Should the Commission remand to the CALJ for resolving this issue? And, if so, what should the scope of remand include?

The parties are invited to brief only these discrete questions. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. In particular, the Commission requests that the parties respond to the statements on the public interest submitted by the parties.

In addition, the Commission requests specific briefing to address the following questions relevant to the public interest considerations in this investigation, including evidence in support:

(1) Would an exclusion order or cease and desist order affect existing owners of Accused Products, and if so, how?

(2) To what extent and as to which statutory public interest factor(s) should the Commission consider that DISH does not compete with Respondents in the sale of internet-streaming enabled fitness devices?

(3) Please discuss what alternatives, if any, to the Accused Products would be available to U.S. consumers, including from third parties, if the Commission were to issue remedial orders. Please discuss price point, functionality, and/or any other information that the parties believe would be useful to the Commission in evaluating the availability of alternative fitness devices.

(4) Please explain whether an exclusion order or cease and desist order would impact domestic production of like or directly competitive products.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the

Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the questions identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such initial written submissions should include views on the RD that issued on September 9, 2022.

Initial written submissions, limited to 60 pages, must be filed no later than the close of business on December 2, 2022. Complainants are requested to identify the form of the remedy sought and Complainants and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the HTSUS subheadings under which the accused articles are imported, and to supply identification information for all known importers of the accused products. Reply submissions, limited to 20 pages, must be filed no later than the close of business on December 9, 2022. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1265'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary at (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on November 18, 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).

Issued: November 18, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–25687 Filed 11–23–22; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATE: The Members of the National Council on Disability (NCD) will hold a quarterly business meeting on Thursday, December 8, 2022, 12:00 p.m.–4:00 p.m., Eastern Standard Time (EST).

PLACE: This meeting will occur via Zoom videoconference. Registration is not required. Interested parties are encouraged to join the meeting in an attendee status by Zoom Desktop Client, Mobile App, or Telephone to dial-in. Updated information is available on NCD's event page at *https://ncd.gov/events/2022/upcoming-council-meeting*. To join the Zoom webinar, please use the following URL: *https://us06web.zoom.us/j/88045536032?pwd=VGRBbUd1a1hOWmhqaGxZWjhmRG00QT09* or enter Webinar ID: 880 4553 6032 in the Zoom app. The Passcode is: 458383.

To join the Council Meeting by telephone, dial one of the preferred numbers listed. The following numbers are (for higher quality, dial a number based on your current location): (669) 900–6833; (408) 638–0968; (312) 626–6799; (346) 248–7799; (253) 215–8782; (646) 876–9923; or (301) 715–8592. You will be prompted to enter the meeting ID 880 4553 6032 and passcode 458383. International numbers are also available: *https://us06web.zoom.us/u/kejfj69EDW*.

In the event of audio disruption or failure, attendees can follow the meeting by accessing the Communication Access Realtime Translation (CART) link provided. CART is text-only translation that occurs real time during the meeting and is not an exact transcript.

MATTERS TO BE CONSIDERED: Following welcome remarks and introductions, the Council will welcome new Council Members; provide recognition to outgoing Council Members; the Chairman and Executive Committee and Executive Director will provide reports; followed by assignment of Council Member roles and assignments; a Policy update; a discussion on 2024 Progress Report; and any old or new business, before adjourning.

Agenda: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern Standard Time):

Thursday, December 8, 2022

12:00–12:10 p.m.—Welcome and Call to Order
12:10–1:00 p.m.—Meet the New NCD Council Members
1:00–1:10 p.m.—Outgoing Member Recognition
1:10–1:20 p.m.—Chairman's Report
1:20–1:35 p.m.—Executive Committee Report
1:35–1:45 p.m.—Break
1:45–2:00 p.m.—Council Member Roles and Assignments
2:00–2:40 p.m.—Policy Update
2:40–3:25 p.m.—Progress Report 2024 process discussion
3:25–3:30 p.m.—Old Business/New Business
3:30–4:00 p.m.—Public Comment
4:00 p.m.—Adjourn

Public Comment: Your participation during the public comment period provides an opportunity for us to hear from you—individuals, businesses, providers, educators, parents and advocates. Your comments are

important in bringing to the Council's attention issues and priorities of the disability community.

For the December 8 meeting, NCD requests comments from the public regarding ideas for the Council's Fiscal Year 2024 policy project proposals, which will be discussed and voted on at its February Council meeting. NCD specifically requests ideas to engage emerging topics, areas in need of updated research for advising federal policy makers, and areas previously unengaged by the Council.

Because of the virtual setting, there will be a hybrid option for submitting public comment. The Council is soliciting public comment by email or via video or audio over Zoom. Emailed public comment submissions will be reviewed during the meeting and delivered to members of the Council at its conclusion. You can also present public comment during the session by clicking the ''Hand Raise'' button in Zoom and waiting to be called on. If you plan to present over Zoom, please provide advance notice. To provide comments or notice to present public comment, please send an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' and your name, organization, state, and topic of comment included in the body of your email. Submission should be received no later than December 7, 5 p.m. EST to ensure inclusion.

CONTACT PERSON FOR MORE INFORMATION: Nicholas Sabula, Public Affairs Specialist, NCD, 1331 F Street NW, Suite 850, Washington, DC 20004; 202–272–2004 (V), or *nsabula@ncd.gov*.

Accommodations: An ASL interpreter will be on-camera during the entire meeting, and CART has been arranged for this meeting and will be embedded into the Zoom platform as well as available via streamtext link. The web link to access CART (in English) is: *https://www.streamtext.net/player?event=NCD*.

If you require additional accommodations, please notify Anthony Simpson by sending an email to *asimpson.cntr@ncd.gov* as soon as possible and no later than 24 hours prior to the meeting.

Due to last-minute confirmations or cancellations, NCD may substitute items without advance public notice.

Dated: November 21, 2022.

Anne C. Sommers McIntosh,

Executive Director.

[FR Doc. 2022–25795 Filed 11–22–22; 11:15 am]

BILLING CODE 8421–02–P

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

46th Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), National Foundation of the Arts and the Humanities (NFAH).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Museum and Library Services Board will meet to advise the Director of the Institute of Museum and Library Services (IMLS) with respect to duties, powers, and authority of IMLS relating to museum, library, and information services, as well as coordination of activities for the improvement of these services.

Dates and Time: The meeting will be held on December 14, 2022, from 10:30 a.m. until adjourned.

Place: The meeting will convene in a hybrid format. Virtual meeting and audio conference technology will be used to connect virtual attendees with in-person attendees. Instructions for joining will be sent to all registrants. In-person attendees will meet at 955 L'Enfant Plaza North SW, First-floor Conference Room, Washington, DC 20024. Due to room-capacity limitations, only board members and IMLS staff will be able to join in person.

FOR FURTHER INFORMATION CONTACT: Katherine Maas, Chief of Staff and Alternate Designated Federal Officer, Institute of Museum and Library Services, Suite 4000, 955 L'Enfant Plaza North SW, Washington, DC 20024; (202) 653–4798; *kmaas@imls.gov* (*mailto:kmaas@imls.gov*).

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is meeting pursuant to the National Museum and Library Service Act, 20 U.S.C. 9105a, and the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

The 46th Meeting of the National Museum and Library Services Board, which is open to the public, will be held on December 14, 2022.

The agenda for the 46th Meeting of the National Museum and Library Services Board will be as follows:

I. Call to Order
II. Approval of Minutes of the 45th Meeting
III. Director's Welcome and Update
IV. Board Program
V. Office of Museum Services Update
VI. Office of Library Services Update
VII. Strategic Communications Update
VIII. Office of Research and Evaluation Update
IX. Governmental Engagement and Legislative Update
X. Financial Update

If you wish to attend the meeting, please inform IMLS as soon as possible, but no later than noon on December 12, 2022, by contacting Katherine Maas at *kmaas@imls.gov* (*mailto:kmaas@imls.gov*). Please provide notice of any special needs or accommodations by November 29, 2022.

Dated: November 18, 2022.

Brianna Ingram,

Paralegal Specialist.

[FR Doc. 2022–25689 Filed 11–23–22; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295, 50–304, and 72–1037; NRC–2019–0236]

In the Matter of Zion Solutions, LLC and Exelon Generation Company, LLC Zion Nuclear Power Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct transfer of license; extending effectiveness of order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order to extend until November 26, 2023, the effectiveness of a November 26, 2019, order, which approved the direct transfer of Facility Operating License Nos. DPR–39 and DPR–48 for Zion Nuclear Power Station (ZNPS), Units 1 and 2, respectively, and the general license for the ZNPS independent spent fuel storage installation from the current holder, Zion*Solutions,* LLC, to Exelon Generation Company, LLC and amended the facility operating licenses for administrative purposes to reflect the transfer.

DATES: The order was issued on November 17, 2022, and was effective upon issuance.

ADDRESSES: Please refer to Docket ID NRC–2019–0236 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–2019–0236. Address questions about Docket IDs in

Regulations.gov to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The request for extending the effectiveness of the transfer order is available in ADAMS under Accession No. ML22294A162. The order extending the effectiveness of the approval of the transfer of licenses and conforming amendments is available in ADAMS under Accession No. ML22308A177.

• *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: Kim Conway, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1335; email: *Kimberly.Conway@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Dated: November 21, 2022.

For the Nuclear Regulatory Commission.

Shaun M. Anderson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Order Extending the Effectiveness of the Approval of the Transfer of Licenses and Conforming Amendments

United States of America

Nuclear Regulatory Commission

[NRC–2019–0236]

In the Matter of Zion*Solutions,* LLC and Exelon Generation Company, LLC Zion Nuclear Power Station, Units 1 and 2; EA–19–125 Docket Nos. 50–295, 50–304, and 72–1037; License Nos.: DPR–39 and DPR–48

Order Extending the Effectiveness of the Approval of the Transfer of Licenses and Conforming Amendments

I

Zion*Solutions,* LLC is the holder of U.S. Nuclear Regulatory Commission (NRC, the Commission) Facility Operating License Nos. DPR–39 and DPR–48 for the Zion Nuclear Power Station, Units 1 and 2, respectively (ZNPS), and the associated general license for the ZNPS independent spent fuel storage installation (ISFSI), which are located in Lake County, Illinois. Zion*Solutions,* LLC is authorized to possess and maintain ZNPS and the ZNPS ISFSI. Operation of ZNPS is no longer authorized under these licenses.

II

By Order dated November 26, 2019 (Transfer Order), the Commission consented to the direct transfer of the ZNPS licenses from Zion*Solutions,* LLC to Exelon Generation Company, LLC and approved draft conforming administrative license amendments in accordance with Sections 50.80, ''Transfer of licenses,'' 72.50, ''Transfer of license,'' and 50.90, ''Application for amendment of license, construction permit, or early site permit,'' of Title 10 of the *Code of Federal Regulations* (10 CFR). By its terms, the Transfer Order becomes null and void if the transfer is not completed within one year (*i.e.,* by November 26, 2020); provided, however, that upon written application and for good cause shown, such date may be extended by order. By letter dated August 27, 2020, Zion*Solutions,* LLC submitted a written application to extend the effectiveness of the Transfer Order by 6 months, until May 26, 2021. That request was approved by Order (First Extension Order) dated October 21, 2020. By letter dated April 15, 2021, Zion*Solutions,* LLC submitted a written application to extend the effectiveness of the Transfer Order by an additional 6 months, until November 26, 2021. That request was approved by Order (Second Extension Order) dated May 12, 2021. Subsequently, by letter dated August 17, 2021, Zion*Solutions,* LLC submitted a written application to extend the effectiveness of the Transfer Order by an additional twelve months, until November 26, 2022. That request was approved by Order (Third Extension Order) dated August 30, 2021.

III

By letter dated October 19, 2022, Zion*Solutions,* LLC submitted a written application to extend the effectiveness of the Transfer Order by an additional 6 months, until May 26, 2023. As stated in the application, a license amendment request for the ZNPS License Termination Plan and responses to requests for additional information regarding ZNPS Final Status Survey Final Reports and their associated Release Records are currently under review by the NRC staff. The extension would provide the NRC staff with additional time to assess the information provided by Zion*Solutions,* LLC and make a final determination regarding the release of land for unrestricted use. However, based on the complexity of the review, potential need for confirmatory surveys, and administrative work required to complete the partial site release, the NRC has determined that a twelve-month extension to November 26, 2023, is more appropriate.

Based on the above, the NRC has determined that Zion*Solutions,* LLC has shown good cause for extending the effectiveness of the Transfer Order by an additional twelve months.

IV

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; Title 42 of the United States Code Sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that the expiration date of the Transfer Order, as extended by the Third Extension Order, is further extended until November 26, 2023. If the subject license transfer from Zion*Solutions,* LLC to Exelon Generation Company, LLC is not completed by November 26, 2023, the Transfer Order shall become null and void; provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

Dated this 17th day of November 2022.

For The Nuclear Regulatory Commission.

John W. Lubinski,

Director, Office of Nuclear Material, Safety and Safeguards.

[FR Doc. 2022–25750 Filed 11–23–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0124]

Information Collection: Scheduling Information for the Licensing of Accident Tolerant, Higher Burnup, and Increased Enrichment Fuels

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 proposed collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Scheduling Information for the Licensing of Accident Tolerant, Higher Burnup, and Increased Enrichment Fuels.''

DATES: Submit comments by December 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–2022–0124 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0124.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No, ML22109A108. The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML22235A693 and ML22227A117 respectively.
- *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 proposed collection of information to OMB for review entitled ''Scheduling Information for the Licensing of Accident Tolerant, Higher Burnup, and Increased Enrichment Fuels.'' 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 August 22, 2022 (87 FR 51463).

1. *The title of the information collection:* ''Scheduling Information for the Licensing of Accident Tolerant, Higher Burnup, and Increased Enrichment Fuels.''
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Once with the addition of voluntary updates, as available.
6. *Who will be required or asked to respond:* All holders of operating licenses for nuclear power reactors under the provisions of part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or holders of a combined license under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' except those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel. All holders of licenses and potential applicants for a fuel cycle facility under the provisions of 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material,'' and holders of licenses and Certificates of Compliance and potential applicants for transportation and storage systems under the provisions of 10 CFR part 71, ''Packaging and Transportation of Radioactive Material,'' and 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.''

7. *The estimated number of annual responses:* 43.

8. *The estimated number of annual respondents:* 43.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 780.

10. *Abstract:* The accident tolerant fuel (ATF) program is a joint effort between the U.S. nuclear industry and the U.S. Department of Energy to design and pursue approval of various fuel types with enhanced accident tolerance. The ATF program includes development of technologies that would extend fuel burnup and enrichment limits beyond currently authorized levels. In order to deploy these new technologies, the industry will need to seek authorization for various activities throughout the fuel cycle, from fuel fabrication, transportation, and storage to installation and utilization in a reactor. In order to support the timely processing of licensing activities needed to support the deployment of these new technologies, the NRC is seeking scheduling information for licensing submittals from all respondents. This information will allow the NRC to better allocate its resources to support the activities associated with licensing these technologies while being better able to meet the industry's desired timeline.

Dated: November 21, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–25769 Filed 11–23–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of November 28, December 5, 12, 19, 26, 2022, January 2, 2023. 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 November 28, 2022

There are no meetings scheduled for the week of November 28, 2022.

Week of December 5, 2022—Tentative

Tuesday, December 6, 2022

10:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting). (Contact: Celimar Valentin-Rodriguez: 301–415–7124)

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, December 8, 2022

9:00 a.m. Overview of Advanced Reactor Fuel Activities (Public Meeting). (Contact: Stephanie Devlin-Gill, 301–415–5301)

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 December 12, 2022—Tentative

Wednesday, December 14, 2022

10:00 a.m. Briefing on Equal Employment Opportunity, Affirmative Employment, and Small Business (Public Meeting). (Contact: Larniece McKoy Moore: 301–415–1942).

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 December 19, 2022—Tentative

There are no meetings scheduled for the week of December 19, 2022.

Week of December 26, 2022—Tentative

There are no meetings scheduled for the week of December 26, 2022.

Week of January 2, 2023—Tentative

There are no meetings scheduled for the week of January 2, 2023.

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: November 22, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–25819 Filed 11–22–22; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0218]

Information Collection: Specific Domestic Licenses To Manufacture or Transfer Certain Items Containing Byproduct 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, ''Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.''

DATES: Submit comments by December 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–2021–0218 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–2021–0218.
- *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 Form 653, 653A, 653B are available in ADAMS under Accession Nos. ML22199A004 and ML22028A015.
- *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, ''Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct 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 April 4, 2022 (87 FR 19535).

1. *The title of the information collection:* ''Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.''
2. *OMB approval number:* 3150–0001.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 653, 653A, 653B.
5. *How often the collection is required or requested:* There is a one-time submittal of information to receive a certificate of registration for a sealed source and/or device. Certificates of registration for sealed sources and/or devices can be amended at any time. In addition, licensee recordkeeping must be performed on an on-going basis, and reporting of transfer of byproduct material must be reported every calendar year, and in some cases, every calendar quarter.
6. *Who will be required or asked to respond:* All specific licensees who manufacture or initially transfer items containing byproduct material for sale or distribution to general licensees, or persons exempt from licensing, medical use product distributors to specific licensees, and those requesting a certificate of registration for a sealed source and/or device.
7. *The estimated number of annual responses:* 3,038 [2,285 reporting + 349 recordkeepers + 404 third-party recordkeepers].
8. *The estimated number of annual respondents:* 662 (156 NRC licenses, registration certificate holder + 506 Agreement States licensees and registration certificate holders).
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 109,510 (15,601 reporting + 1,122 recordkeeping + 92,787 third-party).
10. *Abstract:* Part 32 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material,'' establishes requirements for specific licenses for the introduction of byproduct material into products or materials and transfer of the products or materials to general licensees, or persons exempt from licensing, medical use product distributors to specific licensees, and those requesting a certificate of registration for a sealed source and/or device. It also prescribes requirements governing holders of the specific licenses. Some of the requirements are for information which must be submitted in an application for a certificate of registration for a sealed source and/or device, records which must be kept, reports which must be submitted, and information which must be forwarded to general licensees and persons exempt from licensing. As mentioned, 10 CFR part 32 also prescribes requirements for the issuance of certificates of registration (concerning radiation safety information about a product) to manufacturers or initial transferors of sealed sources and devices. Submission or retention of the information is mandatory for persons subject to the 10 CFR part 32 requirements. The information is used by the NRC to make licensing and other regulatory determinations concerning the use of radioactive byproduct material in products and devices.

Dated: November 21, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–25770 Filed 11–23–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–NEW]

Submission for Review: New Information Collection, Research Agreements for the Use of OPM Record-Level Data

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a new information collection request (ICR) 3206–NEW, Research Agreements for the Use of OPM Record-Level Data.

DATES: Comments are encouraged and will be accepted until January 24, 2023. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection by one of the following means:

Federal Rulemaking Portal: http://www.regulations.gov. All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

- *Email: evidence@opm.gov.* Please put ''Research Agreements'' in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: For more information, contact the Office of the Chief Financial Officer's Planning, Performance, and Evaluation unit, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, Attention: Megan Kays or via electronic mail to *evidence@opm.gov.*

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. OPM collects and maintains record-level data on job applicants, Federal employees, annuitants, and other beneficiaries of OPM's programs and services. Research Agreements for the Use of OPM Record-Level Data is OPM's proposed mechanism to share data to further policy-relevant Federal workforce research. OPM will collect information through a Research Agreement Application to enable OPM to determine whether providing record level data to a research entity is in the public interest. Those who are approved as research partners will be required to provide additional information to OPM. This is a new collection to establish OPM's Research Agreement program. Therefore, we invite comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Office of Personnel Management.

Title: Research Agreements for the Use of OPM Record-Level Data.

OMB Number: 3206–NEW.

Frequency: Annually.

Affected Public: Individuals.

Number of Respondents: 95.

Estimated Time per Respondent: 79 Minutes.

Total Burden Hours: 125.

U.S. Office of Personnel Management.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2022–25699 Filed 11–23–22; 8:45 am]

BILLING CODE 6325–23–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–50 and CP2023–48; MC2023–51, CP2023–49; MC2023–52, CP2023–50]

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:* November 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).:* MC2023–50 and CP2023–48; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & Parcel Select Contract 1 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 17, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 29, 2022.

2. *Docket No(s).:* MC2023–51 and CP2023–49; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 226 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 17, 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:* November 29, 2022.

3. *Docket No(s).:* MC2023–52 and CP2023–50; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 86 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 17, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* November 29, 2022.

[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).

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–25628 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–53 and CP2023–51; MC2023–54 and CP2023–52]

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:* November 30, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
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).:* MC2023–53 and CP2023–51; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 87 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 18, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 30, 2022.

2. *Docket No(s).:* MC2023–54 and CP2023–52; *Filing Title:* USPS Request to Add Priority Mail Express Contract 98 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 18, 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:* November 30, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–25748 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 10, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 765 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–43, CP2023–43.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25682 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 83 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–40, CP2023–39.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25655 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 17, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, and Parcel Select Service Contract 1 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–50, CP2023–48.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25679 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 16, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 766 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–48, CP2023–46.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25683 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 15, 2022, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 4 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–47, CP2023–45.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25680 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 10, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 84 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–44, CP2023–44.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25656 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 80 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–35, CP2023–34.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25647 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 16, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 85 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–49, CP2023–47.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25657 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 17, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 87 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–53, CP2023–51.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25661 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 9, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 764 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–41, CP2023–40.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25674 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C.

3642 and 3632(b)(3), on November 8, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 225 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–37, CP2023–36.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25676 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 82 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–39, CP2023–38.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25653 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 17, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 86 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–52, CP2023–50.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25658 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 18, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 98 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–54, CP2023–52.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25681 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 17, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 226 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–51, CP2023–49.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25660 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 81 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–38, CP2023–37.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25649 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 9, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service Contract 121 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–42, CP2023–41.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–25678 Filed 11–23–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96352; File No. SR–IEX–2022–10]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Proposed Rule Change To Modify IEX Rule 11.190(b)(7)

November 18, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 4, 2022 the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of section 19(b)(1) under the Act,[3] and Rule 19b–4 thereunder,[4] the Exchange is filing with the Commission a proposed rule change to provide Members [5] the option of having Discretionary Limit orders automatically cancel or re-price in certain circumstances.

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule filing is to amend IEX Rule 11.190(b)(7) to allow Users [6] to attach an optional instruction to any Discretionary Limit [7] (''D-Limit'') order to either re-price or cancel an order that was price adjusted during a period of quote instability,[8] if, ten (10) milliseconds after the most recent quote instability determination [9] that resulted in the order being price adjusted, the order is resting at a price that is less aggressive than the NBB [10] (NBO [11]) for buy (sell) orders.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] *See* IEX Rule 1.160(s).

[6] *See* IEX Rule 1.160(qq). Users include both Members and Sponsored Participants, *see* IEX Rule 1.160(ll), but the terms ''Member'' and ''User'' are used interchangeably in this filing.

[7] *See* IEX Rule 11.190(b)(7).

[8] *See* IEX Rule 11.190(g).

[9] *Id.*

[10] *See* IEX Rule 1.160(u).

[11] *See* IEX Rule 1.160(u).

Background

In October 2020,[12] IEX introduced the D-Limit order type,[13] which is designed to help protect liquidity providers from potential adverse selection during periods of quote instability in a fair and nondiscriminatory manner.[14] A D-Limit order may be a displayed or non-displayed limit order that upon entry and when posting to the Order Book [15] is priced to be equal to and ranked at the order's limit price, but will be adjusted to a less-aggressive price during periods of quote instability, as defined in IEX Rule 11.190(g).[16]

Specifically, if the System [17] receives a D-Limit buy (sell) order during a period of quote instability (*i.e.,* the Crumbling Quote Indicator or ''CQI'' is on), and the D-Limit order has a limit price equal to or higher (lower) than the quote instability determination price level (''CQI Price''), the price of the order will be automatically adjusted by the System to one (1) minimum price variation (''MPV'') [18] lower (higher) than the CQI Price.[19] Similarly, when unexecuted shares of a D-Limit buy (sell) order are posted to the Order Book, if a quote instability determination is made and such shares are ranked and displayed (in the case of a displayed order) by the System at a price equal to or higher (lower) than the CQI Price, the price of the order will be automatically adjusted by the System to a price one MPV lower (higher) than the quote instability price level.[20]

Currently, a D-Limit order that has been subject to an automatic price adjustment will not revert to the price at which it was previously ranked and displayed (in the case of a displayed order). Rather, once the price of a D-Limit order that has been posted to the Order Book is automatically adjusted by the System, the order will continue to be ranked and displayed (in the case of a displayed order) at the adjusted price, unless subject to another automatic adjustment, or if the order is subject to the price sliding provisions of IEX Rule 11.190(h).[21] Whenever the price of a D-

[12] *See* IEX Trading Alert 2020–029, available at *https://iextrading.com/alerts/#/126.*

[13] *See* Securities Exchange Act Release No. 89686 (August 26, 2020), 85 FR 54438 (September 1, 2020) (SR–IEX–2019–15) (''D-Limit Approval Order'').

[14] *See* Securities Exchange Act Release No. 87814 (December 20, 2019), 84 FR 71997, 71998 (December 30, 2019) (SR–IEX–2019–15) (''D-Limit Proposal'').

[15] *See* IEX Rule 1.160(p).

[16] *See* IEX Rules 11.190(b)(7) and 11.190(g).

[17] *See* IEX Rule 1.160(nn).

[18] *See* IEX Rule 11.210.

[19] *See* IEX Rule 11.190(b)(7)(A) and (B).

[20] *See* IEX Rule 11.190(b)(7)(C) and (D).

[21] *See* IEX Rule 11.190(b)(7)(E).

Limit order is adjusted the order will receive a new time priority. If multiple D-Limit orders are adjusted at the same time, their relative time priority will be maintained. Further, when the price of a D-Limit order is adjusted, the Member that entered the order receives an order restatement message from the Exchange notifying the Member of the price adjustment.[22]

IEX is proposing optional functionality that will facilitate the ability of some Members to manage their use of D-Limit orders. Some Members that use D-Limit orders have informed IEX that they cannot readily configure their trading systems to receive, process, and respond to the restatement messages IEX transmits to Members after each price adjustment. They note that their trading systems are not currently configured to ingest the D-Limit restatement messages (and, in some cases, other restatement messages), and they would have to devote significant resources to build the logic in order to ingest, and respond to, the messages for this one order type. In these cases, the Members are unable to track whether their D-Limit orders have been re-priced, and if so, the price at which they are currently resting. Without this information, IEX understands that such Members are hindered in their ability to timely cancel or adjust the prices of their resting D-Limit orders to meet their trading objectives. To address this issue, some Members have requested that IEX provide optional functionality allowing a D-Limit order that has been subject to an automatic price adjustment to be automatically either canceled or re-priced in certain circumstances. Specifically, this option would allow the User to elect to automatically cancel or re-price the order when, ten (10) milliseconds following the quote instability determination that resulted in a price adjustment, it is resting at a price less aggressive than the NBBO.

Proposal

Based upon the Member feedback discussed above, IEX proposes to modify IEX Rule 11.190(b)(7) to allow Users to submit a D-Limit order with an optional cancel or re-price instruction. As proposed, if a D-Limit order that is entered with the optional instruction was subject to an automatic price adjustment pursuant to IEX Rule 11.190(b)(7)(A)–(D) and is resting at a price that is less aggressive than the NBBO ten (10) milliseconds after the most recent quote instability determination that resulted in the order being price adjusted, the order will either be canceled or re-priced to the less aggressive of the order's limit price or the NBB (for a buy order) or NBO (for a sell order), as specified by the User.

Additionally, displayed D-Limit orders that re-price to the NBB (for a buy order) or the NBO (for a sell order) will be subject to IEX's Display-Price Sliding rule,[23] and will be displayed at the ''most aggressive permissible price'' without locking or crossing a Protected Quotation[24] of an away market, which means they will be priced one MPV less aggressive than the locking[25] or crossing[26] price. Non-displayed D-Limit orders that re-price to the NBB (for a buy order) or the NBO (or a sell order) will be subject to IEX's Non-Displayed Price Sliding rule, which means they will be able to post at the locking or crossing price.[27]

Specifically, IEX proposes to add a new subsection (E) to IEX Rule 11.190(b)(7), to provide as follows:

(E) Cancel/Re-price Functionality. Users may attach an optional instruction to a Discretionary Limit order to either re-price or cancel an order that was price adjusted pursuant to subparagraphs (A)–(D) above if the buy (sell) order is resting at a price that is less aggressive than the NBB (NBO) ten (10) milliseconds after the most recent quote instability determination, pursuant to paragraph (g) of this IEX Rule 11.190, that resulted in the order being price adjusted pursuant to subparagraphs (A)–(D) above, as set forth in subparagraph (i) or (ii) below.

(i) Re-price. A buy (sell) order with the optional re-price instruction will be automatically re-priced to the less aggressive of the order's limit price or the NBB (NBO).

(ii) Cancel. An order with the optional cancel instruction will be automatically canceled.[28]

IEX also proposes to renumber subparagraph (E) of IEX Rule 11.190(b)(7) as subparagraph (F) of the rule, and to amend the new subparagraph (F) to reflect that price adjusted D-Limit orders will remain at the adjusted price, ''unless subject to another automatic adjustment pursuant to subparagraphs (C)–(D) above, or the optional re-price functionality described in subparagraph (E), above.''[29]

In determining how long to wait before applying the optional cancel or re-price functionality to a D-Limit order, IEX considered how long it would take for a User to cancel or re-price a D-Limit order itself after receiving and processing a restatement message. Specifically, IEX selected a time frame that would not give Users utilizing the proposed cancel or pre-price functionality any speed advantage over Users handling the cancel or re-price process themselves. IEX notes that all outbound messages sent from the Exchange to Users are subject to 37 microseconds of latency,[30] and all inbound messages sent from Users to the Exchange are subject to 350 microseconds latency, totaling 387 microseconds.[31] This ''round trip'' latency is more than nine (9) milliseconds less than the 10-millisecond time than the time frame proposed by IEX to trigger the optional cancel or re-price functionality as described herein. IEX believes that this time differential is materially longer than the amount of time needed for a User to ingest and process the restatement message and determine whether to cancel or re-price its D-Limit order. The timing differential is designed to ensure that orders canceled or re-priced by IEX have no advantage over orders canceled or repriced by a User that processed the restatement message. To the contrary, the Exchange would cancel or re-price orders more slowly than orders canceled or re-priced by a User.

Additionally, IEX considered the fact that each time the CQI determines that a quote is unstable, that period of quote instability can last as long as two (2) milliseconds but that most price changes within the predicted direction happen within ten (10) milliseconds after the determination.[32] Thus, IEX believes that a ten (10) millisecond waiting period before a D-Limit order that was subject to an automatic price adjustment is canceled or re-priced, if the User included the optional cancel or re-price instruction with the order, is reasonable. As noted above, this amount of time is materially longer than it would take for a User to adjust the terms of an order subject to price adjustment on its own, but not so long a time period that it would leave an impacted order at

[22] A restatement message is an automated message from the Exchange System informing the Member that the price of its order has been adjusted.

[23] *See* IEX Rule 11.190(b)(h)(1).

[24] *See* IEX Rule 1.160(bb).

[25] *See* IEX Rule 11.190(b)(h)(3)(A)(ii).

[26] *See* IEX Rule 11.190(b)(h)(3)(B)(ii).

[27] *See* IEX Rule 11.190(b)(h)(2).

[28] *See* Proposed IEX Rule 11.190(b)(7)(E).

[29] *See* Proposed IEX Rule 11.190(b)(7)(F).

[30] *See* IEX Rule 11.510(a).

[31] *See* IEX Rule 11.510(a).

[32] *See* IEX Rule 11.190(g). In June 2022, for all CQI determinations where the relevant quote moved in the predicted direction, 67% did so within 10 milliseconds (*i.e.,* to a lower price for an NBB determination or a higher price for an NBO determination). After 10 milliseconds, IEX observed significantly diminishing returns with respect to the rate of capturing additional quote moves and therefore believes that 10 milliseconds is a reasonable cutoff for the cancel/re-price functionality.

a less competitive[33] price for an extended period of time. Moreover, based on informal feedback from Members that indicated they might use the proposed functionality, IEX believes that this time frame is consistent with their D-Limit trading strategies.

The following example, demonstrates how this functionality would work:

- Market is $10.10 × $10.20.
- Order A, a non-displayed D-Limit buy order with limit price of $10.11 (and re-price instruction) arrives, and books at $10.11.
- Order B, a displayed D-Limit buy order with limit price of $10.08 (and re-price instruction) arrives, and books at $10.08.
- Order C, a non-displayed D-Limit buy order with limit price of $10.10 (and cancel instruction) arrives, and books at $10.10.
- IEX makes a quote instability determination for the bid with a CQI Price of $10.10.
- Orders A and C are price adjusted to $10.09, one MPV less than the CQI Price. Order B continues to rest at $10.08.
- After 3 milliseconds, the NBB drops to $10.09. No changes to Orders A, B, or C.
- After 3 more milliseconds, the NBB returns to $10.10. No changes to Orders A, B, or C.
- After 4 more milliseconds (*i.e.,* 10 milliseconds after the most recent quote instability determination that resulted in Orders A and C being price adjusted) the NBB remains at $10.10. Orders A and C are now resting at a price less aggressive than the NBB and therefore subject to re-pricing or cancellation pursuant to the User instructions. Order A re-prices to $10.10 (the less aggressive of the NBB or its limit price) and Order C cancels. Order B remains unchanged because it was never subject to an automatic price adjustment and, even though resting at a price less aggressive than the NBB, is not subject to re-pricing notwithstanding its User instruction.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[34] in general, and furthers the objectives of section 6(b)(5),[35] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it is designed to provide more flexibility and opportunities for Members to add both displayed and non-displayed liquidity to the Exchange. As noted in the Purpose section, the proposed rule change is responsive to informal feedback from some Members, stating that they cannot readily configure their trading systems to receive, process, and respond to D-Limit restatement messages IEX transmits to Members after each price adjustment. In these cases, the Members are unable to track whether their D-Limit orders have been re-priced, and if so, the price at which they are currently resting. Without this information, IEX understands that such Members are hindered in their ability to timely cancel or adjust the prices of their resting D-Limit orders to meet their trading objectives. To address this issue, impacted Members have requested that IEX provide optional functionality allowing a D-Limit order that has been subject to an automatic price adjustment to be automatically either canceled or re-priced in certain circumstances. Specifically, this option would allow the User to elect to automatically cancel or re-price the order when, ten (10) milliseconds following the most recent quote instability determination that resulted in a price adjustment, it is resting at a price less aggressive than the NBBO.

By providing additional functionality to enable Members to more effectively manage D-Limit orders, IEX believes that the proposed rule change will promote more aggressive pricing that may attract additional liquidity to the Exchange and, to the extent it is successful in doing so, will benefit all market participants, thereby supporting the purposes of the Act 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. Specifically, for Users that utilize the proposed optional re-price functionality, their D-Limit orders will be priced at more aggressive prices that are more likely to execute during periods of quote stability. Similarly, IEX believes that Users that utilize the proposed optional cancel functionality are more likely to resubmit some or all of those orders with more aggressive prices following cancelation, which are also more likely to execute during periods of quote stability.

The Exchange further believes that the proposed rule change is consistent with the Act because it would be available to all Members on a fair, equal and nondiscriminatory basis regardless of their technological sophistication. Moreover, the proposal is designed to incentivize the entry of additional D-Limit orders by providing the additional optional functionality to support Members' ability to manage such orders. To the extent that such incentive is successful, all market participants, including takers of liquidity, will benefit.

The Exchange also believes that the proposed rule change is consistent with the protection of investors and the public interest because the circumstances under which a D-Limit order will be adjusted are narrowly tailored, transparent, and predictable, as described in the Purpose section.

Further, the Exchange believes that the proposed functionality is similar to existing functionality on IEX and other exchanges wherein the price of an order is adjusted based on user instructions. These include price sliding and cancellation provisions to address locked and crossed markets, LULD bands,[36] Regulation SHO,[37] anti-internalization, and pegged orders. As described more fully below, it is well established that exchanges can permit market participants to enter orders with a forward-looking instruction whereby the exchange will re-price or cancel an order in the future, under specified circumstances. IEX believes that the proposed rule change is substantially similar to these existing functionalities.

IEX and other exchanges accept certain types of users' order instructions to prevent an incoming displayed order

[33] During periods of quote instability, D-Limit orders moved to a price less aggressive than the NBB (NBO) for bids (offers) are less likely to execute (although they could, for example, match with a large Intermarket Sweep Order that clears out all liquidity resting at more aggressive prices, *see* IEX Rule 11.190(b)(12)). Under this proposal, 10 milliseconds after the last quote instability determination, when the market for a particular security is likely more stable, IEX will act on the User's instructions to either re-price the D-Limit order to a more competitive price (the NBB (NBO) for bids (offers)) or cancel the order back to the User.

[34] 15 U.S.C. 78f(b).

[35] 15 U.S.C. 78f(b)(5).

[36] *See* IEX Rules 11.190(h)(5) and 11.280(e)(5)(B) (displayed and non-displayed limit orders priced above (below) the upper (lower) Limit Up-Limit Down (''LULD'') bands are automatically re-priced to the upper (lower) LULD price band.

[37] *See* IEX Rule 11.190(h)(4) (short sale orders not marked short exempt that cannot be executed or displayed in compliance with Rule 201 of Regulation SHO are re-priced to a price equal to one MPV above the current NBB).

from locking or crossing an away market's Protected Quotation. While all exchanges have rules designed to prevent an incoming displayed order locking or crossing an away market's Protected Quotation, as required by Regulation NMS, some exchanges also provide users with various options for price adjusting or canceling an order that would otherwise lock or cross an away market. For example, MEMX LLC (''MEMX'') and MIAX PEARL LLC (''PEARL'') allow users to specify that a displayed order subject to price sliding will be cancelled upon entry to avoid crossing the market, instead of being re-priced.[38] Additionally, MEMX and PEARL offer an optional ''multiple price sliding'' instruction for displayed orders. If one of their members does not opt in to ''multiple price sliding'', MEMX or PEARL will adjust the order's price two times to prevent a lock or cross of an away market Protected Quotation, after which time it will cancel the order if a third re-pricing is required by changes in the NBBO.[39] But if the User includes the ''multiple price sliding'' instruction, both MEMX and PEARL will continue to adjust the price indefinitely as required by NBBO changes.[40] This logic also applies to displayed orders that are priced outside of the LULD Bands. Based on a user's instructions, MEMX or PEARL will cancel an order priced outside of the LULD bands, re-price the displayed order up to two times and cancel the order if a third re-pricing is required by changes in the NBBO (if the order does not have a ''multiple price sliding'' instruction), or continue to adjust the order's price.[41]

Further, IEX and other exchanges permit entry of a non-displayed order with a minimum quantity instruction to cancel remaining, which means a partial execution will result in the order being canceled if the number of shares remaining do not satisfy the order's minimum quantity requirement.[42]

Additionally, some exchange order types allow a user to submit an order with specific instructions about how much the order's price can be adjusted to match with contra-side interest. For example, Cboe BZX Exchange, Inc. (''BZX'') has a discretionary order type that is a displayed or non-displayed limit order with a user submitted ''discretionary price,'' which is a non-displayed offset amount at which the user is willing to buy or sell.[43] The aggressiveness of the user-selected discretionary price will impact the likelihood that a discretionary order will execute. Similarly, Cboe EDGX Exchange Inc. (''EDGX'') offers a midpoint discretionary order (''MDO'') with optional quote depletion protection (''QDP'').[44] A MDO behaves like IEX's Discretionary Peg order type[45] in that the order is usually able to exercise discretion up to the Midpoint Price.[46] However, EDGX users may submit their MDO orders with the optional QDP instruction, which will prevent the MDO from exercising any discretion for a period of two milliseconds after the best bid (offer) displayed on EDGX's order book is executed for less than one round lot.[47] Therefore, the EDGX user submitting the MDO order can instruct the exchange to not let the order execute at more aggressive prices under specific market conditions unknown to the user at the time the order was submitted.

Finally, pegged orders such as Midpoint Peg[48] and Primary Peg[49] orders, which peg to the Midpoint Price[50] and one MPV less aggressive than the NBB (NBO) for buy (sell) orders, respectively, are examples of an IEX User instructing the Exchange to re-price orders in response to future changes in the NBBO. IEX believes that the proposed optional re-pricing functionality is analogous because, as with pegging orders, the re-pricing is to the best bid or best offer. And IEX notes that several other exchanges have displayed order types that are pegged to the NBBO and thus subject to price adjustments as the NBBO changes.[51]

IEX believes that these examples described above demonstrate there is precedent for exchanges providing an ability for market participants to enter orders with a forward-looking instruction whereby the exchange will re-price or cancel an order in the future, under specified circumstances. IEX further believes that the proposed rule change is consistent with these exchanges' rule-based practices. As proposed, an IEX Member would simply be able to optionally instruct the Exchange to re-price or cancel a D-Limit order under specified circumstances.

Accordingly, based on the forgoing, the Exchange does not believe that the proposed rule change raises any novel issues not already considered by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance IEX's competitiveness with other markets by further enhancing IEX's D-Limit order type functionality. As discussed in the Purpose section, the proposal is designed to incentivize the entry of additional liquidity providing orders on IEX by offering Members the flexibility of including an optional instruction to either cancel or re-price a D-Limit order that has been price adjusted during a period of quote instability, if 10 milliseconds after the most recent quote instability determination that resulted in a price adjustment, the order is priced less aggressively than the NBB (NBO) for buy (sell) orders. By giving more opportunities to Members to make their D-Limit orders more competitive (if not canceled) after a period of quote instability ends, IEX believes this proposal will enhance opportunities for price discovery and increase the overall displayed (and non-displayed) liquidity profile on the Exchange, to the benefit of all market participants.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. All Members would be eligible to include the optional cancel or re-price instruction on any or all of their D-Limit orders in the same manner. Moreover, the proposal would provide potential benefits to all Members to the extent that there is more liquidity available on IEX as a result of increased use of D-Limit orders attributable to the ability to enter such orders with optional cancellation or re-pricing instructions.

[38] *See* MEMX Rule 11.6(j)(A)(i) and PEARL Rule 2614(g)(1)(C).

[39] *See supra* note 38.

[40] *See supra* note 38.

[41] *See* MEMX Rule 11.16(e)(5)(B) and PEARL Rule 2622(e).

[42] *See, e.g.,* IEX Rule 11.190(b)(11)(G)(i); *see also* MEMX Rule 11.6(f); PEARL Rule 2614(c)(7).

[43] *See* BZX Rule 11.9(c)(10).

[44] *See* EDGX Rule 11.8(g).

[45] *See* IEX Rule 11.190(b)(10).

[46] *See* IEX Rule 1.160(t).

[47] *See* EDGX Rule 11.8(g)(10). By contrast an IEX Discretionary Peg order will never exercise discretion during a period of quote instability as defined in IEX Rule 11.190(b)(10)(K).

[48] *See* IEX Rule 11.190(b)(9).

[49] *See* IEX Rule 11.190(b)(8).

[50] *See* IEX Rule 1.160(t).

[51] *See, e.g.,* Cboe EDGA, Inc. Equity (''EDGA'') Rule 11.8(e) and the Nasdaq Stock Market LLC (''Nasdaq'') Rule 4703(g).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–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–IEX–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 offices 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–IEX–2022–10, and should be submitted on or before December 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25663 Filed 11–23–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96359; File No. SR–CboeBZX–2022–038]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Rule 11.28(a) To Extend the MOC Cut-Off Time

November 18, 2022.

On August 5, 2022, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend BZX Rule 11.28(a) to extend the cut-off time for accepting Market-on-Close orders entered for participation in the Cboe Market Close. The proposed rule change was published for comment in the **Federal Register** on August 24, 2022.[3] On October 4, 2022, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On November 11, 2022, the Exchange submitted Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 amended and superseded the proposed rule change as originally filed.[6] The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend Rule 11.28(a) to extend the Cboe Market Close MOC Cut-Off Time from 3:35 p.m. Eastern Time to 3:49 p.m. Eastern Time. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[52] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95529 (August 17, 2022), 87 FR 52092.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 95967, 87 FR 61425 (October 11, 2022). The Commission designated November 22, 2022, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2022-038/srcboebzx2022038.htm.*

[7] 15 U.S.C. 78s(b)(2)(B).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 11.28 (Cboe Market Close, a Closing Match Process for Non-BZX-Listed Securities) provides Members an optional closing match process for non-BZX-Listed securities, known as Cboe Market Close (''CMC''). Currently, per Rule 11.28(a) (Order Entry) Members [8] may enter, cancel, or replace Market-on-Close (''MOC'') orders designated for participation in CMC beginning at 6:00 a.m. Eastern Time [9] up to 3:35 p.m. (''MOC Cut-Off Time''). The Exchange now proposes to move the MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. The Exchange is not proposing to make any other changes to the CMC process.

By way of background, on May 5, 2017, the Exchange filed a proposed rule change to adopt CMC, a match process for MOC orders in non-BZX listed securities and on December 1, 2017, filed Amendment No. 1 [10] to that proposal (the ''Original Proposal'').[11] On January 17, 2018, the Commission, acting through authority delegated to the Division of Trading and Markets,[12] approved the Original Proposal (''Approval Order'').[13] On January 31, 2018, NYSE Group, Inc. (''NYSE'') and the Nasdaq Stock Market LLC (''Nasdaq'') filed petitions for review of the Approval Order (''Petitions for Review''). Pursuant to Commission Rule of Practice 431(e),[14] the Approval Order was stayed by the filing with the Commission of a notice of intention to petition for review.[15] On March 1, 2018, pursuant to Commission Rule of Practice 431, the Commission issued a scheduling order granting the Petitions of Review of the Approval Order, and provided until March 22, 2018, for any party or other person to file a written statement in support of, or in opposition to, the Approval Order.[16] On April 12, 2018, NYSE and Nasdaq submitted written statements opposing the Approval Order and BZX submitted a statement in support of the Approval Order.[17] On October 4, 2018, BZX filed Amendment No. 2 [18] to the Original Proposal.

The Commission conducted a de novo review of the CMC proposal and associated public record, including Amendment No. 2, the Petitions for Review, and all comments and statements submitted by certain exchanges, issuers, and other market participants,[19] to determine whether the proposal was consistent with the requirements of the Act and the rules and regulations issued thereunder that are applicable to a national securities exchange.[20] The Commission noted that under Rule 700(b)(3) of the Commission's Rule of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [21]

Importantly, after reviewing the entire record, the Commission concluded that BZX met its burden to show that the proposed rule change was consistent with the Act, and pursuant to its January 21, 2020, order, set aside the Approval Order and approved BZX's CMC proposal, as amended (''Final Approval Order'').[22] Notably, the Commission stated that the record ''demonstrate[d] that Cboe Market Close should introduce and promote competitive forces among national securities exchanges for the execution of MOC orders'' [23] and that ''the record demonstrate[d] that Cboe Market Close should not disrupt the closing auction price discovery process nor should it materially increase the risk of manipulation of official closing prices''.[24] For the reasons discussed more fully below, the Exchange believes that when applying the Commission's analysis in the Final Approval Order to the current proposal, such review would similarly conclude that this proposal is consistent with the Act and should be approved.

Since the Original Proposal various exchanges have extended the MOC cut-off times for their closing auctions, moving them closer to 4:00 p.m.[25] Additionally, closing price match services offered by off-exchange venues have grown in popularity,[26] including alternative trading systems (''ATS'') that offer a MOC cut-off time as close as 30-seconds before the primary exchanges'

[8] The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to section 15 of the Act, and which has been approved by the Exchange. *See* Rule 1.5(n), definition of ''Member''.

[9] All times noted throughout are in Eastern Time.

[10] The only change in Amendment No. 1 was to rename the proposed closing match process as Cboe Market Close. Per the Commission, because Amendment No. 1 was a technical amendment and did not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 was not subject to notice and comment.

[11] *See* Securities Exchange Act Release No. 34–80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR–Bats–BZX–2017–34) (Notice of Filing of a Proposed Rule Change to Introduce Bats Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28).

[12] 17 CFR 200.30–3(a)(12).

[13] *See* Securities Exchange Act Release No. 34–82522 (January 17, 2018), 83 FR 3205 (January 23, 2018) (SR–BatsBZX–2017–34) (Notice of Filing of Amendment No. 1 and Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28).

[14] 17 CFR 201.431(e).

[15] *See* Letter to Christopher Solgan, Assistant General Counsel, Cboe Global Markets, Inc. (Jan. 24, 2018) (providing notice of receipt of notices of intention to petition for review of delegated action and stay of order), available at: *https://www.sec.gov/rules/sro/batsbzx/2018/sr-batsbzx-2017-34-letter-from-secretary-to-cboe.pdf.*

[16] *See* Securities Exchange Act Release No. 82794, 83 FR 9561 (Mar. 6, 2018). On March 16, 2018, the Office of the Secretary, acting by delegated authority, issued an order on behalf of the Commission granting a motion for an extension of time to file statements on or before April 12, 2018. *See* Securities Exchange Act Release No. 82896, 83 FR 12633 (Mar. 22, 2018).

[17] *See* Statement of NYSE Group, Inc., in Opposition to the Division's Order Approving a Rule to Introduce Cboe Market Close (''NYSE Statement''); Statement of the Nasdaq Stock Market LLC in Opposition to Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Introduce Cboe Market Close (''Nasdaq Statement''); and Statement of Cboe BZX Exchange, Inc., in support of Commission Staff's Approval Order (''BZX Statement''), available at: *https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm.*

[18] *See* Securities Exchange Act Release No. 34–84670 (November 28, 2018), 83 FR 62646 (December 4, 2018) (SR–BatsBZX–2017–34) (''Notice of Filing of Amendment No. 2 to Proposed Rule Change to Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28'').

[19] *See* ''Statements on File No. SR–BatsBZX–2017–34'', available at: *https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm.*

[20] *See* Securities Exchange Act Release No. 34–88008 (January 21, 2020), 85 FR 4726 (January 27, 2020) (SR–BatsBZX–2017–34) (''Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28'').

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *See* Securities Exchange Act Release No. 34–84454 (October 19, 2018), 83 FR 53923 (October 25, 2018) (SR–Nasdaq–2018–068) (Order approving a rule change by Nasdaq) (The Commission approved a rule change by Nasdaq to move the cut-off times for the entry of MOC and LOC orders from 3:50 p.m. to 3:55 p.m.); *see also* Securities Exchange Act Release No. 34–85021 (January 31, 2019) (SR–NYSE–2018–58) (Order approving a rule change by NYSE) (The Commission approved a rule change by the NYSE to amend Rule 123C to extend the cut-off times for order entry and cancellation for participation in the closing auction, from 3:45 p.m. to 3:50 p.m.).

[26] *See infra,* ''Price Discovery'' and ''Fragmentation'', which describes the growth of off-exchange closing volume.

cut-off times, as well as MOC cut-off times aligned with those of NYSE, NYSE Arca, and Nasdaq.[27] As the market structure for closing auctions and closing price match offerings has continued to evolve, and in response to customer feedback and to better compete with off-exchange venues, the Exchange is proposing this rule change to align CMC's MOC Cut-Off Time more closely with the other exchanges and off-exchange venues.

The Exchange notes that Members have requested a MOC Cut-Off Time that is closer to the end of Regular Trading Hours [28] so that they may retain control of their trading for a longer period and be better able to manage their trading at the close.[29] Generally speaking, notional trading and trading volatility are typically at their highest towards the end of Regular Trading Hours. Accordingly, market participants often prefer to trade as close to 4:00 p.m. as possible, because doing so can provide them with more time to seek better priced liquidity for their orders in a variety of ways, including but not limited to, finding contra-side liquidity in the marketplace and trading directly against such interest, or guaranteeing a customer order at a price better than the national best bid or offer by committing capital to an order and filling it in a principal capacity, as well as continuing to trade orders algorithmically into the close, thus reducing the size of their outstanding orders that they may decide to commit to CMC or the primary auctions.

Additionally, Members have indicated that extending the MOC Cut-Off Time to 3:49 p.m. will help to make CMC a more comparable alternative to NYSE and Nasdaq, which have MOC cut-off times of 3:50 p.m.[30] and 3:55 p.m.,[31] respectively. For reasons discussed directly above, cut-off times closer to 4:00 p.m. are beneficial to market participants, and by extending CMC's MOC Cut-Off Time to 3:49 p.m., CMC will be better positioned to serve as a viable option for market participants to consider when deciding which venues to route their MOC orders, thus enhancing intermarket competition.

In support of the above, the chart below shows the total traded volume across all market centers, from 3:30 p.m. to 4:00 p.m. in 30-seconds intervals, and includes labels for the different MOC cut-off times for CMC, NYSE, and Nasdaq. As illustrated, at NYSE's 3:50 p.m. MOC cut-off time, Nasdaq's 3:55 p.m. MOC cut-off time, and 4:00 p.m. market close, there is a noticeable increase in traded volume in the overall marketplace, with volume relatively flat in the overall marketplace prior to those times. Comparatively, there is no observed spike in traded volume in the overall marketplace at the current CMC MOC Cut-Off Time of 3:35 p.m. The Exchange believes that this data substantiates the view that a MOC cut-off time closer to 4:00 p.m. is valued by market participants, and that by extending the CMC MOC Cut-Off Time to 3:49 p.m. CMC will be better positioned as a viable alternative to the primary exchanges' closing auctions, ''foster[ing] price competition and thereby decreas[ing] costs for market participants.'' [32]

[27] For example, JP Morgan Securities' ATS, JPB–X, offers Close Price Match. This functionality utilizes a conditional order process to match orders and crosses them at the security's official closing prices, as determined by the closing auction at the primary exchange for a security. The Close Price Match time for an NMS stock is currently 30-seconds before the MOC cut-off time for that stock's primary exchange. Additionally, Instinet, LLC's ATS, CBX provides for three MOC Crossing Sessions, which consist of: a cross for securities where the primary listing exchange is the Nasdaq (''Nasdaq Cross''), a cross for securities where the primary listing exchange is the NYSE Arca (''Arca Cross''), and a cross for securities where the primary listing exchange is the NYSE (''NYSE Cross'') (collectively, ''MOC Crosses''). Each MOC Cross occurs two minutes prior to the relevant exchange's cut-off time; *i.e.* the Nasdaq Cross currently occurs at or near 3:53 p.m., the NYSE Cross at or near 3:48 p.m., and the Arca Cross at or near 3:57 p.m. *See* Form ATS–N, JPB–X, available at: *https://www.sec.gov/Archives/edgar//data/782124/000001961722000459/xslATS-N_X01/primary_doc.xml; see also* Form ATS–N, Instinet, LLC's ATS, CBX, available at: *https://www.sec.gov/Archives/edgar/data/310607//0000310607/22000009/xslATS-N_X01/primary_doc.xml.*

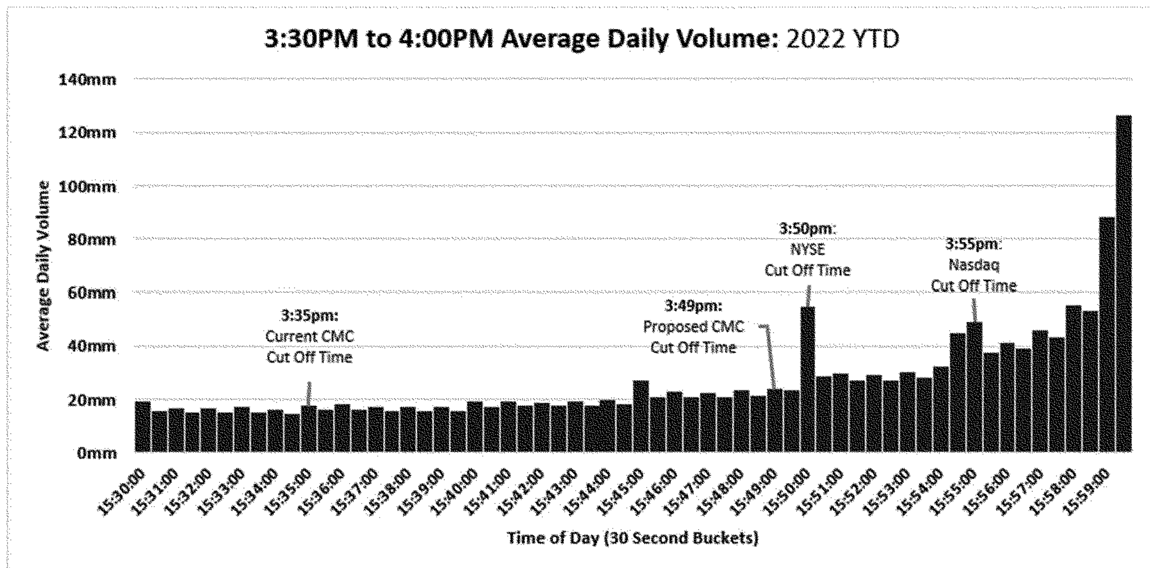
[28] The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* Rule 1.2 (w), definition of, ''Regular Trading Hours.''

[29] The Exchange notes that part of its rationale for extending CMC's MOC Cut-Off Time is substantively identical to that of other exchanges moving their MOC cut-off times to later in the trading day, namely, NYSE and Nasdaq. *See* Securities Exchange Act Release No. 34–84454 (October 19, 2018), 83 FR 18580 (October 25, 2018) (SR–Nasdaq–2018–068) (''Specifically, the Exchange believes that extending the cutoff times for submitting on close orders will allow market participants to retain control over their orders for a longer period of time, and thereby assist those market participants in managing their trading at the close.''); *see also* Securities Exchange Act Release No. 34–84804 (December 12, 2018), 83 FR 64910 (December 18, 2018) (SR–NYSE–2018–58) (''The Exchange believes that extending the cut-off times for entry and cancellation of MOC and LOC Orders, cancellation of CO orders, as well as when the Exchange would begin disseminating Order Imbalance Information for the close would. . .allow market participants to retain control over their orders for a longer period of time, and thereby assist those market participants in managing their trading at the close.'').

[30] *See* NYSE Rule 73.5(a)(8), Closing Auction Imbalance Freeze Time.

[31] *See* Nasdaq Rule 4702(b)(11)(A), Market On Close Order.

[32] *Supra* note 20.



Source: Internal Exchange Data

The Exchange also notes that today's market participants, including users of CMC, are technologically equipped [33] to handle a 3:49 p.m. MOC Cut-Off Time. As a general matter, today's market participants, including CMC users, rely on electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decisions on an automated basis, in times typically measured in microseconds. In this regard, the Exchange believes that if a CMC user receives a message that their MOC order was not matched in CMC,[34] such CMC user will have more than enough time to reroute their MOC order to the primary exchange. Importantly, the Exchange discussed the proposed change with both current CMC users and potential new CMC users [35] to gauge whether a MOC Cut-Off Time one-minute prior to the NYSE cut-off time, and six-minutes prior to the Nasdaq cut-off time, would present operational or technological challenges, and confirmed that both current CMC users as well as potential new CMC users can in fact technologically manage the proposed change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[36] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [37] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [38] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that moving the MOC Cut-Off Time to 3:49 p.m. would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow Members to retain control over their orders for a longer period, thereby assisting market participants in managing their trading at the close. As discussed more fully above, market participants may prefer to trade as close to 4:00 p.m. as possible,

[33] The Exchange notes that today's equities markets involve the widespread use of automated trading algorithms and routing solutions, as well as market connectivity options with speeds often measured in microseconds. *See generally* ''Staff Report on Algorithmic Trading in U.S. Capital Markets'' (August 5, 2020), available at *https://www.sec.gov/tm/reports-and-publications/special-studies/algo_trading_report_2020* (''Algorithmic Trading Report'') (''Over the past decade, the 'manual handling of institutional orders is increasingly rare and has been replaced by sophisticated institutional order execution algorithms and smart order routing systems.'') (''The secondary market for U.S.-listed equity securities that has developed within this structure is now primarily automated. The process of trading has changed dramatically primarily as a result of developments in technologies for generating, routing, and executing orders, as well as by the requirement imposed by law and regulation.'') (''Modern equity markets are connected in part by the data flowing between market centers. An enormous volume of data is available to market participants. In recent years, there has been an exponential growth in the amount of market data available, the speed with which it is disseminated, and the computer power used to analyze and react to price movements.'').

[34] The CMC Closing Match Process—*i.e.,* the matching of all buy and sell MOC orders entered into the System by time priority at the MOC Cut-Off Time, the electronic notification to Members of any unmatched MOC orders, and the dissemination by the Exchange of the total size of all buy and sell orders matched via CMC via the Cboe Auction Feed—generally occurs within microseconds. As such, a MOC Cut-Off Time one-minute prior to the primary exchanges' cut-off times is a sufficient period of time for Members to reroute their unmatched MOC orders to the primary exchanges, should they choose to do so.

[35] The Exchange discussed the proposed amendment with both current CMC users, as well as potential new users. By way of background, a large majority of CMC Users are mid-size, regional broker dealers that utilize third-party front-end providers or broker-dealers that provide them with electronic and automated trading solutions such as algorithms and smart order routers, which they use to access CMC. Specifically, the Exchange discussed the proposed amendment with CMC's Users' two (2) third-party providers whose end users are responsible for 100% of CMC's volume, and these providers indicated that the automated routing and trading solutions they offer to CMC's users can appropriately manage the proposed MOC Cut-Off Time. Additionally, the Exchange discussed the proposed amendment with potential new users of CMC (approximately sixty (60) market participants, including proprietary trading firms, regional broker-dealers, and bulge bracket broker-dealers). These market participants indicated that amending the MOC Cut-Off Time would likely encourage them to use CMC as part of their trading strategies (whether directly or through a third-party provider) because the proposed MOC Cut-Off Time enables market participants to hold onto and trade their orders closer to 4:00 p.m. and makes CMC a more viable alternative to the primary exchanges' closing auctions.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] *Id.*

because doing so can provide them with more time to seek better priced liquidity for their orders in a variety of ways, as well as give them more time to determine the size of their outstanding orders that they may decide to commit to CMC the primary auctions, or services offered by off-exchange venues such as ATSs.

Additionally, the Exchange believes that a MOC Cut-Off Time fifteen-minutes (15) prior to NYSE's cut-off time, and twenty-five-minutes (25) prior to Nasdaq's cut-off time, is no longer necessary. Rather, the Exchange notes that today's market participants are technologically equipped [39] to handle a 3:49 p.m. MOC Cut-Off Time. Specifically, CMC's current users utilizes third-party providers or broker-dealers [40] that provide them with electronic trading technology enabling them to quickly react to market conditions and messages, such as the Cboe Auction Feed. Moreover, as noted above, many market participants, including non-users of CMC, utilize electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decisions on an automated basis, in times often measured in microseconds. Therefore, the Exchange believes that both current users of CMC, as well as those that may utilize CMC following approval of this amendment, will be technologically equipped to efficiently respond to CMC's publication of matched shares and should they so choose, reroute any unmatched MOC orders to the respective primary closing auction.[41]

The Exchange acknowledges that there are market participants that may not currently possess internal high-speed routing and trading technology. However, such market participants may, and likely already do, utilize routing and trading services offered by third-party providers or broker-dealers [42] to handle and execute their orders electronically. Accordingly, the Exchange believes that the proposed MOC Cut-Off Time is not likely to result in disparate treatment amongst CMC users and other market participants.

The Exchange also believes that the extension of cut-off times by the primary exchanges since CMC's proposal, as well as the growth of off-exchange venues [43] with cut-off times in such close proximity to the end of Regular Trading Hours is indicative of Members' desires for such offerings. Logically, such a change in market structure would not have occurred if market participants did not already possess the operational and technological wherewithal to effectively manage the multitude of cut-off times offered by the exchanges and off-exchange venues.

Moreover, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because extending the MOC Cut-Off Time to 3:49 p.m. would more closely align the CMC MOC Cut-Off Time to the cut-off times in place for the primary exchanges.[44] For the reasons discussed more fully above, the primary exchanges' cut-off times are beneficial to market participants because of their proximity to 4:00 p.m. By moving the MOC Cut-Off Time closer to the primary exchanges' cut-off times, CMC can become a comparable alternative to the primary exchanges' closing auctions for Members to route their unpriced MOC orders, and "should foster price competition and thereby decrease costs for market participants." [45] Importantly, even with a MOC Cut-Off Time closer to the primary exchanges' cut-off times, CMC removes any perceived impact on the primary listing markets' close by publishing the number of matched order shares, by security, in advance of the primary markets' cut-off time. The total matched shares would still be disseminated by the Exchange free of charge via the Cboe Auction Feed, albeit at the new proposed MOC Cut-Off Time of 3:49 p.m. Because of the speeds and widespread use of market technology the market makers on the primary exchanges could, should they choose to do so, incorporate the Cboe Auction Feed information into their closing processes.[46] Additionally, as discussed above, because of the market technology utilized by market participants in today's markets, those who choose to participate in CMC will still have ample time [47] to reroute any MOC orders not matched via CMC to reach the primary market to be included in their closing auction process. Specifically, CMC's current users rely on third-party providers or broker-dealers [48] to handle and execute their orders electronically. Furthermore, potential new users of

[39] *Supra* note 33.

[40] As a general matter, third-party technology providers and broker-dealers with electronic trading offerings provide automated trading and routing products and services to market participants that may not possess their own proprietary technology, or simply choose to leverage third party solutions they deem superior to their own internal technology. By way of example, portfolio managers responsible for reweighting their managed funds may not possess internal automated routing and algorithmic trading capabilities, and instead utilize third-party solutions enabling them to trade on an automated basis. As such, the proposed MOC Cut-Off Time of 3:49 p.m. is not likely to negatively impact market participants who may not possess the internal capabilities to reroute unmatched CMC MOC orders to the primary exchanges' closing auctions. The Exchange further notes that the utilization of third parties and broker-dealers for technological trading solutions was even noted by the Commission in its Algorithmic Trading Report. *Supra* note 33 ("Institutions that do not create their own algorithms generally use algorithms provided to them by institutional brokers.") ("Brokers are tasked by their customers with finding liquidity in a complex, fragmented market, achieving best execution, and minimizing information leakage and other implicit costs. To try to meet these goals, brokers use, and offer to their customers, a wide range of execution algorithms.")

[41] By way of background, CMC calculates the matched shares at the MOC Cut-Off Time (currently 3:35 p.m.) Importantly, the matching process happens quickly, and while the duration may vary, the total matching process typically takes a fraction of second (*e.g.,* ~948 microseconds), with the maximum being around 1-second. With these timeframes in mind, a user should in most instances knows the paired CMC quantity no later than 3:49:01 p.m., leaving the user at least fifty-nine-seconds (59) to reroute any unpaired CMC MOC orders to the primary exchanges' closing auctions. As noted by the Exchange throughout this filing, the speed of today's trading technology is typically measured in microseconds, making fifty-nine-seconds (59) a significant amount of time for a user to make an automated trading decision. For reference, a microsecond is 1-millionth of a second.

[42] *Supra* note 40.

[43] *Supra* note 27.

[44] As noted above, NYSE's cut-off time is 3:50 p.m., and Nasdaq's cut-off time is 3:55 p.m. NYSE Arca's cut-off time for MOC orders is 3:59 p.m. *See* "Trading Information—Closing Auctions", available at: *https://www.nyse.com/markets/nyse-arca/trading-info.*

[45] Supra note 20.

[46] The Exchange spoke with four (4) designated market makers for the primary exchanges and confirmed that while they do not currently monitor the Cboe Auction Feed, they are technically equipped to do so.

[47] *Supra* note 41.

[48] As a general matter, third-party technology providers and broker-dealers with electronic trading offerings provide automated trading and routing products and services to market participants that may not possess their own proprietary technology, or simply choose to leverage third party solutions they deem superior to their own internal technology. By way of example, portfolio managers responsible for reweighting their managed funds may not possess internal automated routing and algorithmic trading capabilities, and instead utilize third-party solutions enabling them to trade on an automated basis. As such, the proposed MOC Cut-Off Time of 3:49 p.m. is not likely to negatively impact market participants who may not possess the internal capabilities to reroute unmatched CMC MOC orders to the primary exchanges' closing auctions. The Exchange further notes that the utilization of third parties and broker-dealers for technological trading solutions was even noted by the Commission in its Algorithmic Trading Report. *Supra* note 33 ("Institutions that do not create their own algorithms generally use algorithms provided to them by institutional brokers.") ("Brokers are tasked by their customers with finding liquidity in a complex, fragmented market, achieving best execution, and minimizing information leakage and other implicit costs. To try to meet these goals, brokers use, and offer to their customers, a wide range of execution algorithms.")

CMC either likely already possess the necessary routing and trading technology or may simply choose to utilize third-party solutions.[49] Accordingly, the Exchange believes that the proposed MOC Cut-Off Time is not likely to result in disparate treatment amongst CMC users.

The proposed rule change would also more closely align CMC's MOC Cut-Off Time with that of off-exchange venues that offer cut-off times aligned with those currently offered by the primary exchanges, and as little as 30-seconds prior to market close.[50] As such, the Exchange believes that the proposed rule change is supported by both ample precedent as well as current market structure, and should not present any new or novel issues that market participants must consider when managing their trading and determining which exchange or off-exchange venue to route their MOC orders.

Price Discovery [51]

The Exchange believes that the proposed rule change is consistent with the section 6(b)(5) requirements.[52] As previously noted by the Exchange,[53] CMC accepts and matches only unpriced MOC orders. By matching only unpriced MOC orders, and not Limit-On-Close (''LOC'') orders and executing those matched MOC orders that naturally pair off with each other and effectively cancel each other out, CMC is designed to avoid impacting price discovery. While the proposed rule change would have CMC accept MOC orders up to 3:49 p.m., such extension will not change this underlying functionality. As previously noted by the Exchange,[54] matched MOC orders are merely recipients of price formation and do not directly contribute to the price formation process. Indeed, in its Final Approval Order for CMC, even the Commission noted that unpriced, paired-off MOC orders do not directly contribute to setting the official closing price of securities on the primary listing exchanges but, rather, are inherently the recipients of price formation information.[55]

Moreover, the Exchange believes that even if extending the MOC Cut-Off Time to 3:49 p.m. reduces the number of MOC orders routed to a security's primary listing market, CMC is designed to remove any perceived adverse impact on the primary listing markets' close because the total matched shares would still be disseminated by the Exchange free of charge via the Cboe Auction Feed prior to the primary exchanges' cut-off times. Additionally, because of the technological capabilities of today's market participants discussed more fully above, the market makers on the primary exchanges could, should they choose to do so, incorporate the Cboe Auction Feed information into their closing processes. Furthermore, current users of CMC are technologically equipped to manage the proposed CMC MOC-Cut Off Time. Potential new CMC users are capable of rerouting any unmatched CMC MOC orders to the primary exchanges. As discussed above, CMC's current users rely on third-party solutions that provide them with the technological capability to appropriately manage the proposed MOC Cut-Off Time above. Similarly, given the widespread use of routing and trading technology in today's markets, it is likely that potential new CMC users already possess the technological capabilities to manage the proposed MOC Cut-Off time. Even where potential new users of CMC may not possess internally high-speed routing and trading technology, such users can utilize, to the extent they do not so already, third-party providers and broker-dealers to handle and route their orders electronically.

Fragmentation [56]

Another matter addressed by the Commission in their review of the Original Proposal was fragmentation, and whether CMC would fragment the markets beyond what currently occurs through off-exchange close price matching venues offered by broker-dealers.[57] While comparisons to off-exchange MOC activity may not be a perfect measure of the potential resulting effect of CMC market fragmentation,[58] the proposed amendment is designed to enable CMC to better compete with off-exchange venues and for closing volume that is *already* executed away from the primary listing venues.

As illustrated in the first two charts below, a growing proportion of trading volume at the close occurs on off-exchange venues, where the TRF close volume, as a percent of Exchange close volume, has risen steadily since January 2019.[59] In the third chart the Exchange also studied the top ten most actively traded securities during the same time period and found that a significant portion of the total closing volume is executed off-exchange, following the dissemination of the official closing price.

[49] *Supra* note 40.

[50] *Supra* note 27.

[51] As part of this proposed rule change the Exchange is addressing several questions considered by the Commission in connection with the Exchange's Original Proposal, including price discovery and fragmentation, market complexity and operational risk, and manipulation. Importantly, in considering these questions, the Commission found that based on CMC's design and the record before the Commission, that the proposal was consistent with Section 6(b)(5) of the Act. *Supra* note 20.

[52] The Exchange notes that the Commission, in its Final Approval Order, carefully analyzed and considered CMC and its potential effects, if any, on the primary listing exchanges' closing auctions, including their price discovery functions. Importantly, the Commission found that, based on CMC's design, CMC should not disrupt the price discovery process in the closing auctions of the primary listing exchanges. *Supra* note 20.

[53] *See* Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc. (August 2, 2017), available at: *https://www.sec.gov//batsbzx-2017-34/batsbzx201734-2162452-157801.pdf; see also* Letter from Joanne Moffic-Silver (October 11, 2017), available at: *https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734-2634580-161229.pdf.*

[54] *Id.*

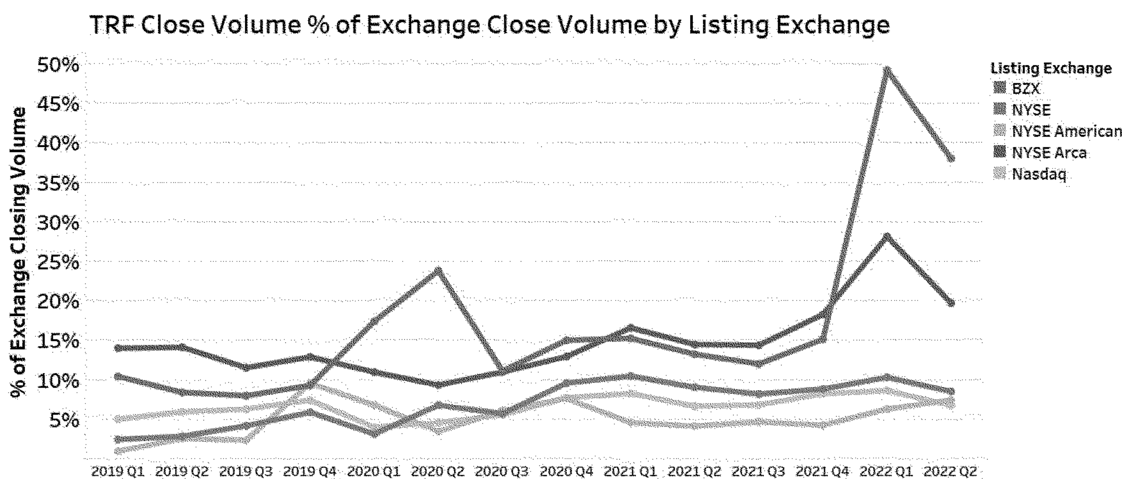
[55] *Supra* note 20.

[56] *Supra* note 51.

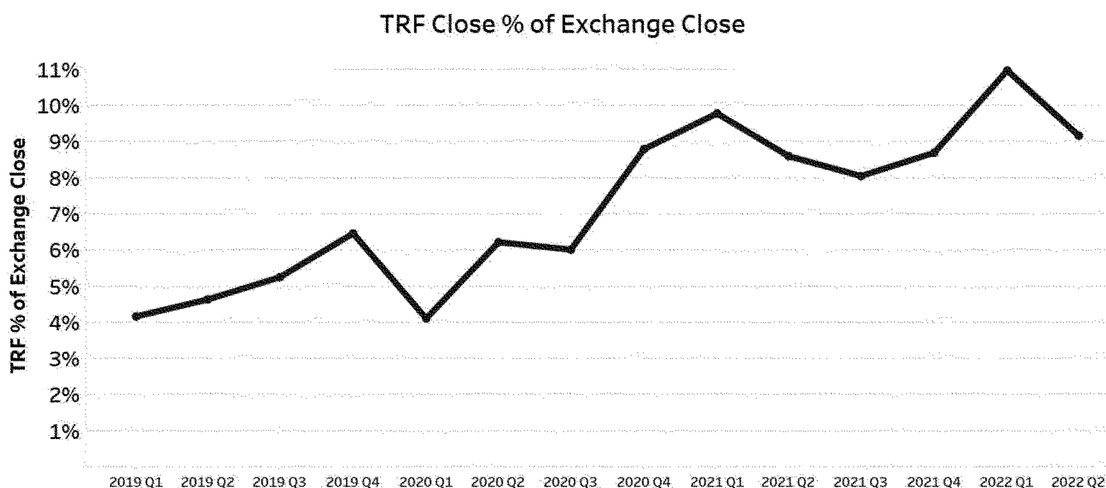
[57] *Supra* note 20.

[58] Id (''. . .[C]omparisons to off-exchange activity are not a perfect measure of the potential resulting effect of the [CMC] proposal because the structures of the many off-exchange mechanisms differ from the structure of Cboe Market Close.'').

[59] The Exchange conducted an analysis of off-exchange/Trade Reporting Facility (''TRF'') closing volume that occurs after market close, 4:00 p.m. Eastern Time, where the price is equal to the closing price and for which such trades are reported with a Prior Reference Price (''PRP'') trade reporting modifier. The TRF is a trade reporting facility where FINRA members may report trades in Nasdaq-listed and other exchange-listed securities, that were executed otherwise than on an exchange. The first two charts represent TRF executed volume at the close with the ''PRP'' flag that equals the closing auction price, divided by total on exchange auction volume.



Source: Internal Exchange Data.



Source: Internal Exchange Data.

	Symbol	Primary exchange	TRF close % inc. PRP[60]
1	AAPL	Nasdaq	9
2	T	NYSE	6
3	BAC	NYSE	10
4	INTC	Nasdaq	5
5	MSFT	Nasdaq	7
6	F	NYSE	9
7	PFE	NYSE	5
8	CSCO	Nasdaq	5
9	CMCSA	Nasdaq	7
10	WFC	NYSE	9

Source: Internal Exchange Data.

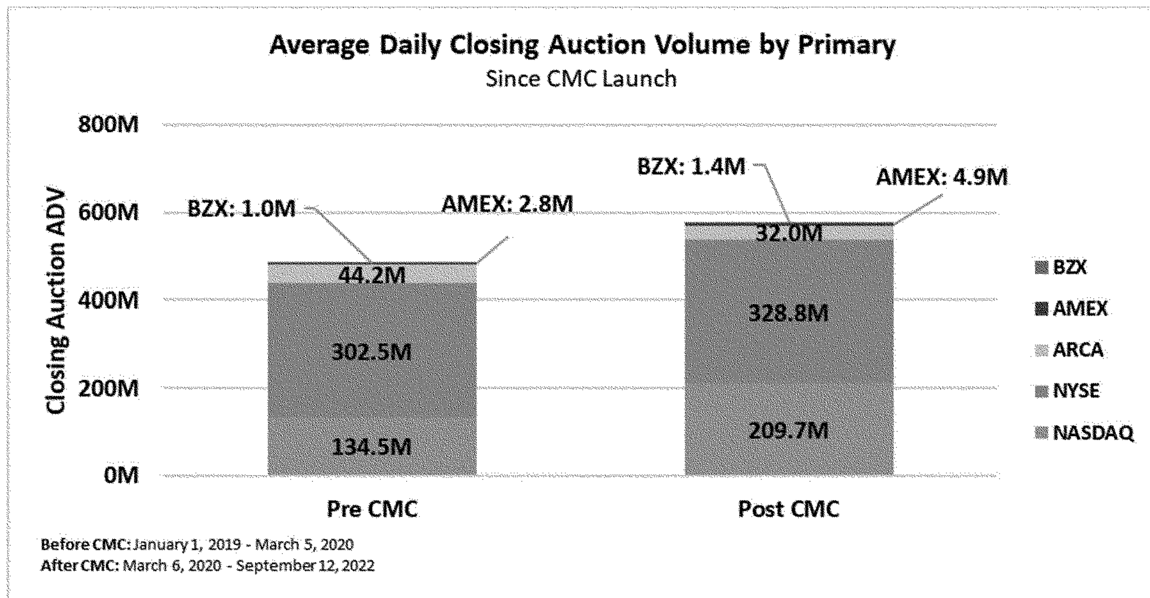
Given the significant volume of off-exchange MOC activity, the Exchange believes there is ample opportunity for CMC to attract *existing* MOC volume that is already being executed away from CMC and the primary listing venues. As discussed above, market participants have expressed the value of being able to trade closer to 4:00 p.m. In this regard, with the proposed MOC Cut-Off Time CMC will be able to meet the needs of market participants, and better compete with off-exchange venues, ''foster[ing] price competition and thereby decreas[ing] costs for market participants.[61] Members may prefer to execute their MOC orders via CMC rather than off-exchange venues for reasons such as the increased transparency and reliability that exists when investors execute their orders on public, well-regulated exchanges.

[60] As defined above, ''PRP''.

[61] *Supra* note 20.

Moreover, by attracting such order flow, CMC can help to increase the amount of volume at the close executed on systems subject to the resiliency requirements of Regulation SCI.[62]

Indeed, an analysis by the Exchange shows that the closing auction volume on both NYSE and Nasdaq has increased despite the launch of CMC on March 6, 2020. Therefore, while the proposed amendment may lead to additional orders being routed to CMC rather than the primary exchanges' closing auctions, it cannot be said with certainty that such a change will significantly fragment the marketplace. In any event, the proposed extension of the MOC Cut-Off Time to 3:49 p.m. is not likely to materially increase market fragmentation and have a negative impact on the market because the data shows that even with the implementation of CMC, there is still a significant amount of volume executed on the primary exchanges' suggesting that market participants continue to utilize the primary closing auctions.



Source: Internal Exchange Data.

Market Complexity and Operational Risk[63]

The Exchange believes that the proposed rule change is simple and straightforward, and as such will not significantly increase market complexity or operational risk. The Exchange seeks only to extend the MOC Cut-Off Time to 3:49 p.m., leaving all other aspects of the CMC process intact. Members will not have to consider new operational requirements of monitoring and consuming a new data feed or consider the utilization of a new order type or implementation of new Exchange code. Rather, Members may continue to monitor the same data feed as they do today, the Cboe Auction Feed, and simply look for the publication of the CMC information at the new proposed MOC Cut-Off Time.

Additionally, as discussed more fully above, the Exchange discussed this proposal with current CMC users prior to submitting this proposal and learned that CMC's current users are technologically equipped[64] to manage a MOC Cut-Off Time closer to the primary exchanges' cut-off times, and that they can respond to CMC's publication of matched shares and quickly reroute any unmatched MOC orders to the respective primary closing auction. Moreover, CMC is a voluntary offering, and Members may freely decide whether to participate.

Furthermore, as noted throughout, both off-exchange venues and other exchanges already offer MOC cut-off times that are closer in time to the end of Regular Trading Hours. Specifically, as mentioned above, in 2018 Nasdaq received approval to move the cut-off times for the entry of MOC and Limit-On-Close (''LOC'') orders from 3:50 to 3:55 p.m.[65] Similarly, in 2018 the NYSE received approval from the SEC to extend their cut-off times for order entry and cancellation for participation their closing auction, from 3:45 p.m. to 3:50 p.m.[66] NYSE also offers discretionary-orders, which unlike MOC/LOC orders that are subject to NYSE's 3:50 p.m. cut-off, may be entered for participation in the closing auction until 3:59:50.[67] Additionally, market participants may enter MOC orders for participation in NYSE Arca's closing auction up to 3:59 p.m.[68] Finally, various off-exchange venues offer closing match processes with cut-off times aligned with those of

[62] *See* Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc., a Cboe Company (Oct. 11, 2017) (''Furthermore, [CMC] would operate on the Exchange's reliable SCI systems . . . significant MOC liquidity is conducted today by off-exchange venues. These venues are not SCI systems and, therefore, not subject to Regulation SCI's enhanced resiliency requirements. [CMC] could attract MOC orders from these off-exchange venues to the Exchange and its reliable SCI system, furthering the Commission's presumed desire for liquidity at the close to be conducted on SCI systems.'')

[63] *Supra* note 51.

[64] *Supra* note 41.

[65] *Supra* note 25.

[66] *Id.*

[67] *See* NYSE Rule 7.31(c)(2)(C); *see also* ''The Floor Broker's Modern Trading Tool'', available at: *https://www.nyse.com/article/trading/d-order* (''While D Orders are available for use throughout the trading day, most executions occur in the closing auction, where they're known as Closing D Orders. At 3:55 p.m., Closing D Order interest eligible to participate in the closing auction is added to the order imbalance feed at their discretionary price range. Closing D Orders can also be submitted, modified or cancelled up to 3:59:50 p.m. These distinct features of Closing D Orders are designed to facilitate the Floor Broker's traditional agency role on behalf of larger institutional interest, allowing Floor Brokers to work in conjunction with their customer to find larger liquidity opportunities.'').

[68] *See* ''Closing Auction Timeline'', available at: *https://www.nyse.com/markets/nyse-arca/trading-info.*

the primary exchanges, and even as close to 30-seconds before market close, 4:00 p.m.[69]

Accordingly, the Exchange believes that market participants are well accustomed to managing the various cut-off times in today's marketplace, and in incorporating these timelines into their trading decisions. The number of exchanges and off-exchange venues with extended cut-off times indicates that market participants find value in their ability to retain control of their trading heading into the end of Regular Trading Hours, and the primary exchanges and off-exchange venues have responded to such demand. Certainly, market participants would not desire cut-off times closer to the end of Regular Trading Hours if they could not technologically and operationally manage their trading accordingly. Therefore, the extension of CMC's MOC Cut-Off Time should not present market participants with any novel operational or technological complexities.

Manipulation [70]

As a general matter, the Exchange notes that the value to market participants in extending the MOC Cut-Off Time to 3:49 p.m. is not the proximity of CMC's matched shares message to the cut-off times of the primary exchanges. Rather, the value of the proposed amendment is the ability of users to trade their orders for a longer period of time before deciding whether to commit their MOC orders to CMC. Nevertheless, the Exchange does not expect that the proposed extension of the MOC Cut-Off Time to 3:49 p.m. will result in an increase of manipulative activity due to information asymmetries, or raise any unique manipulation concerns relative to how CMC exists today with a current MOC Cut-Time of 3:35 p.m.

The Exchange notes that any information CMC participants may be able to glean from their paired-off MOC orders, or from their unmatched MOC orders, is still limited in nature. For instance, any information that CMC participants may learn from receiving unmatched MOC order messages is still limited in nature because the CMC participant would still only know the unexecuted size of its own order.[71] Moreover, even if a Member chose to participate in CMC only to gather information about the direction of an imbalance and use such information to manipulate the closing price, the Member's orders were still eligible for execution subjecting the Member to economic risk.

While this proposal would result in the total shares for buy and sell orders in CMC being disseminated closer in time to the primary exchanges' cut-off times, this change does not suddenly make such information more valuable or useful in terms of enhancing opportunities for gaming and manipulating the official closing price. The proposed MOC Cut-Off Time is one-minute prior to NYSE's cut-off time of 3:50 p.m., and six-minutes prior to Nasdaq's cut-off time of 3:55 p.m. As noted above, today's markets are marked by technological solutions which typically operate in durations of microseconds. In this context, the separation between the CMC MOC Cut-Off Time and that of NYSE's and Nasdaq's is a substantial duration of time, during which much can change in the marketplace, thus limiting the value of information, if any, that can be gleaned from CMC's dissemination of matched shares at 3:49 p.m.

Furthermore, as with the current MOC Cut-Off Time, the proposed extension does not present any information asymmetries that do not already exist in today's markets, as the very nature of trading creates short term asymmetries of information to those who are parties to a trade.[72] Indeed, as noted by the Commission, any party to a trade gains valuable insight regarding the depth of the market when an order is executed or partially executed.[73] Additionally, NYSE imbalance information is already disseminated to NYSE floor brokers, who are permitted to share with their customers specific data from the imbalance feed.[74] Even in this case, though, the Commission stated that the value of such information is limited because the imbalance information does not represent overall supply and demand for a security, is subject to change, and is only one relevant piece of information.[75] Similarly, because any information gleaned by a CMC participant is limited only to the unexecuted size of their order, and relative to the depth of only the BZX pool of liquidity, the Exchange believes that the proposed extension of the MOC Cut-Off Time does not create an increased risk of manipulative trading activity.

Moreover, there are currently controls and processes in place to monitor for manipulative trading activity, such as the supervisory responsibilities and capabilities of exchanges and the expansive cross market surveillance conducted by FINRA. Following approval of this proposal, the Exchange, FINRA and others will continue to surveil for potential manipulative activity and when appropriate, bring enforcement actions against market participants engaged in manipulative trading activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change seeks merely to extend the MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m., enabling all Members to manage their trading for a longer period. The Exchange is not proposing to make any other changes to the CMC process. Moreover, CMC is a voluntary closing match process, and Members are not required to participate in the CMC. Additionally, the proposed rule change applies equally to all Members. Importantly, based on feedback from CMC users, the proposed MOC Cut-Off Time will not prevent CMC's current user's from participating in CMC, as CMC's current users are technologically equipped to manage a 3:49 p.m. MOC Cut-Off Time, and should they choose to do so, reroute MOC orders not matched in CMC to the primary exchanges' closing auctions.

Furthermore, the Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the proposed rule change more closely aligns the CMC MOC Cut-Off Time to the cut-off times of other exchanges, while still providing CMC participants with an opportunity to reroute any of their unpaired MOC orders to the

[69] *Supra* note 27.

[70] *Supra* note 51.

[71] The Exchange notes that in its Final Approval Order, even the Commission noted that, ''In particular, a market participant would only be able to determine the direction of the imbalance and would have difficulty determining the magnitude of any imbalance, as it would only know the unexecuted size of its own order. In addition, the information would only be with regard to the pool of liquidity on BZX and would provide no insight into imbalances on the primary listing exchange, competing auctions, ATSs, or other off-exchange matching services which, as described above, can represent a significant portion of trading volume at the close.'' *Supra* note 20.

[72] The Exchange also notes that in its approval order, even the Commission noted that, ''Further, the Commission believes information asymmetries as those described by commenters exist today and are inherent in trading, including with respect to closing auctions. For example, any party to a trade gains valuable insight regarding the depth of the market when an order is executed or partially executed.'' *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

primary exchanges. In this regard, the proposed rule change may make CMC a more viable alternative to the primary auctions and ''should foster price competition and thereby decrease costs for market participants.'' [76] Additionally, the proposed MOC Cut-Off Time may also enable the Exchange to more effectively compete with off-exchange venues that have cut-off times much closer in time to the market close and comprise a growing percentage of closing volume.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2022–038, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [77] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 1, to further inform the Commission's analysis of whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Act,[78] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis, and input from commenters with respect to, the consistency of the proposal with Sections 6(b)(5) [79] and 6(b)(8) [80] of the Act. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,[81] in addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendment No. 1. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. The Exchange states that CMC users are technologically equipped to handle a 3:49 p.m. MOC Cut-Off Time and that, if a CMC user receives a message that their MOC order was not matched in CMC, such CMC user will have more than enough time to reroute their MOC order to the primary exchange.[82] While the Exchange acknowledges that there are market participants that may not currently possess internal high-speed routing and trading technology, the Exchange states that such market participants may, and likely already do, utilize routing and trading services offered by third-party providers or broker-dealers to handle and execute their orders electronically.[83] Accordingly, the Exchange believes that the proposed MOC Cut-Off Time is not likely to result in disparate treatment amongst CMC users and other market participants.[84] What are commenters' views on whether the proposed MOC Cut-Off Time (3:49 p.m.), which would be one minute from NYSE's MOC cut-off time of 3:50 p.m. and six minutes from Nasdaq's MOC cut-off time of 3:55 p.m., would provide enough time for CMC users to reroute unmatched MOC orders to the primary exchanges should they choose to do so?

2. The Exchange states that total matched share information would still be disseminated by the Exchange free of charge via the Cboe Auction Feed, albeit at the new proposed MOC Cut-Off Time of 3:49 p.m.[85] The Exchange states that, because of the speeds and widespread use of market technology, market makers on the primary exchanges could, should they choose to do so, incorporate the Cboe Auction Feed information into their closing processes.[86] What are commenters' views on whether the dissemination of total matched share information at an MOC Cut-Off Time of 3:49 p.m. would provide enough time for market participants, including market makers, to access and incorporate such information into their closing trading strategies and processes should they choose to do so?

3. The Exchange states that, with an MOC Cut-Off Time at 3:49 p.m., CMC will be better positioned to serve as a viable option for market participants to consider when deciding which venues to route their MOC orders, thus enhancing intermarket competition.[87] In particular, the Exchange states that, by extending the MOC Cut-Off Time to 3:49 p.m., CMC will be better positioned as a viable alternative to the primary exchanges' closing auctions, ''foster[ing] price competition and thereby decreas[ing] costs for market participants.'' [88] The Exchange also states that the proposed MOC Cut-Off Time may enable the Exchange to more effectively compete with off-exchange venues that have cut-off times much closer in time to the market close and comprise a growing percentage of closing volume.[89] What are commenters' views on the extent to which an extension of the MOC Cut-Off Time to 3:49 p.m. would promote competition among MOC order execution venues and foster price competition for MOC order execution fees?

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5) and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to

[76] *Supra* note 20.

[77] 15 U.S.C. 78s(b)(2)(B).

[78] *Id.*

[79] 15 U.S.C. 78f(b)(5).

[80] 15 U.S.C. 78f(b)(8).

[81] *See supra* note 6.

[82] *See supra* Item II.A.1.

[83] *See supra* Item II.A.2.

[84] *See id.*

[85] *See id.*

[86] *See id.*

[87] *See supra* Item II.A.1.

[88] *See id.* (quoting the Final Approval Order).

[89] *See supra* Item II.B.

Rule 19b–4 under the Act,[90] any request for an opportunity to make an oral presentation.[91]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by December 16, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 30, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–038 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–038 and should be submitted on or before December 16, 2022. Rebuttal comments should be submitted by December 30, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[92]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25669 Filed 11–23–22; 8:45 am]

BILLING CODE 8011–01–P

[90] 17 CFR 240.19b–4.

[91] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[92] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96357; File No. SR–CboeBZX–2022–055]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fee Schedule

November 18, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 10, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to modify the required criteria of the Tape B Volume and Quoting Tier 1 and to clarify that fee code X[3] is applicable to certain routed orders that add or remove liquidity.[4]

The Exchange first notes that its listing business also operates in a highly-competitive market in which market participants, which includes issuers of securities, Lead Market Makers (''LMMs''), and other liquidity providers, can readily transfer their listings, opt not to participate, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. Footnote 13 of the Fee Schedule provides for the Tape B Volume and Quoting Tiers, which are designed to incentivize market participants to enroll in LMP Securities,[5] which the Exchange believes will enhance market quality in all securities listed on the Exchange and encourage issuers to list new products and transfer existing products to the Exchange.

The Exchange currently offers two Tape B Volume and Quoting Tiers under Footnote 13, which provide an additional rebate of $0.0001 (Tier 1) and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Fee code X is appended to routed orders.

[4] The Exchange initially filed the proposed fee changes on November 1, 2022 (SR–CboeBZX–2022–054). On November 10, 2022, the Exchange withdrew that filing and submitted this filing.

[5] ''LMP Securities'' means a list of securities included in the Liquidity Management Program, the universe of which is determined by the Exchange and published in a circular distributed to Members and on the Exchange's website. Such LMP Securities include all Cboe-listed Exchange-Traded Products (''ETPs'') and certain non-Cboe-listed ETPs for which the Exchange wants to incentivize Members to provide enhanced market quality.

$0.0002 (Tier 2) per share for orders that meet certain criteria. Tier 1 provides an additional rebate if (i) the Member is enrolled in at least 50 BZX-listed LMP Securities, for which it meets the following criteria for at least 50% of the trading days in the applicable month: (1) the Member has a NBBO Time [6] of equal to or greater than 15% or a NBBO Size Time [7] of equal to or greater than 25%; and (2) the Member has a Displayed Size Time [8] of equal to or greater than 90%; and (ii) the Member adds a Tape B ADV [9] of equal to or greater than 0.50% of the TCV.[10] All Members are eligible to enroll in LMP Securities and are eligible for the current Tape B Volume and Quoting Tiers. Such rebates are applicable to orders that add liquidity which are appended with fee code B.[11] LMP incentives are designed to apply to Tape B trades as BZX-listed securities are Tape B securities. In order to further incentivize market participants to achieve the Tape B Volume and Quoting Tier 1, the Exchange proposes to eliminate the Tape B ADV requirement from the second prong (ii) of the Tier 1 criteria, which will make the criteria less stringent.

Next, the Exchange proposes to clarify that fee code X is applicable to routed orders that add or remove liquidity. When certain fee codes were deleted from the Fee Schedule the Exchange simultaneously proposed to update fee code X to make clear it applies to all other routed orders that are not otherwise specified under other fee codes in the Fee Schedule.[12] However, the Exchange did not make clear in the fee code table that fee code X is therefore also applicable to orders that both add and remove liquidity.[13] Therefore, the Exchange is now proposing to add such language to the description of fee code X, as well as eliminate the reference to ''Removing'' liquidity in the Standard Rates header for the Routing Liquidity column (which is applicable to fee code X).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange Act of 1934 (the ''Act''),[14] in general, and furthers the objectives of Section 6(b)(4),[15] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities.

The Exchange notes that its listing business operates in a highly-competitive market in which market participants, which includes issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, opt not to participate, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule change to the Tape B Volume and Quoting Tier 1 reflects a competitive pricing structure designed to incentivize market participants to enroll in LMP Securities, which the Exchange believes will enhance market quality in all securities listed on the Exchange and encourage issuers to list new products and transfer existing products to the Exchange. The Exchange believes that the proposed change to the Tape B Volume and Quoting Tier1 is consistent with the Act and represent a reasonable, equitable, and not unfairly discriminatory means to incentivize liquidity provision in ETPs listed on the Exchange. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as an ETP listing venue. LMP incentives are designed to apply to Tape B trades as BZX-listed securities are Tape B securities. The proposed change is designed to make Volume and Quoting Tier 1 less stringent. The Exchange believes that the proposal to amend Tape B Volume and Quoting Tier 1 represents an equitable allocation of fees and other charges because the Tape B Volume and Quoting Tiers are available equally to all Members and all Members are eligible to enroll in LMP Securities. Based on the prior month's trading volume, the Exchange anticipates at least two Members will meet the amended Tape B Volume and Quoting Tier 1. Further, the Exchange believes that the proposal represents an equitable allocation of fees and other charges and is not unreasonably discriminatory because enrolling in LMP Securities is open to all Members and any Member that wishes to receive the Tape B Volume and Quoting Tier 1 must meet the proposed quoting and execution standards in order to receive the additional rebate, as outlined above. Where a Member does not meet the requirements, they will not receive the additional rebate. Further and as noted throughout, the Tape B Volume and Quoting Tiers are designed to enhance market quality in BZX-listed securities and to make the Exchange more competitive as an ETP listing venue.

The Exchange believes the proposal to modify fee code X to explicitly provide that it is applicable to routed orders that add and remove liquidity on the destination exchange is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposal is intended only to make a clarifying change to the Fee Schedule and involves no substantive change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed change to the Tape B Volume and Quoting Tier 1 burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX both among Members by incentivizing Members to enroll in LMP Securities and as a listing venue by enhancing market quality in BZX-listed securities. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as a listing venue. Accordingly, the Exchange does not believe that the

[6] ''NBBO Time'' means the average of the percentage of time during regular trading hours during which the Member maintains at least 100 shares at each of the NBB and NBO.

[7] ''NBBO Size Time'' means the percentage of time during regular trading hours during which there are size-setting quotes at the NBBO on the Exchange.

[8] ''Displayed Size Time'' means the percentage of time during regular trading hours during which the Member maintains at least 2,500 displayed shares on the bid and separately maintains at least 2,500 displayed shares on the offer that are priced no more than 2% away from the NBB and NBO, respectively.

[9] ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day.

[10] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[11] Fee code B is appended to a displayed order that adds liquidity to BZX (Tape B).

[12] *See* Securities Exchange Act No. 91002 (January 27, 2021) 86 FR 7902 (February 2, 2021) (SR–CboeBZX–2021–010).

[13] Under the Transaction Fees section of the Fee Schedule, bullet four provides ''[u]nless otherwise noted, all routing fees or rebates in the Fee Codes and Associated Fees table are for removing liquidity from the destination venue.''

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

proposed change will impair the ability of issuers, LMMs, other Members, or competing listing venues to maintain their competitive standing. The Exchange also notes that the proposed change is intended to enhance market quality in BZX-listed securities and other listed securities, to the benefit of all investors in such BZX-listed securities. The Exchange does not believe the proposed amendment would burden intramarket competition as it would be available to all Members uniformly.

The Exchange believes its proposal to clarify that fee code X is applicable to liquidity adding and removing orders will have no impact on competition as it involves no substantive change, but merely is a clarifying change to the existing Fee Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [16] and paragraph (f) of Rule 19b–4 [17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–055 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–055. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–055 and should be submitted on or before December 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25668 Filed 11–23–22; 8:45 am]

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96362; File No. SR–ISE–2022–25]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ATR and Re-Pricing Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality

November 18, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 2022, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules in connection with a technology migration to enhanced Nasdaq, Inc. (''Nasdaq'') functionality.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with a technology migration to enhanced Nasdaq functionality that will result in higher performance, scalability, and more robust architecture, the Exchange proposes to amend its rules to adopt certain trading functionality currently utilized at Nasdaq BX, Inc. (''BX''). As further discussed below, the Exchange is proposing to adopt such functionality substantially in the same form as currently on BX, while retaining certain intended differences between it and its affiliates.

The Exchange intends to begin implementation of the proposed rule change by Q4 2023. ISE would commence its implementation 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.

Re-Pricing

In connection with the technology migration, the Exchange proposes to adopt re-pricing functionality in Options 3, Section 4 and Section 5 for certain orders and quotes that lock or cross an away market's price. The proposed functionality will be materially identical to current BX functionality.[3] As further described below, the Exchange proposes a number of corresponding amendments throughout Options 2 and Options 3 in connection with adopting the re-pricing mechanism.

The Exchange notes that today, it would cancel any unexecuted balances of non-routable orders that cannot be placed on the order book.[4] With the technology migration, any unexecuted balances may rest on the order book as the Exchange would re-price an order that locks or crosses another market as described in this proposal.

As proposed, the System will re-price certain orders to avoid locking or crossing an away market's price. Orders that are designated as non-routable and that 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) as non-displayed and displayed one minimum price variance (''MPV'') above (for offers) or below (for bids) the national best price.[5] Upon re-pricing in this manner, such order will be displayed on OPRA at one MPV above (for offers) or below (for bids) the national best price. The order will remain on the Exchange's order book and will be accessible at the non-displayed price. For example, a non-displayed limit order may be accessed on the Exchange by a Member if the limit order is priced 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)*
*OPRA will show the displayed price, not the booked non-displayed price

In order to effectuate the foregoing changes, the Exchange proposes to amend Options 3, Section 5(c), which currently provides that the System automatically executes eligible orders using the Exchange's displayed best bid and offer (''BBO''). As amended, Options 3, Section 5(c) would provide 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'')[6] if the best bid and/or offer on the Exchange has been re-priced pursuant to Options 3, Section 5(d). The proposed definition of an internal BBO, which will be identical to BX's definition of internal BBO in BX Options 3, Section 5(c), will cover re-priced orders that remain on the order book and are available at non-displayed prices while resting on the order book. The proposed re-pricing itself will be described in Options 3, Section 5(d). Currently, Options 3, Section 5(d) describes Trade-Through Compliance and Locked or Crossed Market behavior, and further provides that an order that is designated by the Member as routable would be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions.[7] The Exchange proposes to add rule text within Options 3, Section 5(d) to describe the manner in which a non-routable order would be re-priced. Specifically, the Exchange proposes 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[8] 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) as non-displayed, and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.'' The Exchange believes that the addition of this language, substantially similar to language within BX Options 3, Section 5(d),[9] will

[3] Today, BX re-prices certain orders and quotes to avoid locking and crossing away markets, consistent with its Trade-Through compliance and Locked or Crossed Markets obligations. *See* BX Options 3, Sections 4(b)(6) and 5(d). *See also* Securities Exchange Act Release No. 89476 (August 4, 2020), 85 FR 48274 (August 10, 2020) (SR–BX–2020–017) (describing BX re-pricing mechanism in BX Options 3, Section 5). In addition to re-pricing, the Exchange also permits Members to cancel their quotes by configuration.

[4] Today, this would include cancelling unexecuted balances of non-routable orders after following the procedures set forth in Supplementary Material .02 to Options 5, Section 2.

[5] The Exchange notes that other rules may cause a routable or non-routable order to re-price in the manner described above. For example, the Exchange will introduce a FIND routing strategy with the technology migration. Orders marked as FIND (*i.e.,* ''FIND Orders'') are routable in nature but could, in certain specified scenarios, re-price and be treated as a non-routable order in such cases. *See e.g.,* Options 5, Section 4(a)(iii)(B)(4) (effective but not yet operative), which provides that a FIND Order received after an Opening Process that is marketable against the BBO when the ABBO is inferior to the BBO will be traded on the Exchange at or better than the BBO price. If the FIND Order has size remaining after exhausting the BBO, it may: (1) trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the ABBO price, (2) be entered into the Order Book at its limit price, or (3) if locking or crossing the ABBO, be entered into the Order Book at the ABBO price and displayed one MPV away from the ABBO. The FIND Order will be treated as DNR for the remainder of the trading day, even in the event that there is a new Opening Process after a trading halt. *See also* 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, including to adopt FIND Orders) (''Routing Filing''). The changes proposed in the Routing Filing will become operative at the same time as this proposal.

[6] A non-displayed order price is not visible to any market participants other than the submitting market participant until such order executes and becomes visible at that time to all market participants.

[7] Options 3, Section 5(d) also currently provides that orders that are not automatically executed will be handled as provided in Supplementary Material .02 to Options 5, Section 2; provided that Members may specify that a Non-Customer order should instead be cancelled automatically by the System at the time of receipt.

[8] As noted above, FIND Orders (which are inherently routable but could then become non-routable in specified circumstances) may also be re-priced. *See supra* note 5.

[9] Currently, BX Options 3, Section 5(d), in relevant part, provides that if, at the time of entry, an order that the entering party has elected not to

provide Members with additional information as to the manner in which orders are handled by the System when those orders would lock or cross an away market. Identical to BX, the Exchange is specifying that the re-price would occur ''at the time of entry'' to avoid a locked or crossed market violation or a trade-through violation.[10]

With respect to quotes, today as set forth in Options 3, Section 4(b)(6), 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 either be re-priced and displayed at one MPV above (for offers) or below (for bids) the national best price or immediately cancelled, as configured by the Member. The Exchange now proposes to amend the quote re-pricing mechanism currently described in ISE Options 3, Section 4(b)(6) by harmonizing it with BX Options 3, Section 4(b)(6).[11] As amended, the quote re-pricing language in Options 3, Section 4(b)(6) would provide: ''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) as non-displayed, 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.'' As reflected in the foregoing, the difference between the current and proposed re-pricing is that the Exchange will re-price to the current national best price under the proposal and book non-displayed at this price (*i.e.,* the current national best price). Upon re-pricing in this manner, the order would then be displayed one MPV inferior to the national best price. In contrast, today, the Exchange re-prices and books as displayed one MPV inferior to the national best price. The proposed process is identical to how BX quote re-pricing works today.[12]

In connection with the introduction of the BX-like quote re-pricing mechanism, the Exchange also proposes to add the definition of internal BBO (similar to the proposed definition of internal BBO for order re-pricing) in new subsection (7) of Options 3, Section 4(b) for quote re-pricing. Specifically, subsection (7) will provide that the System automatically executes eligible quotes using the Exchange's displayed best bid and offer (*i.e.,* BBO) or the Exchange's non-displayed order book (*i.e.,* internal BBO) if the best bid and/or offer on the Exchange has been re-priced pursuant to Options 3, Section 5(d) and Options 3, Section 4(b)(6). The proposed addition is intended to make clear that quotes may now be executed using either the BBO or internal BBO, similar to how orders may now be executed with the proposed re-pricing changes.[13] The Exchange will also make a technical amendment to renumber current subsection (7) of Options 3, Section 4(b) to new subsection (8).

In connection with the foregoing changes, the Exchange proposes to add references to ''internal BBO'' throughout its rules to closely conform with the concept of re-pricing at an internal BBO as proposed in Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d). First, the Exchange proposes to add references to the internal BBO in Options 2, Section 10(a), which currently describes Preferred Market Makers [14] and Preferenced Orders.[15] The Exchange proposes to amend paragraph (a)(3) of Options 2, Section 10, which currently stipulates that a Preferred Market Maker must be quoting at the NBBO at the time the Preferenced Order is received in order to be entitled to the Preferred Market Maker allocation set forth in Options 3, Section 10(c)(1)(C). As amended, the Rule will provide that if the Preferred Market Maker is quoting at the *better of the internal BBO or 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. The proposal to use the term ''better of the internal BBO or the NBBO'' will conform to the concept of re-pricing at an internal BBO as proposed in Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d), and will make clear that the Preferred Market Maker must now be quoting at the better of the NBBO or internal BBO to be entitled to the Preferred Market Maker allocation.[16] Today, BX has similar language governing its Directed Market Makers (''DMMs'') (analogous to the Exchange's Preferred Market Makers), which requires Directed Market Makers to be quoting at the better of the internal BBO or the NBBO in order to receive the Directed Market Maker allocation entitlement.[17] The Exchange also proposes a corresponding change in paragraph (a)(2) of Options 2, Section 10, which currently states that 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. Specifically, the Exchange proposes that the Preferred Market Maker will not be entitled to the allocation in Options 3, Section 10(c)(1)(C) if the Preferred Market Maker is not quoting at a price equal to *or better than the better of the internal BBO or the NBBO* at the time the Preferenced Order is received.

Second, the Exchange proposes to add the concept of ''better of the internal BBO or the NBBO'' in Options 3, Section 10(c)(1)(B), which currently sets forth an enhanced Primary Market Maker allocation entitlement. As amended, Options 3, Section 10(c)(1)(B) will provide 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

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. BX intends to make a clarifying change in a separate rule filing to align its rule text with proposed ISE Options 3, Section 5(d) to also indicate that BX will re-price to the current national best price *as non-displayed.*

[10] After the re-price under Options 3, Section 5(d), continuous re-pricing could take place pursuant to Options 5, Section 4 if the away market price fades to inferior prices and the re-priced order can move closer to its original limit price. *See supra* note 5.

[11] BX Options 3, Section 4(b)(6) provides that 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. BX intends to make a clarifying change in a separate rule filing to align its rule text with proposed ISE Options 3, Section 4(b)(6) to also indicate that it will re-price to the current national best price *as non-displayed.*

[12] *See supra* note 11.

[13] While BX's quote re-pricing rule does not explicitly reference the term ''internal BBO,'' BX describes the re-pricing of quotes in BX Options 3, Section 4(b)(6) and also currently operates identically to how ISE is proposing for quotes in ISE Options 3, Section 4(b)(7) (the BX system automatically executes eligible quotes using BX's displayed best bid and offer (*i.e.,* BX BBO) or BX's non-displayed order book (*i.e.,* internal BX BBO) if the best bid and/or offer on BX has been re-priced pursuant to BX Options 3, Section 5(d) and BX Options 3, Section 4(b)(6). BX intends to file a separate rule change to add this clarification in BX Options 3, Section 4.

[14] 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. *See* Options 2, Section 10(a).

[15] A Preferenced Order is an order designated to a Preferred Market Maker. *See* Options 2, Section 10.

[16] As discussed below, the Exchange is proposing corresponding changes in the Preferred Market Maker allocation rule in Options 3, Section 10(c)(1)(C).

[17] *See* BX Options 2, Section 10(a)(1).

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). The proposed changes will conform to the concept of re-pricing at an internal BBO as proposed in Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d), and will make clear that the Primary Market Maker must now be quoting at the better of the NBBO or internal BBO to be entitled to the enhanced Primary Market Maker allocation. The Exchange notes that Nasdaq Phlx LLC (''Phlx'') has similar language in Phlx Options 3, Section 10 governing Lead Market Maker (''LMM'') (analogous to the Exchange's Primary Market Maker) allocation.[18] The Exchange also proposes to correct a citation in Options 3, Section 10(c)(1)(B)(i)(b) from subparagraph (a)(1)(E) to subparagraph (c)(1)(E).

Third, the Exchange proposes to add the concept of ''better of the internal BBO or the NBBO'' in Options 3, Section 10(c)(1)(C), which currently sets forth Preferred Market Maker allocation entitlement. As amended, Options 3, Section 10(c)(1)(C) will provide 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. The proposed changes will conform to the concept of re-pricing at an internal BBO as proposed in Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d), and will make clear that the Preferred Market Maker must now be quoting at the better of the NBBO or internal BBO to be entitled to the Preferred Market Maker allocation. The Exchange notes that Phlx has similar language in Phlx Options 3, Section 10 governing DMM allocation.[19]

Fourth, the Exchange proposes to add the concept of ''better of the internal BBO or the NBBO'' throughout Options 3, Section 10(c)(1)(D), which currently sets forth the Primary Market Maker allocation entitlement for orders of five (5) contracts or fewer. As amended, subparagraph (i) of Options 3, Section 10(c)(1)(D) will provide that a Primary Market Maker is entitled to priority with respect to Orders of 5 Contracts or Fewer if the Primary Market Maker has a quote at the *better of the internal BBO or the NBBO* with no other Priority Customer or Preferenced Market Maker interest present which has a higher priority, including when the Primary Market Maker is also the Preferred Market Maker. As amended, subparagraph (ii) of Options 3, Section 10(c)(1)(D) will provide that if the Primary Market Maker is quoting at the *better of the internal BBO or the NBBO* and the Primary Market Maker is also the Preferred Market Maker or there is no Preferred Market Maker quoting at the *better of the internal BBO or the NBBO,* and a Priority Customer has a higher priority at the time of execution, the Priority Customer will be allocated the Orders of 5 Contracts or Fewer up to their displayed size pursuant Options 3, Section 10(c)(1)(A) and if contracts remain, the Primary Market Maker will be allocated the remainder. As amended, subparagraph (iii) of Options 3, Section 10(c)(1)(D) will provide that if the Primary Market Maker is quoting at the *better of the internal BBO or the NBBO* and no Priority Customer has a higher priority at the time of execution and a Preferred Market Maker, who is not a Primary Market Maker, is quoting at *the better of the internal BBO or the NBBO* then allocation shall proceed according to Section 10(c)(1)(C). The proposal will conform to the concept of re-pricing at an internal BBO as proposed in Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d). The Exchange notes that BX has similar language in BX Options 3, Section 10 governing LMM allocation entitlement for orders of five (5) contracts or fewer.[20]

Opening Process

In connection with the technology migration, the Exchange proposes to amend its Opening Process in Options 3, Section 8 to adopt language that conforms to the proposed re-pricing structure. The Exchange proposes to amend Options 3, Section 8(j)(6)(A) to reflect the new BX-like re-pricing that it is proposing to adopt, as described in the re-pricing section above. Currently, Section 8(j)(6)(A) stipulates that for contracts that are not routable, pursuant to Options 3, Section 8(j)(6), the System would cancel (i) any portion of the DNR order that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur, or (ii) any order or quote that is priced through the Opening Price.[21] All other interest would remain in the System and be eligible for trading after opening. As it relates to DNR order handling, this reflects current System behavior where the Exchange would cancel any unexecuted balances of a non-routable order that cannot be placed on the order book because the residual interest would lock or cross an away market. With the technology migration, such unexecuted balances may rest on the order book as the Exchange would instead re-price the non-routable order that locks or crosses an away market to align to current BX re-pricing functionality. Accordingly, the Exchange proposes to replace the current rule text in Section 8(j)(6)(A) with the following: ''Pursuant to Options 3, Section 8(j)(6), the System will re-price DNR Orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to the current away best offer (for bids) or the current away best bid (for offers) as non-displayed, and display at a price that is one minimum trading increment inferior to the ABBO, and disseminate such DNR Order as part of the new BBO.'' Proposed Section 8(j)(6)(A) will further provide that the System will cancel any order or quote that is priced through the Opening Price, and that all other interest will be eligible for trading after the opening. This would reflect that the Exchange will continue to cancel any interest priced through the Opening Price, and to keep all other interest in the System for trading after opening. Proposed Options 3, Section 8(j)(6)(A) is substantially similar to BX Options 3, Section 8(k)(4) and (5), and will bring greater transparency in how non-routable orders will be handled in the Opening Process.[22]

Auction Mechanisms

Facilitation and Solicited Order Mechanisms

The Exchange proposes to amend Options 3, Section 11 (Auction Mechanisms) to modify the entry checks for the Exchange's Facilitation Mechanism[23] and Solicited Order

[18] *See* Phlx Options 3, Section 10(a)(1)(B).

[19] *See* Phlx Options 3, Section 10(a)(1)(C).

[20] *See* BX Options 3, Section 10(a)(1)(C)(2)(iii).

[21] The Opening Price is described in Options 3, Sections 8(h) and (j).

[22] BX Options 3, Sections 8(k)(4) and (5) provide that pursuant to Options 3, Section 8(k)(3)(F), the System will re-price Do Not Route Orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to a price that is one minimum trading increment inferior to the ABBO, and disseminate the re-priced DNR Order as part of the new BBO. The System will cancel any order or quote that is priced through the Opening Price. All other interest will be eligible for trading after opening. BX intends to align its rule to proposed ISE Options 3, Section 8(j)(6)(A) in a separate rule filing to clarify that DNR Orders in the BX opening process can re-price *to the current ABBO as non-displayed,* and *display at* a price that is one MPV inferior to the ABBO.

[23] The Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member

Mechanism[24] to reflect the BX-like re-pricing changes under this proposal by introducing the concept of an internal BBO.[25] As discussed in the re-pricing section above, the Exchange proposes to re-price orders that would otherwise lock or cross an away market.[26] Specifically, an order will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) as non-displayed and displayed at one MPV above (for offers) or below (for bids) the national best price.[27] With this re-pricing, an Exchange order could be available 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''). Accordingly, the Exchange proposes to add the concept of ''internal BBO'' in the order entry checks for the Facilitation and Solicited Order Mechanisms in Options 3, Sections 11(b)(1) and (d)(1), respectively, to account for a non-displayed better price that may be available on the Exchange order book.

In particular, the Exchange proposes to add the concept of ''internal BBO'' in Options 3, Section 11(b)(1), which currently sets forth the entry checks for the Exchange's Facilitation Mechanism. As amended, the Rule will provide that orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO *and the internal BBO* on the same side of the market as the agency order unless there is a Priority Customer order on *the BBO or the internal BBO on the same side of the market as the agency order,* in which case the order must be entered at an improved price *over the Priority Customer order;* and (B) equal to or better than the ABBO on the opposite side.[28] The proposal will make clear that with the introduction of the re-pricing mechanism in proposed Options 3, Section 5(d), the System will now check orders entered into the Facilitation Mechanism against the internal BBO as well. In addition, the proposed changes will clarify that the Facilitation order must be entered at an improved price over the Priority Customer order where there is a Priority Customer order on the same side BBO or internal BBO. By way of example, the below examples demonstrates how the internal BBO would operate in the Facilitation Mechanism.

Facilitation Passes Entry Validation Equal To or Better Than the NBBO and Internal BBO on the Same Side of the Market

Assume the following:

MIAX BBO: 3.10 × 3.20
ISE BBO 3.05 × 3.25
Non-Priority Customer DNR order to buy for 3.25 arrives at ISE; books at 3.20 non-displayed and re-prices/displays at 3.15
ISE Internal BBO: 3.20 × 3.25
NBBO: 3.15 × 3.20

Facilitation to buy @ 3.20 arrives and is able to begin because the Facilitation Agency side price is at or better than the NBBO and internal BBO on the same side of the market and at or better than the ABBO on the opposite side of the market.

Facilitation Fails Entry Validation Equal To or Better Than the NBBO and Internal BBO on the Same Side of the Market

Assume the following:

MIAX BBO: 3.10 × 3.20
ISE BBO 3.05 × 3.25
Non-Priority Customer DNR order to buy for 3.25 arrives at ISE; books at 3.20 non-displayed and re-prices/displays at 3.15
ISE Internal BBO: 3.20 × 3.25
NBBO: 3.15 × 3.20

Facilitation to buy @ 3.15 arrives and is rejected because the Facilitation Agency side price is not at or better than the internal BBO on the same side of the market.

Similarly, the Exchange proposes to add the concept of ''internal BBO'' in Options 3, Section 11(d)(1), which currently sets forth the entry checks for the Exchange's Solicited Order Mechanism. As amended, the Rule will provide that orders must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO *and the internal BBO* on both sides of the market; provided that, if there is a Priority Customer order on the *BBO or internal BBO,* the order must be entered at an improved price *over the Priority Customer order.* Similar to the proposed changes for the Facilitation Mechanism, the proposal will make clear that with the introduction of the re-pricing mechanism in proposed Options 3, Section 5(d), the System will now check orders entered into the Solicited Order Mechanism against the internal BBO as well. In addition, the proposed changes will clarify that the order entered into the Solicited Order Mechanism must be entered at an improved price over the Priority Customer order where there is a Priority Customer order on either side of the BBO or internal BBO. By way of example, the below examples demonstrates how the internal BBO would operate in the Solicited Order Mechanism.

Solicitation Passes Entry Validation Equal To or Better Than the NBBO and Internal BBO on Both Sides of the Market

MIAX BBO: 3.10 × 3.20
ISE BBO 3.05 × 3.25
Non-Priority Customer DNR order to sell for 3.05 arrives at ISE; books at 3.10 non-displayed and re-prices/displays at 3.15
ISE Internal BBO: 3.05 × 3.10
NBBO: 3.10 × 3.15

Solicitation to buy @ 3.10 arrives and is able to begin because the Solicitation Agency side price is at or better than the NBBO and internal BBO on both sides of the market.

Solicitation Fails Entry Validation Equal To or Better Than the NBBO and Internal BBO On Both Sides of the Market

MIAX BBO: 3.10 × 3.20
ISE BBO 3.05 × 3.25
Non-Priority Customer DNR order to sell for 3.05 arrives at ISE; books at 3.10 non-displayed and re-prices/displays at 3.15
ISE Internal BBO: 3.05 × 3.10
NBBO: 3.10 × 3.15

Solicitation to buy @ 3.15 arrives and is rejected because the Solicitation Agency side price is not at or better than the internal BBO on both sides of the market.

Lastly, the Exchange proposes a clarifying change in Options 3, Section 11(b)(1), which governs the entry checks for the Facilitation Mechanism. Specifically, the Exchange proposes to amend the provision as follows: ''Orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO and the internal BBO on the same side of the market as the agency order unless there is a Priority Customer order on the same

seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. *See* Options 3, Section 11(b).

[24] The Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent against contra orders that it solicited. *See* Options 3, Section 11(d).

[25] As discussed later in the filing, while BX does not have a Facilitation or Solicited Order Mechanism like ISE, BX currently considers the internal BBO in its price improvement auction (''PRISM'') in a similar manner as being proposed for the ISE Facilitation and Solicited Order Mechanisms.

[26] *See supra* notes 5 and 8.

[27] *See* proposed Options 3, Section 5(d). *See supra* notes 5 and 8.

[28] The Facilitation Mechanism does not check the Exchange best bid or offer on the opposite side of the market because any interest that is available on the opposite side of the market would allocate against the Facilitation Agency Order and provide price improvement.

side *of the market as the agency order.* . . .'' The proposed change does not change current System behavior, and is meant to align the language in the Priority Customer order clause relating to the same side of the market as the agency order more closely with similar language in the preceding clause.

Price Improvement Mechanism

The Exchange proposes to amend Options 3, Section 13 (Price Improvement Mechanism for Crossing Transactions) to modify the entry checks for the Exchange's Price Improvement Mechanism (''PIM'') to reflect the BX-like re-pricing changes under this proposal.[29] The Exchange proposes to amend Options 3, Section 13(b)(1) to provide, ''If the Agency Order is for less than 50 option contracts, and if the difference between the National Best Bid and National Best Offer (''NBBO'') *or the difference between the internal best bid and internal best offer* is $0.01, the Crossing Transaction must be entered at *$0.01* better than the NBBO *and the internal BBO* on the opposite side of the market from the Agency Order and better than the limit order or quote on the Nasdaq ISE order book on the same side of the Agency Order.'' [30] The addition of ''internal BBO'' herein is similar to the changes proposed for the Facilitation and Solicited Order Mechanisms discussed above in that the Exchange is reflecting the proposed re-pricing changes in its PIM rule as illustrated by the example below.

Today, an Agency Order for less than 50 contracts could begin a PIM if the difference between the NBBO is $0.01. With this change, an Agency Order for less than 50 contracts could begin a PIM if the difference between the NBBO or between the internal BBO is $0.01. Below is an example of the how the System would treat an order for less than 50 contracts where the internal BBO is greater than the NBBO with respect to the rule text within Options 3, Section 13(b)(1).

Assume ISE Market Maker quotes an option series at 1.09 (10) × 1.15 (10).

Next assume ABBO quotes that option series at 1.10 (10) × 1.11 (10).

Assume an order locks the ABBO quote with a buy order in that options series of 5 @ 1.11.

With the proposed repricing, this order would book at 1.11 and display 1 MPV (penny in this case) away at 1.10 on the order book.

In this scenario:

- the PIM to buy 49 @ 1.10 would be rejected;
- the PIM to buy 49 @ 1.11 would be rejected;
- the PIM to sell 49 @ 1.10 would be rejected; and
- the PIM to sell 49 @ 1.11 would be rejected.

This proposed new rule text accounts for a non-displayed better price that may be available on the order book. A similar change is proposed for the Crossing Transaction within that same paragraph. Additionally, in lieu of stating ''one minimum price improvement increment'' the Exchange proposes to replace that rule text with ''$0.01.'' Amending the rule text to $0.01 does not amend the current System operation, rather it more simply states what that minimum increment is today. The Exchange proposes similar changes within Options 3, Section 13(b)(2) to add references to ''difference between the internal BBO'' and ''$0.01.'' [31] Below is an example of the how the System would treat an order for 50 contracts or more where the internal BBO is greater than the NBBO with respect to the rule text within Options 3, Section 13(b)(2).

Assume ISE Market Maker quotes an option series at 1.09 (10) × 1.15 (10).

Next assume ABBO quotes that option series at 1.10 (10) × 1.11 (10).

Assume an order locks the ABBO quote with a buy order in that option series at 5 @ 1.11.

With the proposed repricing this order would book at 1.11 and display 1 MPV (penny in this case) away at 1.10 on the order book.

In this scenario:

- the PIM to buy 50 @ 1.10 would be rejected;
- the PIM to buy 50 @ 1.11 would be rejected;
- the PIM to sell 50 @ 1.10 would be rejected; and
- the PIM to sell 50 @ 1.11 would be accepted and would begin a PIM auction.

Assuming no other interest arrives during the PIM auction timer, this order would trade at the end of the auction timer, thereby filling the order 5 @ 1.11 and the remainder would allocate to the contra side/counter side order.

Acceptable Trade Range

As set forth in Options 3, Section 15(a)(2)(A), the Exchange currently offers an Acceptable Trade Range (''ATR'') risk protection that sets dynamic boundaries within which quotes and orders may trade. ATR is designed to guard against the System from experiencing dramatic price swings by preventing the immediate execution of quotes and orders beyond the thresholds set by the protection. With the proposed adoption of the BX-like re-pricing mechanism described above, the Exchange proposes to introduce 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 in the manner discussed below. The Exchanges notes that today, it would cancel rather than re-price any interest that exceeds the outer limit of the ATR. The proposed changes will harmonize the Exchange's ATR with BX's ATR.[32]

Currently, subparagraph (i) of Options 3, Section 15(a)(2)(A) provides that the System will calculate an ATR to limit the range of prices at which an order or quote will be allowed to execute. The ATR is calculated by taking the reference price, plus or minus a value to be determined by the Exchange (*i.e.,* the reference price − (x) for sell orders and the reference price + (x) for buy orders).[33] ATR is not available for All-or-None Orders. Subparagraph (ii) provides that the reference price is the National Best Bid (''NBB'') for sell orders/quotes and the National Best Offer (''NBO'') for buy orders/quotes.[34] The reference price is calculated upon receipt of a new order or quote, provided that if the applicable NBB or NBO price is improved at the time an order is routed to an away market, a new reference price is calculated based on the NBB or NBO at that time. Today, as set forth in subparagraph (iii), if an order or quote reaches the outer limit of the ATR without being fully executed,

[29] BX intends to file a rule change to amend BX Options 3, Section 13 to similarly refer to an ''internal BBO.''

[30] Currently, Options 3, Section 13(b)(1) provides that if the Agency Order is for less than 50 option contracts, and if the difference between the National Best Bid and National Best Offer (''NBBO'') is $0.01, the Crossing Transaction must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than the limit order or quote on the Nasdaq ISE order book on the same side of the Agency Order.

[31] *See supra* note 29.

[32] *See* BX Options 3, Section 15(b)(1). As discussed further below, the Exchange will also add references to ''internal BBO'' in the ATR reference price description. BX intends to file a similar rule change to clarify this behavior.

[33] The ATR settings values are tied to the option premium and will be set out in the ATR table in the ISE system settings document on a publicly available website. The ISE settings will be identical to BX ATR. The Exchange would notify all Members through an Options Trader Alert if it determined to amend that value and also publish the settings on a publicly available website.

[34] In the event of a crossed ABBO, ATR will use the NBO instead of the NBB for incoming sell orders and the NBB instead of the NBO for incoming buy orders as the reference price.

then any unexecuted balance will be cancelled.

The Exchange now proposes to amend this rule to adopt an iterative process like BX wherein an order/quote that reaches its ATR boundary will be 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. Specifically, the Exchange proposes to amend subparagraph (iii) of Options 3, Section 15(a)(2)(A) to provide that if 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. 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) then becomes the reference price for calculating a new ATR. If the order/quote remains unexecuted after the Posting Period, a new Acceptable Trade Range will be calculated and the 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 [35] (in which case it will be returned).[36] The proposed changes will be functionally identical to BX's ATR, as set forth in BX Options 3, Section 15(b)(1)(A).

In light of the foregoing changes, the Exchange also proposes to update the reference price definition in subparagraph (ii) 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.*[37]

This will be functionally identical to BX's ATR reference price, as set forth in BX Options 3, Section 15(b)(1).[38]

In addition, the Exchange proposes in new subparagraph (iv) [39] that during the Posting Period, the Exchange will disseminate as a quotation: (1) the Threshold Price for the remaining size of the order/quote triggering the ATR and (2) on the opposite side of the market, the best price will be displayed using the ''non-firm'' indicator message in accordance with the specifications of the network processor. This would allow the order or quote setting the ATR Threshold Price to retain priority in the Exchange book and also prevent any later-entered order from accessing liquidity ahead of it. If the Exchange were to display trading interest available on the opposite side of the market, that trading interest would be automatically accessible to later-entered orders during the period when the order triggering the ATR is paused. This is identical to how BX currently disseminates such interest during the ATR Posting Period.[40] Identical to BX, following the Posting Period, the Exchange will return to a normal trading state and disseminate its best bid and offer.[41]

Importantly, the ATR is neutral with respect to away markets. The order may route to other destinations to access liquidity priced within the ATR provided the order is designated as routable, as shown in the example below.[42] With the proposed changes, if the order still remains unexecuted, this process will repeat [43] until the order is executed, cancelled, or posted at its limit price. Pursuant to Options 5, Section 4, if after an order is routed to the full size of an away exchange and additional size remains available for the routed order, the remaining contracts will be posted on the Exchange's order book at a price that assumes the away market has been fully executed and exhausted by the routed order.[44] This practice of routing and then posting is consistent with the national market system plan governing trading and routing of options orders and the Exchange policies and procedures that implement that plan.[45]

The following examples illustrate the proposed ATR functionality.

Example 1

Assume that the Acceptable Trade Range is set for $0.05 and the following quotations are posted in all markets:

AWAY EXCHANGE QUOTES

Exchange	Bid size	Bid price	Offer price	Offer size
GEMX	10	$0.75	$0.90	10
AMEX	10	0.75	0.92	10

[35] The Exchange intends to initially set the configurable number to 5 iterations, similar to BX. The Exchange would issue an Options Trader Alert if it determined to amend that timeframe and also publish the settings on a publicly available website.

[36] Under this proposal, DNR orders that are locked against the ABBO will pause their ATR iterations (*i.e.,* a new ATR will not be calculated based on the reference price at that time) and will remain this way until the ATR process can be completed. This will be the same as BX DNR order handling. Returning an order to the customer means that the order would be cancelled.

[37] The additions of ''internal BBO'' in this rule text are consistent with the proposed re-pricing described above.

[38] BX Options 3, Section 15(b)(1) states, in relevant part, that ''[t]he system will calculate an Acceptable Trade Range to limit the range of prices at which an order will be allowed to execute. The Acceptable Trade Range is calculated by taking the reference price, plus or minus a value to be determined by the Exchange. (*i.e.,* the reference price − (×) for sell orders and the reference price + (×) for buy orders). Upon receipt of a new order, the reference price is the NBB for sell orders and the NBO for buy orders or the last price at which the order is posted whichever is higher for a buy order or lower for a sell order.'' The Exchange notes that BX's rule does not reference ''quotes,'' but BX's ATR currently applies to both orders and quotes like the Exchange's ATR. The Exchange further notes that BX's rule does not refer to an ''internal BBO'' but that today, BX's ATR reference price also takes the the better of the NBB (NBO) or internal best bid (best offer) for sell (buy) orders/quotes, or the last price at which the order/quote is posted.

[39] The Exchange will make a related change to update current subparagraph (iv) to subparagraph (v).

[40] *See* BX Options 3, Section 15(b)(1)(B). Like BX today, with the proposed changes, route timers pursuant to Options 5, Section 4(a), will continue to run on the Exchange during ATR iterations and ''firm'' quote posting can occur if, for example, the order is re-priced to one MPV away from the ABBO pursuant to proposed Options 3, Section 5(d) to comply with the trade-through and locked or crossed market restrictions pursuant to Options 5, Section 2. In such cases, the quotation will disseminate as a ''firm'' quote.

[41] *See* BX Options 3, Section 15(b)(1)(B).

[42] When a Threshold Price is calculated, an order can route and execute at away venues at multiple prices that are at or better than the calculated Threshold Price.

[43] As proposed in Options 3, Section 15(a)(2)(A)(iii)(2), the Exchange will establish a maximum number of ATR iterations until the order or quote is returned back to the Member.

[44] *See* Options 5, Section 4(a)(iii) (effective but not yet operative).

[45] *See* Options Order Protection and Locked/Crossed Markets Plan, Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

AWAY EXCHANGE QUOTES—Continued

Exchange	Bid size	Bid price	Offer price	Offer size
PHLX	10	0.75	0.94	10

ISE PRICE LEVELS

Exchange	Bid size	Bid price	Offer price	Offer size
ISE	10	$0.75	$0.90	10
ISE			0.95	10
ISE			0.97	10
ISE			1.00	20

ISE receives a routable order to buy 70 contracts at $1.10. The Acceptable Trade Range is $0.05 and the reference price is the National Best Offer – $0.90. The Acceptable Trade Range 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 ISE.

• 10 contracts will be executed at $0.90 against GEMX.

• 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 ISE.

• Then, after executing at multiple price levels, the order is posted at the Threshold Price of $0.95 for a brief period not to exceed one second (''Posting Period'') to determine whether additional liquidity will become available.

• During the Posting Period, a new Acceptable Trade Range Threshold Price of $1.00 is determined (new reference price of $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 $0.97, and 10 contracts at $1.00.[46]

Similarly, if a new order is received when a previous order has reached the Acceptable Trade Range threshold, the Threshold Price will be used as the reference price for the new Acceptable Trade Range threshold. Both orders would then be allowed to execute up (down) to the new Threshold Price.

Example 2

AWAY EXCHANGE QUOTES

Exchange	Bid size	Bid price	Offer price	Offer size
GEMX	10	$0.75	$0.90	10
AMEX	10	0.75	0.92	10
PHLX	10	0.75	0.94	10

ISE PRICE LEVELS

Exchange	Bid size	Bid price	Offer price	Offer size
ISE	10	$0.75	$0.90	10
ISE			0.95	10
ISE			1.05	20

ISE receives a routable order to buy 60 contracts at $1.10. The Acceptable Trade Range is $0.05 and the reference price is the National Best Offer – $0.90. The Acceptable Trade Range Threshold Price 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 ISE.

• 10 contracts will be executed at $0.90 against GEMX.

• 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 ISE.

• Then, after executing at multiple price levels, the order is posted at $0.95 for a Posting Period (brief period not to exceed one second) to determine whether additional liquidity will become available.

• No new liquidity was received during the Posting Period. A new Acceptable Trade Range Threshold Price of $1.00 is determined (new reference price of $0.95 + $0.05 = $1.00).

• If, during the previous Posting Period, a second order is received to buy 10 contracts at $1.25, the two orders would then post at the new Acceptable Trade Range Threshold price of $1.00 for another Posting Period (brief period not to exceed one second) to determine whether additional liquidity will become available.

[46] The brief pause described above will not disadvantage customers seeking the best price in any market. For example, if in the example above an NYSE ARCA quote of $0.75 × $0.96 with size of 10 × 10 is received, a routable order would first route to NYSE ARCA at $0.96, then execute against ISE at $0.97.

• A new Acceptable Trade Range Threshold Price of $1.05 will be calculated.

• If no additional liquidity becomes available within the posted price of the orders ($1.00) during the Posting Period, the orders would execute 10 contracts each against the order on the ISE book at $1.05 at the conclusion of the Posting Period.

Example 3

Assume the following:

Acceptable Trade Range is configured to $0.07.

ABBO 1.91 (10) × 2.01 (10).

Buy order 1 @ 2.00.

DNR Order to Buy 1 @ 2.01 – slides back to display at 2.00.

MM1 Quote 1.99 (10) × 2.12 (10).

Order1 Buy 10 @ 1.94.

Order2 Buy 10 @ 1.93.

Order3 Buy 5 @ 1.92.

Order4 Buy 5 @ 1.91.

Order to Sell 100 @ 1.90 comes in.

• First trades 1 @ 2.01 with slid DNR order.

• Then trades 1 @ 2.00 with other buy order.

• Then trades 10 @ 1.99 with MM quote (then quote purges since bid side volume has been exhausted).

• Then trades with Order1 (10 @ 1.94).

• Then posts 78 @1.94, the ATR Threshold (calculated by taking the initial reference price of 2.01 (*i.e.,* the better of the internal best bid and NBB) minus the 0.07 Acceptable Trade Range).

After the ATR Posting Period completes:

• Trades 10 @ 1.93 with Order2.

• Trades 5 @ 1.92 with Order3.

• Trades 5 @ 1.91 with Order4.

• Posts to book at 1.91 non-displayed and re-prices to display 1 MPV (penny) from ABBO at 1.92, exposes 58 @ 1.91.

After route timer passes:

• Routes 10 @ 1.91 to ABBO.

• Posts to book at its limit with remaining 48 @ 1.90.[47]

Finally, the Exchange proposes to add clarifying language in the first sentence of subparagraph (i) of Options 3, Section 15(a)(2)(A) that the System will calculate the ATR after the Opening Process.[48] This is a clarifying change that does not amend current functionality. ATR does not apply until after the Opening Process because the order book (and the ATR reference price) is established once options series are open for trading.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[49] in general, and furthers the objectives of Section 6(b)(5) of the Act,[50] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Generally, the Exchange's proposal is intended to add or align certain System functionality with functionality currently offered on BX in order to provide a more consistent technology offering across affiliated Nasdaq options exchanges. A more harmonized technology offering, in turn, will simplify technology implementation, changes, and maintenance by market participants of the Exchange that are also participants on Nasdaq affiliated options exchanges. The Exchange's proposal also seeks to provide greater harmonization between the rules of the Exchange and BX, which would result in greater uniformity, and less burdensome and more efficient regulatory compliance by market participants. As such, the proposal would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that more consistent rules will increase the understanding of the Exchange's operations for market participants that are also participants on the Nasdaq affiliated options exchanges, thereby contributing to the protection of investors and the public interest. The Exchange believes that such changes would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes would promote transparency in Exchange rules and reducing potential confusion, thereby ensuring that Members, regulators, and the public can more easily navigate the Exchange's rulebook and better understand how options trading is conducted on the Exchange.

Re-Pricing

The Exchange believes that re-pricing quotes and orders that would otherwise lock or cross an away market, as proposed in Options 3, Sections 4(b)(6), 5(c) and (d), is consistent with the Act. Today, BX re-prices such quotes and orders by re-pricing them to the current national best price as non-displayed, and displaying them one MPV away from the best bid or offer.[51] This behavior is consistent with the protection of investors and the general public because it affords Members the ability to obtain the best price offered among the various options markets while not locking or crossing an away market. With the proposed changes, the Exchange will continue to not trade through an away market. As a result, the Exchange's proposal would be consistent with the Options Order Protection and Locked/Crossed Market Plan. Any quote or non-routable order that locks or crosses an away market on the Exchange would be re-priced as a result of this amendment. The proposed changes to Options 3, Section 4(b)(6) will clearly articulate the proposed re-pricing mechanism, and will provide Members with additional information as to how quotes will be handled by the System when those quotes would lock or cross an away market. As discussed above, the difference between the current and proposed quote re-pricing is that the Exchange will re-price to the current national best price under the proposal as non-displayed (instead of re-pricing and displaying one MPV inferior as it does today). The Exchange will continue to display one MPV inferior to the national best price under this proposal. As such, the proposed quote re-pricing mechanism will continue to prevent the Exchange from disseminating a price that locks or crosses another market. This process is identical to how BX quote re-pricing functions today, as described in BX Options 3, Section 4(b)(6).

In connection with the introduction of the BX-like quote re-pricing mechanism, the Exchange also proposes to add the definition of internal BBO (similar to the proposed definition of internal BBO for order re-pricing) in Options 3, Section 4(b)(7). As discussed above, the proposed addition is intended to make clear that quotes may now be executed using either the BBO or internal BBO if the Exchange best bid or offer has been re-priced pursuant to the order re-pricing mechanism proposed in Options 3, Section 5(d) and the quote re-pricing mechanism proposed in Options 3, Section 4(b)(6). As noted above, BX handles quotes in the same manner as proposed for ISE Options 3, Section 4(b)(7).[52]

The proposed changes to Options 3, Section 5(c) will allow the Exchange to

[47] *See supra* note 40 regarding route timer.

[48] While BX's ATR does not have this clarification today, BX's ATR likewise applies after the Opening Process.

[49] 15 U.S.C. 78f(b).

[50] 15 U.S.C. 78f(b)(5).

[51] *See* BX Options 3, Sections 4(b)(6), 5(c) and (d).

[52] *See supra* note 13.

define an internal BBO in its Rules when describing re-priced orders that remain on the order book and are available at non-displayed prices while resting on the order book. The proposed changes to Options 3, Section 5(d) will clearly articulate the proposed re-pricing mechanism itself, and provide Members with additional information as to how orders are handled by the System when those orders would lock or cross an away market. The Exchange notes that allocation priority for re-priced orders would be consistent with the current rules in Options 3, Section 10(c).

The Exchange also believes that the related proposals to add references to internal BBO in Options 2, Section 10 and Options 3, Section 10 are consistent with the Act. Overall, the proposed addition of internal BBO will ensure that the rules conform to the concept of re-pricing at an internal BBO as proposed in Options 5(c) and (d) and will make clear that a re-priced order is accessible on the Exchange's order book at the non-displayed price. Specifically, the Exchange believes that adding references to the internal BBO in the allocation rules for Preferred Market Makers and Primary Market Makers will make clear that in connection with the proposed re-pricing mechanism, such market participants must now be quoting at the better of the NBBO or the internal BBO in order to be entitled to the applicable allocations set forth in their respective rules. The introduction of the internal BBO would have no impact on a Primary Market Maker's quoting obligations as Primary Market Makers do not need to be at the NBBO today, or as proposed, the better of NBBO or the internal BBO in order to meet their quoting obligations.[53] The Exchange also notes that the proposed quote re-pricing mechanism described above will allow the Primary Market Maker or Preferred Market Maker to re-price to the internal BBO and receive their enhanced allocation when the internal BBO is better than the NBBO.[54] In addition, by not providing the enhanced allocation for Market Makers that are not at the internal BBO when it is better than the NBBO, the Exchange is protecting investors with more aggressively priced interest by allocating to them first. The Exchange does not believe that Market Makers should be entitled to enhanced allocations in the foregoing instance given that there are better available internal BBO prices on the market. Like BX, the Exchange believes that the overall benefit to the marketplace is that market participants will be able to obtain the best price offered among the various options markets while avoiding a trade-through or locked or cross market violation.

Opening Process

The Exchange believes that the proposed changes to the Opening Process in Options 3, Section 8 are consistent with the Act. Specifically, the Exchange believes that the proposed changes to Options 3, Section 8(j)(6)(A) will bring greater transparency as to how non-routable orders will be handled during the Opening Process. As discussed above, the Exchange proposes to no longer cancel any unexecuted portions of a DNR Order that locks or crosses an away market, and instead will re-price the DNR Order to the current away best offer (for bids) or the current away best bid (for offers) as non-displayed, and display a price that is one minimum trading increment inferior to the ABBO, and disseminate such DNR Order as part of the new BBO. The proposed changes reflect the new BX-like re-pricing mechanism that the Exchange is proposing to adopt as part of the technology migration. The Exchange believes that the proposed re-pricing of DNR Orders during the Opening Process is consistent with the protection of investors and the general public because it affords Members the ability to obtain the best price offered among the various options markets while not locking or crossing an away market. As discussed above, proposed Options 3, Section 8(j)(6)(A) will also continue to reflect that the Exchange will cancel any interest that is priced through the opening price and keep all other interest in the System for trading after opening. The Exchange notes with the proposed changes, Options 3, Section 8(j)(6)(A) will be substantially similar to BX Options 3, Section 8(k)(4) and (5), thereby promoting greater consistency among the rules of Nasdaq affiliated options exchanges.[55] Finally, the proposed changes to the Opening Process attempts to maximize the number of contracts executed on the Exchange during such Opening Process, while taking into consideration away market interests and ensuring that better away prices are not traded through.

Auction Mechanisms

Facilitation and Solicited Order Mechanisms

The Exchange believes that the proposed addition of ''or the internal BBO'' in the entry check provisions for the Facilitation and Solicited Order Mechanisms at Options 3, Sections 11(b)(1) and (d)(1), respectively, is consistent with the Act. The proposed changes will account for BX-like re-pricing, which would result in an Exchange order being available at a price that is better than the NBBO but is non-displayed. The proposed changes to add ''or the internal BBO'' will make clear that the System will now check orders entered into those auction mechanisms against a non-displayed order book priced better than the NBBO as well the NBBO.[56] As a result, the proposed changes would ensure that Members submitting an order through the Facilitation Mechanism or Solicited Order Mechanism submit such orders at the best price, which (i) for the Facilitation Mechanism, must be at a price that is equal to or better than the displayed NBBO and the non-displayed BBO (*i.e.,* the internal BBO) on the same side of the market as the agency order, and (ii) for the Solicited Order Mechanism, must be at a price that is equal to or better than the NBBO and the internal BBO on both sides of the market.[57]

The Exchange also believes that the clarifying changes in Options 3, Section 11(b)(1) relating to Facilitation order entry checks are consistent with the Act as the proposed changes seek to align the language in the Priority Customer order clause relating to the same side of the market as the agency order more closely with similar language in the preceding clause and clarify current System behavior. Similarly, the Exchange believes that the clarifying changes in Options 3, Section 11(d)(1) relating to Solicited Order Mechanism

[53] Quoting obligations include, for example, a Market Maker's continuous quoting obligations. *See* Options 2, Section 5(e).

[54] Market Makers are incentivized to quote at the internal BBO as there is sufficient market information provided to quote accordingly. BX and Phlx also allow their Lead Market Makers and Directed Market Makers to re-price to the internal BBO and receive their enhanced allocation when the internal BBO is better than the NBBO. *See* BX and Phlx Options 3, Section 10. The Nasdaq Options Market LLC (''NOM'') also re-prices orders and quotes but does not have the concept of a Lead Market Makers or Directed Market Markers.

[55] *See supra* note 22.

[56] Today, BX and Phlx similarly consider the internal BBO when initiating their price improvement auctions, BX PRISM and Phlx PIXL. The Exchange would continue to abide by the rules approved by the Commission and not commence an auction in the Facilitation or Solicited Order Mechanisms or in PIM if better priced interest was resting on the book.

[57] As proposed, for the Facilitation Mechanism, if there is a Priority Customer order on the BBO or internal BBO on the same side of the market as the agency order, the order must be entered at an improved price over the Priority Customer order. For the Solicited Order Mechanism, if there is a Priority Customer order on the BBO or internal BBO on either side of the market, the order must be entered at an improved price over the Priority Customer order.

order entry checks are consistent with the Act as the proposed changes seek to align the language in the Priority Customer order clause with the preceding clause and clarify current System behavior. The Exchange believes that the proposed changes will promote transparency in the Rulebook, and reduce potential confusion by Members and investors.

Price Improvement Mechanism

Similarly, the Exchange's proposal to amend Options 3, Section 13(b)(1) and (b)(2) to account for re-pricing, which would result in an ISE order being available at a price which is better than the NBBO but is non-displayed, is consistent with the Act. The addition of ''or the internal BBO'' will make clear that a non-displayed order book priced better than the NBBO would cause a PIM auction to initiate. Stating ''$0.01'' in lieu of ''one minimum price improvement increment'' is consistent with the Act as this non-substantive amendment more simply states the current minimum increment.[58] Similar to the changes described above for the Facilitation and Solicited Order Mechanisms, the proposed changes for PIM would ensure that Members submitting an order through PIM submit such orders at the best price, which must be (i) better than the displayed NBBO and non-displayed BBO (*i.e.,* the internal BBO) on the Exchange's order book when the PIM is less than 50 contracts and the difference between the NBBO or the difference between the internal BBO is $0.01 wide or (ii) equal to or better than the displayed NBBO and internal BBO when the PIM is 50 contracts or more, or if the difference between the NBBO or the difference between the internal BBO is greater than $0.01.[59]

Acceptable Trade Range

The Exchange believes that the proposed changes to its ATR risk protection in Options 3, Section 15(a)(2)(A) are consistent with the Act. The Exchange is proposing to introduce an iterative process for ATR wherein an order/quote that reaches the outer limit of the ATR (*i.e.,* the Threshold Price) without being fully executed will be paused for a brief Posting Period to allow more liquidity to be collected and determine whether or not more liquidity will become available (on the Exchange or an away market if the order is designated as routable) within the posted price of the order/quote before moving on to a new Threshold Price. The Threshold Price, at which the order is posted, would then become the new reference price,[60] and a new ATR would be calculated. The Exchange notes that the proposed iterative ATR process is identical to current BX ATR functionality in BX Options 3, Section 15(b)(1), and therefore is not new or novel.

The Exchange believes that with the proposed changes, ATR will continue to reduce the negative impacts of sudden, unanticipated volatility in individual Exchange options, serve to preserve an orderly market in a transparent manner, increase overall market confidence, and promote fair and orderly markets and the protection of investors. The proposed ATR iterative process should also continue to result in greater continuity in prices as it is designed to prevent immediate or rapid executions at far away prices, thereby protecting investors and the public interest. As discussed above, the Exchange is bounding how far interest can trade into the depth of the Exchange's book based on the best prices that are available to the market. The Exchange therefore believes that its proposal protects investors and the public interest by basing the ATR reference price on the best available prices.

The Exchange also believes that the addition of configurable instances of iterations when the ATR would apply will provide Members with more certainty as to the application of the rule.[61]

The Exchange believes that disseminating a ''non-firm'' indicator message during the Posting Period, as discussed above, is consistent with its obligations under the SEC Quote Rule.[62] As discussed above, this would allow the order or quote setting the ATR Threshold Price to retain priority in the Exchange book and also prevent any later-entered order from accessing liquidity ahead of it. If the Exchange were to display trading interest available on the opposite side of the market, that trading interest would be automatically accessible to later-entered orders during the period when the order triggering the ATR is paused. The ''non-firm'' indicator is meant to relieve eligible exchanges from having to apply locked and crossed rules to the quotation of the market.[63] Since the opposite side interest is likely to be traded through at the completion of the Posting Period, the Exchange would display that interest as ''non-firm'' to alleviate away exchanges from having to apply lock/crossed violation protections (when routing) against this price.[64]

The fact that the Exchange is experiencing volatility that is strong enough to trigger the ATR mechanism qualifies as an unusual market condition. The Exchange expects such situations to be rare, and it has set the current parameters of the mechanism at levels that ensures that it is triggered quite infrequently. In addition, the proposed ATR mechanism will cause the market to pause for no more than one second to try to dampen volatility, the same pause that currently exists on BX. Importantly, the brief pause occurs only after the Exchange has already executed transactions—potentially at multiple price levels—rather than pausing before executing any transactions in the hopes of attracting initial liquidity.

Finally, the Exchange believes that the proposed clarifying language to add that the System will calculate ATR after the Opening Process will better articulate current System behavior. ATR does not apply until after the opening because the order book (and the ATR reference price) is established once options series are open for trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a competitive market and regularly competes with other options exchanges for order flow. As discussed above, the Exchange is re-platforming its System in connection with the technology migration to enhanced Nasdaq functionality, which the Exchange believes would promote competition among options exchanges by potentially attracting additional order flow to the Exchange with the enhanced trading platform. The basis for the majority of the proposed rule changes are the rules of the Nasdaq affiliated options exchanges, which

[58] *See supra* note 55.

[59] Provided they are better than any limit order or quote on the same side of the Nasdaq ISE order book as the PIM agency order for both scenarios.

[60] As described above, if a new NBB is received that is greater than a buy order posted at the Threshold Price, or a new NBO is received that is lower than a sell order posted at the Threshold Price, the new NBB (for buy orders) or NBO (for sell orders) would become the new reference price.

[61] *See supra* notes 33 and 35.

[62] *See* 17 CFR 242.602(a)(3).

[63] To the away venue, this quotation is simply the top of book quotation on ISE (which could be made of orders and/or quotes).

[64] In addition, Options 5, Section 1(k) defines ''Non-Firm'' as, with respect to Quotations, that Members of a Eligible Exchange are relieved of their obligation to be firm for their Quotations pursuant to Rule 602 under the Exchange Act.

have been previously filed with the Commission as consistent with the Act.

The quote re-pricing proposal in Options 3, Section 4(b)(6) and (7) will be functionally identical to BX quote re-pricing in Options 3, Section 4(b)(6).[65] The order re-pricing proposal in Options 3, Section 5(c) and (d) will be functionally identical to BX order re-pricing in BX Options 3, Section 5(c) and (d).[66] Also, the proposed ATR enhancement in Options 3, Section 15(a)(2)(A) will be functionally identical to BX ATR in BX Options 3, Section 15(b)(1).

The Exchange reiterates that the proposed rule change is being proposed in the context of the technology migration to enhanced Nasdaq functionality. As such, the Exchange believes that this proposed rule change is necessary to permit fair competition among options exchanges because the proposed rule changes will permit ISE to re-price orders and quotes similar to BX. Additionally, with this proposal, ISE would be able to offer its Members the same ATR functionality currently available to BX Participants. The Exchange further believes the proposed rule change will benefit Members by providing a more consistent technology offering, as well as consistent rules, for market participants on the Nasdaq affiliated options exchanges.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the majority of the proposed changes will apply to all Members. ATR allows Members to potentially receive better prices for their aggressive orders or quotes as they work through the ATR Threshold Prices and look to accumulate additional interest at each posted price during the Posting Periods. Re-pricing affords Members the ability to obtain the best price offered among the various options markets while continuing to be consistent with the Options Order Protection and Locked/Crossed Market Plan, as discussed above. The ability to leverage these mechanisms to achieve better prices for market participants will drive competition from Members to provide tighter markets and more liquidity in order to participate in the trading opportunities while still being bound by reasonable risk protections.

[65] *See supra* note 13.

[66] The re-pricing rule changes impact the following rule provisions: Options 2, Section 10; Options 3, Section 8(j)(6)(A); Options 3, Section 10(c)(1)(B), (C) and (D)(i)–(iii); Options 3, Section 11(b)(1) and (d)(1); and Options 3, Section 13(b)(1) and (2).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[67] and subparagraph (f)(6) of Rule 19b–4 thereunder.[68]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2022–25 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–ISE–2022–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2022–25 and should be submitted on or before December 16, 2022.

[67] 15 U.S.C. 78s(b)(3)(A)(iii).

[68] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25672 Filed 11–23–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96360; File No. SR–Phlx–2022–47]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend FINRA Fees

November 18, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities

[69] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 9, Other Member Fees, to reflect adjustments to FINRA Registration Fees and Fingerprinting Fees.[3]

While the changes proposed herein are effective upon filing, the Exchange has designated the additional processing of each initial or amended Form U4, Form U5 or Form BD and electronic Fingerprint Processing Fees to become operative on January 2, 2023. Additionally, the Exchange designates that the FINRA Annual System Processing Fee Assessed only during Renewals become operative on January 2, 2024.[4] The amendments to the paper Fingerprint Fees are immediately effective.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposal amends Phlx's Pricing Schedule at Options 7, Section 9, Other Member Fees, to reflect adjustments to FINRA Registration Fees and Fingerprinting Fees.[5] The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of Phlx members and member organizations that are not FINRA members (''Non-FINRA members''). The Exchange is merely listing these fees on its Pricing Schedule at Phlx Options 7, Section 9C. The Exchange does not collect or retain these fees.

The Exchange proposes to amend: (1) the $110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to $155; (2) the $45 FINRA Annual System Processing Fee Assessed only during Renewals to $70; and (3) the $15 Second Submission (Electronic) Fingerprint Processing Fee to $20. Each of these fees are listed within Phlx Options 7, Section 9C. These amendments are being made in accordance with a FINRA rule change to adjust to its fees.[6]

The Exchange also proposes to amend the following Fingerprint Fees: (1) the $29.50 Initial Submission (Electronic) fee to $31.25;[7] (2) the $44.50 Initial Submission (Paper) fee to $41.25;[8] (3) the $29.50 Third Submission (Electronic) fee to $31.25;[9] and (4) the $44.50 Third Submission (Paper) fee to $41.25.[10] Specifically, today, the FBI fingerprint charge is $11.25[11] and the FINRA electronic Fingerprint Fee will increase from $15 to $20 in 2023.[12] While FINRA did not amend the paper Fingerprint Fee, previously the FBI Fee was reduced from $14.50 to $11.25.[13] The paper Fingerprint Fees are not currently reflecting the amount assessed by FINRA. The amendment to the paper Fingerprint Fees will conform these fees with those of FINRA.

The FINRA Web CRD Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[14] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to increase: (1) the $110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to $155; (2) the $45 FINRA Annual System Processing Fee Assessed only during Renewals to $70; and (3) the electronic Fingerprint Fees from $15 to $20 in accordance with an adjustment to FINRA's fees[16] because the proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons.

These costs are borne by FINRA when a Non-FINRA member uses Web CRD. The Exchange's rule text will reflect the current registration and electronic fingerprint rates that will be assessed by

[3] This rule change impacts FINRA fees for members who trade equity and options products on Phlx. Equity 7, Section 4.B. indicates that a list of fees that will be collected and retained by FINRA via the Web CRD registration system for the registration of associated persons of Exchange members that are not also FINRA members is available within Options 7, Section 9C.

[4] *See* Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR–FINRA–2020–032) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adjust FINRA Fees To Provide Sustainable Funding for FINRA's Regulatory Mission).

[5] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[6] *See* note 4. FINRA noted in its rule change that it was adjusting its fees to provide sustainable funding for FINRA's regulatory mission.

[7] This fee includes a $20.00 FINRA fee and $11.25 FBI fee). *See https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees.*

[8] This fee includes a $30 FINRA Fee and a $11.25 FBI Fee. *See https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees.*

[9] This fee includes a $20.00 FINRA fee and $11.25 FBI fee). *See https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees.*

[10] This fee includes a $30 FINRA Fee and a $11.25 FBI Fee. *See https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees.*

[11] *See* Securities Exchange Act Release No. 67247 (June 25, 2012) 77 FR 38866 (June 29, 2012) (SR–FINRA–2012–030) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Sections 4 and 6 of Schedule A to the FINRA By-Laws Regarding Fees Relating to the Central Registration Depository) (''2012 Rule Change'')

[12] *See* note 4.

[13] *See* 2012 Rule Change at note 6. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] The $20 FINRA Fee is in addition to the $11.25 FBI Fee except for the second fingerprint transaction.

FINRA as of January 2, 2023 for the additional processing of each initial or amended Form U4, Form U5 or Form BD and Second Submission (Electronic) Fingerprint Processing Fee and the registration rates that will be assessed by FINRA as of January 2, 2024 for the FINRA Annual System Processing Fee Assessed only during Renewals.[17]

The Exchange believes it is reasonable to correct the paper Fingerprint Fees to reflect the reduced FBI Fee of $11.25.[18] The amendments to the paper Fingerprint Fees will provide all Phlx members and member organizations with the correct Fingerprint Fees.

The Exchange believes it is equitable and not unfairly discriminatory to increase: (1) the $110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to $155; (2) the $45 FINRA Annual System Processing Fee Assessed only during Renewals to $70; and (3) the electronic Fingerprint Fees from $15 to $20 in accordance with an adjustment to FINRA's fees [19] because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner. Similarly, the Exchange believes it is equitable and not unfairly discriminatory to correct the paper Fingerprint Fees to reflect the reduced FBI Fee of $11.25 [20] because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that its proposal to increase: (1) the $110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to $155; (2) the $45 FINRA Annual System Processing Fee Assessed only during Renewals to $70; and (3) the electronic Fingerprint Fees from $15 to $20 in accordance with an adjustment to FINRA's fees [21] does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner. The proposal will reflect the fees that will be assessed by FINRA to all members who register or require fingerprints as of January 2, 2023 and January 2, 2024, respectively.

Similarly, the Exchange believes it does not impose an undue burden on competition to correct the paper Fingerprint Fees to reflect the reduced FBI Fee of $11.25 because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2022–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2022–47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2022–47 and should be submitted on or before December 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25670 Filed 11–23–22; 8:45 am]

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[17] *See* note 4.

[18] *See* 2012 Rule Change at note 6. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

[19] The $20 FINRA Fee is in addition to the $11.25 FBI Fee except for the second fingerprint transaction.

[20] *See* 2012 Rule Change at note 6. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

[21] The $20 FINRA Fee is in addition to the $11.25 FBI Fee except for the second fingerprint transaction.

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96364; File No. 10–239]

In the Matter of the Application of 24X National Exchange LLC for Registration as a National Securities Exchange; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Grant or Deny an Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

November 18, 2022.

I. Introduction

On March 25, 2022, 24X National Exchange LLC (''24X'') filed with the Securities and Exchange Commission (''Commission'') a Form 1 application under the Securities Exchange Act of 1934 (''Act'') seeking registration as a national securities exchange under Section 6 of the Act.[1] Notice of the application was published for comment in the **Federal Register** on June 6, 2022.[2] The Commission received comment letters on the Form 1 application and a letter from 24X responding to these comment letters.[3] On September 1, 2022, the Commission instituted proceedings pursuant to Section 19(a)(1)(B) of the Act[4] to determine whether to grant or deny 24X's application for registration as a national securities exchange under Section 6 of the Act (the ''OIP'').[5] The Commission received one comment letter in response to the OIP,[6] and a letter in response to the OIP from 24X.[7] On October 21, 2022, 24X filed an amendment to its Form 1 application (''Amendment No. 1'').[8] Among other things, Amendment No. 1 revised the corporate documents of 24X and its direct holding company; amended 24X's proposed rules and User Manual;[9] filed additional financial statements for 24X's immediate holding company; and provided additional information about the finances for 24X. On November 10, 2022, 24X filed a second amendment to its Form 1 application (''Amendment No. 2).[10] In Amendment No. 2, 24X revised the Amended and Restated Limited Liability Company Operating Agreement of 24X Bermuda Holdings LLC, as well as the Member Nominating Committee Charter.

Section 19(a)(1)(B) of the Act provides that proceedings instituted to determine whether to deny an application for registration as a national securities exchange shall be concluded within 180 days of the date of a publication of notice of the filing of the application for registration.[11] At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration.[12] The Commission may extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding.[13] The Notice was published for comment in the **Federal Register** on June 6, 2022.[14] The 180th day after publication of the Notice is December 2, 2022. The Commission is extending the time period for granting or denying 24X's application for registration as a national securities exchange for an additional 90 days.

The Commission finds good cause for extending the period for granting or denying 24X's application for registration as a national securities exchange because the extension will provide additional time for the Commission to assess whether 24X's Form 1 application, as amended, satisfies the requirements of the Act and the rules and regulations thereunder. As described in the Notice, 24X proposes to significantly expand trading outside of regular trading hours[15] for NMS stocks by operating a national securities exchange 24 hours a day, seven days a week, 365 days a year, including holidays. In addition, in Amendment Nos. 1 and 2, 24X significantly amended its application for registration as a national securities exchange as originally filed. Therefore, the Commission believes that there is good cause to extend the time for conclusion of the proceedings for 90 days. Accordingly, the Commission, pursuant to Section 19(a)(1)(B) of the Act,[16] designates March 3, 2023, as the date by which the Commission shall either grant or deny 24X's Form 1 application.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25685 Filed 11–23–22; 8:45 am]

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[1] 15 U.S.C. 78f.

[2] *See* Securities Exchange Act Release No. 95007 (May 31, 2022), 87 FR 34333 (June 6, 2022) (''Notice'').

[3] The public comment file for 24X's Form 1 application (File No. 10–239) is available on the Commission's website at: *https://www.sec.gov/comments/10-239/10-239.htm.*

[4] 15 U.S.C. 78s(a)(1)(B).

[5] *See* Securities Exchange Act Release No. 95651 (Sept.1, 2022), 87 FR 54736 (Sept. 7, 2022).

[6] *See* letter from Brian Hyndman, President and Chief Executive Officer, Blue Ocean ATS, LLC, dated Sept. 28, 2022, to Vanessa A. Countryman, Secretary, Commission.

[7] *See* letter from James M. Brady, Katten Muchin Rosenman LLP, outside counsel for 24X National Exchange LLC, dated Oct. 18, 2022, to Vanessa A. Countryman, Secretary, Commission.

[8] *See* Securities Exchange Act Release No. 96218 (Nov. 3, 2022), 87 FR 67725 (Nov. 9, 2022). Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/rules/other/2022/24x/24x-form-1.htm.*

[9] For example, 24X has proposed to delete its original proposal to trade fractional shares and to have a mirrored platform in London.

[10] *See* Securities Exchange Act Release No. 96337 (Nov. 17, 2022). Amendment No. 2 is available on the Commission's website at: *https://www.sec.gov/rules/other/2022/24x/24x-form-1.htm.*

[11] 15 U.S.C. 78s(a)(1)(B).

[12] *Id.*

[13] *Id.*

[14] *See supra* note 2.

[15] ''Regular trading hours'' is defined in Rule 600(b)(77) as ''the time between 9:30 a.m. and 4:00 p.m. Eastern Time.'' 17 CFR 242.600(b)(77).

[16] 15 U.S.C. 78s(a)(1)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96351; File No. SR–ICEEU–2022–015]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to ICE Clear Europe Operational Risk and Resilience Policy

November 18, 2022.

I. Introduction

On September 22, 2022, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Operational Risk Management Policy and rename it the Operational Risk and Resilience Policy. The proposed rule change was published for comment in the **Federal Register** on October 7, 2022.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

ICE Clear Europe currently has in place an Operational Risk Management Policy. The current Operational Risk Management Policy explains how ICE Clear Europe identifies, assesses, manages, monitors, and reports its operational risks. The proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe Operational Risk and Resiliency Policy, Exchange Act Release No. 95964 (Oct. 3, 2022); 87 FR 61109 (Oct. 7, 2022) (SR–ICEEU–2022–015) (''Notice'').

change would maintain the current substance of the Operational Risk Management Policy while expanding it to include a description of how ICE Clear Europe maintains operational resilience, in addition to managing operational risk. The proposed rule change would define operational resilience as the ability to prevent, respond to, recover, and learn from operational service disruption events. The proposed rule change would add descriptions of the following elements that ICE Clear Europe employs to maintain operational resilience: (i) the three lines of defense; (ii) certain other ICE Clear Europe policies and procedures that form a framework for managing and maintaining operational resilience; (iii) important business services; (iv) impact tolerances; and (v) scenario analysis and testing. The proposed rule change also would rename the Operational Risk Management Policy as the Operational Risk and Resilience Policy (referred to below as the ''Policy'').

ICE Clear Europe maintains that overall these changes would memorialize in the Policy its current practices with respect to operational resilience. ICE Clear Europe is making these changes to demonstrate compliance with certain additional legal requirements applicable to ICE Clear Europe in its home jurisdiction, the United Kingdom.[4]

In addition to the changes related to operational resilience, the proposed rule change would make other updates to the Policy, including fixing typographical errors and adjusting the frequency of review.

B. Operational Resilience Updates

i. Three Lines of Defense

The proposed rule change would add to the Policy a description of the three lines of defense, which is the model that ICE Clear Europe currently uses for managing risks. The proposed rule change would not make any changes to this model but would memorialize it in the Policy, in compliance with certain additional legal requirements applicable to ICE Clear Europe in its home jurisdiction.[5]

Under the three lines of defense model, the ICE Clear Europe business line that generates the risk is considered to be the First Line of defense (or Risk Owner). The First Line is responsible for managing risks and adhering to the Policy. All ICE Clear Europe departments, other than the Risk Oversight Department and Internal Audit, could be the First Line of defense.

The Risk Oversight Department/Enterprise Risk Management[6] is the Second Line of defense. The Second Line is responsible for challenging the First Line and monitoring adherence to the Policy.

Internal Audit is the Third Line of defense. It provides independent and objective assurance to ICE Clear Europe's Board regarding, among other things, evaluation of governance, risk management, and key controls mitigating current and evolving risk.

ii. Framework

The proposed rule change would add to the Policy a description of the other policies and procedures that ICE Clear Europe uses to maintain operational resilience. ICE Clear Europe considers these policies and procedures to form a complimentary operational risk and resilience framework. As would be described in the Policy, ICE Clear Europe uses this framework to reduce the likelihood of an operational disruption event within acceptable tolerance, and mitigate and quickly recover from an operational disruption event. In addition to the Policy itself, the policies and procedures in the framework are: (i) the Incident Management Policy;[7] (ii) the Business Continuity & Disaster Recovery Policy;[8] (iii) the Information Security Policy and Cyber Security Strategy;[9] (iv) the Outsourcing Policy;[10] and (v) the Vendor Management Policy.[11]

Again, ICE Clear Europe currently maintains these policies and procedures and the proposed rule change would not alter these policies and procedures. The proposed rule change would only memorialize these policies and procedures to demonstrate how they form a complimentary framework for managing and maintaining ICE Clear Europe's operational resilience, in compliance with certain additional legal requirements applicable to ICE Clear Europe in its home jurisdiction.[12]

iii. Important Business Services

Next, the proposed rule change would add a description of ICE Clear Europe's Important Business Services and set certain requirements with respect to these services. The proposed rule change would define a business service as important if a prolonged disruption of that service would significantly disrupt the orderly functioning of a market that ICE Clear Europe serves, thereby impacting financial stability. The proposed rule change would require that ICE Clear Europe identify and document its Important Business Services and the people, processes, technology, facilities, and underlying information related to such services. Moreover, the relevant First Line must review the important business service annually, subject to oversight by Second Line and approval by a Board-level committee.

ICE Clear Europe currently maintains and documents its critical business services, as part of managing its operational risk and maintaining operational resilience. ICE Clear Europe's critical business services are similar to Important Business Services, but slightly broader in scope. ICE Clear Europe's Important Business Services therefore would be a subset of its critical business services. Given that, ICE Clear Europe maintains that overall, identifying its Important Business Services would not substantively alter its existing risk management framework. While not changing its approach in a substantive way, ICE Clear Europe is introducing the concept of Important Business Services to demonstrate compliance with certain additional legal requirements applicable in its home jurisdiction.[13]

iv. Impact Tolerances

The proposed rule change would also add a description of the maximum levels of disruption to its Important Business Services that ICE Clear Europe could tolerate. The proposed rule change would describe these as impact tolerances. For each Important Business

[4] Notice, 87 FR at 61109.

[5] Notice, 87 FR at 61109.

[6] ICE's Enterprise Risk Management team coordinates with ICE Clear Europe's Risk Oversight Department in providing the Second Line function.

[7] ICE Clear Europe's Incident Management Policy provides a framework for the communication, resolution, and recording of incidents and to ensure incidents are resolved in a planned and controlled manner so that any interruption is resolved quickly, and service is restored.

[8] ICE Clear Europe's Business Continuity & Disaster Recovery helps to ensure appropriate plans are in place to recover from a business continuity or disaster recovery incident which impact the availability of primary office, failure in IT infrastructure or reduced availability of staff.

[9] ICE Clear Europe's Information Security Policy and Cyber Security Strategy explains the responsibilities of users as well as the steps they must take to help protect information and information systems and ways to prevent and respond to a variety of threats to information and information systems.

[10] ICE Clear Europe's Outsourcing Policy governs outsourcing arrangements to ensure minimum operational resilience standards are being met by outsourced service providers.

[11] ICE Clear Europe's Vendor Management Policy helps to ensure the requisite due diligence is performed and helps to ensure that vendors have the capacity, resiliency and capability to fully support ICE Clear Europe.

[12] Notice, 87 FR at 61109, 61110.

[13] Notice, 87 FR at 61110.

Service, ICE Clear Europe would establish an appropriate impact tolerance, as well as controls and recovery procedures to help ensure ICE Clear Europe can recover when the tolerance is exceeded.

ICE Clear Europe would monitor impact tolerances and would escalate breaches to the Executive Risk Committee and Board. Moreover, First Line personnel would review breaches and establish a remediation plan. Second Line would be required to agree to the review and remediation plan, and ultimately the review and remediation would be presented to the Board.

First Line would review the impact tolerances annually. Second Line would oversee this review and an appropriate Board-level Committee would approve it.

ICE Clear Europe currently maintains a risk management framework that already covers incident management based on levels of severity linked to financial, reputational, operational and regulatory impacts.[14] ICE Clear Europe therefore maintains that overall, establishing impact tolerances with respect to its Important Business Services would build on its existing risk management framework to demonstrate compliance with certain additional legal requirements applicable in its home jurisdiction.[15]

v. Scenario Analysis and Testing

The proposed rule change also would add an overview of ICE Clear Europe's scenario analysis and testing. ICE Clear Europe would conduct scenario analysis and testing on its Important Business Services to determine if ICE Clear Europe can remain within the impact tolerances under a range of extreme but plausible disruption scenarios. ICE Clear Europe's testing scenarios would include scenarios that affect more than one Important Business Service at a time and that take into account dependencies.

For any identified weaknesses related to extreme but plausible scenarios, the First Line must develop a remediation plan, with which the Second Line must agree. Moreover, scenario analysis and testing results would be reported to the Executive Risk Committee and the Board.

ICE Clear Europe currently conducts scenario analysis and testing. ICE Clear Europe is adding this section to the Policy to document its scenario analysis and testing, particularly with respect to its Important Business Services. As discussed above, ICE Clear Europe is identifying, and establishing impact tolerances for its Important Business Services in compliance with certain additional legal requirements applicable to ICE Clear Europe in its home jurisdiction.[16] ICE Clear Europe maintains that memorializing its approach to scenario analysis and testing, in particular with respect to its Important Business Services, would further demonstrate compliance with these legal requirements.[17]

C. Other Updates and Typographical Corrections

In addition to expanding the Policy to include operational resilience, the proposed rule change would make other updates to the Policy. For example, the proposed rule change would correct typographical errors, update references, and remove redundant references. The proposed rule change also would rename the section formerly titled ''The Policy for Operational Risk Management'' as ''Risk and Control Assessments,'' to more clearly reflect the information contained there.

The proposed rule change also would correct a reference to the Enterprise Risk Register. Section 3.1 currently provides that all ''risks are documented in the Enterprise Risk Register . . .'' The proposed rule change would correct this to provide instead that all ''risk assessments,'' and not just ''risks,'' are documented in the Enterprise Risk Register. The proposed rule change also would correct a reference to the Enterprise Risk Register in Section 3.1, changing it from the ''Risk Register Dashboard'' to the ''Enterprise Risk Register.''

The proposed rule change would correct a drafting error in Section 3.2.5. Section 3.2.5 requires, among other things, that ICE Clear Europe periodically monitor key Controls, meaning controls that mitigate high inherent risks. As currently written, Section 3.2.5 requires that Enterprise Risk Management coordinate with the First, Second, and Third Lines to develop control monitoring plans for Key Controls. The proposed rule change would delete the reference to the Second Line. Given that the Enterprise Risk Management Group is, as noted above, part of ICE Clear Europe's Second Line, the reference is redundant.

Finally, the proposed rule change would amend the review section of the Policy to require that it be subject to at least an annual review or earlier in the event of a material change. Currently the Policy is subject to a biennial review or earlier in the event of a material change. ICE Clear Europe is making this change to make the Policy consistent with other ICE Clear Europe policies, which are subject to annual reviews.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[18] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[19] and Rules 17Ad–22(e)(2)(v) and 17Ad–22(e)(17) thereunder.[20]

i. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[21] Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the Policy are consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions.

The Commission believes that the proposed rule change would help ICE Clear Europe maintain its overall operational resilience while demonstrating compliance with certain additional legal requirements applicable to ICE Clear Europe in its home jurisdiction. It would do so by memorializing in the Policy how ICE Clear Europe manages and maintains its operational resilience. As discussed above, ICE Clear Europe does so by using, among others, the three lines of defense model and maintain complimentary operational risk and resilience framework. The Commission believes that memorializing these practices in the Policy would help to ensure that ICE Clear Europe personnel follow them on a consistent and predictable basis. Because the Commission believes that these practices are an effective means of maintaining operational resilience, the Commission believes that

[14] Notice, 87 FR at 61110.

[15] Notice, 87 FR at 61110.

[16] Notice, 87 FR at 61110.

[17] Notice, 87 FR at 61110.

[18] 15 U.S.C. 78s(b)(2)(C).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 17 CFR 240.17Ad–22(e)(2)(v) and (e)(17).

[21] 15 U.S.C. 78q–1(b)(3)(F).

memorializing them in the Policy, and therefore helping to ensure that ICE Clear Europe personnel follow these processes on a consistent and predictable basis, would help ICE Clear Europe maintain operational resilience.

The Commission similarly believes that identifying ICE Clear Europe's Important Business Services, setting impact tolerances with respect to those services, and conducting scenario and analysis and testing for those services, would help ICE Clear Europe to maintain these Important Business Services in the event of a disruption. Because a prolonged disruption to an Important Business Service would significantly disrupt the orderly functioning of a market that ICE Clear Europe serves, thus impacting financial stability, the Commission believes that maintaining Important Business Services against the threat of a disruption and other operational risks would help ICE Clear Europe maintain its overall operational resilience.

Moreover, the Commission believes that the other changes discussed in Part II.C above would improve the Policy and therefore ICE Clear Europe's ability to maintain operational resilience using the Policy. For example, the Commission believes that fixing typographical errors, removing the redundant reference to the Second Line in Section 3.2.5, and updating references would help to ensure that the Policy can be applied consistently and free from error. The Commission also believes that making the Policy subject to at least an annual review or earlier in the event of a material change, rather than a biennial review, would help to identify any gaps and necessary resolutions or updates sooner than what is currently required.

For these reasons, the Commission believes the proposed rule change would help ICE Clear Europe maintain operational resilience using the Policy. ICE Clear Europe's operational resilience should decrease the likelihood that operational incidents disrupt its ability to promptly and accurately clear and settle securities transactions. The Commission believes therefore the proposed rule change would maintain ICE Clear Europe's ability to promptly and accurately clear and settle securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[22]

ii. Consistency With Rule 17Ad–22(e)(2)(v)

Rule 17Ad–22(e)(2)(v) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, specify clear and direct lines of responsibility.[23] The Commission believes that the proposed changes discussed above would maintain clear and direct lines of responsibility for First Line and Second Line personnel. For example, the First Line would review each Important Business Service annually, subject to oversight by the Risk Oversight Department and approval by a Board-level committee. The First Line additionally would review the impact tolerances annually, and the Second Line would oversee this review. The First Line also would, as discussed above, develop plans to remediate certain findings from scenario analysis and testing. As discussed above, the proposed rule change would memorialize these lines of responsibility to demonstrate compliance with certain additional legal requirements applicable to ICE Clear Europe in its home jurisdiction. The Commission believes all of these changes would specify clear and direct lines of responsibility.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(2)(v).[24]

iii. Consistency With Rule 17Ad–22(e)(17)

Rule 17Ad–22(e)(17) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to manage its operational risks by, among other things, identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[25] The Commission believes that by memorializing in the Policy how ICE Clear Europe manages and maintains its operational resilience, the proposed rule change would mitigate the impact of operational risk at ICE Clear Europe by helping to ensure that ICE Clear Europe personnel follow these processes on a consistent and predictable basis, and therefore are able to maintain operational resilience and mitigate the impact of operational risk at ICE Clear Europe. The Commission also believes that identifying ICE Clear Europe's Important Business Services, setting impact tolerances with respect to those services, and conducting scenario and analysis and testing for those services would help ICE Clear Europe to identify, manage, and mitigate the impact of operational risks to these Important Business Services. Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(17).[26]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act,[27] and Rules 17Ad–22(e)(2)(v) and 17Ad–22(e)(17) thereunder.[28]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[29] that the proposed rule change (SR–ICEEU–2022–015) be, and hereby is, approved.[30]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25662 Filed 11–23–22; 8:45 am]

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[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(2)(v).

[24] 17 CFR 240.17Ad–22(e)(2)(v).

[25] 17 CFR 240.17Ad–22(e)(17).

[26] 17 CFR 240.17Ad–22(e)(17).

[27] 15 U.S.C. 78q–1(b)(3)(F).

[28] 17 CFR 240.17Ad–22(e)(2)(v) and (e)(17).

[29] 15 U.S.C. 78s(b)(2).

[30] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96363; File No. SR–GEMX–2022–10]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ATR and Re-Pricing Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality

November 18, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 2022, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules in connection with a technology migration to enhanced Nasdaq, Inc. (''Nasdaq'') functionality.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with a technology migration to enhanced Nasdaq functionality that will result in higher performance, scalability, and more robust architecture, the Exchange proposes to amend its rules to adopt certain trading functionality currently utilized at Nasdaq BX, Inc. (''BX''). As further discussed below, the Exchange is proposing to adopt such functionality substantially in the same form as currently on BX, while retaining certain intended differences between it and its affiliates.

The Exchange intends to begin implementation of the proposed rule change by Q3 2023. GEMX would commence its implementation 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.

Re-Pricing

In connection with the technology migration, the Exchange proposes to adopt re-pricing functionality in Options 3, Section 4 and Section 5 for certain orders and quotes that lock or cross an away market's price. The proposed functionality will be materially identical to current BX functionality.[3] As further described below, the Exchange proposes a number of corresponding amendments throughout Options 2 and Options 3 in connection with adopting the re-pricing mechanism.

The Exchange notes that today, it would cancel any unexecuted balances of non-routable orders that cannot be placed on the order book.[4] With the technology migration, any unexecuted balances may rest on the order book as the Exchange would re-price an order that locks or crosses another market as described in this proposal.

As proposed, the System will re-price certain orders to avoid locking or crossing an away market's price. Orders that are designated as non-routable and that 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) as non-displayed and displayed one minimum price variance (''MPV'') above (for offers) or below (for bids) the national best price.[5] Upon re-pricing in this manner, such order will be displayed on OPRA at one MPV above (for offers) or below (for bids) the national best price. The order will remain on the Exchange's order book and will be accessible at the non-displayed price. For example, a non-displayed limit order may be accessed on the Exchange by a Member if the limit order is priced 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) *

* OPRA will show the displayed price, not the booked non-displayed price.

In order to effectuate the foregoing changes, the Exchange proposes to amend Options 3, Section 5(c), which currently provides that the System automatically executes eligible orders using the Exchange's displayed best bid and offer (''BBO''). As amended, Options 3, Section 5(c) would provide 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'')[6] if the best bid and/or offer on the Exchange has been re-priced pursuant to Options 3, Section 5(d). The proposed definition of an internal BBO, which will be identical to BX's definition of internal BBO in BX Options 3, Section 5(c), will cover re-priced orders that remain on the order book and are available at non-displayed prices while resting on the order book. The proposed re-pricing itself will be described in Options 3, Section 5(d). Currently, Options 3, Section 5(d) describes Trade-Through Compliance and Locked or Crossed Market behavior, and further provides that an order that is designated by the Member as routable would be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions.[7] The Exchange proposes to add rule text within Options 3, Section 5(d) to

[3] Today, BX re-prices certain orders and quotes to avoid locking and crossing away markets, consistent with its Trade-Through compliance and Locked or Crossed Markets obligations. *See* BX Options 3, Sections 4(b)(6) and 5(d). *See also* Securities Exchange Act Release No. 89476 (August 4, 2020), 85 FR 48274 (August 10, 2020) (SR–BX–2020–017) (describing BX re-pricing mechanism in BX Options 3, Section 5). In addition to re-pricing, the Exchange also permits Members to cancel their quotes by configuration.

[4] Today, this would include cancelling unexecuted balances of non-routable orders after following the procedures set forth in Supplementary Material .02 to Options 5, Section 2.

[5] The Exchange notes that other rules may cause a routable or non-routable order to re-price in the manner described above. For example, the Exchange will introduce a FIND routing strategy with the technology migration. Orders marked as FIND (*i.e.,* ''FIND Orders'') are routable in nature but could, in certain specified scenarios, re-price and be treated as a non-routable order in such cases. *See e.g.,* Options 5, Section 4(a)(iii)(B)(4) (effective but not yet operative), which provides that a FIND Order received after an Opening Process that is marketable against the BBO when the ABBO is inferior to the BBO will be traded on the Exchange at or better than the BBO price. If the FIND Order has size remaining after exhausting the BBO, it may: (1) trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the ABBO price, (2) be entered into the Order Book at its limit price, or (3) if locking or crossing the ABBO, be entered into the Order Book at the ABBO price and displayed one MPV away from the ABBO. The FIND Order will be treated as DNR for the remainder of the trading day, even in the event that there is a new Opening Process after a trading halt. *See also* 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, including to adopt FIND Orders) (''Routing Filing''). The changes proposed in the Routing Filing will become operative at the same time as this proposal.

[6] A non-displayed order price is not visible to any market participants other than the submitting market participant until such order executes and becomes visible at that time to all market participants.

[7] Options 3, Section 5(d) also currently provides that orders that are not automatically executed will be handled as provided in Supplementary Material .02 to Options 5, Section 2; provided that Members may specify that a Non-Customer order should instead be cancelled automatically by the System at the time of receipt.

describe the manner in which a non-routable order would be re-priced. Specifically, the Exchange proposes 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[8] 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) as non-displayed, and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.'' The Exchange believes that the addition of this language, substantially similar to language within BX Options 3, Section 5(d),[9] will provide Members with additional information as to the manner in which orders are handled by the System when those orders would lock or cross an away market. Identical to BX, the Exchange is specifying that the re-price would occur ''at the time of entry'' to avoid a locked or crossed market violation or a trade-through violation.[10]

With respect to quotes, today as set forth in Options 3, Section 4(b)(6), 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 either be re-priced and displayed at one MPV above (for offers) or below (for bids) the national best price or immediately cancelled, as configured by the Member. The Exchange now proposes to amend the quote re-pricing mechanism currently described in GEMX Options 3, Section 4(b)(6) by harmonizing it with BX Options 3, Section 4(b)(6).[11] As amended, the quote re-pricing language in Options 3, Section 4(b)(6) would provide: ''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) as non-displayed, 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.'' As reflected in the foregoing, the difference between the current and proposed re-pricing is that the Exchange will re-price to the current national best price under the proposal and book non-displayed at this price (*i.e.,* the current national best price). Upon re-pricing in this manner, the order would then be displayed one MPV inferior to the national best price. In contrast, today, the Exchange re-prices and books as displayed one MPV inferior to the national best price. The proposed process is identical to how BX quote re-pricing works today.[12]

In connection with the introduction of the BX-like quote re-pricing mechanism, the Exchange also proposes to add the definition of internal BBO (similar to the proposed definition of internal BBO for order re-pricing) in new subsection (7) of Options 3, Section 4(b) for quote re-pricing. Specifically, subsection (7) will provide that the System automatically executes eligible quotes using the Exchange's displayed best bid and offer (*i.e.,* BBO) or the Exchange's non-displayed order book (*i.e.,* internal BBO) if the best bid and/or offer on the Exchange has been re-priced pursuant to Options 3, Section 5(d) and Options 3, Section 4(b)(6). The proposed addition is intended to make clear that quotes may now be executed using either the BBO or internal BBO, similar to how orders may now be executed with the proposed re-pricing changes.[13] The Exchange will also make a technical amendment to renumber current subsection (7) of Options 3, Section 4(b) to new subsection (8).

In connection with the foregoing changes, the Exchange proposes to add references to ''internal BBO'' throughout its rules to closely conform with the concept of re-pricing at an internal BBO as proposed in Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d). First, the Exchange proposes to add references to the internal BBO in Options 2, Section 10(a), which currently describes Preferred Market Makers[14] and Preferenced Orders.[15] The Exchange proposes to amend paragraph (a)(3) of Options 2, Section 10, which currently stipulates that a Preferred Market Maker must be quoting at the NBBO at the time the Preferenced Order is received in order to be entitled to the Preferred Market Maker allocation set forth in Options 3, Section 10(c)(1)(C). As amended, the Rule will provide that if the Preferred Market Maker is quoting at the *better of the internal BBO or 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. The proposal to use the term ''better of the internal BBO or the NBBO'' will conform to the concept of re-pricing at an internal BBO as proposed in Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d), and will make clear that the Preferred Market Maker must now be quoting at the better of the NBBO or internal BBO to be entitled to the Preferred Market Maker allocation.[16] Today, BX has similar language governing its Directed Market Makers (''DMMs'') (analogous to the Exchange's Preferred Market Makers), which requires Directed Market Makers to be quoting at the better of the internal BBO or the NBBO in order to receive the Directed Market Maker allocation entitlement.[17] The Exchange also proposes a corresponding change in paragraph (a)(2) of Options 2, Section 10, which currently states that

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[8] As noted above, FIND Orders (which are inherently routable but could then become non-routable in specified circumstances) may also be re-priced. *See supra* note 5.

[9] Currently, BX Options 3, Section 5(d), in relevant part, provides that 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. BX intends to make a clarifying change in a separate rule filing to align its rule text with proposed GEMX Options 3, Section 5(d) to also indicate that BX will re-price to the current national best price *as non-displayed.*

[10] After the re-price under Options 3, Section 5(d), continuous re-pricing could take place pursuant to Options 5, Section 4 if the away market price fades to inferior prices and the re-priced order can move closer to its original limit price. *See supra* note 5.

[11] BX Options 3, Section 4(b)(6) provides that 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. BX intends to make a clarifying change in a separate rule filing to align its rule text with proposed GEMX Options 3, Section 4(b)(6) to also indicate that it will re-price to the current national best price *as non-displayed.*

[12] *See supra* note 11.

[13] While BX's quote re-pricing rule does not explicitly reference the term ''internal BBO,'' BX describes the re-pricing of quotes in BX Options 3, Section 4(b)(6) and also currently operates identically to how GEMX is proposing for quotes in GEMX Options 3, Section 4(b)(7) (the BX system automatically executes eligible quotes using BX's displayed best bid and offer (*i.e.,* BX BBO) or BX's non-displayed order book (*i.e.,* internal BX BBO) if the best bid and/or offer on BX has been re-priced pursuant to BX Options 3, Section 5(d) and BX Options 3, Section 4(b)(6). BX intends to file a separate rule change to add this clarification in BX Options 3, Section 4.

[14] 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. *See* Options 2, Section 10(a).

[15] A Preferenced Order is an order designated to a Preferred Market Maker. *See* Options 2, Section 10.

[16] As discussed below, the Exchange is proposing corresponding changes in the Preferred Market Maker allocation rule in Options 3, Section 10(c)(1)(C).

[17] *See* BX Options 2, Section 10(a)(1).

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. Specifically, the Exchange proposes that the Preferred Market Maker will not be entitled to the allocation in Options 3, Section 10(c)(1)(C) if the Preferred Market Maker is not quoting at a price equal to *or better than the better of the internal BBO or the NBBO* at the time the Preferenced Order is received.

Second, the Exchange proposes to add the concept of ''better of the internal BBO or the NBBO'' in Options 3, Section 10(c)(1)(B), which currently sets forth an enhanced Primary Market Maker allocation entitlement. As amended, Options 3, Section 10(c)(1)(B) will provide 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). The proposed changes will conform to the concept of re-pricing at an internal BBO as proposed in Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d), and will make clear that the Primary Market Maker must now be quoting at the better of the NBBO or internal BBO to be entitled to the enhanced Primary Market Maker allocation. The Exchange notes that Nasdaq Phlx LLC (''Phlx'') has similar language in Phlx Options 3, Section 10 governing Lead Market Maker (''LMM'') (analogous to the Exchange's Primary Market Maker) allocation.[18] The Exchange also proposes to correct a citation in Options 3, Section 10(c)(1)(B)(i)(b) from subparagraph (a)(1)(E) to subparagraph (c)(1)(E).

Third, the Exchange proposes to add the concept of ''better of the internal BBO or the NBBO'' in Options 3, Section 10(c)(1)(C), which currently sets forth Preferred Market Maker allocation entitlement. As amended, Options 3, Section 10(c)(1)(C) will provide 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. The proposed changes will conform to the concept of re-pricing at an internal BBO as proposed in Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d), and will make clear that the Preferred Market Maker must now be quoting at the better of the NBBO or internal BBO to be entitled to the Preferred Market Maker allocation. The Exchange notes that Phlx has similar language in Phlx Options 3, Section 10 governing DMM allocation.[19]

Fourth, the Exchange proposes to add the concept of ''better of the internal BBO or the NBBO'' throughout Options 3, Section 10(c)(1)(D), which currently sets forth the Primary Market Maker allocation entitlement for orders of five (5) contracts or fewer. As amended, subparagraph (i) of Options 3, Section 10(c)(1)(D) will provide that a Primary Market Maker is entitled to priority with respect to Orders of 5 Contracts or Fewer if the Primary Market Maker has a quote at the *better of the internal BBO or the NBBO* with no other Priority Customer or Preferenced Market Maker interest present which has a higher priority, including when the Primary Market Maker is also the Preferred Market Maker. As amended, subparagraph (ii) of Options 3, Section 10(c)(1)(D) will provide that if the Primary Market Maker is quoting at the *better of the internal BBO or the NBBO* and the Primary Market Maker is also the Preferred Market Maker or there is no Preferred Market Maker quoting at the *better of the internal BBO or the NBBO,* and a Priority Customer has a higher priority at the time of execution, the Priority Customer will be allocated the Orders of 5 Contracts or Fewer up to their displayed size pursuant Options 3, Section 10(c)(1)(A) and if contracts remain, the Primary Market Maker will be allocated the remainder. As amended, subparagraph (iii) of Options 3, Section 10(c)(1)(D) will provide that if the Primary Market Maker is quoting at the *better of the internal BBO or the NBBO* and no Priority Customer has a higher priority at the time of execution and a Preferred Market Maker, who is not a Primary Market Maker, is quoting at *the better of the internal BBO or the NBBO* then allocation shall proceed according to Section 10(c)(1)(C). The proposal will conform to the concept of re-pricing at an internal BBO as proposed in Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d). The Exchange notes that BX has similar language in BX Options 3, Section 10 governing LMM allocation entitlement for orders of five (5) contracts or fewer.[20]

Opening Process

In connection with the technology migration, the Exchange proposes to amend its Opening Process in Options 3, Section 8 to adopt language that conforms to the proposed re-pricing structure. The Exchange proposes to amend Options 3, Section 8(j)(6)(i) to reflect the new BX-like re-pricing that it is proposing to adopt, as described in the re-pricing section above. Currently, Section 8(j)(6)(i) stipulates that for contracts that are not routable, pursuant to Options 3, Section 8(j)(6), the System would cancel (1) any portion of the DNR order that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur, or (2) any order or quote that is priced through the Opening Price.[21] All other interest would remain in the System and be eligible for trading after opening. As it relates to DNR order handling, this reflects current System behavior where the Exchange would cancel any unexecuted balances of a non-routable order that cannot be placed on the order book because the residual interest would lock or cross an away market. With the technology migration, such unexecuted balances may rest on the order book as the Exchange would instead re-price the non-routable order that locks or crosses an away market to align to current BX re-pricing functionality. Accordingly, the Exchange proposes to replace the current rule text in Section 8(j)(6)(i) with the following: ''Pursuant to Options 3, Section 8(j)(6), the System will re-price DNR Orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to the current away best offer (for bids) or the current away best bid (for offers) as non-displayed, and display at a price that is one minimum trading increment inferior to the ABBO, and disseminate such DNR Order as part of the new BBO.'' Proposed Section 8(j)(6)(i) will further provide that the System will cancel any order or quote that is priced through the Opening Price, and that all other interest will be eligible for trading after the opening. This would reflect that the Exchange will continue to cancel any interest priced through the Opening Price, and to keep all other interest in the System for trading after opening. Proposed Options 3, Section 8(j)(6)(i) is substantially similar to BX Options 3,

[18] *See* Phlx Options 3, Section 10(a)(1)(B).

[19] *See* Phlx Options 3, Section 10(a)(1)(C).

[20] *See* BX Options 3, Section 10(a)(1)(C)(2)(iii).

[21] The Opening Price is described in Options 3, Sections 8(h) and (j).

Section 8(k)(4) and (5), and will bring greater transparency in how non-routable orders will be handled in the Opening Process.[22]

Auction Mechanisms

Facilitation and Solicited Order Mechanisms

The Exchange proposes to amend Options 3, Section 11 (Auction Mechanisms) to modify the entry checks for the Exchange's Facilitation Mechanism [23] and Solicited Order Mechanism [24] to reflect the BX-like re-pricing changes under this proposal by introducing the concept of an internal BBO.[25] As discussed in the re-pricing section above, the Exchange proposes to re-price orders that would otherwise lock or cross an away market.[26] Specifically, an order will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) as non-displayed and displayed at one MPV above (for offers) or below (for bids) the national best price.[27] With this re-pricing, an Exchange order could be available 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''). Accordingly, the Exchange proposes to add the concept of ''internal BBO'' in the order entry checks for the Facilitation and Solicited Order Mechanisms in Options 3, Sections 11(b)(1) and (d)(1), respectively, to account for a non-displayed better price that may be available on the Exchange order book.

In particular, the Exchange proposes to add the concept of ''internal BBO'' in Options 3, Section 11(b)(1), which currently sets forth the entry checks for the Exchange's Facilitation Mechanism. As amended, the Rule will provide that orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO *and the internal BBO* on the same side of the market as the agency order unless there is a Priority Customer order on *the BBO or internal BBO on the same side of the market as the agency order,* in which case the order must be entered at an improved price *over the Priority Customer order;* and (B) equal to or better than the ABBO on the opposite side.[28] The proposal will make clear that with the introduction of the re-pricing mechanism in proposed Options 3, Section 5(d), the System will now check orders entered into the Facilitation Mechanism against the internal BBO as well. In addition, the proposed changes will clarify that the Facilitation order must be entered at an improved price over the Priority Customer order where there is a Priority Customer order on the same side BBO or internal BBO. By way of example, the below examples demonstrate how the internal BBO would operate in the Facilitation Mechanism.

Facilitation Passes Entry Validation Equal to or Better Than the NBBO and Internal BBO on the Same Side of the Market

Assume the following:

MIAX BBO: 3.10 × 3.20

GEMX BBO 3.05 × 3.25

Non-Priority Customer DNR order to buy for 3.25 arrives at GEMX; books at 3.20 non-displayed and re-prices/displays at 3.15

GEMX Internal BBO: 3.20 × 3.25

NBBO: 3.15 × 3.20

Facilitation to buy @ 3.20 arrives and is able to begin because the Facilitation Agency side price is at or better than the NBBO and internal BBO on the same side of the market and at or better than the ABBO on the opposite side of the market.

Facilitation Fails Entry Validation Equal to or Better Than the NBBO and Internal BBO on the Same Side of the Market

Assume the following:

MIAX BBO: 3.10 × 3.20

GEMX BBO 3.05 × 3.25

Non-Priority Customer DNR order to buy for 3.25 arrives at GEMX; books at 3.20 non-displayed and re-prices/displays at 3.15

GEMX Internal BBO: 3.20 × 3.25

NBBO: 3.15 × 3.20

Facilitation to buy @ 3.15 arrives and is rejected because the Facilitation Agency side price is not at or better than the internal BBO on the same side of the market.

Similarly, the Exchange proposes to add the concept of ''internal BBO'' in Options 3, Section 11(d)(1), which currently sets forth the entry checks for the Exchange's Solicited Order Mechanism. As amended, the Rule will provide that orders must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO *and the internal BBO* on both sides of the market; provided that, if there is a Priority Customer order on the *BBO or internal BBO,* the order must be entered at an improved price *over the Priority Customer order.* Similar to the proposed changes for the Facilitation Mechanism, the proposal will make clear that with the introduction of the re-pricing mechanism in proposed Options 3, Section 5(d), the System will now check orders entered into the Solicited Order Mechanism against the internal BBO as well. In addition, the proposed changes will clarify that the order entered into the Solicited Order Mechanism must be entered at an improved price over the Priority Customer order where there is a Priority Customer order on either side of the BBO or internal BBO. By way of example, the below examples demonstrate how the internal BBO would operate in the Solicited Order Mechanism.

Solicitation Passes Entry Validation Equal to or Better Than the NBBO and Internal BBO on Both Sides of the Market

MIAX BBO: 3.10 × 3.20

GEMX BBO 3.05 × 3.25

Non-Priority Customer DNR order to sell for 3.05 arrives at GEMX; books at 3.10 non-displayed and re-prices/displays at 3.15

GEMX Internal BBO: 3.05 × 3.10

NBBO: 3.10 × 3.15

Solicitation to buy @ 3.10 arrives and is able to begin because the Solicitation Agency side price is at or better than the

[22] BX Options 3, Sections 8(k)(4) and (5) provide that pursuant to Options 3, Section 8(k)(3)(F), the System will re-price Do Not Route Orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to a price that is one minimum trading increment inferior to the ABBO, and disseminate the re-priced DNR Order as part of the new BBO. The System will cancel any order or quote that is priced through the Opening Price. All other interest will be eligible for trading after opening. BX intends to align its rule to proposed GEMX Options 3, Section 8(j)(6)(i) in a separate rule filing to clarify that DNR Orders in the BX opening process can re-price *to the current ABBO as non-displayed,* and *display at* a price that is one MPV inferior to the ABBO.

[23] The Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. *See* Options 3, Section 11(b).

[24] The Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent against contra orders that it solicited. *See* Options 3, Section 11(d).

[25] As discussed later in the filing, while BX does not have a Facilitation or Solicited Order Mechanism like GEMX, BX currently considers the internal BBO in its price improvement auction (''PRISM'') in a similar manner as being proposed for the GEMX Facilitation and Solicited Order Mechanisms.

[26] *See supra* notes 5 and 8.

[27] *See* proposed Options 3, Section 5(d). *See supra* notes 5 and 8.

[28] The Facilitation Mechanism does not check the Exchange best bid or offer on the opposite side of the market because any interest that is available on the opposite side of the market would allocate against the Facilitation Agency Order and provide price improvement.

NBBO and internal BBO on both sides of the market.

Solicitation Fails Entry Validation Equal to or Better Than the NBBO and Internal BBO on Both Sides of the Market

MIAX BBO: 3.10 × 3.20
GEMX BBO 3.05 × 3.25
Non-Priority Customer DNR order to sell for 3.05 arrives at GEMX; books at 3.10 non-displayed and re-prices/displays at 3.15
GEMX Internal BBO: 3.05 × 3.10
NBBO: 3.10 × 3.15

Solicitation to buy @ 3.15 arrives and is rejected because the Solicitation Agency side price is not at or better than the internal BBO on both sides of the market.

Lastly, the Exchange proposes a clarifying change in Options 3, Section 11(b)(1), which governs the entry checks for the Facilitation Mechanism. Specifically, the Exchange proposes to amend the provision as follows: ''Orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO and the internal BBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side *of the market as the agency order* . . . .'' The proposed change does not change current System behavior, and is meant to align the language in the Priority Customer order clause relating to the same side of the market as the agency order more closely with similar language in the preceding clause.

Price Improvement Mechanism

The Exchange proposes to amend Options 3, Section 13 (Price Improvement Mechanism for Crossing Transactions) to modify the entry checks for the Exchange's Price Improvement Mechanism (''PIM'') to reflect the BX-like re-pricing changes under this proposal.[29] The Exchange proposes to amend Options 3, Section 13(b)(1) to provide, ''If the Agency Order is for less than 50 option contracts, and if the difference between the National Best Bid and National Best Offer (''NBBO'') *or the difference between the internal best bid and internal best offer* is $0.01, the Crossing Transaction must be entered at *$0.01* better than the NBBO *and the internal BBO* on the opposite side of the market from the Agency Order and better than the limit order or quote on the Nasdaq GEMX order book on the same side of the Agency Order.'' [30] The addition of ''internal BBO'' herein is similar to the changes proposed for the Facilitation and Solicited Order Mechanisms discussed above in that the Exchange is reflecting the proposed re-pricing changes in its PIM rule as illustrated by the example below.

Today, an Agency Order for less than 50 contracts could begin a PIM if the difference between the NBBO is $0.01. With this change, an Agency Order for less than 50 contracts could begin a PIM if the difference between the NBBO or between the internal BBO is $0.01. Below is an example of the how the System would treat an order for less than 50 contracts where the internal BBO is greater than the NBBO with respect to the rule text within Options 3, Section 13(b)(1).

Assume GEMX Market Maker quotes an option series at 1.09 (10) × 1.15 (10)
Next assume ABBO quotes that option series at 1.10 (10) × 1.11 (10)
Assume an order locks the ABBO quote with a buy order in that options series of 5 @ 1.11

With the proposed repricing, this order would book at 1.11 and display 1 MPV (penny in this case) away at 1.10 on the order book.

In this scenario:

- the PIM to buy 49 @ 1.10 would be rejected;
- the PIM to buy 49 @ 1.11 would be rejected;
- the PIM to sell 49 @ 1.10 would be rejected; and
- the PIM to sell 49 @ 1.11 would be rejected.

This proposed new rule text accounts for a non-displayed better price that may be available on the order book. A similar change is proposed for the Crossing Transaction within that same paragraph. Additionally, in lieu of stating ''one minimum price improvement increment'' the Exchange proposes to replace that rule text with ''$0.01.'' Amending the rule text to $0.01 does not amend the current System operation, rather it more simply states what that minimum increment is today. The Exchange proposes similar changes within Options 3, Section 13(b)(2) to add references to ''difference between the internal BBO'' and ''$0.01.'' [31] Below is an example of the how the System would treat an order for 50 contracts or more where the internal BBO is greater than the NBBO with respect to the rule text within Options 3, Section 13(b)(2).

Assume GEMX Market Maker quotes an option series at 1.09 (10) × 1.15 (10)
Next assume ABBO quotes that option series at 1.10 (10) × 1.11 (10)
Assume an order locks the ABBO quote with a buy order in that option series at 5 @1.11

With the proposed repricing this order would book at 1.11 and display 1 MPV (penny in this case) away at 1.10 on the order book.

In this scenario:

- the PIM to buy 50 @ 1.10 would be rejected;
- the PIM to buy 50 @ 1.11 would be rejected;
- the PIM to sell 50 @ 1.10 would be rejected; and
- the PIM to sell 50 @ 1.11 would be accepted and would begin a PIM auction.

Assuming no other interest arrives during the PIM auction timer, this order would trade at the end of the auction timer, thereby filling the order 5 @1.11 and the remainder would allocate to the contra side/counter side order.

Acceptable Trade Range

As set forth in Options 3, Section 15(a)(2)(A), the Exchange currently offers an Acceptable Trade Range (''ATR'') risk protection that sets dynamic boundaries within which quotes and orders may trade. ATR is designed to guard against the System from experiencing dramatic price swings by preventing the immediate execution of quotes and orders beyond the thresholds set by the protection. With the proposed adoption of the BX-like re-pricing mechanism described above, the Exchange proposes to introduce 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 in the manner discussed below. The Exchanges notes that today, it would cancel rather than re-price any interest that exceeds the outer limit of the ATR. The proposed changes will harmonize the Exchange's ATR with BX's ATR.[32]

Currently, subparagraph (i) of Options 3, Section 15(a)(2)(A) provides that the System will calculate an ATR to limit the range of prices at which an order or

[29] BX intends to file a rule change to amend BX Options 3, Section 13 to similarly refer to an ''internal BBO.''

[30] Currently, Options 3, Section 13(b)(1) provides that if the Agency Order is for less than 50 option contracts, and if the difference between the National Best Bid and National Best Offer (''NBBO'') is $0.01, the Crossing Transaction must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than the limit order or quote on the Nasdaq GEMX order book on the same side of the Agency Order.

[31] *See supra* note 29.

[32] *See* BX Options 3, Section 15(b)(1). As discussed further below, the Exchange will also add references to ''internal BBO'' in the ATR reference price description. BX intends to file a similar rule change to clarify this behavior.

quote will be allowed to execute. The ATR is calculated by taking the reference price, plus or minus a value to be determined by the Exchange (*i.e.,* the reference price − (x) for sell orders and the reference price + (x) for buy orders).[33] ATR is not available for All-or-None Orders. Subparagraph (ii) provides that the reference price is the National Best Bid (''NBB'') for sell orders/quotes and the National Best Offer (''NBO'') for buy orders/quotes.[34] The reference price is calculated upon receipt of a new order or quote, provided that if the applicable NBB or NBO price is improved at the time an order is routed to an away market, a new reference price is calculated based on the NBB or NBO at that time. Today, as set forth in subparagraph (iii), if an order or quote reaches the outer limit of the ATR without being fully executed, then any unexecuted balance will be cancelled.

The Exchange now proposes to amend this rule to adopt an iterative process like BX wherein an order/quote that reaches its ATR boundary will be 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. Specifically, the Exchange proposes to amend subparagraph (iii) of Options 3, Section 15(a)(2)(A) to provide that if 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. 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) then becomes the reference price for calculating a new ATR. If the order/quote remains unexecuted after the Posting Period, a new Acceptable Trade Range will be calculated and the 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[35] (in which case it will be returned).[36] The proposed changes will be functionally identical to BX's ATR, as set forth in BX Options 3, Section 15(b)(1)(A).

In light of the foregoing changes, the Exchange also proposes to update the reference price definition in subparagraph (ii) 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.*[37]

This will be functionally identical to BX's ATR reference price, as set forth in BX Options 3, Section 15(b)(1).[38]

In addition, the Exchange proposes in new subparagraph (iv)[39] that during the Posting Period, the Exchange will disseminate as a quotation: (1) the Threshold Price for the remaining size of the order/quote triggering the ATR and (2) on the opposite side of the market, the best price will be displayed using the ''non-firm'' indicator message in accordance with the specifications of the network processor. This would allow the order or quote setting the ATR Threshold Price to retain priority in the Exchange book and also prevent any later-entered order from accessing liquidity ahead of it. If the Exchange were to display trading interest available on the opposite side of the market, that trading interest would be automatically accessible to later-entered orders during the period when the order triggering the ATR is paused. This is identical to how BX currently disseminates such interest during the ATR Posting Period.[40] Identical to BX, following the Posting Period, the Exchange will return to a normal trading state and disseminate its best bid and offer.[41]

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[33] The ATR settings values are tied to the option premium and will be set out in the ATR table in the GEMX system settings document on a publicly available website. The GEMX settings will be identical to BX ATR. The Exchange would notify all Members through an Options Trader Alert if it determined to amend that value and also publish the settings on a publicly available website.

[34] In the event of a crossed ABBO, ATR will use the NBO instead of the NBB for incoming sell orders and the NBB instead of the NBO for incoming buy orders as the reference price.

[35] The Exchange intends to initially set the configurable number to 5 iterations, similar to BX. The Exchange would issue an Options Trader Alert if it determined to amend that timeframe and also publish the settings on a publicly available website.

[36] Under this proposal, DNR orders that are locked against the ABBO will pause their ATR iterations (*i.e.,* a new ATR will not be calculated based on the reference price at that time) and will remain this way until the ATR process can be completed. This will be the same as BX DNR order handling. Returning an order to the customer means that the order would be cancelled.

[37] The additions of ''internal BBO'' in this rule text are consistent with the proposed re-pricing described above.

[38] BX Options 3, Section 15(b)(1) states, in relevant part, that ''[t]he system will calculate an Acceptable Trade Range to limit the range of prices at which an order will be allowed to execute. The Acceptable Trade Range is calculated by taking the reference price, plus or minus a value to be determined by the Exchange. (*i.e.,* the reference price − (x) for sell orders and the reference price + (x) for buy orders). Upon receipt of a new order, the reference price is the NBB for sell orders and the NBO for buy orders or the last price at which the order is posted whichever is higher for a buy order or lower for a sell order.'' The Exchange notes that BX's rule does not reference ''quotes,'' but BX's ATR currently applies to both orders and quotes like the Exchange's ATR. The Exchange further notes that BX's rule does not refer to an ''internal BBO'' but that today, BX's ATR reference price also takes the better of the NBB (NBO) or internal best bid (best offer) for sell (buy) orders/quotes, or the last price at which the order/quote is posted.

[39] The Exchange will make a related change to update current subparagraph (iv) to subparagraph (v).

[40] *See* BX Options 3, Section 15(b)(1)(B). Like BX today, with the proposed changes, route timers pursuant to Options 5, Section 4(a), will continue to run on the Exchange during ATR iterations and ''firm'' quote posting can occur if, for example, the order is re-priced to one MPV away from the ABBO pursuant to proposed Options 3, Section 5(d) to comply with the trade-through and locked or crossed market restrictions pursuant to Options 5, Section 2. In such cases, the quotation will disseminate as a ''firm'' quote.

[41] *See* BX Options 3, Section 15(b)(1)(B).

Importantly, the ATR is neutral with respect to away markets. The order may route to other destinations to access liquidity priced within the ATR provided the order is designated as routable, as shown in the example below.[42] With the proposed changes, if the order still remains unexecuted, this process will repeat[43] until the order is executed, cancelled, or posted at its limit price. Pursuant to Options 5, Section 4, if after an order is routed to the full size of an away exchange and additional size remains available for the routed order, the remaining contracts will be posted on the Exchange's order book at a price that assumes the away market has been fully executed and exhausted by the routed order.[44] This practice of routing and then posting is consistent with the national market system plan governing trading and routing of options orders and the Exchange policies and procedures that implement that plan.[45]

The following examples illustrate the proposed ATR functionality.

Example 1

Assume that the Acceptable Trade Range is set for $0.05 and the following quotations are posted in all 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

GEMX Price Levels:

Exchange	Bid size	Bid price	Offer price	Offer size
GEMX	10	$0.75	$0.90	10
GEMX			0.95	10
GEMX			0.97	10
GEMX			1.00	20

GEMX receives a routable order to buy 70 contracts at $1.10. The Acceptable Trade Range is $0.05 and the reference price is the National Best Offer − $0.90. The Acceptable Trade Range 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 GEMX
- 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 GEMX
- Then, after executing at multiple price levels, the order is posted at the Threshold Price of $0.95 for a brief period not to exceed one second (''Posting Period'') to determine whether additional liquidity will become available.
- During the Posting Period, a new Acceptable Trade Range Threshold Price of $1.00 is determined (new reference price of $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 $0.97, and 10 contracts at $1.00.[46]

Similarly, if a new order is received when a previous order has reached the Acceptable Trade Range threshold, the Threshold Price will be used as the reference price for the new Acceptable Trade Range threshold. Both orders would then be allowed to execute up (down) to the new Threshold Price.

Example 2

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

GEMX Price Levels:

Exchange	Bid size	Bid price	Offer price	Offer size
GEMX	10	$0.75	$0.90	10
GEMX			0.95	10
GEMX			1.05	20

[42] When a Threshold Price is calculated, an order can route and execute at away venues at multiple prices that are at or better than the calculated Threshold Price.

[43] As proposed in Options 3, Section 15(a)(2)(A)(iii)(2), the Exchange will establish a maximum number of ATR iterations until the order or quote is returned back to the Member.

[44] *See* Options 5, Section 4(a)(iii) (effective but not yet operative).

[45] *See* Options Order Protection and Locked/Crossed Markets Plan, Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

[46] The brief pause described above will not disadvantage customers seeking the best price in any market. For example, if in the example above an NYSE ARCA quote of $0.75 × $0.96 with size of 10 × 10 is received, a routable order would first route to NYSE ARCA at $0.96, then execute against GEMX at $0.97.

GEMX receives a routable order to buy 60 contracts at $1.10. The Acceptable Trade Range is $0.05 and the reference price is the National Best Offer – $0.90. The Acceptable Trade Range Threshold Price 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 GEMX
- 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 GEMX

- Then, after executing at multiple price levels, the order is posted at $0.95 for a Posting Period (brief period not to exceed one second) to determine whether additional liquidity will become available.
- No new liquidity was received during the Posting Period. A new Acceptable Trade Range Threshold Price of $1.00 is determined (new reference price of $0.95 + $0.05 = $1.00)
- If, during the previous Posting Period, a second order is received to buy 10 contracts at $1.25, the two orders would then post at the new Acceptable Trade Range Threshold price of $1.00 for another Posting Period (brief period not to exceed one second) to determine whether additional liquidity will become available.
- A new Acceptable Trade Range Threshold Price of $1.05 will be calculated.
- If no additional liquidity becomes available within the posted price of the orders ($1.00) during the Posting Period, the orders would execute 10 contracts each against the order on the GEMX book at $1.05 at the conclusion of the Posting Period.

Example 3

Assume the following:

Acceptable Trade Range is configured to $0.07
ABBO 1.91 (10) × 2.01 (10)
Buy order 1 @ 2.00
DNR Order to Buy 1 @ 2.01—slides back to display at 2.00
MM1 Quote 1.99 (10) × 2.12 (10)
Order1 Buy 10 @ 1.94
Order2 Buy 10 @ 1.93
Order3 Buy 5 @ 1.92
Order4 Buy 5 @ 1.91
Order to Sell 100 @ 1.90 comes in

- First trades 1 @ 2.01 with slid DNR order
- Then trades 1 @ 2.00 with other buy order
- Then trades 10 @ 1.99 with MM quote (then quote purges since bid side volume has been exhausted)
- Then trades with Order1 (10 @ 1.94)
- Then posts 78 @ 1.94, the ATR Threshold (calculated by taking the initial reference price of 2.01 (*i.e.,* the better of the internal best bid and NBB) minus the 0.07 Acceptable Trade Range)

After the ATR Posting Period completes:

- Trades 10 @ 1.93 with Order2
- Trades 5 @ 1.92 with Order3
- Trades 5 @ 1.91 with Order4
- Posts to book at 1.91 non-displayed and re-prices to display 1 MPV (penny) from ABBO at 1.92, exposes 58 @ 1.91

After route timer passes:

- Routes 10 @ 1.91 to ABBO
- Posts to book at its limit with remaining 48 @ 1.90 [47]

Finally, the Exchange proposes to add clarifying language in the first sentence of subparagraph (i) of Options 3, Section 15(a)(2)(A) that the System will calculate the ATR after the Opening Process.[48] This is a clarifying change that does not amend current functionality. ATR does not apply until after the Opening Process because the order book (and the ATR reference price) is established once options series are open for trading.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[49] in general, and furthers the objectives of Section 6(b)(5) of the Act,[50] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Generally, the Exchange's proposal is intended to add or align certain System functionality with functionality currently offered on BX in order to provide a more consistent technology offering across affiliated Nasdaq options exchanges. A more harmonized technology offering, in turn, will simplify technology implementation, changes, and maintenance by market participants of the Exchange that are also participants on Nasdaq affiliated options exchanges. The Exchange's proposal also seeks to provide greater harmonization between the rules of the Exchange and BX, which would result in greater uniformity, and less burdensome and more efficient regulatory compliance by market participants. As such, the proposal would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that more consistent rules will increase the understanding of the Exchange's operations for market participants that are also participants on the Nasdaq affiliated options exchanges, thereby contributing to the protection of investors and the public interest. The Exchange believes that such changes would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes would promote transparency in Exchange rules and reducing potential confusion, thereby ensuring that Members, regulators, and the public can more easily navigate the Exchange's rulebook and better understand how options trading is conducted on the Exchange.

Re-Pricing

The Exchange believes that re-pricing quotes and orders that would otherwise lock or cross an away market, as proposed in Options 3, Sections 4(b)(6), 5(c) and (d), is consistent with the Act. Today, BX re-prices such quotes and orders by re-pricing them to the current national best price as non-displayed, and displaying them one MPV away from the best bid or offer.[51] This behavior is consistent with the protection of investors and the general public because it affords Members the ability to obtain the best price offered among the various options markets while not locking or crossing an away market. With the proposed changes, the Exchange will continue to not trade through an away market. As a result, the Exchange's proposal would be consistent with the Options Order Protection and Locked/Crossed Market Plan. Any quote or non-routable order that locks or crosses an away market on the Exchange would be re-priced as a result of this amendment. The proposed changes to Options 3, Section 4(b)(6) will clearly articulate the proposed re-pricing mechanism, and will provide Members with additional information as to how quotes will be handled by the System when those quotes would lock

[47] *See supra* note 40 regarding route timer.

[48] While BX's ATR does not have this clarification today, BX's ATR likewise applies after the Opening Process.

[49] 15 U.S.C. 78f(b).

[50] 15 U.S.C. 78f(b)(5).

[51] *See* BX Options 3, Sections 4(b)(6), 5(c) and (d).

or cross an away market. As discussed above, the difference between the current and proposed quote re-pricing is that the Exchange will re-price to the current national best price under the proposal as non-displayed (instead of re-pricing and displaying one MPV inferior as it does today). The Exchange will continue to display one MPV inferior to the national best price under this proposal. As such, the proposed quote re-pricing mechanism will continue to prevent the Exchange from disseminating a price that locks or crosses another market. This process is identical to how BX quote re-pricing functions today, as described in BX Options 3, Section 4(b)(6).

In connection with the introduction of the BX-like quote re-pricing mechanism, the Exchange also proposes to add the definition of internal BBO (similar to the proposed definition of internal BBO for order re-pricing) in Options 3, Section 4(b)(7). As discussed above, the proposed addition is intended to make clear that quotes may now be executed using either the BBO or internal BBO if the Exchange best bid or offer has been re-priced pursuant to the order re-pricing mechanism proposed in Options 3, Section 5(d) and the quote re-pricing mechanism proposed in Options 3, Section 4(b)(6). As noted above, BX handles quotes in the same manner as proposed for GEMX Options 3, Section 4(b)(7).[52]

The proposed changes to Options 3, Section 5(c) will allow the Exchange to define an internal BBO in its Rules when describing re-priced orders that remain on the order book and are available at non-displayed prices while resting on the order book. The proposed changes to Options 3, Section 5(d) will clearly articulate the proposed re-pricing mechanism itself, and provide Members with additional information as to how orders are handled by the System when those orders would lock or cross an away market. The Exchange notes that allocation priority for re-priced orders would be consistent with the current rules in Options 3, Section 10(c).

The Exchange also believes that the related proposals to add references to internal BBO in Options 2, Section 10 and Options 3, Section 10 are consistent with the Act. Overall, the proposed addition of internal BBO will ensure that the rules conform to the concept of re-pricing at an internal BBO as proposed in Options 5(c) and (d) and will make clear that a re-priced order is accessible on the Exchange's order book at the non-displayed price. Specifically, the Exchange believes that adding references to the internal BBO in the allocation rules for Preferred Market Makers and Primary Market Makers will make clear that in connection with the proposed re-pricing mechanism, such market participants must now be quoting at the better of the NBBO or the internal BBO in order to be entitled to the applicable allocations set forth in their respective rules. The introduction of the internal BBO would have no impact on a Primary Market Maker's quoting obligations as Primary Market Makers do not need to be at the NBBO today, or as proposed, the better of NBBO or the internal BBO in order to meet their quoting obligations.[53] The Exchange also notes that the proposed quote re-pricing mechanism described above will allow the Primary Market Maker or Preferred Market Maker to re-price to the internal BBO and receive their enhanced allocation when the internal BBO is better than the NBBO.[54] In addition, by not providing the enhanced allocation for Market Makers that are not at the internal BBO when it is better than the NBBO, the Exchange is protecting investors with more aggressively priced interest by allocating to them first. The Exchange does not believe that Market Makers should be entitled to enhanced allocations in the foregoing instance given that there are better available internal BBO prices on the market. Like BX, the Exchange believes that the overall benefit to the marketplace is that market participants will be able to obtain the best price offered among the various options markets while avoiding a trade-through or locked or cross market violation.

Opening Process

The Exchange believes that the proposed changes to the Opening Process in Options 3, Section 8 are consistent with the Act. Specifically, the Exchange believes that the proposed changes to Options 3, Section 8(j)(6)(i) will bring greater transparency as to how non-routable orders will be handled during the Opening Process. As discussed above, the Exchange proposes to no longer cancel any unexecuted portions of a DNR Order that locks or crosses an away market, and instead will re-price the DNR Order to the current away best offer (for bids) or the current away best bid (for offers) as non-displayed, and display a price that is one minimum trading increment inferior to the ABBO, and disseminate such DNR Order as part of the new BBO. The proposed changes reflect the new BX-like re-pricing mechanism that the Exchange is proposing to adopt as part of the technology migration. The Exchange believes that the proposed re-pricing of DNR Orders during the Opening Process is consistent with the protection of investors and the general public because it affords Members the ability to obtain the best price offered among the various options markets while not locking or crossing an away market. As discussed above, proposed Options 3, Section 8(j)(6)(i) will also continue to reflect that the Exchange will cancel any interest that is priced through the opening price and keep all other interest in the System for trading after opening. The Exchange notes with the proposed changes, Options 3, Section 8(j)(6)(i) will be substantially similar to BX Options 3, Section 8(k)(4) and (5), thereby promoting greater consistency among the rules of Nasdaq affiliated options exchanges.[55] Finally, the proposed changes to the Opening Process attempts to maximize the number of contracts executed on the Exchange during such Opening Process, while taking into consideration away market interests and ensuring that better away prices are not traded through.

Auction Mechanisms

Facilitation and Solicited Order Mechanisms

The Exchange believes that the proposed addition of ''or the internal BBO'' in the entry check provisions for the Facilitation and Solicited Order Mechanisms at Options 3, Sections 11(b)(1) and (d)(1), respectively, is consistent with the Act. The proposed changes will account for BX-like re-pricing, which would result in an Exchange order being available at a price that is better than the NBBO but is non-displayed. The proposed changes to add ''or the internal BBO'' will make clear that the System will now check orders entered into those auction mechanisms against a non-displayed order book priced better than the NBBO as well the NBBO.[56] As a result, the

[52] *See supra* note 13.

[53] Quoting obligations include, for example, a Market Maker's continuous quoting obligations. *See* Options 2, Section 5(e).

[54] Market Makers are incentivized to quote at the internal BBO as there is sufficient market information provided to quote accordingly. BX and Phlx also allow their Lead Market Makers and Directed Market Makers to re-price to the internal BBO and receive their enhanced allocation when the internal BBO is better than the NBBO. *See* BX and Phlx Options 3, Section 10. The Nasdaq Options Market LLC (''NOM'') also re-prices orders and quotes but does not have the concept of a Lead Market Makers or Directed Market Markers.

[55] *See supra* note 22.

[56] Today, BX and Phlx similarly consider the internal BBO when initiating their price improvement auctions, BX PRISM and Phlx PIXL.

Continued

proposed changes would ensure that Members submitting an order through the Facilitation Mechanism or Solicited Order Mechanism submit such orders at the best price, which (i) for the Facilitation Mechanism, must be at a price that is equal to or better than the displayed NBBO and the non-displayed BBO (*i.e.,* the internal BBO) on the same side of the market as the agency order, and (ii) for the Solicited Order Mechanism, must be at a price that is equal to or better than the NBBO and the internal BBO on both sides of the market.[57]

The Exchange also believes that the clarifying changes in Options 3, Section 11(b)(1) relating to Facilitation order entry checks are consistent with the Act as the proposed changes seek to align the language in the Priority Customer order clause relating to the same side of the market as the agency order more closely with similar language in the preceding clause and clarify current System behavior. Similarly, the Exchange believes that the clarifying changes in Options 3, Section 11(d)(1) relating to Solicited Order Mechanism order entry checks are consistent with the Act as the proposed changes seek to align the language in the Priority Customer order clause with the preceding clause and clarify current System behavior. The Exchange believes that the proposed changes will promote transparency in the Rulebook, and reduce potential confusion by Members and investors.

Price Improvement Mechanism

Similarly, the Exchange's proposal to amend Options 3, Section 13(b)(1) and (b)(2) to account for re-pricing, which would result in a GEMX order being available at a price which is better than the NBBO but is non-displayed, is consistent with the Act. The addition of ''or the internal BBO'' will make clear that a non-displayed order book priced better than the NBBO would cause a PIM auction to initiate. Stating ''$0.01'' in lieu of ''one minimum price improvement increment'' is consistent with the Act as this non-substantive amendment more simply states the current minimum increment.[58] Similar to the changes described above for the Facilitation and Solicited Order Mechanisms, the proposed changes for PIM would ensure that Members submitting an order through PIM submit such orders at the best price, which must be (i) better than the displayed NBBO and non-displayed BBO (*i.e.,* the internal BBO) on the Exchange's order book when the PIM is less than 50 contracts and the difference between the NBBO or the difference between the internal BBO is $0.01 wide or (ii) equal to or better than the displayed NBBO and internal BBO when the PIM is 50 contracts or more, or if the difference between the NBBO or the difference between the internal BBO is greater than $0.01.[59]

Acceptable Trade Range

The Exchange believes that the proposed changes to its ATR risk protection in Options 3, Section 15(a)(2)(A) are consistent with the Act. The Exchange is proposing to introduce an iterative process for ATR wherein an order/quote that reaches the outer limit of the ATR (*i.e.,* the Threshold Price) without being fully executed will be paused for a brief Posting Period to allow more liquidity to be collected and determine whether or not more liquidity will become available (on the Exchange or an away market if the order is designated as routable) within the posted price of the order/quote before moving on to a new Threshold Price. The Threshold Price, at which the order is posted, would then become the new reference price,[60] and a new ATR would be calculated. The Exchange notes that the proposed iterative ATR process is identical to current BX ATR functionality in BX Options 3, Section 15(b)(1), and therefore is not new or novel.

The Exchange believes that with the proposed changes, ATR will continue to reduce the negative impacts of sudden, unanticipated volatility in individual Exchange options, serve to preserve an orderly market in a transparent manner, increase overall market confidence, and promote fair and orderly markets and the protection of investors. The proposed ATR iterative process should also continue to result in greater continuity in prices as it is designed to prevent immediate or rapid executions at far away prices, thereby protecting investors and the public interest. As discussed above, the Exchange is bounding how far interest can trade into the depth of the Exchange's book based on the best prices that are available to the market. The Exchange therefore believes that its proposal protects investors and the public interest by basing the ATR reference price on the best available prices.

The Exchange also believes that the addition of configurable instances of iterations when the ATR would apply will provide Members with more certainty as to the application of the rule.[61]

The Exchange believes that disseminating a ''non-firm'' indicator message during the Posting Period, as discussed above, is consistent with its obligations under the SEC Quote Rule.[62] As discussed above, this would allow the order or quote setting the ATR Threshold Price to retain priority in the Exchange book and also prevent any later-entered order from accessing liquidity ahead of it. If the Exchange were to display trading interest available on the opposite side of the market, that trading interest would be automatically accessible to later-entered orders during the period when the order triggering the ATR is paused. The ''non-firm'' indicator is meant to relieve eligible exchanges from having to apply locked and crossed rules to the quotation of the market.[63] Since the opposite side interest is likely to be traded through at the completion of the Posting Period, the Exchange would display that interest as ''non-firm'' to alleviate away exchanges from having to apply lock/crossed violation protections (when routing) against this price.[64]

The fact that the Exchange is experiencing volatility that is strong enough to trigger the ATR mechanism qualifies as an unusual market condition. The Exchange expects such situations to be rare, and it has set the current parameters of the mechanism at levels that ensures that it is triggered quite infrequently. In addition, the proposed ATR mechanism will cause the market to pause for no more than one second to try to dampen volatility,

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The Exchange would continue to abide by the rules approved by the Commission and not commence an auction in the Facilitation or Solicited Order Mechanisms or in PIM if better priced interest was resting on the book.

[57] As proposed, for the Facilitation Mechanism, if there is a Priority Customer order on the BBO or internal BBO on the same side of the market as the agency order, the order must be entered at an improved price over the Priority Customer order. For the Solicited Order Mechanism, if there is a Priority Customer order on the BBO or internal BBO on either side of the market, the order must be entered at an improved price over the Priority Customer order.

[58] *See supra* note 55.

[59] Provided they are better than any limit order or quote on the same side of the Nasdaq GEMX order book as the PIM agency order for both scenarios.

[60] As described above, if a new NBB is received that is greater than a buy order posted at the Threshold Price, or a new NBO is received that is lower than a sell order posted at the Threshold Price, the new NBB (for buy orders) or NBO (for sell orders) would become the new reference price.

[61] *See supra* notes 33 and 35.

[62] *See* 17 CFR 242.602(a)(3).

[63] To the away venue, this quotation is simply the top of book quotation on GEMX (which could be made of orders and/or quotes).

[64] In addition, Options 5, Section 1(k) defines ''Non-Firm'' as, with respect to Quotations, that Members of an Eligible Exchange are relieved of their obligation to be firm for their Quotations pursuant to Rule 602 under the Exchange Act.

the same pause that currently exists on BX. Importantly, the brief pause occurs only after the Exchange has already executed transactions—potentially at multiple price levels—rather than pausing before executing any transactions in the hopes of attracting initial liquidity.

Finally, the Exchange believes that the proposed clarifying language to add that the System will calculate ATR after the Opening Process will better articulate current System behavior. ATR does not apply until after the opening because the order book (and the ATR reference price) is established once options series are open for trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a competitive market and regularly competes with other options exchanges for order flow. As discussed above, the Exchange is re-platforming its System in connection with the technology migration to enhanced Nasdaq functionality, which the Exchange believes would promote competition among options exchanges by potentially attracting additional order flow to the Exchange with the enhanced trading platform. The basis for the majority of the proposed rule changes are the rules of the Nasdaq affiliated options exchanges, which have been previously filed with the Commission as consistent with the Act.

The quote re-pricing proposal in Options 3, Section 4(b)(6) and (7) will be functionally identical to BX quote re-pricing in Options 3, Section 4(b)(6).[65] The order re-pricing proposal in Options 3, Section 5(c) and (d) will be functionally identical to BX order re-pricing in BX Options 3, Section 5(c) and (d).[66] Also, the proposed ATR enhancement in Options 3, Section 15(a)(2)(A) will be functionally identical to BX ATR in BX Options 3, Section 15(b)(1).

The Exchange reiterates that the proposed rule change is being proposed in the context of the technology migration to enhanced Nasdaq functionality. As such, the Exchange believes that this proposed rule change is necessary to permit fair competition among options exchanges because the proposed rule changes will permit GEMX to re-price orders and quotes similar to BX. Additionally, with this proposal, GEMX would be able to offer its Members the same ATR functionality currently available to BX Participants. The Exchange further believes the proposed rule change will benefit Members by providing a more consistent technology offering, as well as consistent rules, for market participants on the Nasdaq affiliated options exchanges.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the majority of the proposed changes will apply to all Members. ATR allows Members to potentially receive better prices for their aggressive orders or quotes as they work through the ATR Threshold Prices and look to accumulate additional interest at each posted price during the Posting Periods. Re-pricing affords Members the ability to obtain the best price offered among the various options markets while continuing to be consistent with the Options Order Protection and Locked/Crossed Market Plan, as discussed above. The ability to leverage these mechanisms to achieve better prices for market participants will drive competition from Members to provide tighter markets and more liquidity in order to participate in the trading opportunities while still being bound by reasonable risk protections.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[67] and subparagraph (f)(6) of Rule 19b–4 thereunder.[68]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–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–GEMX–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 such filing also will be available for

[65] *See supra* note 13.

[66] The re-pricing rule changes impact the following rule provisions: Options 2, Section 10; Options 3, Section 8(j)(6)(i); Options 3, Section 10(c)(1)(B), (C) and (D)(i)–(iii); Options 3, Section 11(b)(1) and (d)(1); and Options 3, Section 13(b)(1) and (2).

[67] 15 U.S.C. 78s(b)(3)(A)(iii).

[68] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–GEMX–2022–10 and should be submitted on or before December 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25673 Filed 11–23–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96353; File No. SR–CBOE–2022–057]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Increase Position and Exercise Limits for Options on Apple Inc. Stock (''AAPL'')

November 18, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 7, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to increase position and exercise limits for options on Apple Inc. stock (''AAPL''). The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 8.30. Position Limits

* * * * *

Interpretations and Policies

.01 No change.

.02 *Option Contract Limits.*

(a)–(f) No change.

(g) Notwithstanding paragraphs (a) through (e) above, the position limit for AAPL options is 1,000,000 option contracts. However, if the most recent six-month trading volume of AAPL stock totals less than 200,000,000 shares or the most recent six-month trading volume of AAPL stock totals less than 150,000,000 shares and AAPL stock has fewer than 600,000,000 shares currently outstanding, the position limit for AAPL options will be determined as set forth in paragraphs (a) through (e) above.

* * * * *

Rule 8.42. Exercise Limits

(a) *General.* Except with the prior permission of the President or his designee, to be confirmed in writing, no Trading Permit Holder shall exercise, for any account in which it has an interest or for the account of any customer, a long position in any option contract where such Trading Permit Holder or customer, acting alone or in concert with others, directly or indirectly:

(1) has or will have exercised within any five consecutive business days aggregate long positions in any class of options dealt in on the Exchange in excess of 25,000 or 50,000 or 75,000 or 200,000, or 250,000 *or 1,000,000* option contracts or such other number of options contracts as may be fixed from time to time by the Exchange as the exercise limit for that class of options; or

* * * * *

The text of the proposed rule change is [also] available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that position limits must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.

Cboe Options Rule 8.30 sets forth the position limits for equity options.[3] Specifically, Rule 8.30 provides that the position limits for equity options are 25,000 or 50,000 or 75,000 or 200,000 or 250,000 option contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market or such other number of option contracts as may be fixed from time to time by the Exchange. Interpretation and Policy .02 to Rule 8.30 describes how the Exchange determines which of the five position limit amounts will apply to an equity option class. Specifically, the position limit applicable to a class is determined based on the trading volume and outstanding shares of the underlying security.

[69] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to Rule 8.42, the exercise limit for an equity option is the same as the position limit established in Rule 8.30 for that equity option.

When an underlying security undergoes a stock split, the number of outstanding options is proportionately increased and the exercise price is proportionately decreased.[4] For example, if a security undergoes a 4–1 stock split, and before the stock split, an investor holds one option on 100 shares of stock ABC with an exercise price of $100, after adjustment for the split, the investor will hold four ABC options, each on 100 shares and each with an exercise price of $25. In response to this increase in option positions that results from a stock split for the underlying, if an underlying security undergoes a stock split, the position (and exercise) limit for the option overlying that security is multiplied by the number of shares issued per single outstanding share as part of the stock split. Using the same 4–1 example, if the position limit for an option before the stock split is 250,000, the position limit for the option overlying that security will be multiplied by four to 1,000,000. This will prevent investors holding the maximum positions from immediately being over the position limit at the time of the stock split. However, this position limit increase is temporary and lasts until the last outstanding option position at the time of the stock split has expired, at which time the position limit reverts to the pre-stock split level.

Based on the criteria in Rule 8.30, Interpretation and Policy .02, the position limit for AAPL options is currently 250,000 (and pursuant to Rule 8.42, the exercise limit is also 250,000). It was also 250,000 at the time of the AAPL 4–1 stock split on August 31, 2020, at which time the position limit was increased to 1,000,000. The position limit for AAPL options remained at 1,000,000, until September 16, 2022 (when the last option position that was outstanding at the time of the stock split expired), at which time the position limit reverted back to 250,000. However, given the significant activity in AAPL options (and the underlying security), the Exchange understands that numerous customers held more than 250,000 AAPL option contracts at that time, putting their holdings above the position limit. The Exchange further understands from these customers that the reduced position limit may be impeding trading activity and ability to implement their investment strategies in AAPL options, such as use of effective hedging vehicles or income generating strategies (*e.g.,* buy-write or put-write), and the ability of market-makers to make liquid markets with tighter spreads in these options, potentially causing the transfer of volume to over-the-counter (''OTC'') markets. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets. Therefore, the Exchange believes it is appropriate to increase the AAPL position limit back to 1,000,000 option contracts[5] so market participants may continue to trade AAPL options in the same manner and at the same levels they have been for the prior two years. The Exchange believes this may enable liquidity providers to maintain liquidity levels on the Exchange and other market participants to continue to trade on the Exchange rather than shift their volume to the OTC markets. The Exchange believes the larger market capitalization of AAPL stock, as well as the continued highly liquid market for this security since the stock split, reduces the concerns for potential market manipulation and/or disruption in the underlying market upon increasing position limits, while the continued demand for trading AAPL options for legitimate economic purposes despite the reduced position limit warrants reversion to the position limit that existed for the prior two years.

As stated above, position (and exercise) limits are intended to prevent the establishment of options positions that can be used to or potentially create incentives to manipulate the underlying market so as to benefit options positions. The Commission has recognized that these limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.[6] As demonstrated below, AAPL stock (and the overlying options) is highly liquid. The Exchange notes that the proposed position limit of 1,000,000 contracts for AAPL options, which was the AAPL options position limit for two years, is the same as existing position limits for options on the iShares Russell 2000 ETF (''IWM''), the iShares MSCI Emerging Markets ETF (''EEM''), iShares China Large-Cap ETF (''FXI''), and iShares MSCI EAFE ETF (''EFA'').[7] To support the proposed position limit increase, the Exchange considered the liquidity of the underlying security, the value of the underlying security and relevant marketplace, the AAPL share and option volume, and, the liquidity of the above-referenced exchange-traded products (''ETPs'') that currently have position limits of 1,000,000.

The below table shows the average daily volume (''ADV'') of each of shares of and option contracts on AAPL stock traded during specified time periods prior to the 2020 stock split, between the stock split and the position limit reversion, and since the position limit reversion.

Date range	ADV (shares)	ADV (option contracts)
January 3, 2020 through August 31, 2020 (date of stock split)	170,468,316	870,304
September 1, 2020 through December 31, 2021	101,001,141	1,661,627
January 1, 2022 through September 16, 2022 (date of position limit reversion)	88,458,041	1,354,430
September 17, 2022 through October 24, 2022 (time since position limit reversion)	91,683,969	1,425,372

Additionally, as of October 24, 2022, there were 16.07 billion outstanding shares of AAPL stock, which had a per share price of $149.45 on that date, giving it a market capitalization of $2.4 trillion.

For comparison, below is the same data for IWM, EEM, FXI, and EFA from January 1, 2022 through October 24, 2022, with outstanding shares, share value (net asset value (''NAV''), and market capitalization (fund value) as of

[4] *See* Options Clearing Corporation (''OCC'') Bylaws, Article VI, Section 11A(a); and *Characteristics and Risks of Standardized Options* at 19.

[5] *See* proposed Rule 8.30, Interpretation and Policy .02(g).

[6] *See* Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR–NYSEAmex–2012–29).

[7] *See* Cboe Options Rule 8.30, Interpretation and Policy .07, which provides that the position limits for options on shares or other securities that represent interests in registered investment companies organized as open-end management investment companies, unit investment trusts, or similar entities that satisfy the criteria set forth in Rule 4.3, Interpretation and Policy .06 are the same as equity options pursuant to Rule 8.30, except for certain securities listed in Interpretation and Policy .07.

October 24, 2022. While these are ETPs as opposed to stocks, ETP shares trade in the same manner as stocks and other than the few set forth in Rule 8.30, Interpretation and Policy .07, position limits for options on ETPs are determined in the same manner as options on stocks.

Product	ADV (ETF shares)	ADV (option contracts)	Shares outstanding (millions)	Fund market cap (USD) (billions)	Share value (USD)
IWM	31,358,610	840,721	291.10	50.49	173.44
EEM	47,767,767	183,342	578.25	19.62	33.93
FXI	39,007,654	159,703	176.70	3.80	21.53
EFA	29,953,566	123,262	705.60	41.83	59.28

The Exchange believes that, overall, the liquidity in the AAPL shares and in their overlying options, AAPL's significantly large market capitalization, and the overall market landscape for AAPL stock and options support the proposal to increase its position limit. Given the robust liquidity in and value of AAPL stock, the Exchange does not anticipate that the proposed increase in the position limit would create significant price movements as the relevant market is large enough to adequately absorb potential price movements that may be caused by larger trades.

The proposed rule change is based on current trading statistics of AAPL options and stock. If the volume of trading were to significantly decline, the Exchange appreciates the need to adjust the proposed 1,000,000 position limit to address that decline in trading activity to reduce the changes [sic] of potential manipulation. Therefore, the Exchange proposes to add to proposed Rule 8.30, Interpretation and Policy .02(g) that if the most recent six-month trading volume of AAPL stock totals less than 200,000,000 shares or the most recent six-month trading volume of AAPL stock totals less than 150,000,000 shares and AAPL stock has fewer than 600,000,000 shares currently outstanding, the position limit for AAPL options will be determined as set forth in paragraphs (a) through (e) of Interpretation and Policy .02.[8] These proposed levels are twice the current volume and share levels of an underlying security for the overlying option to be eligible for the 250,000 option contract position limit.

Surveillance and Reporting Requirements

The Exchange believes that increasing the position limit for AAPL options would lead to a more liquid and competitive market environment for these options, which will benefit customers that trade these options. The reporting requirement for AAPL options would remain unchanged. Thus, the Exchange would still require that each TPH or TPH organization that maintains positions in AAPL options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s). Market-Makers [9] (including Designated Primary Market-Makers (''DPMs'')) [10] would continue to be exempt from this reporting requirement, however, the Exchange may access Market-Maker position information.[11] Moreover, the Exchange's requirement that TPHs file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more option contracts of any single class for the previous day will remain at this level for AAPL options and will continue to serve as an important part of the Exchange's surveillance efforts.[12]

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify continued compliance with the Exchange's listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlyings, as applicable.[13] The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,[14] which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in AAPL options. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a TPH must maintain for a large position held by itself or by its customer.[15] In addition, Rule 15c3–1 [16] imposes a capital charge on TPHs to the extent of any margin deficiency resulting from the higher margin requirement.

[8] Pursuant to Rule 8.30, Interpretation and Policy .02(f), every six months, the Exchange will review the status of underlying securities to determine which limit should apply. A higher limit will be effective on the date set by the Exchange, while any change to a lower limit will take effect after the last expiration then trading, unless the requirement for the same or a higher limit is met at the time of the intervening six-month review. This will continue to apply to AAPL options, and if the trading levels are below the criteria in proposed paragraph (g) at the time of this review, AAPL options will be subject to the standard position limits applicable to other equity options.

[9] A Market-Maker is a ''Trading Permit Holder registered with the Exchange pursuant to Rule 3.52 for the purpose of making markets in option contracts traded on the Exchange and that has the rights and responsibilities set forth in Chapter 5, Section D of the Rules.'' *See* Rule 1.1.

[10] A Designated Primary Market-Maker is a ''TPH organization that is approved by the Exchange to function in allocated securities as a Market-Maker (as defined in Rule 8.1) and is subject to the obligations under Rule 5.54 or as otherwise provided under the rules of the Exchange.'' *See* Rule 1.1.

[11] The Options Clearing Corporation (''OCC'') through the Large option Position Reporting (''LOPR'') system acts as a centralized service provider for TPH compliance with position reporting requirements by collecting data from each TPH or TPH organization, consolidating the information, and ultimately providing detailed listings of each TPH's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. (''FINRA''), acting as its agent pursuant to a regulatory services agreement (''RSA'').

[12] *See* Rule 8.43 for reporting requirements.

[13] The Exchange believes these procedures have been effective for the surveillance of trading AAPL options and will continue to employ them.

[14] 17 CFR 240.13d–1.

[15] *See* Rule 10.3 for a description of margin requirements.

[16] 17 CFR 240.15c3–1.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in the position limit for AAPL options will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to execute their trading and hedging activities and use AAPL options to achieve investment strategies in the same manner and at the same levels they have been since the 2020 stock split. Also, increasing the position limit may allow Market-Makers to maintain their liquidity in AAPL options in amounts commensurate with the continued high consumer demand in the AAPL options market. The proposed position limit increase may also encourage other liquidity providers to continue to trade on the Exchange rather than shift their volume to OTC markets, which will enhance the process of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the considerable market capitalization of AAPL stock and the liquidity of the markets for AAPL stock and options will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. The Exchange has not observed manipulation or disruption of the AAPL stock or options market in the past two years while the position limit was 1,000,000. As a general principle, increases in market capitalization, active trading volume, and deep liquidity of securities do not lead to manipulation and/or disruption. The Exchange does not believe that the AAPL stock or options markets would become susceptible to manipulation and/or disruption as a result of permanently increasing the position limit to that level. Indeed, the Commission has previously expressed the belief that not just increasing, but removing, position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.[20]

Further, the Exchange notes that the proposed rule change to increase position limits for select actively traded options is not novel. The Commission has approved similar proposed rule changes by the Exchange to increase position limits for options on similar, highly liquid and actively traded ETPs.[21] While those are ETPs and AAPL is stock, pursuant to Rule 8.30, the position limits for options on stock and ETPs are generally calculated in the same manner and based on trading volume and market capitalization of the underlying. As demonstrated above, the AAPL stock and options ADV (both before and after the stock split) and the AAPL market capitalization are significantly higher than that of ETPs for the position limit for the overlying options, which the Commission previously approved to be increased to 1,000,000. While the ADV of AAPL stock is lower than it was prior to the 2020 stock split, it is still more than 50% of the pre-stock split ADV and is currently approximately two to three times higher than the ADV of IWM, EEM, FXI, and EFA, the options on which are subject to a 1,000,000 position limit. Additionally, the ADV of AAPL options since the 2020 stock split is almost double the ADV prior to the stock split and is currently anywhere from almost twice to more than ten times the ADV of IWM, EEM, FXI, and EFA options, which are currently subject to a position limit four times higher than that of AAPL options. Further, the market capitalization of AAPL stock is approximately $2.4 trillion (as of October 24, 2022), compared to the market capitalizations of approximately $50.49 billion, $19.62 billion, $3.80 billion, and $41.83 billion for IWM, EEM, FXI, and EFA, respectively (as of that same date). Given the significantly higher levels of AAPL options and stock trading than that of the above-referenced ETPs and the overlying options, and the considerably higher market capitalization of AAPL stock compared to that of the ETPs, the Exchange believes it is reasonable and appropriate to increase the position limit of AAPL options to the same position limit of 1,000,000 that currently exists for these ETP options. The proposed rule change also includes criteria for the AAPL option position limit to be determined in the same manner as other equity options in the event AAPL stock trading volume and outstanding shares significantly declines in the future. This would occur if those numbers were less than twice the current criteria an underlying security needs to satisfy for the overlying option to be eligible for the 250,000 position limit. The Exchange believes this is a reasonable level to cause the position limit to revert back to the standard position limit levels in order to reduce the likelihood of potential manipulation.

The Exchange's surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in AAPL options, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors. As noted above, the Exchange has not observed manipulation or disruption of the AAPL stock or options market in the past two years while the position limit was 1,000,000, nor does it believe that the AAPL stock or options markets would become susceptible to manipulation and/or disruption as a result of permanently increasing the position limit to that same level.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] *See* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911, 4913 (February 1, 1999) (SR–CBOE–98–23).

[21] *See* Securities Exchange Act Release Nos. 93525 (November 4, 2021), 86 FR 62584 (November 10, 2021) (SR–CBOE–2021–029); 88768 (April 29, 2020), 85 FR 26736 (May 5, 2020) (SR–CBOE–2020–015); 83415 (June 12, 2018), 83 FR 28274 (June 18, 2018) (SR–CBOE–2018–042); *and* 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR–CBOE–2012–066).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increased position limit (and exercise limit) will be available to all market participants and apply to each in the same manner. The Exchange believes that the proposed rule change will provide additional opportunities for market participants to continue to efficiently achieve their investment and trading objectives for AAPL options on the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act. On the contrary, the Exchange believes the proposal promotes competition because it may maintain order flow on exchanges, which would in turn compete amongst each other for those orders, and prevent a transfer of trading activity to the nontransparent OTC market.[22] The Exchange believes market participants would benefit from being able to trade options with increased position limits in an exchange environment in several ways, including but not limited to the following: (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor. The Exchange notes that other options exchanges may choose to file similar proposals with the Commission to increase the position limit on AAPL options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[22] Additionally, several other options exchanges have the same position limits as the Exchange, as they incorporate by reference to the Exchange's position limits, and as a result the position limits for options on AAPL options will increase at those exchanges. For example, Nasdaq Options position limits are determined by the position limits established by the Exchange. *See* Nasdaq Stock Market LLC Rules, Options 9, Sec. 13 (Position Limits).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–057.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2022–057. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–057, and should be submitted on or before December 16,2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25664 Filed 11–23–22; 8:45 am]

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[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96355; File No. SR–BOX–2022–29]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend IM–5050–6 (Short Term Option Series Program)

November 18, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2022, BOX Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend IM–5050–6 (Short Term Option Series Program). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IM–5050–6 (Short Term Option Series Program). Specifically, the Exchange proposes to amend the Short Term Option Series Rules to: (1) limit the number of Short Term Option Expiration Dates for options on SPDR S&P 500 ETF Trust (SPY), the INVESCO QQQ Trust SM, Series 1 (QQQ), and iShares Russell 2000 ETF (IWM) from five to two expirations for Monday and Wednesday expirations; and (2) expand the Short Term Option Series program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program, subject to the same proposed limitation of two expirations. The Exchange also proposes to amend Rule 100(a)(66) which defines a Short Term Option Series. This is a competitive filing that is based on a proposal recently submitted by Nasdaq ISE, LLC (''Nasdaq ISE'') and approved by the Commission.[3]

Curtail Short Term Option Expiration Dates

Currently, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays in which monthly options series or Quarterly Options Series expire (''Short Term Option Expiration Dates''). The Exchange may have no more than a total of five Short Term Option Expiration Dates not including any Monday or Wednesday SPY, QQQ, and IWM Expirations. Further, if the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday.

Today, with respect to Wednesday SPY, QQQ, and IWM Expirations, the Exchange may open for trading on any Tuesday or Wednesday that is a business day series of options on SPY, QQQ, and IWM to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (''Wednesday SPY Expirations,'' ''Wednesday QQQ Expirations,'' and ''Wednesday IWM Expirations''). With respect to Monday SPY, QQQ, and IWM Expirations, the Exchange may open for trading on any Friday or Monday that is a business day series of options on the SPY, QQQ, or IWM to expire on any Monday of the month that is a business day and is not a Monday in which Quarterly Options Series expire (''Monday SPY Expirations,'' ''Monday QQQ Expirations,'' and ''Monday IWM Expirations''), provided that Monday SPY Expirations, Monday QQQ Expirations, and Monday IWM Expirations that are listed on a Friday must be listed at least one business week and one business day prior to the expiration. The Exchange may list up to five consecutive Wednesday SPY Expirations, Wednesday QQQ Expirations, and Wednesday IWM Expirations and five consecutive Monday SPY Expirations, Monday QQQ Expirations, and Monday IWM Expirations at one time; the Exchange may have no more than a total of five each of Wednesday SPY Expirations, Wednesday QQQ Expirations, and Wednesday IWM Expirations and a total of five each of Monday SPY Expirations, Monday QQQ Expirations, and Monday IWM Expirations. Monday and Wednesday SPY Expirations, Monday and Wednesday QQQ Expirations, and Monday and Wednesday IWM Expirations will be subject to the provisions of IM–5050–6.

Proposal

At this time, the Exchange proposes to curtail the number of Short Term Option Expiration Dates from five to two[4] for SPY, QQQ and IWM for Monday and Wednesday Expirations, as well as the proposed Tuesday and Thursday Expirations in SPY and QQQ (''Short Term Option Daily Expirations'').

The Exchange proposes to create a new category of Short Term Option Expirations Dates called ''Short Term Option Daily Expirations'' which will only permit two Short Term Option Expiration Dates for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time. The Exchange proposes to include a table, labelled ''Table 1'', within IM–5050–6(a) which specifies each symbol that qualifies as a Short Term Option Daily Expiration. The table would note the number of expirations for each symbol as well as expiration days. The Exchange proposes to include Monday and Wednesday expirations for SPY, QQQ, and IWM and Tuesday and Thursday expirations for SPY and QQQ and list the number of expirations as ''2'' for these symbols. The Exchange's proposal to permit Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program is explained below in more detail. In the event Short Term Option Daily Expirations expire on the same day in the same class as a monthly options series or a Quarterly Options Series, the Exchange would skip that week's listing and instead list the following week; the two weeks of Short Term Option Expiration Dates would therefore not be consecutive. Specifically, the Exchange proposes to state within IM–5050–6(a),

> In addition to the above, BOX may open for trading series of options on the symbols provided in Table 1 below that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Short Term Option Daily Expirations''). BOX may have no more than a total of two Short Term Option Daily Expirations for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time. Short Term Option Daily Expirations would be subject to IM–5050–6.

SPY, QQQ, and IWM Friday expirations and other option symbols expiring on a Friday that are not noted in Table 1 will continue to have a total of five Short Term Option Expiration Dates provided those Friday expirations are not Fridays in which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates''). These expirations would be

[3] *See* Securities Exchange Act Release No. 96281 (November 9, 2022) (Order Approving SR–ISE–2022–18).

[4] The Exchange proposes to list the two front months for Short Term Option Daily Expirations.

referred to as ''Short Term Option Weekly Expirations'' to distinguish them from the proposed expirations that would be subject to Short Term Option Daily Expirations. The Exchange proposes to add rule text to IM–5050–6(a) which states that Monday Short Term Option Expiration Dates, Tuesday Short Term Option Expiration Dates, Wednesday Short Term Option Expiration Dates, and Thursday Short Term Option Expiration Dates, together with Friday Short Term Option Expiration Dates, are collectively ''Short Term Option Expiration Dates''.[5]

Tuesday and Thursday Expirations

At this time, the Exchange proposes to expand the Short Term Option Series Program to permit the listing and trading of no more than a total of two consecutive Tuesday and Thursday ''Tuesday Short Term Option Daily Expirations'' and ''Thursday Short Term Option Daily Expirations'' each for SPY and QQQ at one time. Tuesday and Thursday Short Term Option Daily Expirations would be subject to IM–5050–6.

A Short Term Option Series means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Wednesday or Friday of the following business week that is a business day, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

The Exchange proposes to amend the definition at Rule 100(a)(66) to accommodate the listing of options series that expire on Tuesdays and Thursdays. Specifically, the Exchange proposes to add Tuesday and Thursdays to the permitted expiration days, which currently include Monday, Wednesday, and Friday, that it may open for trading.

The Exchange also proposes corresponding changes within IM–5050–6, which sets forth the requirements for SPY and QQQ options that are listed pursuant to the Short Term Option Series Program as Short Term Option Daily Expirations. Similar to Monday and Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations within IM–5050–6, the Exchange proposes that it may open for trading on any Monday or Tuesday that is a business day series of options on the symbols provided in Table 1 that expire at the close of business on each of the next two Tuesdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Tuesday Short Term Option Expiration Date'').

Likewise, the Exchange proposes that it may open for trading on any Wednesday or Thursday that is a business day series of options on symbols provided in Table 1 that expire at the close of business on each of the next two Thursdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Thursday Short Term Option Expiration Date'').

In the event that options on SPY and QQQ expire on a Tuesday or Thursday and that Tuesday or Thursday is the same day that a monthly option series or Quarterly Options Series expires, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. Today, Monday and Wednesday Expirations in SPY, QQQ, and IWM skip the weekly listing in the event the weekly listing expires on the same day in the same class as a Quarterly Options Series. Currently, there is no rule text provision that states that Monday and Wednesday Expirations in SPY, QQQ, and IWM skip the weekly listing in the event the weekly listing expires on the same day in the same class as a monthly option series. Practically speaking, Monday and Wednesday Expirations in SPY, QQQ, and IWM would not expire on the same day as a monthly expiration.

The interval between strike prices for the proposed Tuesday and Thursday SPY and QQQ Short Term Option Daily Expirations will be the same as those for the current Short Term Option Series for Monday, Wednesday and Friday expirations applicable to the Short Term Option Series Program.[6] Specifically, the Tuesday and Thursday SPY and QQQ Short Term Option Daily Expirations will have a $0.50 strike interval minimum.[7] As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Tuesday and Thursday SPY and QQQ Short Term Option Daily Expiration series will be P.M.-settled.

Pursuant to Rule 100(a)(66), with respect to the Short Term Option Series Program, a Tuesday or Thursday expiration series shall expire on the first business day immediately prior to that Tuesday or Thursday, *e.g.,* Monday or Wednesday of that week, respectively, if the Tuesday or Thursday is not a business day.

Currently, for each option class eligible for participation in the Short Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.[8] The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.[9] This thirty (30) series restriction would apply to Tuesday and Thursday SPY and QQQ Short Term Option Daily Expiration series as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list SPY and QQQ options expiring on Tuesdays and Thursdays with a limit of two Tuesday Short Term Daily Expirations and two Thursday Short Term Daily Expirations.

Finally, the Exchange is amending IM–5050–6(b)(2), to conform the rule text to the usage of the term ''Short Term Option Daily Expirations.'' Today, with the exception of Monday and Wednesday SPY Expirations, Monday and Wednesday QQQ Expirations, and Monday and Wednesday IWM Expirations, no Short Term Option Series may expire in the same week in which monthly option series on the same class expire. With this proposal, Tuesday and Thursday SPY Expirations and Tuesday and Thursday QQQ Expirations would be treated similarly to existing Monday and Wednesday SPY, QQQ, and IWM Expirations. With respect to monthly option series, Short Term Option Daily Expirations will be permitted to expire in the same week in which monthly option series on the same class expire. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion.

[5] Defining the term ''Short Term Option Expiration Dates'' will make clear that this term includes expiration dates for each day Short Term Options are listed.

[6] *See* IM–5050–6(b)(5).

[7] *Id.*

[8] *See* IM–5050–6(b)(1).

[9] *Id.*

Further, as with Monday and Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Tuesday and Thursday Short Term Option Daily Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire.[10] Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire.

The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Tuesday and Thursday Short Term Option Daily Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Tuesday and Thursday Short Term Option Daily Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Monday and Wednesday for SPY, QQQ and IWM and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Monday and Wednesday for SPY, QQQ and IWM. The Exchange notes that Monday and Wednesday Expirations in SPY, QQQ, and IWM that were listed prior to the proposed changes discussed herein will continue to be listed on the Exchange until those options expire pursuant to the current Short Term Option Series rules.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[11] in general, and section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The proposal is consistent with the Act as the overall reduction offered by this proposal reduces the number of Short Term Option Expirations to be listed on the Exchange. This reduction would remove impediments to and perfect the mechanism of a free and open market by encouraging Market Makers to continue to deploy capital more efficiently and improve market quality. Also, the Exchange's proposal curtails the number of Monday, Tuesday, Wednesday, and Thursday expirations in SPY, QQQ, and IWM without reducing the classes of options available for trading on the Exchange. The Exchange believes that despite the proposed curtailment of expirations, Participants will continue to be able to expand hedging tools and tailor their investment and hedging needs more effectively in SPY, QQQ, and IWM.

Similar to SPY, QQQ and IWM Monday and Wednesday Expirations (proposed to be SPY, QQQ and IWM Monday and Wednesday Short Term Daily Expirations), the introduction of SPY and QQQ Tuesday and Thursday Short Term Daily Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that SPY and QQQ Tuesday and Thursday expirations (renamed SPY and QQQ Tuesday and Thursday Short Term Daily Expirations) will allow market participants to purchase SPY and QQQ options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the proposal to permit Tuesday and Thursday Short Term Daily Expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program, subject to the proposed limitation of two expirations, would protect investors and the public interest by providing the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in SPY and QQQ options, thus allowing them to better manage their risk exposure.

In particular, the Exchange believes the Short Term Option Series Program has been successful to date and that Tuesday and Thursday SPY and QQQ Short Term Daily Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Tuesday and Thursday SPY and QQQ Short Term Daily Expirations should create greater trading and hedging opportunities and flexibility, and will provide customers with the ability to tailor their investment objectives more effectively. The Exchange currently lists Monday and Wednesday SPY, QQQ, and IWM Expirations (renamed SPY, QQQ, and IWM Monday and Wednesday Short Term Daily Expirations).

Today, with the exception of Monday and Wednesday SPY Expirations, Monday and Wednesday QQQ Expirations, and Monday and Wednesday IWM Expirations, no Short Term Option Series may expire in the same week in which monthly option series on the same class expire. With this proposal, Tuesday and Thursday SPY Expirations and Tuesday and Thursday QQQ Expirations would be treated similarly to existing Monday and Wednesday SPY, QQQ, and IWM Expirations. The Exchange believes that permitting Short Term Option Daily Expirations to expire in the same week that standard monthly options expire on Fridays is consistent with Act. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Monday and Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Tuesday and Thursday Short Term Option Daily Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire. Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire. The Exchange believes that it is consistent with the Act to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire similar to Monday and Wednesday SPY, QQQ, and IWM Expirations.

There are no material differences in the treatment of Wednesday SPY and QQQ expirations for Short Term Option Series as compared to the proposed

[10] While the Exchange proposes to add rule text within IM–5050–6 with respect to Monday Expirations, Tuesday Expirations, and Wednesdays Expirations stating that those expirations would not expire on business days that are business days in which monthly options series expire, practically speaking this would not occur.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

Tuesday and Thursday SPY and QQQ Short Term Daily Expirations. Given the similarities between Wednesday SPY, QQQ and IWM Expirations and the proposed Tuesday and Thursday SPY and QQQ Short Term Daily Expirations, the Exchange believes that applying the provisions in IM–5050–6 that currently apply to Wednesday SPY, QQQ and IWM Expirations to Tuesday and Thursday SPY and QQQ Short Term Daily Expirations is justified.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed Tuesday and Thursday SPY and QQQ Short Term Daily Expirations, in the same way that it monitors trading in the current Short Term Option Series and trading in Monday and Wednesday SPY, QQQ, and IWM Expirations. The Exchange also represents that it has the necessary systems capacity to support the new options series. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of Tuesday and Thursday SPY and QQQ Short Term Daily Expirations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a response to a filing submitted by Nasdaq ISE that was recently approved by the Commission.[13]

Further, the Exchange believes the proposal will provide an overall reduction in the number of Short Term Option Expirations to be listed on the Exchange. The Exchange believes this reduction will not impose an undue burden on competition, rather, it should encourage Market Makers to continue to deploy capital more efficiently and improve market quality. Also, the Exchange's proposal curtails the number of weekly expirations in SPY, QQQ, and IWM without reducing the classes of options available for trading on the Exchange. The Exchange believes that despite the proposed curtailment of weekly expirations, Participants will continue to be able to expand hedging tools and tailor their investment and hedging needs more effectively in SPY, QQQ, and IWM.

Similar to SPY, QQQ and IWM Monday and Wednesday Expirations, the introduction of SPY and QQQ Tuesday and Thursday Short Term Daily Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that SPY and QQQ Tuesday and Thursday Short Term Daily Expirations will allow market participants to purchase SPY and QQQ options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe the proposal will impose any burden on inter- market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade Short-Term Option Series with Tuesday and Thursday Short Term Daily Expirations. The Exchange notes that having Tuesday and Thursday SPY and QQQ expirations is not a novel proposal, as Wednesday SPY, QQQ and IWM Expirations are currently listed on the Exchange.

Further, the Exchange does not believe the proposal will impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[18] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission notes that it recently approved Nasdaq ISE's substantially similar proposal.[20] The Exchange has stated that waiver of the 30-day operative delay will ensure fair competition among the exchanges and align its rules with identical rules currently in place at another exchange. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[13] *See supra,* note 3.

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] *See* Securities Exchange Act Release No. 96281 (November 9, 2022) (SR–ISE–2022–18).

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BOX–2022–29 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–BOX–2022–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2022–29 and should be submitted on or before December 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25666 Filed 11–23–22; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96354]

Order Cancelling Registrations of Certain Transfer Agents

November 18, 2022.

On September 27, 2022, notice was published in the **Federal Register** that the Securities and Exchange Commission ("Commission") intended to issue an order, pursuant to section 17A(c)(4)(B) of the Securities Exchange Act of 1934 ("Act"),[1] cancelling the registrations of certain transfer agents.[2] For the reasons discussed below, the Commission is cancelling the registration of the transfer agents identified in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Moshe Rothman, Assistant Director, or Catherine Whiting, Special 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 to *tradingandmarkets@sec.gov* with the phrase "Order Cancelling 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. On September 27, 2022, the Commission published notice of its intention to cancel the registration of certain transfer agents whom it believed were no longer in existence or had ceased doing business as transfer agents.[3]

In the notice, the Commission identified 52 such transfer agents and stated that at any time after November 1, 2022, the Commission intended to issue an order canceling the registrations of any or all of the identified transfer agents. The Commission received no responses to the notice.

Accordingly, the Commission is cancelling the registrations of the 52 transfer agents identified in the Appendix attached to this Order.

Order

On the basis of the foregoing, the Commission finds that each of the transfer agents whose name appears in the attached Appendix either is no longer in existence or has ceased doing business as a transfer agent.

It is therefore ordered pursuant to Section 17A(c)(4)(B) of the Act that the registration as a transfer agent of each of the transfer agents whose name appears in the attached Appendix be and hereby is cancelled.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[4]

Action as set forth or recommended herein *approved* pursuant to authority delegated by the Commission under Public Law 87–592.

For the Division of Trading and Markets.

Moshe Rothman,

Assistant Director.

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

[1] 15 U.S.C. 78q–1(c)(4)(B).

[2] Securities Exchange Act Release No. 34–95855 (Sept. 21, 2022), 87 FR 58590 (Sept. 27, 2022).

[3] *Id.*

[4] 17 CFR 200.30–3(a)(22).

Transfer agent name	File No.
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

[FR Doc. 2022–25665 Filed 11–23–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold a public meeting on Thursday, December 8, 2022. The meeting will begin at 10:00 a.m. (ET) and will be open to the public.

PLACE: The meeting will be conducted by remote means. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.* This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

Public Comment: The public is invited to submit written statements to the Committee. Written statements should be received on or before December 7, 2022.

Written statements may be submitted by any of the following methods:

Electronic Statements

• Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or

• Send an email message to *rules-comments@sec.gov.* Please include File No. 265–28 on the subject line; or

Paper Electronic Statements

• Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1503, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements 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.

MATTERS TO BE CONSIDERED: The agenda for the meeting includes: welcome, announcement of a new access and inclusion working group, and opening remarks; approval of previous meeting minutes; a panel discussion on account statement disclosure entitled ''Do client statements adequately serve investors?''; a panel discussion regarding corporate tax transparency; a panel discussion regarding single-stock exchange-traded funds; subcommittee reports; access and inclusion working group report, and a non-public administrative session.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: November 22, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25927 Filed 11–22–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96361; File No. SR–NYSE–2022–53]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

November 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2022, New York Stock Exchange LLC (''NYSE'' 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 amend its Price List to introduce monthly quoting incentives for Designated Market Makers (''DMM'') in assigned Exchange Traded Products (''ETP'') for the first 12 months following listing on the Exchange. The Exchange proposes to implement the fee changes effective November 14, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes monthly quoting incentives for DMMs in assigned ETPs for the first 12 months following listing on the Exchange while that ETP is listed on the Exchange.

The proposed change responds to the current competitive environment where order flow providers have a choice of where to direct orders by offering incentives to DMMs to quote and trade at the national best bid or offer (''NBBO'')[3] in assigned ETPs during the first 12 months following the ETP's listing on the Exchange. The Exchange also hopes thereby to encourage additional ETPs to list and trade on the Exchange.

The Exchange proposes to implement the fee changes effective November 14, 2022.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 1.1(r) (definition of NBBO, Best Protected Bid, Best Protected Offer, Protected Best Bid and Offer (PBBO)).

Background

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

As the Commission itself has recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [5] Indeed, equity trading is currently dispersed across 16 exchanges,[6] 31 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 20% of the market.[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to the competitive environment described above, the Exchange proposes monthly credits for DMMs that meet certain quoting requirements in assigned ETPs during the first 12 months following the assigned ETP's listing on the Exchange while that ETP is listed on the Exchange.

Proposed Rule Change

In order to encourage quoting on the Exchange in listed ETPs, the Exchange proposes to offer monthly quoting credits to DMMs in assigned ETPs. Specifically, the Exchange proposes that DMMs quoting 30% or more of the time in a billing month in an ETP assigned to that DMM on the last day of that billing month would be eligible for a credit of $4,000 per assigned ETP for that billing month. DMMs quoting less than 30% of the time in a billing month in an ETP assigned to that DMM on the last day of that billing month would be eligible for a credit of $2,000 per assigned ETP for that billing month. As proposed, DMMs would be eligible for the credits for the first 12 months following the listing of the ETP on the Exchange while that ETP is listed on the Exchange.

For example, ETP 1 lists on the Exchange and is assigned to DMM A in November 2022. ETP 2 lists on the Exchange and is assigned to DMM A in December 2022. Further assume that in November and December 2022, DMM A quotes at the NBBO 40% of the time for ETP 1 and at 20% of the time for ETP 2. Based on this quoting activity, DMM A would be eligible for the following credits for those billing months:

- a $4,000 credit for ETP 1 in November 2022;
- a $4,000 credit for ETP 1 in December 2022; and
- a $2,000 credit for ETP 2 in December 2022, for a combined $6,000 credit in December 2022.

If DMM A improves their quoting in ETP 2 in January 2023 and quotes at the NBBO 40% of the time in that billing month, DMM A's combined credit for January 2023 for both ETPs would increase to $8,000.

If DMM A quotes at the NBBO 40% of the time in both ETP 1 and ETP 2 in November 2023, DMM A would receive a $4,000 credit for ETP 2 and no credit for ETP 1 since November 2023 would be ETP's 13th month listed on the Exchange.

The purpose of the proposed change is to encourage higher quoting levels by DMMs on the Exchange in a listed ETP's first 12 months following listing, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality. As noted above, the Exchange operates in a competitive environment, and member organizations have a choice of where to send order flow. Because the proposal permits DMMs to receive a monthly credit if the DMM quotes a certain percentage at the NBBO on the Exchange during the first 12 months following an ETP's listing while the ETP is listed, the Exchange believes that the proposed credits would provide incentives for DMMs to quote more aggressively on the Exchange in their listed ETPs in order to qualify for it. The Exchange believes that incentivizing DMMs on the Exchange to add liquidity at the NBBO to meet the higher quote levels could contribute to price discovery and improve quoting on the Exchange. In addition, additional liquidity providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation, which benefits all member organizations.

The proposed change is not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 51808, 84FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[6] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) & (5).

revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." [12] While Regulation NMS has enhanced competition, it has also fostered a "fragmented" market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that "such competition can lead to the fragmentation of order flow in that stock." [13]

The new proposed incentives are reasonable. Specifically, the Exchange believes that a new DMM credits would provide an incentive for DMMs to increase liquidity-providing orders at the NBBO on the Exchange during the first year following the listing of an ETP. The proposed credits are thus intended to encourage higher levels of liquidity and quoting by DMMs on the Exchange in listed ETPs, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality. To the extent that the proposed change leads to an increase in overall liquidity activity and quoting on the Exchange and more competitive pricing, this will improve the quality of the Exchange's market, improve quote spreads and increase its attractiveness to existing and prospective participants. The proposed incentives will also support new ETPs listing on the Exchange by incentivizing DMMs to quote at the NBBO more often.

As noted above, the Exchange operates in a competitive environment, and member organizations have a choice of where to send order flow. Because the proposed credits require DMMs to meets certain quoting requirements at the NBBO in order to qualify for the credits, the Exchange believes that the proposed credit would provide an incentive for all DMMs to quote aggressively on the Exchange in order to qualify for the base credit and more aggressively in order to qualify for the higher credit. The Exchange believes that incentivizing DMMs on the Exchange to add liquidity to meet the higher quote levels at the NBBO could contribute to price discovery and improve quoting on the Exchange. In addition, additional liquidity providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes that the proposed credits are an equitable allocation of fees because the proposed credits would be available to all DMMs on an equal basis. The Exchange believes that the proposal will allocate the proposed credits fairly among DMMs and allow DMMs to qualify for a credit by adding liquidity and improving quoting at the NBBO during the first 12 months following an ETP's listing on the Exchange. The Exchange believes the proposed rule change would improve market quality by providing incentives for all DMMs to increase aggressively priced liquidity-providing orders at the NBBO on the Exchange, thereby encouraging higher levels of liquidity by DMMs on the Exchange, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to provide credits for adding liquidity that encourage DMMs on the Exchange to quote at the NBBO as the proposed credits would be provided on an equal basis to all similarly situated DMMs that add liquidity in assigned ETPs during the first year following listing and by meeting the proposed quoting requirements. For the same reason, the Exchange believes it is not unfairly discriminatory to provide a higher credit for increased quoting at the NBBO at or above 30% because the proposed higher credit would equally encourage all DMMs to provide additional liquidity on the Exchange. As noted, the Exchange intends for the proposal to improve market quality for all members on the Exchange in listed ETPs and by extension attract more liquidity to the market, thereby encouraging higher levels of liquidity by DMMs on the Exchange in listed ETPs, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small." [15]

Intramarket Competition. The proposed changes are designed to incentivize market participants to direct displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the change on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) ("Regulation NMS").

[13] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[14] 15 U.S.C. 78f(b)(8).

[15] Regulation NMS, 70 FR at 37498–99.

does not believe its proposed fee change can impose any burden on intermarket competition.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–53 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–53. 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–NYSE–2022–53 and should be submitted on or before December 16,2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25671 Filed 11–23–22; 8:45 am]

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96356; File No. SR–CboeEDGX–2022–050]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

November 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 10, 2022, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGX Equities") as follows: (1) to amend the standard rebate for orders yielding fee codes DM,[3] HA,[4] MM,[5] or RP;[6] (2) to introduce a new Growth Tier, a new Non-Displayed Step-Up Volume Tier, and a new Retail Growth Tier; (3) to modify the rebate under the Non-Displayed Add Volume Tier 2, and (4) to add clarifying language to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Fee code DM is appended on orders adding liquidity using the midpoint discretionary order within discretionary range.

[4] Fee code HA is appended to non-displayed orders adding liquidity.

[5] Fee code MM is appended to non-displayed orders adding liquidity using the mid-point peg.

[6] Fee code RP is appended to non-displayed orders adding liquidity using the supplemental peg.

description of fee code X.[7] The Exchange proposes to implement these changes effective November 1, 2022.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the ''Act''), to which market participants may direct their order flow. Based on publicly available information,[8] no single registered equities exchange has more than 15% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity. For orders in securities priced below $1.00, the Exchange provides a standard rebate of $0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

First, the Exchange proposes to reduce the rebate applied to certain non-displayed orders. Specifically, the Exchange proposes to reduce the rebate of $0.0010 per share to $0.0008 per share for orders yielding fee code DM, HA, MM, or RP.

Second, the Exchange proposes to add two new tiers to the Add/Remove Volume Tiers provided under footnote 1 of the Fee Schedule and one new tier to the Retail Volume Tiers provided under footnote 2 of the Fee Schedule. Specifically, the Exchange proses to adopt the Growth Tier 5 and Non-Displayed Step-Up Volume Tier 3 under the footnote 1, and the Retail Growth Tier 2 under footnote 2. The Growth Tiers, Non-Displayed Step-Up Volume Tiers, and Retail Growth Tiers each provide an enhanced rebate for Members' qualifying orders where a Member reaches certain add volume-based criteria, including ''growing'' its volume over a certain baseline month. The Growth Tiers are applicable to liquidity adding orders yielding fee B,[9] V,[10] Y,[11] 3,[12] and 4,[13] the Non-Displayed Step-Up Volume Tiers are applicable to non-displayed orders yielding DM, HA, MM and RP, and the Retail Growth Tiers are applicable to retail orders yielding fee codes ZA[14] and ZO.[15] The proposed criteria for each of the proposed tiers is as follows:

(1) Member adds a Step-Up ADAV[16] from October 2022 ≥0.15% of the TCV[17] or Member adds a Step-Up ADAV from October 2022 ≥15,000,000; and

(2) Member has a total remove ADV ≥0.45% of TCV or Member has a total remove ADV ≥45,000,000.

While the proposed criteria is the same for each of the proposed new tiers, the Exchange proposes the following rebates: $0.0034 per share to Members meeting Growth Tier 5, $0.0026 per share to Members meeting Non-Displayed Step-Up Volume Tier 3, and $0.0037 per share to Members meeting Retail Growth Tier 2. While the criteria of each of the proposed tiers is identical, the Exchange proposes different rebates for each of the tiers based on the type of order (*i.e.,* liquidity adding displayed orders, liquidity adding non-displayed orders, and retail orders).

The Exchange next proposes to modify the Non-Displayed Add Volume Tier 2 under footnote 1 of the Fee Schedule. Specifically, the Exchange proposes to reduce the rebate from $0.0022 per share to $0.0020 per share to orders meeting the required criteria. The Exchange proposes no modifications to the required criteria of the tier.

Last, the Exchange proposes to clarify that fee code X is applicable to routed orders that add or remove liquidity. When certain fee codes were deleted from the Fee Schedule, the Exchange simultaneously proposed to update fee code X to make clear that it applies to all other routed orders that are not otherwise specified under other fee codes in the Fee Schedule.[18] However, the Exchange did not make clear in the fee code table that fee code X is therefore also applicable to orders that both add and remove liquidity.[19] Therefore, the Exchange is now proposing to add such language to the description of fee code X, as well as eliminate the reference to ''Removing'' liquidity in the Standard Rates header for the Routing Liquidity column (which is applicable to fee code X).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market

[7] Fee code X is appended to routed orders.

[8] See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (October 24, 2022), available at *https://www.cboe.com/us/equities/market_statistics/.*

[9] Fee code B is appended to orders adding liquidity to EDGX in Tape B securities.

[10] Fee code V is appended to orders adding liquidity to EDGX in Tape A securities.

[11] Fee code Y is appended to orders adding liquidity to EDGX in Tape C securities.

[12] Fee code 3 is appended to orders adding liquidity to EDGX in the pre and post market in Tapes A or C securities.

[13] Fee code 4 is appended to orders adding liquidity to EDGX in the pre and post market in Tape B securities.

[14] Fee code ZA is appended liquidity adding retail orders.

[15] Fee code ZO is appended to liquidity adding retail orders in the pre and post market.

[16] ADAV means average daily added volume calculated as the number of shares added per day ADAV is calculated on a monthly basis. Step-Up ADAV means ADAV in the relevant baseline month subtracted from current ADAV.

[17] TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[18] *See* Securities Exchange Act No. 91002 (January 27, 2021) 86 FR 7902 (February 2, 2021) (SR–CboeEDGX–2021–006).

[19] Under the Transaction Fees section of the Fee Schedule, bullet four provides ''[u]nless otherwise noted, all routing fees or rebates in the Fee Codes and Associated Fees table are for removing liquidity from the destination venue.''

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)[23] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to reduce the rebates applicable to fee codes DM, HA, MM, and RP is fair, equitable, and reasonable because the proposed rebate remains consistent with pricing offered by the Exchange's affiliates and competitors and does not represent a significant departure from the Exchange's general pricing structure. Specifically, the proposed rebate applicable to fee code DM, HA, MM, and RP are in-line with the rebates provided to similar non-displayed orders offered by the Nasdaq Stock Market LLC (''Nasdaq''), which provides rebates ranging from $0.0010 (Tape C securities) to $0.0014 (Tape A and B securities) for similar orders.[24] Therefore, the Exchange believes the proposed rebates associated with fee codes DM, HA, MM, and RP remain consistent with pricing previously offered by the Exchange and other exchanges and does not represent a significant departure from such pricing.

The proposal to adopt the Growth Tier 5, Non-Displayed Step-Up Volume Tier, and Retail Growth Tier 2 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. While the criteria of each of the proposed tiers is identical, the Exchange proposes different rebates for each of the tiers based on the type of order (*i.e.,* liquidity adding displayed orders, liquidity adding non-displayed orders, and retail orders). Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[25] including the Exchange,[26] and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes the proposed new tiers and the proposed change to reduce the rebate for Non-Displayed Add Volume Tier 2 are reasonable because they will be available to all Members and provide all Members with an additional opportunity to receive an enhanced rebate. The Exchange further believes the proposed Growth Tier 5, Non-Displayed Step-Up Volume Tier, and Retail Growth Tier 2 as well as the existing Non-Displayed Add Volume Tier will provide a reasonable means to encourage liquidity adding displayed orders, liquidity adding non-displayed orders, and retail orders, respectively, in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an additional opportunity to receive an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that the proposed changes are reasonable as it does not represent a significant departure from the criteria currently offered in the Fee Schedule. Specifically, the proposed new tiers have criteria similar to the existing Growth Tier 4, albeit with more stringent criteria that applies at the Member level rather than the MPID level. Nonetheless, the Exchange believes that the enhanced rebates under the proposed new tiers and the Non-Displayed Add Volume Tier are commensurate with the criteria and the type of order flow associated with the applicable tier by allowing for Member level activity to become eligible for the rebate instead of only MPID level activity. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed new tiers and have the opportunity to meet the tiers' criteria and receive the corresponding enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy the criteria proposed under each proposed new tier. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

Finally, the Exchange believes the proposal to modify fee code X to explicitly provide that it is applicable to routed orders that add and remove liquidity on the destination exchange is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposal is intended only to make a clarifying change to the Fee Schedule and involves no substantive change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of

[22] *Id.*

[23] 15 U.S.C. 78f(b)(4).

[24] *See* ''Rebate to Add Non-Displayed Midpoint Liquidity (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO'' for firms that add less than 1 million shares of midpoint liquidity on the Nasdaq fee schedule at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[25] *See, e.g.,* BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[26] *See, e.g.,* EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change to the Non-Displayed Add Volume Tier 2 and the proposed new Growth Tier 5, Non-Displayed Step-Up Volume Tier, and Retail Growth Tier 2 will apply to all Members equally in that all Members are eligible for each of the Tiers, have a reasonable opportunity to meet the Tiers' criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGX by amending an existing pricing incentive and adopting pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

The Exchange does not believe the proposal to decrease the rebate associated with fee codes DM, HA, MM, or RP represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 15% of the market share.[27] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [28] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[29] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Finally, the Exchange believes its proposal to clarify that fee code X is applicable to liquidity adding and removing orders will have no impact on competition as it involves no substantive change to the existing Fee Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[27] *Supra* note 8.

[28] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[29] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [30] and paragraph (f) of Rule 19b–4 [31] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml)*; or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2022–050 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–050. 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

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2022–050 and should be submitted on or before December 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25667 Filed 11–23–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11925]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Picasso Landscapes: Out of Bounds" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the American Federation of Arts' exhibition "Picasso Landscapes: Out of Bounds" at The Mint Museum, Charlotte, North Carolina; the Cincinnati Art Museum, Cincinnati, Ohio; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–25723 Filed 11–23–22; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from Wesley W. Wilson and Frank A. Wolak (WB22–62–11/3/22) for permission to use data from the Board's 2017–2021 unmasked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB22–62.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Eden Besera,

Clearance Clerk.

[FR Doc. 2022–25710 Filed 11–23–22; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Finding of No Significant Impact/Record of Decision for the Final Environmental Assessment and Final General Conformity Determination for the Proposed Terminal Area Plan and Air Traffic Procedures at Chicago O'Hare International Airport

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

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces the issuance and availability of a Finding of No Significant Impact/Record of Decision for the Final Environmental Assessment and Final General Conformity Determination for the Proposed Terminal Area Plan and Air Traffic Procedures for Chicago O'Hare International Airport, Chicago, Illinois. The Final Environmental Assessment analyzes and discloses the potential environmental impacts associated with the Proposed Terminal Area Plan and Air Traffic Procedures at Chicago O'Hare International Airport, pursuant to the National Environmental Policy Act.

FOR FURTHER INFORMATION CONTACT: Deb Bartell, Manager, Chicago Airports District Office (847) 294–7336.

SUPPLEMENTARY INFORMATION: The Finding of No Significant Impact/Record of Decision and the Final Environmental Assessment, including the Final General Conformity Determination, located at Appendix E of the Final Environmental Assessment, are available online at: (*https://www.faa.gov/airports/great_lakes/TAPandATEA/*).

Issued in Des Plaines, IL.

Dated: November 18, 2022.

Debra L. Bartell,

Manager, Chicago Airports District Office.

[FR Doc. 2022–25677 Filed 11–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

[32] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT:
OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On November 17, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Entities:

1. ACCESS TECHNOLOGY TRADING L.L.C (Arabic: اكسيس تكنولوجي للتجارة ش.ذ.م.م) (f.k.a. ME ACCESS TECHNOLOGY GENERAL TRADING FZE), SM-OFFICE-01-204 S, Dubai, United Arab Emirates; SM Office, D1-204S, Ajman, United Arab Emirates; Website www.meaccesstechnology.com; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 04 Apr 2022; License 1048510 (United Arab Emirates); Registration Number 1368637 (United Arab Emirates); Economic Register Number (CBLS) 11859002 (United Arab Emirates) [IRAN-EO13846] (Linked To: PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO.).

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 13846 of August 6, 2018, "Reimposing Certain Sanctions With Respect to Iran," 83 FR 38939, 3 CFR, 2019 Comp., p. 854 (E.O. 13846) for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO., an Iranian person included on the SDN List.

2. EAST ASIA TRADING IMPORT AND EXPORT TRADE CO., LTD. (a.k.a. EAST ASIA GENERAL TRADING CO. LTD.; a.k.a. "EAST ASIA TRADING"), Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands; No. 815, Duhui Plaza, Zhonghang Road, Futian District, Shenzhen, Guangdong, China; Website https://www.eastasiatrading.net/; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 12 Jun 2019; Business Registration Number 101444 (Marshall Islands) [IRAN-EO13846] (Linked To: NAFTIRAN INTERTRADE CO. (NICO) LIMITED).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAFTIRAN INTERTRADE CO. (NICO) LIMITED, an Iranian person included on the SDN List.

3. HIGHLINE LOGISTIC HK LIMITED, Unit No A222 3F Hang Fung Industrial Building Phase 2 No 2G Hok Yuen Street Hunghom, Hong Kong, China; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 20 Jan 2021; C.R. No. 3013326 (Hong Kong) [IRAN-EO13846] (Linked To: PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO.).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO., an Iranian person included on the SDN List.

4. HONG KONG AEONIAN COMPLEX CO., LIMITED, Room 1002, No. 715 Hengkai Building, Changxing Road, Jiangbei District, Ningbo, Hong Kong, China; Additional Sanctions

Information - Subject to Secondary Sanctions; Organization Established Date 27 Apr 2020; C.R. No. 2936467 (Hong Kong); Business Registration Number 71809722-000 (Hong Kong) [IRAN-EO13846] (Linked To: PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO.).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO., an Iranian person included on the SDN List.

5. MONCH GENERAL TRADING L.L.C. (Arabic: مونش للتجارة العامة ش.ذ.م.م), Office No. 1503, Exchange Tower, 15th Floor, Business Bay, Dubai, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions; Dubai Chamber of Commerce Membership No. 1267441 (United Arab Emirates); Business Registration Number 774989 (United Arab Emirates) [IRAN-EO13846] (Linked To: PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO.).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO., an Iranian person included on the SDN List.

6. TORGAN CO., LIMITED (Chinese Traditional: 托爾幹有限公司), Room 09, 27 F, Ho King Commercial Centre, 2 16 Fa Yuen Street, Mongkok, Kowloon, Hong Kong, China; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 27 Dec 2019; C.R. No. 2905960 [IRAN-EO13846] (Linked To: PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO.).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO., an Iranian person included on the SDN List.

7. ZHEJIANG WONDER IMP. AND EXP. CO., LTD. (Chinese Simplified: 浙江文德进出口有限公司) (a.k.a. ZHEJIANG WENDE IMPORT AND EXPORT CO., LTD.; a.k.a. ZHEJIANG WONDER IMPORT AND EXPORT COMPANY LIMITED), Floor 26, Building 1, Shuangcheng International, No. 1785, Jianghan Road, Binjiang District, Hangzhou, Zhejiang 310052, China; Room 9-318A, Xingnong Building, Hangzhou Free Trade Zone, Hangzou 310052, China; Website www.zjwonder.com; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 25 Nov 2008; Unified Social Credit Code (USCC) 913302016810757525 (China) [IRAN-EO13846] (Linked To: PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO.).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO., an Iranian person included on the SDN List.

8. ASIAN ZONE TRADING L.L.C (Arabic: ايشيئن زون للتجارة ذ.م.م), Al Owais Business Tower, 5th Floor, Office 505, Baniyas Road, Deira, P.O. Box 14781, Dubai, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established

Date 11 Sep 2019; License 851326 (United Arab Emirates); Business Registration Number 2092078 (United Arab Emirates) [IRAN-EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD., an Iranian person included on the SDN List.

9. BARZA STYLE & MODE CO., LIMITED (a.k.a. BARZA STYLE AND MODE CO., LIMITED), Falt B51F Manning Ind Bldg, 116-118, Hongwing St, Kwun Tong Kln, Hong Kong, China; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 15 Apr 2021; C.R. No. 3038707 (Hong Kong) [IRAN-EO13846] (Linked To: EDGAR COMMERCIAL SOLUTIONS FZE).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, EDGAR COMMERCIAL SOLUTIONS FZE., an Iranian person included on the SDN List.

10. GALAXY PETROCHEMICAL FZE (Arabic: جالكسي بتروكيميكال م م ح), P1-ELOB Office No. E2-101F-33, Sharjah, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 11 Dec 2019; License 18387 (United Arab Emirates); Economic Register Number (CBLS) 11578779 (United Arab Emirates) [IRAN-EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD., an Iranian person included on the SDN List.

11. NEWTON TRADING FZE (Arabic: نيوتن تريدينغ م م ح), P1-ELOB Office No. E-42F-11, Sharjah, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 20 Feb 2020; License 18532 (United Arab Emirates); Economic Register Number (CBLS) 11583135 (United Arab Emirates) [IRAN-EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD., an Iranian person included on the SDN List.

12. SUM FIVE PETROCHEMICALS TRADING L.L.C (Arabic: سم فايف لتجارة البتروكيماويات ذ.م.م), Deira Al Riqqa, Dubai, United Arab Emirates; Office 15 G, The Plaza Building, Deira, Dubai, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 18 Jan 2021; License 927052 (United Arab Emirates); Economic Register Number (CBLS) 11610921 (United Arab Emirates) [IRAN-EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD., an Iranian person included on the SDN List.

13. UTELIZ RESOURCES CO., LIMITED (f.k.a. MILAEE TRADING CO., LIMITED), Unit 9039, 9/F, BLK B Chung Mei Ctr, 15-17 Hing Yip St, Kwun Tong Kln, Hong Kong, China; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 10 Jun 2021; C.R. No. 3056947 (Hong Kong) [IRAN-EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD., an Iranian person included on the SDN List.

Dated: November 10, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–25684 Filed 11–23–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) Information Collection Requests.

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before December 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:

Internal Revenue Service (IRS)

1. Title: Quarterly Federal Excise Tax Return.

OMB Number: 1545–0023.

Form Number: Form 720, Form 720–X, and Form 6627.

Abstract: Excise taxes are taxes paid when purchases are made on a specific good, such as gasoline. *26 U.S.C. 4081* imposes tax for miscellaneous excise taxes, manufacturers excise taxes, automotive and related items, petroleum products and motor and aviation fuel. Form 720, *Quarterly Federal Excise Tax Return,* is used to report liability by IRS number and to pay the excise taxes listed on the form. Form 720–X is used to make adjustments to liability reported on Form 720 filed in previous quarters. Form 6627 is used to figure the environmental tax on petroleum, ODCs, imported products that used ODCs as materials in the manufacture or production of the product, and the floor stocks tax on ODCs. Form 6627 is filed with Form 720.

Current Actions: There is no change in the paperwork burden previously approved by OMB. These forms are being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, and Federal, State, local or Tribal governments.

Estimated Number of Respondents: 205,400.

Estimated Time per Respondent: 11 hrs., 38 min.

Estimated Total Annual Burden Hours: 2,391,400.

2. Title: TD 9584, TD 9734, Form 1042, Schedule Q (Form 1042), Form 1042–S, and Form 1042–T.

OMB Number: 1545–0096.

Form Number: 1042, Schedule Q (Form 1042), 1042–S, and 1042–T.

Abstract: TD 9584 contains final regulations that provide guidance on the reporting requirements for interest on deposits maintained at the U.S. office of certain financial institutions and paid to nonresident alien individuals. These regulations affect persons making payments of interest with respect to such a deposit. TD 9734 contains regulations pertain to Internal Revenue Code (IRC) section 871(m) regarding dividend equivalent payments that are treated as U.S. source income. These regulations provide guidance regarding when payments made pursuant to certain financial instruments will be treated as U.S. source income and subject to U.S. withholding tax.

Form 1042 is used by withholding agents to report tax withheld at source on certain income paid to nonresident alien individuals, foreign partnerships, and foreign corporations to the IRS. Schedule Q (Form 1042) is used withholding agents to report the tax liability of a qualified derivatives dealer (QDD). Form 1042–S is used by withholding agents to report income and tax withheld to payees. A copy of each 1042–S is filed electronically or with Form 1042 for information reporting purposes. The IRS uses this information to verify that the correct amount of tax has been withheld and paid to the United States. Form 1042–T is used by withholding agents to transmit paper Forms 1042–S to the IRS.

Current Actions: There is are changes to the existing collection: (1) Schedule Q (Form 1042) was created to replace the previous requirement to attach a statement to the Form 1042 to provide information regarding a QDD's tax liability; (2) the burden for TD 9584, previously reported under OMB control number 1545–1725, is being incorporated in this collection for clarity and continuity; (3) the burden for Form 1042 was recalculated for better estimates; and (4) the number of respondents and responses for all forms were updated with better estimates.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, estates, trusts, tax-exempt organizations, and government entities.

Estimated Number of Respondents: 138,150.

Estimated Number of Responses: 8,560,200.

Estimated Time per Respondent: 15 minutes for TD 9584, 8 hours for TD 9734, 29 hours and 28 minutes for Form 1042, 5 hours and 44 minutes for Schedule Q (Form 1042), 34 minutes for Form 1042–S, and 12 minutes for Form 1042–T.

Estimated Total Annual Burden Hours: 6,704,749.

3. Title: U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons and Statement of Withholding on Certain Dispositions by Foreign Persons.

OMB Number: 1545–0902.

Form Numbers: 8288, 8288–A and 8288–C.

Abstract: Internal Revenue Code section 1445 requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons. Form 8288 is used to report and transmit the amount withheld to the IRS. Form 8288–A is used by the IRS to validate the withholding, and a copy is returned to the transferor for his or her use in filing a tax return. Form 8288–C is used as evidence of the amount of your section 1.446(f)(1) liability that you satisfied.

Current Actions: The following changes have been made to the forms.

Changes to Form 8288:

(1) The form title has been changed to ''U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons''.

(2) The ''entity'' information (Withholding Agent Information) was separated into Parts I and II to its own sections, to avoid processing and repetition issues.

(3) New Line 4 (Withholding Agent Information) was added to the entity section.

(4) We added 10(b) to allow the large trust to identify that the withholding being reported is a result of the large trust election previously made.

(5) New Parts II, IV, and V were added for reporting witholding under section 1446(f)(1) and 1446(f)(4), due to the final regulation in TD 9226, which has an effective date of 1/1/23, per Notice 2021–51.

Changes to Form 8288–A:

(1) The form title has been changed to ''Statement of Withholding on Certain Dispositions by Foreign Persons''.

(2) New box 5 was added to (identify the withholding under the specific section).

(3) A new checkbox was added to box 6 for ''Partnerships''.

The burden estimates below do not include estimates for business or individual filers. These estimates are for all other filers only as business estimates are reported under 1545–0123 and individual estimates are reported under 1545–0074.

Type of Review: Revisions of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Form 8288:

Estimated Number of Respondents: 80,000.

Estimated Time per Respondent: 17 hr., 24 min.

Estimated Total Annual Burden Hours: 1,399,200.

Form 8288–A:

Estimated Number of Respondents: 87,500.

Estimated Time per Respondent: 3 hr., 59 min.

Estimated Total Annual Burden Hours: 343,875.

Form 8288–C:

Estimated Number of Respondents: 70,000.

Estimated Time per Respondent: 25 min.

Estimated Total Annual Burden Hours: 17,500.

4. Title: Debt Instruments with Original Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property; Property Traded on an Established Market.

OMB Number: 1545–1353.

Treasury Decision Numbers: 8517; 9599.

Abstract: These regulations provide definitions, reporting requirements, elections, and general rules relating to the tax treatment of debt instruments with original issue discount and the imputation of, and accounting for, interest on certain sales or exchanges of property. Current Actions: IRS is updating the burden estimates for TD 9599, due to an inadvertent overstatement in the previous OMB submissions. This results in a decrease in the burden estimates by 180,000 responses (from 200,000 to 20,000) and a decrease of 90,000 hours (from 100,000 to 10,000).

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 525,000.

Estimated Time per Response: 0.35.

Estimated Total Annual Burden Hours: 185,500.

Treasury Decision 9599:

Estimated Number of Respondents: 20,000.

Estimated Time per Response: 0.5.

Estimated Total Annual Burden Hours: 10,000.

5. Title: Highly Compensated Employee Definition.

OMB Number: 1545–1550.

Notice Number: Notice 97–45.

Abstract: Notice 97–45 provides guidance on the definition of highly compensated employee (HCE) within the meaning of section 414(q) of the Internal Revenue Code, as simplified by section 1431 of the Small Business Job Protection Act of 1996, including an employer's option to make a top-paid group election under section 414(q)(1)(B)(ii). The notice requires qualified retirement plans that contain a definition of HCE to be amended to reflect the statutory changes to section 414(q).

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 218,683.

Estimated Time per Response: 18 minutes.

Estimated Total Annual Burden Hours: 65,605.

6. Title: Agent for Consolidated Group.

OMB Number: 1545–1699.

Form Number: TD 9715

Abstract: The information is needed in order for a terminating common parent of a consolidated group to designate a substitute agent for the group and receive approval of the Commissioner, or for a default substitute agent to notify the Commissioner that it is the default

substitute agent, pursuant to Treas. Reg. § 1.1502–77. The Commissioner will use the information to determine whether to approve the designation of the substitute agent (if approval is required) and to change the IRS's records to reflect the information about the substitute agent.

Current Actions: There are no changes to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 200.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 400.

7. Title: Golden Parachute Payments.

OMB Number: 1545–1851.

Form Number: T.D. 9083.

Abstract: These regulations deny a deduction for excess parachute payments. A parachute payment is payment compensation to a disqualified individual that is contingent on a change in ownership or control of a corporation. Certain payments, including payments from a small corporation, are exempt from the definition of parachute payment if certain requirements are met (such as shareholder approval and disclosure requirements).

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: Business or other for-profit organizations.

Estimated Number of Respondents: 800.

Estimated Time per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 12,000 hours.

8. Title: Timely Mailing Treated as Timely Filing.

OMB Number: 1545–1899.

Form Number: T.D. 9543 and Revenue Procedure 97–19.

Abstract: This information collection contains regulations that provide guidance as to the only ways to establish prima facie evidence of delivery of documents that have a filing deadline prescribed by the internal revenue laws, absent direct proof of actual delivery. The regulations are necessary to provide greater certainty on this issue and to provide specific guidance. The regulations affect taxpayers who mail Federal tax documents to the Internal Revenue Service or the United States Tax Court. Revenue Procedure 97–19 provides the criteria that will be used by the IRS to determine whether a private delivery service qualifies as a designated Private Delivery Service under section 7502 of the Internal Revenue Code.

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, not-for-profit institutions, farms, Federal Government, and State, local, or Tribal government.

The estimated burden related to Revenue Procedure 97–19:

Estimated Number of Responses: 14.

Estimated Time per Response: 60 hours, 54 minutes.

Estimated Total Annual Burden Hours: 853.

The estimated related to T.D. 9543:

Estimated Number of Responses: 10,847,647.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 1,084,765.

Total Estimated Number of Respondents: 10,847,661.

Total Estimated Total Annual Burden Hours: 1,085,618 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–25705 Filed 11–23–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Provisions Pertaining to Certain Investments in the United States by Foreign Persons and Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

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 the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments should be received on or before December 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:

Title: Provisions Pertaining to Certain Investments in the United States by Foreign Persons and Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States.

OMB Control Number: 1505–0121.

Type of Review: Extension without change of a currently approved collection.

Description: Section 721 of the Defense Production Act of 1950, as amended (section 721), provides the President, acting through the Committee on Foreign Investment in the United States (CFIUS or the Committee), authority to review certain foreign investments in the United States in order to determine the effects of those transactions on the national security of the United States. In August 2018, section 721 was amended by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII, *Public Law 115–232,* 132 Stat. 2173 (Aug. 13, 2018). FIRRMA maintains CFIUS's jurisdiction over any merger, acquisition, or takeover that could result in foreign control of any U.S. business, and broadens the authorities of the President and CFIUS under section 721 to review and take action to address any national security concerns arising from certain non-controlling investments and certain real estate transactions involving foreign persons.

Executive Order 13456, 73 FR 4677 (Jan. 23, 2008), directs the Secretary of the Treasury to issue regulations implementing section 721. The Department of the Treasury issued final regulations (*85 FR 3112* and *85 FR 3158*) on January 17, 2020, and subsequent amendments to the final regulations in 2020 and 2022 (85 FR 8747, 85 FR 45311, 85 FR 57124, and 87 FR 731), implementing FIRRMA, including information collections related to notices and declarations filed with or submitted to the Committee regarding

transactions that could result in foreign control of a U.S. business, certain non-controlling investments and certain real estate transactions involving foreign persons.

The Department of the Treasury maintains a CFIUS Case Management System, featuring an online public portal for external parties to submit declarations and file notices with CFIUS in a standard form. Use of this online system is mandatory for all CFIUS submissions and filings.

Form Number: None.

Affected Public: Individuals and entities.

Estimated Number of Respondents: 1,100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 1,100.

Estimated Time per Response: Varies from 15–20 hours per declaration and 116–130 hours per notice.

Estimated Total Annual Burden Hours: 57,400.

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. 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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–25707 Filed 11–23–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Departmental Offices Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before December 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:

Title: Emergency Capital Investment Program Initial Supplemental Report and Quarterly Supplemental Report.

OMB Control Number: 1505–0275.

Type of Review: Revision of a currently approved collection.

Description: Authorized by the Consolidated Appropriations Act, 2021, the Emergency Capital Investment Program (ECIP) was created to encourage low- and moderate-income community financial institutions to augment their efforts to support small businesses and consumers in their communities.

Under the program, Treasury will provide approximately $8.75 billion in capital directly to depository institutions that are certified Community Development Financial Institutions (CDFIs) or minority depository institutions (MDIs) to, among other things, provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities, that may be disproportionately impacted by the economic effects of the COVID–19 pandemic.

ECIP capital is eligible for a reduction in the dividend or interest rate payable on the instruments depending on the increase in lending by the recipients of the capital (Recipients) within minority, rural, and urban low-income and underserved communities and to low- and moderate-income borrowers over a baseline amount of lending. Recipients are required to submit an Initial Supplemental Report and quarterly reports to determine their increase in lending to the specified targeted communities over the baseline and therefore their qualification for rate reductions on the dividend or interest rates payable on the ECIP instruments. In addition, these reports will collect data necessary for Treasury and other oversight bodies to evaluate program outcomes over time.

Treasury uses the Initial Supplemental Report to establish a baseline amount of qualified lending. Treasury proposes to continue use of this form to collect additional or restated data on a Recipient's amount of baseline lending, such as in connection with mergers, acquisitions, or other business combinations. Instructions may be modified from time to time to accommodate these uses.

Treasury proposes to use the Quarterly Supplemental Report to collect the information required to establish a Recipient's increase in lending. The Quarterly Supplemental Report has two components: (1) schedules which must be completed each quarter that collect data on activity for the preceding quarter and (2) schedules that collect data on the preceding four quarters of activity that are submitted annually. There are separate schedules and instructions for insured depository institutions, bank holding companies, and savings and loan holding companies; and credit unions.

Quarterly Report Schedules: Recipients of ECIP investments will be required to submit two schedules on a quarterly basis. Schedule A—Summary Qualified Lending is used to collect the Qualified Lending and Deep Impact Lending, as defined in the Glossary in the Instructions to the Quarterly Supplemental Report, of a Recipient for a given quarter. Schedule A is therefore used to establish the growth in a Recipient's Qualified Lending over its baseline Qualified Lending for the purposes of calculating the payment rate on the ECIP preferred shares or subordinated debt issued by the Recipient. Schedule B—Disaggregated Qualified Lending is used to present further detail on the composition of the Participant's Qualified and Deep Impact Lending.

Annual Report Schedules: Annually, Recipients will report on up to ten (10) additional schedules, depending on the origination activity that took place during the prior year. Schedule C—Additional Demographic Data on Qualified Lending collects additional

demographic data on certain categories of Qualified Lending and Deep Impact Lending. Schedule D—Additional Place-based Data on Qualified Lending collects additional geographic data on certain categories of Qualified Lending and Deep Impact Lending.

Forms: Initial Supplemental Report and Instructions, Quarterly Supplemental Report Instructions and Schedules.

Affected Public: Recipients of investments through the Emergency Capital Investment Program.

Estimated Number of Respondents: 190 (5 for the Initial Supplemental Report; 185 for the Quarterly Supplemental Report).

Frequency of Response: Initial Supplemental Report—One time annually; Quarterly Supplemental Report—Four times annually for Schedules A and B, Annually for Schedules C and D.

Estimated Total Number of Annual Responses: Initial Supplemental Report—5; Quarterly Supplemental Report—740 for Schedules A & B and 185 for Schedule C and D.

Estimated Time per Response: 8 hours annually for the Initial Supplemental Report; 40 hours annually for the Quarterly Supplemental Report Schedules A & B + 120 hours for Schedules C & D.

Estimated Total Annual Burden Hours: 29,640.

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. 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 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, Treasury seeks comments on the following:

1. For the Quarterly Supplemental Report, Treasury is considering updating the datasets used to identify certain place-based targeted communities periodically, based on availability. For example, from time to time, updated Area Median Income data is published by the Census Bureau or other relevant data sources. Recipients would be required to use this new data in order to classify originations going forward. How frequently should Treasury update this data—never, annually, every five years, some other time period? Treasury anticipates that a transition period would be implemented each time such reference data is updated. Would a one-year transition period be sufficient?

2. Treasury welcomes comments on sources of data through which origination data requested by ECIP is already reported to the federal government and for which Treasury may determine that collection of the data by the Quarterly Supplemental Report represents a duplication of reporting.

3. Are there additional data points that Treasury should consider collecting, in addition to those proposed?

4. Treasury seeks comments on the instructions or other guidance that would be helpful to Recipients to better understand their reporting obligations on the Initial Supplemental Report or Quarterly Supplemental Report.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–25704 Filed 11–23–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0913]

Agency Information Collection Activity: Veteran Toxic Exposure Screening Tool (PACT Act)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 24, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Janel Keyes, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Janel.Keyes@va.gov.* Please refer to ''OMB Control No. 2900–0913'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0913'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Veteran Toxic Exposure Screening Tool (PACT Act), VA Form 10–327.

OMB Control Number: 2900–0913.

Type of Review: Extension of a currently approved collection.

Abstract: The PACT Act was signed into law on August 10, 2022, and mandated that VA implement toxic exposure screening to identify Veterans with potential toxic exposures during military, naval, air, or space service. The PACT Act imposed a Congressionally mandated timeline to implementation of 90 days, with full implementation completed by November 8, 2022. Pursuant to a six-month emergency PRA

clearance from OMB, and to ensure efficacy of the screening tool and ease of use by screeners, the project team performed a pilot test of the toxic screening tool with a sampling from seven targeted clinical areas and sites for 10 days, beginning September 6, 2022. The goal was to collect feedback and best practices to use in refining the screening tool and training to increase best chance for success. VHA now seeks to renew the PRA clearance for the screening tool for a full three years.

Information collected during the toxic exposure screening will be included in the Veteran's electronic health record and will be used to connect Veterans with resources, services, and benefits available, as well as provide guidance that Veterans be engaged in ongoing care or establish care in VA or the community to address their exposure concerns. VA will use several different methods of gathering information from Veterans through the toxic exposure screening, including VHA staff or community care staff administering the screening during a health care appointment, VHA staff administering at other Veteran touch point events (*e.g.,* screening blitz event), and Veterans completing the screening independently before being contacted by VHA staff for a follow-up consultation. Veterans have the option of declining the toxic exposure screening.

Affected Public: Individuals or households.

Estimated Annual Burden: 138,333 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,660,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–25772 Filed 11–23–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0029]

Agency Information Collection Activity: Offer To Purchase and Contract of Sale; Credit Statement of Prospective Purchaser; and Addendum to Offer To Purchase and Contract of Sale (VIRGINIA)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 27, 2022.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0029'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: VA Form 26–6705, Offer to Purchase and Contract of Sale; VA Form 26–6705b, Credit Statement of Prospective Purchaser; and VA Form 26–6705d, Addendum to Offer to Purchase and Contract of Sale (Virginia).

OMB Control Number: 2900–0029.

Type of Review: Extension of a currently approved collection.

Abstract: Under the authority of 38 U.S.C. 3720(a)(5) and (6) the Department of Veterans Affairs (VA) acquires properties for sale to the general public utilizing a private Service Provider. Without this collection, a determination of the best offer for a property and the highest net return/cash equivalent value could not be made to determine the most financially advantageous purchase offer to VA (VA Form 26–6705); the creditworthiness of a prospective buyer could not be determined and the offer to purchase could not be accepted (VA Form 26–6705b or FNMA1003; and, proper acknowledgment of State law by the buyer at or prior to closing would not be made (VA Form 26–6705d)).

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 57753 on September 21, 2022, pages 57753 and 57754.

Affected Public: Individuals or Households.

Estimated Annual Burden: 17,458.

Estimated Average Burden per Respondent: 20 minutes and 5 minutes (average 15 minutes between the three forms).

Frequency of Response: One time.

Estimated Number of Respondents: 53,500.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–25702 Filed 11–23–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Consumer Product Safety Commission

16 CFR Parts 1112 and 1261

Safety Standard for Clothing Storage Units; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1261

[Docket No. CPSC–2017–0044]

Safety Standard for Clothing Storage Units

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) has determined that there is an unreasonable risk of injury and death, particularly to children, associated with clothing storage units (CSUs) tipping over. To address this risk, the Commission is issuing a rule regarding the stability of CSUs. This rule requires CSUs to be tested for stability, exceed minimum stability requirements, bear labels containing safety and identification information, and display a hang tag providing performance and technical data about the stability of the CSU. The Commission issues this rule under the authority of the Consumer Product Safety Act (CPSA).

DATES: This rule is effective on May 24, 2023. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of May 24, 2023.

FOR FURTHER INFORMATION CONTACT: Amelia Hairston-Porter, Trial Attorney, Division of Enforcement and Litigation, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7663; email: *AHairstonporter@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CSUs generally are freestanding furniture items, typically used for storing clothes. Examples of CSUs include chests, bureaus, dressers, chests of drawers, drawer chests, door chests, chifforobes, armoires, and wardrobes. CPSC is aware of numerous deaths and injuries resulting from CSUs tipping over, particularly onto children. To address the hazard associated with CSU tip overs, the Commission has taken several steps.

In June 2015, the Commission launched the Anchor It! campaign. This educational campaign includes print and broadcast public service announcements; information distribution at targeted venues, such as childcare centers; social media; blog posts; videos; and an informational website (*www.AnchorIt.gov*). The campaign explains the nature of the risk, provides safety tips for avoiding furniture and television tip overs, and promotes the use of tip restraints to anchor furniture and televisions.

In addition, CPSC's Office of Compliance and Field Operations has investigated and recalled CSUs.[1] Between January 1, 2000 and July 1, 2022, 43 consumer-level recalls occurred to address CSU tip-over hazards. The recalled products were responsible for 341 tip-over incidents, including reports of 152 injuries and 12 fatalities.[2] These recalls involved 38 firms and affected approximately 21,530,000 CSUs.

In 2016, CPSC staff prepared a briefing package on furniture tip overs, looking at then-current levels of compliance with the voluntary standards, and the adequacy of the voluntary standards.[3] In 2017, the Commission issued an advance notice of proposed rulemaking (ANPR), discussing the possibility of developing a rule to address the risk of injuries and death associated with CSU tip overs. 82 FR 56752 (Nov. 30, 2017).[4] The ANPR began a rulemaking proceeding under the CPSA (15 U.S.C. 2051–2089). In 2022, after considering comments received on the ANPR and extensive additional testing and analysis, the Commission issued a notice of proposed rulemaking (NPR), proposing to establish requirements regarding CSU stability. 87 FR 6246 (Feb. 3, 2022). The Commission is now issuing a final rule, establishing requirements regarding CSU stability.[5]

This preamble provides key information to explain and support the rule, derived from the following materials. For more detailed information, see these additional materials:

- CPSC staff's briefing package supporting the NPR;[6]
- CPSC staff's public briefing to the Commission regarding the NPR briefing package, which includes a video demonstration of stability testing proposed in the NPR;[7]
- the NPR;[8]
- information provided in the docket for this rulemaking;[9]
- information obtained at a public hearing on the NPR;[10] and
- CPSC staff's briefing package supporting this final rule.[11]

II. Statutory Authority

CSUs are ''consumer products'' that the Commission can regulate under the authority of the CPSA. *See* 15 U.S.C. 2052(a)(5). In this document, the Commission issues a final rule under sections 7 and 9 of the CPSA, regarding performance requirements, warnings, and stockpiling, and under section 27(e) of the CPSA, regarding performance and technical data.

A. Performance and Warning Requirements

Section 7 of the CPSA authorizes the Commission to issue a mandatory consumer product safety standard that consists of performance requirements or requirements that the product be marked with, or accompanied by, warnings or instructions. *Id.* 2056(a). Any requirement in the standard must be ''reasonably necessary to prevent or reduce an unreasonable risk of injury'' associated with the product. *Id.* Section 7 requires the Commission to issue such a standard in accordance with section 9 of the CPSA. *Id.*

Section 9 of the CPSA specifies the procedure the Commission must follow to issue a consumer product safety standard under section 7. *Id.* 2058. Under section 9, the Commission may initiate rulemaking by issuing an ANPR

[1] For further information about recalls, see Tab J of the briefing package supporting this final rule.

[2] For the remaining incidents, either no injury resulted from the incident, or the report did not indicate whether an injury occurred.

[3] Massale, J., Staff Briefing Package on Furniture Tipover, U.S. Consumer Product Safety Commission (2016), available at: *https://www.cpsc.gov/s3fs-public/Staff%20Briefing%20Package%20on%20Furniture%20Tipover%20-%20September%2030%202016.pdf.*

[4] The briefing package supporting the ANPR is available at: *https://www.cpsc.gov/s3fs-public/ANPR%20-%20Clothing%20Storage%20Unit%20Tip%20Overs%20-%20November%2015%202017.pdf?5IsEEdW_Cb3ULO3TUGJiHEl875Adhvsg.* After issuing the ANPR, the Commission extended the comment period on the ANPR. 82 FR 2382 (Jan. 17, 2018).

[5] The Commission voted 3–1 to approve this document.

[6] The briefing package supporting the NPR is available at: *https://www.cpsc.gov/s3fs-public/Proposed%20Rule-%20Safety%20Standard%20for%20Clothing%20Storage%20Units.pdf.*

[7] A recording of the public briefing is available at: *https://www.youtube.com/watch?v=LIY1wfyOwDk.*

[8] The NPR is available at: *https://www.federalregister.gov/documents/2022/02/03/2022-01689/safety-standard-for-clothing-storage-units.*

[9] The docket for this rulemaking, CPSC–2017–0044, is available at: *www.regulations.gov.*

[10] A public hearing was held on April 6, 2022. Submissions forwarded to the agency by presenters before the public hearing, and the transcript of the hearing are available in the docket for this rulemaking, CPSC–2017–0044, at *www.regulations.gov.* The public hearing is available for viewing at: *https://www.cpsc.gov/Newsroom/Public-Calendar/2022-04-06-100000/Public-Hearing-Safety-Standard-for-Clothing-Storage-Units.*

[11] The briefing package supporting the final rule is available at: *https://www.cpsc.gov/s3fs-public/Final-Rule-Safety-Standrd-for-Clothing-Storage-Units.pdf?VersionId=X2prG3G0cqqngUwZh3rk01mkmFB40Gjf.*

or NPR; must promulgate the rule in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553); and must publish an NPR that contains the text of the proposed rule, alternatives the Commission considered, and a preliminary regulatory analysis. The Commission also must provide an opportunity for interested parties to submit written and oral comments on the proposed rule. *Id.* 2058(a), (c), (d)(2). Accordingly, the Commission initiated this rulemaking with an ANPR in November 2017 and published an NPR in February 2022, which included the required content and sought written comments on all aspects of the proposed rule. The Commission also provided the opportunity for interested parties to make oral presentations of data, views, or arguments on the proposed rule at an online public hearing on April 6, 2022.

To issue a final rule under section 9 of the CPSA, the Commission must make certain findings and publish a final regulatory analysis. 15 U.S.C. 2058(f). Under section 9(f)(1) of the CPSA, the Commission must consider, and make appropriate findings to be included in the rule, concerning the following issues:

- the degree and nature of the risk of injury the rule is designed to eliminate or reduce;
- the approximate number of consumer products subject to the rule;
- the need of the public for the products subject to the rule and the probable effect the rule will have on the cost, availability, and utility of such products; and
- the means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices.

Id. 2058(f)(1). Under section 9(f)(3) of the CPSA, the Commission may not issue a consumer product safety rule unless it finds (and includes in the rule):

- the rule, including the effective date, is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product;
- that issuing the rule is in the public interest;
- if a voluntary standard addressing the risk of injury has been adopted and implemented, that either compliance with the voluntary standard is not likely to result in the elimination or adequate reduction of the risk or injury, or there is unlikely to be substantial compliance with the voluntary standard;
- that the benefits expected from the rule bear a reasonable relationship to its costs; and
- that the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury.

Id. 2058(f)(3). The final regulatory analysis must include:

- a description of the potential benefits and costs of the rule, including benefits and costs that cannot be quantified, and those likely to receive the benefits and bear the costs;
- a description of alternatives to the final rule that the Commission considered, a summary description of their potential benefits and costs, and a brief explanation of the reason the alternatives were not chosen; and
- a summary of any significant issues raised by commenters in response to the preliminary regulatory analysis, and a summary of the Commission's assessment of those issues.

Id. 2058(f)(2).

B. Stockpiling

Section 9(g)(2) of the CPSA allows the Commission to prohibit manufacturers of a consumer product from stockpiling products subject to a consumer product safety rule to prevent manufacturers from circumventing the purpose of the rule. 15 U.S.C. 2058(g)(2). The statute defines ''stockpiling'' as manufacturing or importing a product between the date a rule is promulgated and its effective date at a rate that is significantly greater than the rate at which the product was produced or imported during a base period ending before the date the rule was promulgated. *Id.* The Commission is to define what constitutes a ''significantly greater'' rate and the base period in the rule addressing stockpiling. *Id.*

C. Performance and Technical Data

Section 27(e) of the CPSA authorizes the Commission to issue a rule to require manufacturers of consumer products to provide ''such performance and technical data related to performance and safety as may be required to carry out the purposes of [the CPSA].'' *Id.* 2076(e). The Commission may require manufacturers to provide this information to the Commission or, at the time of original purchase, to prospective purchasers and the first purchaser for purposes other than resale, as necessary to carry out the purposes of the CPSA. *Id.* Section 2(b) of the CPSA states the purposes of the CPSA, including:

- protecting the public from unreasonable risks of injury associated with consumer products; and
- assisting consumers in evaluating the comparative safety of consumer products.

Id. 2051(b)(1), (b)(2).

III. The Product and Market

A. Description of the Product

This rule defines a ''CSU'' as a consumer product that is a freestanding furniture item, with drawer(s) and/or door(s), that may be reasonably expected to be used for storing clothing, that is designed to be configured to greater than or equal to 27 inches in height, has a mass greater than or equal to 57 pounds with all extendable elements filled with at least 8.5 pounds/cubic foot times their functional volume, and that has a total functional volume of the closed storage greater than 1.3 cubic feet and greater than the sum of the total functional volume of the open storage and the total volume of the open space. Definitions of many of the terms used in this definition are provided in the rule. Common names for CSUs include, but are not limited to: chests, bureaus, dressers, armoires, wardrobes, chests of drawers, drawer chests, chifforobes, and door chests. CSUs are available in a variety of designs (*e.g.,* vertical or horizontal dressers), sizes (*e.g.,* weights and heights), dimensions, and materials (*e.g.,* wood, plastic, leather, manufactured wood or fiber board). Consumers may purchase CSUs that have been assembled by the manufacturer, or they may purchase CSUs as ready-to-assemble (RTA) furniture.

The CSU definition includes several criteria to help distinguish CSUs from other furniture. Details regarding these criteria are discussed in section IX. Description of and Basis for the Rule. Key features include that, as freestanding furniture items, CSUs remain upright without needing to be attached to a wall or other structure, when fully assembled and empty, with all extendable elements and doors closed. As such, built-in units are not considered freestanding. In addition, CSUs typically are intended and used for storing clothing and, therefore, they are commonly used in bedrooms. However, consumers may also use CSUs in rooms other than bedrooms and to store items other than clothing in them. For this reason, whether a product is a CSU depends on whether it meets the criteria in the definition, rather than what the name of the product is or the marketed use for the product. The criteria in the definition regarding height and closed storage volume aim to address the utility of a unit for holding multiple clothing items. Some examples of furniture items that, depending on their design, may not meet the criteria

in the definition and, therefore, may not be considered CSUs are: shelving units, office furniture, dining room furniture, laundry hampers, built-in closets, and single-compartment closed rigid boxes (storage chests).

CSUs may be marketed, packaged, or displayed as intended for children 12 years old and younger. Examples of such products include CSUs with pictures or designs on them that would appeal to children; CSU designs that would be useful for children; or CSUs that are part of a matching set with a crib, or similar infant product. However, CSUs are more commonly general-use products that are not specifically intended for children 12 years old and younger. This rule applies to both children's products and non-children's products.

B. The Market [12]

Retail prices of CSUs vary substantially. The least expensive units retail for less than $100, while more expensive units may retail for several thousand dollars. Based on information provided by large furniture associations during the NPR comment period, the estimated average price of a CSU is approximately $338.

CPSC staff used multiple sources of information to estimate annual revenues from CSU sales. Considering U.S. Census Bureau estimates of retail sales by industry classification, revenue estimates for retail sales from furniture stores, and estimates of the portion of furniture sales that consist of CSUs that fall within the scope of this rule, CPSC estimates that retail sales of CSUs in 2021 totaled approximately $6.99 billion.

Based on the estimated retail sales revenue of $6.99 billion in 2021, and the average estimated CSU price of approximately $338, CPSC estimated that there were approximately 20.64 million units sold in 2021. On average, CPSC assumes that there are approximately 10,000 individual CSUs of each model that are sold. Accordingly, staff estimates that there were 2,064 different models of CSUs sold in 2021.

CPSC also estimated the number of CSUs in use, based on historic sales estimates and statistical distribution of CSU failure rates, and adjusted these estimates iteratively to reflect the decreasing number of CSUs that would remain in use over time. Based on this information, CPSC estimates that the average lifecycle of a CSU is 15 years, that there were approximately 229.94 million CSUs that were in use in 2021, and that there were approximately 6,365 different models of CSUs that were in use in 2021.

IV. Risk of Injury

A. Incident Data [13]

For the NPR, CPSC staff analyzed reported fatalities, reported nonfatal incidents and injuries, and calculated national estimates of injuries treated in U.S. hospital emergency departments (EDs) that were associated with CSU instability or tip overs. For this final rule, staff updated the analysis to include information CPSC received after staff prepared the NPR briefing package. These updates include new incidents (that occurred during or after the time frames included in the NPR) as well as recharacterizations of incidents that were included in the NPR, when warranted by new information.

Each year, CPSC issues an annual report on furniture instability and tip overs.[14] The information provided for this rulemaking is drawn from a subset of data from those annual reports, as well as from the National Electronic Injury Surveillance System [15] (NEISS), which includes reports of injuries treated in EDs, and the Consumer Product Safety Risk Management System [16] (CPSRMS). For this rulemaking, staff focused on incidents that involved products that would be considered CSUs.[17] Staff considered incidents that involved the CSU tipping over, as well as incidents of CSU instability with indications of impending tip over. Tip-over incidents are a subset of product instability incidents, and involve CSUs actually falling over. Product instability incidents are a broader category that includes tip-over incidents, but may also include incidents where CSUs did not fully tip over. Staff considered instability incidents relevant because product instability can lead to a tip over, and the same factors can contribute to instability and tip overs.[18]

Staff used the same information sources and inclusion criteria as the NPR for the updated information. These data represent the minimum number of incidents or fatalities during the time frames described. Data collection is ongoing for CPSRMS and is considered incomplete for 2020 and after; CPSC may receive additional reports for those years in the future.[19]

1. Fatal Incidents

Based on NEISS and CPSRMS, CPSC staff identified 199 reported CSU tip-over fatalities to children (*i.e.,* under 18 years old), 11 reported fatalities to adults (*i.e.,* ages 18 through 64 years), and 24 reported fatalities to seniors (*i.e.,* ages 65 years and older) that were reported to have occurred between January 1, 2000 and April 30, 2022.[20] Of the 199 reported CSU tip-over child fatalities, 95 (48 percent) involved only a CSU (with no television) [21] tipping over. Of the child fatalities, 196 (98 percent) involved a chest, bureau, or dresser; 2 involved a wardrobe; and 1 involved an armoire. Of the 35 reported adult and senior fatalities, 34 (97 percent) involved only a CSU tipping over. Of the adult and senior fatalities, 31 (89 percent) involved a chest, bureau, or dresser; 2 involved a wardrobe; 1 involved an armoire; and 1 involved a portable storage closet.

For the years for which reporting is considered complete—2000 through

[12] For more details about market information, see Tab H of the final rule briefing package.

[13] For details about incident data, see Tab A of the NPR and final rule briefing packages.

[14] These annual reports are available at: *https://www.cpsc.gov/Research--Statistics/Furniture-and-Decor-1.*

[15] Data from NEISS is based on a nationally representative probability sample of about 100 hospitals in the United States and its territories. NEISS data can be accessed from the CPSC website under the ''Access NEISS'' link at: *https://www.cpsc.gov/Research--Statistics/NEISS-Injury-Data.*

[16] CPSRMS is the epidemiological database that houses all anecdotal reports of incidents received by CPSC, ''external cause''-based death certificates purchased by CPSC, all in-depth investigations (IDI) of these anecdotal reports, as well as investigations of select NEISS injuries. Examples of documents in CPSRMS include: hotline reports, internet reports, news reports, medical examiner's reports, death certificates, retailer/manufacturer reports, and documents sent by state/local authorities, among others.

[17] Staff considered incidents that involved chests, bureaus, dressers, armoires, wardrobes, portable clothes lockers, and portable closets.

[18] This preamble refers to tip-over incidents and instability incidents collectively as tip-over incidents.

[19] Among other things, CPSRMS houses all IDI reports, as well as the follow-up investigations of select NEISS injuries. As such, it is possible for a NEISS injury case to be included in the national injury estimate, while its investigation report is counted among the anecdotal nonfatal incidents, or for a NEISS injury case to appear on both the NEISS injury estimate and fatalities, if the incident resulted in death while receiving treatment.

[20] Different time frames are presented for NEISS, CPSRMS, fatal, and nonfatal data because of the timeframes in which staff collected, received, retrieved, and analyzed the data. One reason for varied timeframes is that staff drew data from previous annual reports and other data-collection reports (which used varied start dates), and then updated the data set to include more recent data. Another reason is that CPSRMS data are available on an ongoing basis, whereas NEISS data are not available until several months after the end of the previous calendar year.

[21] Although televisions are involved in CSU tip overs, this rule does not focus on television involvement because, in recent years, there has been a decline in CSU tip-over incidents that involve televisions and nearly all television incidents involved a box or cathode ray tube television, which are no longer common.

2019—there have been from 2 to 21 child fatalities each year from CSU tip overs, and from 0 to 5 fatalities each year to adults and seniors. Although reporting is considered incomplete for 2020 and later years, CPSC is already aware of 1 child fatality in 2020 and 5 child fatalities in 2021 associated with CSU tip overs without televisions.

Of the 199 reported child fatalities from tip overs, 171 involved children 3 years old or younger; 12 involved 4-year-olds; 7 involved 5-year-olds; 4 involved 6-year-olds; 2 involved 7-year-olds; and 3 involved 8-year-olds. Therefore, most reported CSU tip-over fatalities involved children 3 years old or younger.

CSU tip-over fatalities to children were most commonly caused by torso injuries when only a CSU was involved, and were more commonly caused by head injuries when both a CSU and television tipped over. For the 95 child fatalities not involving a television, 60 resulted from torso injuries (chest compression); 14 resulted from head/torso injuries; 12 resulted from head injuries; 6 involved unknown injuries; and 3 involved a child's head, torso, and limbs pinned under the CSU. For the 104 child fatalities that involved both a CSU and television tipping over, 91 resulted from head injuries (blunt head trauma); 6 resulted from torso injuries (chest compression resulting from the child being pinned under the CSU); 4 involved unknown injuries; 2 resulted from head/torso injuries; and 1 involved head/torso/limbs.

2. Reported Nonfatal Incidents

CPSC staff identified 1,154 nonfatal CSU tip-over incidents for all ages that were reported to have occurred between January 1, 2005 and April 30, 2022. CPSRMS reports are considered anecdotal because, unlike NEISS data, they cannot be used to identify statistical estimates or year-to-year trend analysis, and because they include reports of incidents in which no injury resulted. Although these anecdotal data do not provide for statistical analyses, they provide detailed information to identify hazard patterns, and provide a minimum count of injuries and deaths.

Of the 1,154 reported incidents, 67 percent (776 incidents) involved only a CSU, and 33 percent (378 incidents) involved both a CSU and television tipping over. Of the 1,154 incidents, 99.5 percent (1,148 incidents) involved a chest, bureau, or dresser; less than 1 percent (5 incidents) involved an armoire; and less than 1 percent (1 incident) involved a wardrobe.

For the years for which reporting is considered complete—2005 through 2019—there were from 6 to 260 reported nonfatal CSU tip-over incidents each year, with 2016 (260 incidents), 2017 (103 incidents), and 2018 (92 incidents) reporting the highest number of incidents.

Of the 1,154 nonfatal CSU tip-over incidents reported, 423 did not mention any specific injuries; 719 reported one injury; and 12 reported two injuries, resulting in a total of 743 injuries reported among all of the reported nonfatal incidents. Of these 743 reported injuries, 67 (9 percent) resulted in hospital admission; 318 (43 percent) were treated in EDs; 36 (5 percent) were seen by medical professionals; and the level of care is unknown [22] for the remaining 322 (43 percent).

Of the victims whose ages were known, there were far more injuries suffered by children 3 years old and younger than to older victims and the injuries suffered by these young children tended to be more severe, compared to older children and adults/seniors, as indicated by hospital admission and ED treatment rates.

3. National Estimates of ED-Treated Injuries [23]

According to NEISS, there were an estimated 84,100 injuries,[24] for an annual average of 5,300 estimated injuries, related to CSU tip overs for all ages that were treated in U.S. hospital EDs from January 1, 2006 to December 31, 2021. Of the estimated 84,100 injuries, 60,100 (72 percent) were to children, which is an annual average of 3,800 estimated injuries to children over the 16-year period.

For all ages, an estimated 82,600 (98 percent) of the ED-treated injuries involved a chest, bureau, or dresser. Similarly, for child injuries, an estimated 59,500 (99 percent) involved a chest, bureau, or dresser.[25] Of the ED-treated injuries to all ages, 92 percent were treated and released, and 4 percent were hospitalized. Among children, 93 percent were treated and released, and 3 percent were hospitalized.

For each year from 2006 through 2021, there were an estimated 1,800 to 5,900 ED-treated injuries to children from CSU tip overs. The estimated annual number of ED-treated injuries to adults and seniors from CSU tip overs is fairly consistent over most of the 16-year period, with an overall yearly average of 1,500 estimated injuries, although data were insufficient to support reliable statistical estimates for adults and seniors for 2014, 2015, 2019, and 2020.[26]

Of the estimated ED-treated injuries to children, most involved 2- and 3-year-olds, followed by 1- and 4-year-olds. An estimated 8,500 ED-treated injuries involved 1-year-olds; an estimated 15,700 involved 2-year-olds; an estimated 14,000 involved 3-year-olds; and an estimated 7,900 involved 4-year-olds. There were an estimated 2,600 injuries to 5-year-olds that involved only a CSU, and an estimated 1,900 injuries to 6-year-olds that involved only a CSU, but data were insufficient to support reliable statistical estimates for incidents involving CSUs and televisions for these ages. For children 7 to 17 years old,[27] there were an estimated 6,800 ED-treated injuries.

Of an estimated 60,100 ED-treated CSU tip-over injuries to children, an estimated 22,000 (37 percent) resulted in contusions/abrasions; an estimated 15,900 (26 percent) resulted in internal organ injury (including closed head injuries); an estimated 8,300 (13 percent) resulted in lacerations; an estimated 5,500 (9 percent) resulted in fractures; and the remaining estimated 8,400 (14 percent) resulted in other diagnoses.

Overall, an estimated 35,800 (60 percent) of ED-treated tip-over injuries to children were to the head, neck, or face; and an estimated 11,000 (18 percent) were to the leg, foot, or toe. The injuries to children were more likely to be head injuries when a television was involved than when no television was involved. Of the estimated number of ED-treated injuries to children involving a CSU and a television, 74 percent were head injuries, compared to 54 percent of injuries involving only a CSU. Of the

[22] These reports include bruising, bumps on the head, cuts, lacerations, scratches, application of first-aid, or other indications of at least a minor injury that occurred, without any mention of aid rendered by a medical professional. There were three NEISS cases in which the victim went to the ED, but then left without being seen.

[23] Estimates are rounded to the nearest hundred and may not sum to total, due to rounding. NEISS estimates are reportable when the sample count is greater than 20, the national estimate is 1,200 or greater, and the coefficient of variation (CV) is less than 0.33.

[24] Sample size = 2,869, coefficient of variation = .0638.

[25] Data on armoires, wardrobes, portable closets, and clothes lockers were insufficient to support reliable statistical estimates.

[26] Consistent with the NPR, for 2012 through 2021, there was a statistically significant linear decline in child injuries involving all CSUs (including televisions). Unlike in the NPR, there was also a statistically significant linear decline in injuries to children involving CSU-only tip overs for 2012 through 2021. Nevertheless, data indicate that substantial numbers of child injuries and fatalities continue to result from CSU tip overs.

[27] These ages are grouped together because data were insufficient to generate estimates for any single age within that range.

estimated injuries to children involving only a CSU, 20 percent were leg, foot, or toe injuries, and 14 percent were trunk or torso injuries. Data were insufficient to generate estimates of trunk/torso or arm/hand/finger injuries when both a CSU and television tipped over.

B. Details Concerning Injuries [28]

To assess the types of injuries that result from CSU tip overs, CPSC staff focused on incidents involving children, because the vast majority of CSU tip overs involve children. The types of injuries resulting from furniture tipping over onto children include soft tissue injuries, such as cuts and bruises (usually a sign of internal bleeding); skeletal injuries and bone fractures to arms, legs, and ribs; and potentially fatal injuries resulting from skull fractures, closed-head injuries, compressional and mechanical asphyxia, and internal organ crushing leading to hemorrhage. These types of injuries can result from tip overs involving CSUs alone, or CSUs with televisions.

As explained above, head injuries and torso injuries are common in CSU tip overs involving children. The severity of injuries depends on a variety of factors, but primary determinants include the force generated at the point of impact, the entrapment time, and the body part impacted. The head, neck, and chest are the most vulnerable. The severity of injury can also depend on the orientation of the child's body or body part when it is hit or trapped by the CSU. Sustained application of a force that affects breathing can lead to compressional asphyxia and death. In most CSU tip-over cases, serious injuries and death are a result of blunt force trauma to the head and intense pressure on the chest causing respiratory and circulatory system impairment.

Head injuries are produced by high-impact forces applied over a small area and can have serious clinical consequences, such as concussions and facial nerve damage. Such injuries are often fatal, even in cases where the child is immediately rescued and there is rapid intervention. An incident involving blunt head trauma can result in immediate death or loss of consciousness. Autopsies from CSU tip-over fatalities to children reported crushing injuries to the skull and regions of the eye and nose. Brain swelling, deep scalp hemorrhaging, traumatic intracranial bleeding, and subdural hematomas were often reported. These types of injuries are typical of crush injuries caused by blunt head trauma and often have a fatal outcome. Children who survive such injuries may suffer neurological deficits, require neurosurgical interventions, and can face lifelong disabilities.

Compressional and mechanical asphyxia is another potential cause of injury and death in CSU tip-over incidents. Asphyxia can be fatal within minutes. In multiple CSU tip-over incidents, there was physical evidence of chest compression visible as linear marks or abrasions across the chest and neck, consistent with the position of the CSU. Compressional and mechanical asphyxia can result from mechanical forces generated by the sheer mass of an unyielding object, such as furniture, acting on the thoracic and abdominal area of the body, which prevents thorax expansion and physically interferes with the coordinated diaphragm and chest muscle movement that normally occurs during breathing. Torso injuries, which include compressional and mechanical asphyxia, are the most common form of injury for non-television CSU fatalities. External pressure on the chest that compromises the ability to breathe by restricting respiratory movement or on the neck can cause oxygen deprivation (hypoxia). Oxygen deprivation to the brain can cause unconsciousness in less than three minutes and may result in permanent brain damage or death when pressure is applied directly on the neck by the CSU or a component of the CSU (such as the edge of a drawer). The prognosis for a hypoxic victim depends on the degree of oxygen deprivation, the duration of unconsciousness, and the speed at which cardiovascular resuscitation attempts are initiated relative to the timing of cardiopulmonary arrest. Rapid reversal of the hypoxic state is essential to prevent or limit the development of pulmonary and cerebral edema that can lead to death or other serious consequences. The sooner the CSU (compression force) is removed and resuscitation initiated, the greater the likelihood that the patient will regain consciousness and recover from injuries.

In addition to chest compression, pressure on the neck by a component of the CSU can also result in rapid strangulation due to pressure on the blood vessels in the neck. The blood vessels that take blood to and from the brain are relatively unprotected in the soft tissues of the neck and are vulnerable to external forces. Sustained compression of either the jugular veins or the carotid arteries can lead to death. Petechial hemorrhages of the head, neck, chest, and the periorbital area were reported in autopsy reports of CSU tip-over incidents.

Pediatric thoracic trauma has unique features that differ from adult thoracic trauma, because of differences in size, structure, posture, and muscle tone. While the elasticity of a child's chest wall reduces the likelihood of rib fracture, it also provides less protection from external forces. Impact to the thorax of an infant or small child can produce significant chest wall deflection and transfer large kinetic energy forces to vital thoracic organs such as the lungs and heart, which can cause organ deflection and distention and lead to traumatic asphyxia, or respiratory and circulatory system impairment or failure. In addition, a relatively small blood volume loss in a child, due to internal organ injuries and bleeding, can lead to decreased blood circulation and shock.

The severity of the injury or likelihood of death can be reduced if a child is quickly rescued. However, children's ability to self-rescue is limited because of their limited cognitive awareness of hazards, limited skills to react quickly, and limited strength to remove the fallen CSU. Moreover, many injuries can result in immediate death or loss of consciousness, making self-rescue impossible.

C. Hazard Characteristics [29]

To identify hazard patterns associated with CSU tip overs, CPSC focused on incidents involving children and CSUs without televisions because the majority of fatal and nonfatal incidents involve children and, in recent years, there was a statistically significant decrease in the number of ED-treated CSU tip-over incidents that appeared to be driven by a decline in tip overs involving CSUs with televisions. Staff used NEISS and CPSRMS reports to identify hazard patterns, including IDI reports, and also considered child development and capabilities, as well as online videos of real-life child interactions with CSUs and similar furniture items (including videos of tip-over incidents).

For this final rule, staff updated this analysis to include incident information that CPSC received after staff prepared the NPR briefing package. This update is consistent with the new incident information included in the analysis in section IV. Risk of Injury, although the totals in this section may be lower than

[28] For details about injuries, see Tab B of the NPR and final rule briefing packages.

[29] For additional information about hazard patterns, see Tab C of the NPR and final rule briefing packages.

those above. This is, in part, because this section focuses only on incidents involving children and no television. This is also because this section aims to assess hazard characteristics associated with tip overs resulting from child interactions; as such, for this assessment, staff did not focus on incidents in which there was no indication of a child's interaction leading to the tip over. The new information added to this section since the NPR consists of 6 fatal and 97 nonfatal CPSRMS tip-over incidents and 168 nonfatal NEISS tip-over incidents that involved children and CSUs without televisions. Overall, staff did not identify any new hazard patterns or interaction scenarios in the new data.

1. Filled Drawers

Of the 95 fatal CPSRMS incidents involving children and only CSUs, 56 provided information about whether the CSU drawers contained items at the time of the tip over. Of those 56 incidents, 53 (95 percent) involved partially filled or full drawers. Of the 366 nonfatal CPSRMS tip overs involving children and only CSUs, drawer fill level was reported for 78 incidents. Of these 78 incidents, 70 (90 percent) involved partially filled or full drawers.[30] CPSRMS incidents indicate that most items in the drawers were clothing, although a few mentioned other items along with clothing (*e.g.,* diaper bag, toys, papers).

2. Interactions

Of the 95 fatal CPSRMS tip overs involving children and only a CSU, 49 reported the type of interaction the child had with the CSU at the time of the incident. Of these 49 incidents, the most commonly reported interaction was a child climbing on the CSU (37 incidents or 76 percent); followed by a child sitting, laying or standing in a drawer (8 incidents or 16 percent); and a child opening drawers (4 incidents or 8 percent). Climbing was the most common reported interaction for children 3 years old and younger.

Of the 366 nonfatal CPSRMS tip-over incidents involving children and only CSUs, the type of interaction was reported in 226 incidents. Of these, the most common interaction was opening drawers (123 incidents or 54 percent); followed by climbing on the CSU (59 incidents or 26 percent); and putting items in/taking them out of a drawer (18 incidents or 8 percent). Opening drawers and climbing were also the most common reported interactions for children 3 years old and younger.

Of the 1,630 nonfatal NEISS incidents involving children and only CSUs, the type of interaction was reported in 646 incidents. Of these, the child was injured because of another's interaction with the CSU in 26 incidents; the remaining 620 incidents involved the child interacting with the CSU. Of these 620 incidents, the most common interaction was children climbing on the CSU (475 incidents or 77 percent), followed by opening drawers (49 incidents or 8 percent). For children 3 years old or younger, climbing constituted 80 percent of reported interactions.

Thus, in fatal incidents, a child climbing on the CSU was, by far, the most common reported interaction; and in nonfatal incidents, opening drawers and climbing were the most common reported interactions. These interactions are examined further, below.

To learn more about children's interactions with CSUs during tip-over incidents, CPSC staff also reviewed videos, available from news sources, articles, and online, that involved children interacting with CSUs and similar products, and CSU tip overs. Videos of children climbing on CSUs and similar items show a variety of climbing techniques, including stepping on the top of the drawer face, stepping on drawer knobs, using the area between drawers as a foothold, gripping the top of an upper drawer with their hands, pushing up using the top of a drawer, and using items to help climb. Videos of children in drawers of CSUs and other similar products include children leaning forward and backward out of a drawer; sitting, lying, and standing in a drawer; and bouncing in a drawer. Some videos also show multiple children climbing a CSU or in a drawer simultaneously.

a. Climbing

As discussed above, climbing on the CSU was one of the primary interactions involved in CSU tip overs involving children and only a CSU. It was the most common reported interaction (76 percent) in fatal CPSRMS incidents; it was the most common reported interaction (77 percent) in nonfatal NEISS incidents; and it was the second most common reported interaction (26 percent) in nonfatal CPSRMS incidents. Fatal and nonfatal climbing incidents most often involved children 3 years old and younger.

The prevalence of children climbing during CSU tip overs is consistent with the expected motor development of children. Between approximately 1 and 2 years old, children can climb on and off of furniture without assistance, use climbers, and begin to use playground apparatuses independently; and 2-year-olds commonly climb. The University of Michigan Transportation Research Institute (UMTRI) focus groups on child climbing (the UMTRI study is described in section VII. Technical Analysis Supporting the Rule demonstrated these abilities, with child participants showing interest in climbing CSUs and other furniture.

b. Opening Drawers

Opening the drawers of a CSU also was a common interaction in CSU tip overs involving children and only a CSU. It was the most common reported interaction (54 percent) in nonfatal CPSRMS incidents; it was the second most common reported interaction (8 percent) in nonfatal NEISS incidents; and it was the third most common reported interaction (8 percent) in fatal CPSRMS incidents.

In fatal CPSRMS incidents, opening drawer interactions most commonly involved children 2 years old and younger. Nonfatal CPSRMS incidents with opening drawers most commonly involved 3-year-olds, followed by 2-year-olds, then 5-year-olds, then 4-year-olds, then 6-year-olds, then children under 2 years old. Nonfatal NEISS incidents with opening drawers most commonly involved 3-year-olds, followed by 2-year-olds, then 4-year-olds, then children under 2 years old.

Children of all ages were able to open at least one drawer and incident data indicates that children commonly were able to open multiple drawers. For the NPR data set, looking at both fatal and nonfatal CPSRMS tip overs involving children and only CSUs, where the interaction involved opening drawers, overall, about 53 percent involved children opening one drawer; 10 percent involved opening two drawers; and almost 17 percent involved opening ''multiple'' drawers. In 23 incidents, children opened ''all'' of the drawers and it is possible that additional incidents, mentioning a specific number of open drawers (between 2 and 8), also involved all the drawers being opened. In incidents where all of the drawers were open, the CSUs ranged from 2-drawer to 8-drawer units. The youngest child reported to have opened all drawers was 13 months old.

For the 6 new fatal and 97 new nonfatal CPSRMS incidents identified after the NPR data set, the fatal incidents did not report the number of open drawers, but 30 of the nonfatal incidents reported information about the number of open drawers. Of these 30

[30] Nonfatal NEISS incident reports did not contain information on drawer fill level or contents.

incidents, 1 had no drawers open; 11 involved 1 open drawer; 7 involved half or fewer of the drawers open; 1 involved more than half of the drawers open; 7 involved all of the drawers open; and 3 involved multiple open drawers without specifying the number or proportion. Consistent with these incident data, the UMTRI child climbing study found that caregivers commonly reported that their children opened and closed drawers when interacting with furniture.

It is possible for CSUs to tip over from the forces generated by open drawers and their contents, alone, without additional interaction forces. However, pulling on a drawer to open it can apply increased force that contributes to instability. Once a drawer is fully opened, any additional pulling is on the CSU as a whole. The pull force, and the height of the drawer pull location, relative to the floor, are relevant considerations. To examine this factor, staff assessed 15 child incidents in which the height of the force application could be calculated based on descriptions of the incidents. Force application heights ranged from less than one foot to almost four feet (46.5 inches), and children pulled on the lowest, highest, and drawers in between.

c. Opening Drawers and Climbing Simultaneously

CPSC staff also examined incidents in which both climbing and open drawers occurred simultaneously using the NPR data set. Of the 35 fatal CPSRMS climbing incidents, 13 reported the number of drawers open. In all of these incidents, the reported number of drawers open was 1, although, based on further analysis, the number of open drawers could be as high as 8 in one incident.[31] Of the 32 nonfatal CPSRMS climbing incidents, 15 gave some indication of the number of open drawers. Of these, 7 reported that one drawer was open; 2 reported that half or less of the drawers were open; 4 reported that multiple drawers were open; and 2 reported that all the drawers were open. In the 2 cases where all drawers were open, the children were 3 and 4 years old. Of the 412 climbing incidents in the nonfatal NEISS data, 28 gave some indication of the number of open drawers. Of these, 11 reported that one drawer was open; 12 reported that multiple drawers were open; 1 reported that two drawers were open; and 2 reported that all drawers were open. These data are consistent with the videos staff reviewed, which show a range of drawer positions when children climbed on units, including all drawers closed, one drawer open, multiple drawers open, and all drawers fully open.

Incidents involving CSUs with doors also indicate that children are able to open the doors at which point they can further interact with the CSU, such as through climbing. Using the NPR data set, staff found two fatal CPSRMS and four nonfatal CPSRMS tip-over incidents involving wardrobes and armoires, which include doors. In one of the fatal incidents, the victim was found inside a wardrobe that had two doors and one drawer, suggesting that the child opened the doors of the wardrobe. In the other fatal incident, the victim was found under a two-door wardrobe. In most of the nonfatal incidents involving wardrobes or armoires, children were reportedly interacting with items inside the unit, which would require them to open the doors. The ages of the children in these incidents ranged from 3 to 11 years, although opening doors is easily within the physical and cognitive abilities of younger children.

These incidents indicate that children can and do open CSU doors, at which point it is reasonable to conclude, based on child capabilities and climbing behavior in other incidents, that children would put their body weight on the door (*i.e.,* climb) or other extendable elements behind the doors, such as drawers.

d. Differences in Interactions by Age

Based on the incident data, children 3 years old and younger climb, open drawers without climbing, get items in and out of drawers, lean on open drawers, push down on open drawers, sit or lie in bottom drawers, or stand on open bottom drawers. Among fatal CPSRMS tip-over incidents involving children and only CSUs, climbing was the most common interaction for children 3 years old and younger; this drops off sharply for 4-year-olds. Among nonfatal CPSRMS tip-over incidents involving children and only CSUs, opening drawers was, by far, the most common interaction for children 7 years old and younger; and climbing was also common among 3-year-olds and, to a lesser extent, among 2- and 4-year-olds. Among nonfatal NEISS tip overs involving children and only CSUs, climbing was common for 2- and 3-year-olds, slightly less common for 4-year-olds and children under 2 years, and dropped off further for children 5 years and older.

3. Flooring

Of the 95 fatal CPSRMS tip overs involving children and only CSUs, the type of flooring under the CSU was reported for 58 incidents. Of these, 47 (81 percent) involved carpeting, which includes rugs; 9 (15 percent) involved wood, hardwood, or laminate wood flooring; and 2 (3 percent) involved tile or linoleum flooring. The reports for 32 of the fatal CPSRMS tip-over incidents involving carpet included photos with visible carpet. All carpet in these pictures appeared to be typical wall-to-wall carpeting. Four appeared to be a looped pile carpet, and 28 appeared to be cut pile. Staff also identified 2 incidents with reported ‘‘shag’’ carpeting, including 1 fatal incident. Staff found one report mentioning a rug, although the thickness of the rug is unknown.

Of the 366 nonfatal CPSRMS tip overs involving children and only CSUs, the type of flooring under the CSU was reported for 91 incidents. Of these, 67 (74 percent) involved carpeting, which includes rugs; 21 (23 percent) involved wood, hardwood, or laminate wood flooring; 2 (2 percent) involved tile or linoleum flooring; and 1 (1 percent) indicated that the front legs of the CSU were on carpet while the back legs were on wood flooring.[32]

Thus, for incidents where flooring type was reported, carpet was, by far, the most prevalent flooring type.

4. Characteristics of Children in Tip-Over Incidents

a. Age of Children

Children in fatal CPSRMS tip-over incidents involving only CSUs were 11 months through 7 years old. A total of 36 fatal incidents involved children under 2 years old; 31 involved 2-year-old children; 22 involved 3-year-olds; 2 involved 4-year-olds; 1 incident involved a 5-year old; 1 incident involved a 6-year old; and 2 incidents involved 7-year-olds. Overall, 94 percent of children in fatal CPSRMS incidents involving only CSUs were 3 years old or younger.

Among the nonfatal CPSRMS tip-over incidents involving children and only CSUs where age was reported, 3-year-olds were involved in the highest number of incidents (68 incidents), followed by 2-year-olds (62 incidents).

Nonfatal NEISS tip-over incidents involving children and only CSUs follow a similar distribution, with the highest number of reported incidents involving 2-year-olds (430 incidents),

[31] CPSC staff analysis suggests that 7 or more drawers of an 8-drawer unit were open and the child was in a drawer leaning out over the edge in a fatal incident. This analysis is described in Tab M of the NPR briefing package, as Model E.

[32] Flooring type was not reported in nonfatal NEISS incident reports.

followed by 3-year-olds (367 incidents), and children less than 2 years (282 incidents). Overall, 66 percent (1,079 of 1,630) of children involved in these incidents were 3 years old or younger.

b. Weight of Children

Among the 95 fatal CPSRMS tip-over incidents involving children and CSUs without televisions, the child's weight was reported in 49 incidents and ranged from 18 pounds to 45 pounds. Where weight was not reported, staff used the most recent Centers for Disease Control and Prevention (CDC) Anthropometric Reference to estimate the weight of the children.[33] Staff used the 50th percentile values of weight that correspond to the victims' ages to estimate the weight range of the children. For the remaining 46 fatal CPSRMS incidents without a reported weight, the estimated weight range was 19.6 pounds to 57.7 pounds.

Among the 366 nonfatal CPSRMS incidents involving children and only CSUs, the weights of 60 children were reported, ranging from 20 pounds to 125 pounds. Where it was not reported, staff again estimated the weight of the children using the 50th percentile values of weight that correspond to the victims' ages from the most recent CDC Anthropometric Reference. The estimated child weights for the 195 nonfatal CPSRMS incidents without a reported child weight, but with a reported age (which included a 17-year-old), ranged from 19.6 pounds to 158.9 pounds.

Although nonfatal NEISS incident data did not include the children's weights, staff again estimated the children's weights by age, determining that for tip overs involving only CSUs, the estimated weights of the children ranged from 15.8 pounds to 158.9 pounds (this covered children from 3 months to 17 years old).

Overall, the mean reported children's weight for CPSRMS incidents was 34.7 pounds and the median was 32.0 pounds; the mean estimated children's weight was 38.7 pounds and the median was 32.8 pounds. For nonfatal NEISS incidents, the mean estimated children's weight was 40.1 pounds and the median was 32.8 pounds.

The weight of a child is particularly relevant for climbing incidents because weight is a factor in determining the force a child generates when climbing. For this reason, in the NPR, CPSC staff looked at the weights of children involved in climbing incidents, specifically. Of the 35 fatal CPSRMS child climbing incidents, the weight of the child was reported for 23 incidents, and ranged from 21.5 to 45 pounds. For the remaining 12 climbing incidents in which the child's weight was not reported, CPSC staff estimated their weights, based on age, and the weights ranged from 23.8 to 39 pounds. New fatal incidents CPSC identified since the NPR data set involved 2 additional climbing incidents, one of which involved a 29-pound child and the other involved a 31-pound child.

For the NPR data set, of the 32 nonfatal CPSRMS child climbing incidents, the weight of the child was reported in 8 incidents, and ranged from 26 to 80 pounds. For the remaining 24 incidents, staff estimated the weights based on age, and the weights ranged from 25.2 to 45.1 pounds. Weight was not reported in the nonfatal NEISS data, however, using the ages of the children in the 412 nonfatal NEISS child climbing incidents (9 months to 13 years old), staff estimates that their weights ranged from 19.6 to 122 pounds.

V. Relevant Existing Standards[34]

In the United States, the primary voluntary standard that addresses CSU stability is ASTM F2057–19, *Standard Consumer Safety Specification for Clothing Storage Units.* In addition, CPSC staff identified three international consumer safety standards and one domestic standard that are relevant to CSUs:

- AS/NZS 4935: 2009, the Australian/New Zealand Standard for *Domestic furniture—Freestanding chests of drawers, wardrobes and bookshelves/bookcases—determination of stability;*
- ISO 7171 (2019), the International Organization for Standardization *International Standard for Furniture—Storage Units—Determination of stability;*
- EN14749 (2016), the European Standard, *European Standard for Domestic and kitchen storage units and worktops—Safety requirements and test methods;* and
- ANSI/BIFMA X6.5–2022, *Home Office and Occasional-Use Desk, Table and Storage Products.*[35]

This section describes these standards and provides CPSC staff's assessment of their adequacy to address CSU tip-over injuries and deaths.

A. ASTM F2057–19

ASTM first approved and published ASTM F2057 in 2000 and has since revised the standard seven times. The current version, ASTM F2057–19, was approved on August 1, 2019, and published in August 2019. ASTM Subcommittee F15.42, Furniture Safety, is responsible for this standard. Since the first publication of ASTM F2057, CPSC staff has participated in the F15.42 subcommittee and task group meetings and worked with ASTM to improve the standard. In recent years, ASTM Subcommittee F15.42 has discussed and balloted changes to ASTM F2057–19. However, ASTM has not updated the standard.

1. Scope

ASTM F2057–19 states that it is intended to reduce child injuries and deaths from hazards associated with CSUs tipping over and aims ''to cover children up to and including age five.'' The standard covers CSUs that are 27 inches or more in height, freestanding, and defines CSUs as: ''furniture item[s] with drawers and/or hinged doors intended for the storage of clothing typical with bedroom furniture.'' Examples of CSUs provided in the standard include: chests, chests of drawers, drawer chests, armoires, chifforobes, bureaus, door chests, and dressers. The standard does not cover ''shelving units, such as bookcases or entertainment furniture, office furniture, dining room furniture, underbed drawer storage units, occasional/accent furniture not intended for bedroom use, laundry storage/sorting units, nightstands, or built-in units intended to be permanently attached to the building, nor does it cover 'Clothing Storage Chests' as defined in Consumer Safety Specification F2598.''

2. Stability Requirements

ASTM F2057–19 includes two performance requirements for stability. The first is in section 7.1 of the standard, *Stability of Unloaded Unit.* This test consists of placing an empty CSU on a hard, level, flat surface; opening all doors (if any); and extending

[33] Fryar, C.D., Carroll, M.D., Gu, Q., Afful, J., Ogden, C.L. (2021). Anthropometric reference data for children and adults: United States, 2015–2018. National Center for Health Statistics. Vital Health Stat 3(46). The CDC Anthropometric Reference is based on a nationally representative sample of the U.S. population, and the 2021 version is based on data collected from 2015 through 2018. CPSC staff uses the CDC Anthropometric Reference, rather than the CDC Growth Chart, because it is more recently collected data and because the data are aggregated by year of age, allowing for estimates by year. CDC growth charts are available at: *https://www.cdc.gov/growthcharts/clinical_charts.htm.*

[34] For additional information about relevant existing standards, see Tabs C, D, F, and N of the NPR briefing package, and Tab F of the final rule briefing package.

[35] The NPR discussed ANSI/SOHO S6.5–2008 (R2013), *Small Office/Home Office Furniture—Tests American National Standard for Office Furnishings.* Since the NPR, ANSI updated this standard; the revised version is ANSI/BIFMA X6.5–2022.

all drawers and pull-out shelves to the outstop [36] or, in the absence of an outstop, to two-thirds of the operational sliding length. If the CSU tips over in this configuration, or is supported by any component that was not specifically designed for that purpose, it does not meet the requirement.

The second stability requirement is in section 7.2 of the standard, *Stability with Load.* This test consists of placing an empty CSU on a hard, level, flat surface, and gradually applying a test weight of 50 ± 2 pounds. The test weight is intended to represent the weight of a 5-year-old child. For this test, only one door or drawer is open at a time and the test weight is applied to that open feature. Each drawer or door is tested individually, and all other drawers and doors remain closed. If the CSU tips over in this configuration, or is supported by any component that was not specifically designed for that purpose, it does not meet this requirement.

3. Tip Restraint Requirements

ASTM F2057–19 requires CSUs to include a tip restraint that complies with ASTM F3096–14, *Standard Performance Specification for Tipover Restraint(s) Used with Clothing Storage Unit(s).*[37] ASTM F2057–19 and F3096–14 define a ''tipover restraint'' as a ''supplemental device that aids in the prevention of tip over.'' ASTM F3096–14 provides a test protocol to assess the strength of tip restraints, but does not evaluate the attachment to the wall or CSU. The test method specifies that the tester attach the tip restraint to a fixed structure and apply a 50-pound static load.

4. Labeling Requirements

ASTM F2057–19 requires CSUs to be permanently marked in a conspicuous location with warnings that meet specified content and formatting. The warning statements address the risk of children dying from furniture tip overs; not allowing children to stand, climb, or hang on CSUs; not opening more than one drawer at a time; placing the heaviest items in the bottom drawer; and installing tip restraints. For CSUs that are not intended to hold a television, this is also addressed in the warning. Additionally, units with interlock systems must include a warning not to defeat or remove the interlock system. An interlock system is a device that prevents simultaneous opening of more drawers than intended by the manufacturer (like is common on file cabinets). The standard requires that labels be formatted in accordance with ANSI Z535.4, *American National Standard for Product Safety Signs and Labels.*

The standard also includes a performance requirement and test method for label permanence, which are consistent with requirements in other ASTM juvenile furniture product standards. The warning must be ''in a conspicuous location when in use'' and the back of the unit is not considered conspicuous; the standard does not define ''conspicuous location when in use.''

5. Assessment of Adequacy

The Commission concludes that the stability requirements in ASTM F2057–19 are not adequate to address the CSU tip-over hazard because they do not account for multiple open and filled drawers, carpeted flooring, and dynamic forces generated by children's interactions with the CSU, such as climbing or pulling on a drawer. As discussed earlier in this preamble, these factors are commonly involved in CSU tip-over incidents, often simultaneously; and, as discussed later in this preamble, testing indicates that these factors decrease the stability of CSUs.

Although the test in section 7.1 includes a test with all drawers/doors open, the unit is empty and no additional force is applied during this test. As such, this test does not reflect the added factors of open and filled drawers, even though consumers are likely to open drawers and fill CSUs with clothing; and it does not reflect dynamic forces generated by interactions. In addition, although the test in section 7.2 includes a test with a static weight applied to the top of one open drawer or door, it does not include the added factor of multiple open and filled drawers. Also, the 50-pound weight is intended to represent the static weight of a 5-year-old child and does not reflect the additional moment [38] due to the forces when a child climbs the front of a CSU, even when only considering the forces generated by very young children. As the UMTRI study (described in the NPR and later in this preamble) found, the forces children can exert while climbing a CSU exceed their static weights. Finally, neither test accounts for the effect of carpeting, which is common flooring in homes (particularly in bedrooms), is commonly present in tip-over incidents, and decreases CSU stability. Thus, by testing CSUs with open drawers empty, a 50-pound static weight, and without accounting for the effect of carpeting, ASTM F2057–19 does not reflect real-world use conditions that decrease the stability of CSUs.

Staff also looked at whether CSUs involved in tip-over incidents comply with ASTM F2057–19 because it would give an indication of whether F2057 is effective at preventing tip overs and, by extension, whether it is adequate.[39] Staff updated its analysis from the NPR to account for additional incidents and information identified after the NPR. With these adjustments, staff determined that, of the 95 fatal CPSRMS tip-over incidents involving children and only CSUs, 2 of the CSUs complied with the ASTM F2057–19 stability requirements, 1 CSU met the stability requirements when a test weight at the lower permissible weight range was used, and 11 units did not meet the stability requirements. For the remaining 81 units, staff was unable to determine whether they met the ASTM F2057–19 stability requirements, although staff did determine that an exemplar of one of these CSUs complied with the requirements. With the adjusted information for nonfatal CPSRMS tip-over incidents involving children and only CSUs, staff determined that, of the 361 incidents for which staff assessed the compliance of the CSU, 50 met the ASTM F2057–19 stability requirements, 106 did not, and staff was unable to determine the compliance of the remaining 205 units. The number of CSUs that comply with the stability requirements in ASTM F2057–19, but were involved in tip overs, further demonstrates that the voluntary standard does not adequately reduce the risk of tip overs.

As noted in the NPR, CPSC also has some concerns with the effectiveness of the content in the warning labels required in ASTM F2057–19. For example, the meaning of ''tipover restraint'' may not be clear to consumers, and directing consumers not to open more than one drawer at a time is not consistent with consumer use. In addition, focus group study indicated that consumers had trouble understanding the child climbing symbol required by the standard. CPSC staff also believes that greater clarity about the required placement of the

[36] An outstop is a feature that limits outward motion of drawers or pull-out shelves.

[37] Approved October 1, 2014 and published October 2014.

[38] Moment, or torque, is an engineering term to describe rotational force acting about a pivot point, or fulcrum.

[39] Staff did not assess whether NEISS incidents involved ASTM-compliant CSUs because the reports do not contain specific information about the products.

label would make the warning more effective.[40]

For these reasons, the Commission finds that compliance with ASTM F2057–19 is not likely to adequately reduce the risk of injury associated with CSU tip overs.

6. Compliance With ASTM F2057

CPSC also assessed whether there is adequate compliance with the stability requirements in ASTM F2057–19. In 2016,[41] staff tested 61 CSU samples and found that 50 percent (31 of 61) did not comply with the stability requirements in ASTM F2057.[42] In 2018, CPSC staff assessed a total of 188 CSUs, including 167 CSUs selected from among the best sellers from major retailers, using a random number generator; 4 CSU models that were involved in incidents;[43] and 17 units assessed as part of previous test data provided to CPSC.[44] Of the 188 CSUs, 171 (91 percent) complied with the stability requirements in ASTM F2057. One CSU (0.5 percent) did not comply with the Stability of Unloaded Unit test, and 17 (9 percent) did not meet the Stability with Load test. The unit that did not meet the requirements of the Stability of Unloaded Unit test also did not meet the requirements of the Stability with Load test.

B. AS/NZS 4935: 2009

AS/NZS 4935 is a voluntary standard prepared by Standards Australia's and Standards New Zealand's Joint Technical Committee CS–088/CS–091, Commercial/Domestic Furniture. There is only one version of the standard, the current version AS/NZA 4935:2009, which was approved on behalf of the Council of Standards Australia on August 28, 2009, and on behalf of the Council of Standards New Zealand on October 23, 2009. It was published on November 17, 2009.

1. Scope

AS/NZS 4935 aims to address furniture tip-over hazards to children. It describes test methods for determining the stability of domestic freestanding chests of drawers over 500 mm (19.7 inch) high, freestanding wardrobes over 500 mm high (19.7 inch), and freestanding bookshelves/bookcases over 600 mm (23.6 inch) high. It defines ''chest of drawers'' as containing one or more drawers or other extendible elements and intended for the storage of clothing, and may have one or more doors or shelves. It defines ''wardrobe'' as a furniture item primarily intended for hanging clothing that may also have one or more drawers, doors or other extendible elements, or fixed shelves. It defines bookshelves and bookcases as sets of shelves primarily intended for storing books, and may contain doors, drawers or other extendible elements.

2. Stability Requirements

Similar to ASTM F2057–19, AS/NZS 4935 includes two stability requirements. The first requires the unit, when empty, to not tip over when a 29-kilogram (64-pound) test weight is applied to a single open drawer. The 64-pound test weight is intended to represent the weight of a 5-year-and-11-month-old child, adjusted upward to reflect trends of increasing body mass. The test weight is applied to the top face of a drawer, with the drawer opened to two-thirds of its full extension length. The second test requires the unit not tip over when all of the extension elements are open and the unit is empty. Each drawer or extendible element is open to two-thirds of its extension length, and doors are open perpendicular to the furniture. Units do not pass the stability requirements if they cannot support the test weight, if they tip over, or if they are only prevented from tipping by an extendible element.

3. Tip Restraint Requirements

The standard does not require, but recommends, that tip restraints be included with units, along with attachment instructions.

4. Labeling Requirements

The standard requires a warning label and provides example text that addresses the tip-over hazard. The standard also requires a warning tag with specific text and formatting. The label and tag include statements informing consumers about the hazard, warning of tip overs and resulting injuries, and indicating how to avoid the hazard. These requirements do not address the use of televisions. The standard includes label permanency requirements and mandates that the warning label be placed ''inside of a top drawer within clear view when the drawer is empty and partially opened, or on the inside face of a drawer'' for chests of drawers and wardrobes.

5. Assessment of Adequacy

The Commission concludes that the stability requirements in AS/NZS 4935 are not adequate to address the CSU tip-over hazard because they do not account for multiple open and filled drawers, carpeted flooring, and dynamic forces generated by children's interactions with the CSU, such as climbing or pulling on the top drawer. As discussed in this preamble, these factors are commonly involved in CSU tip-over incidents and testing indicates that they decrease the stability of CSUs.

AS/NZS 4935 requires drawer extension to only two-thirds of extension length for both stability tests. This partial extension does not represent real-world use because children are able to open drawers fully, incidents involve fully open drawers, and opening a drawer further decreases the stability of a CSU. In addition, it does not account for filled drawers, which are expected during real-world use, are common in tip-over incidents, and contribute to instability when multiple drawers are open. It also does not account for carpeted floors, which are common in incidents and contribute to instability. Although AS/NZS 4935 uses a heavier test weight than ASTM F2057–19, it is inadequate because neither stability test accounts for the moments children can exert on CSUs during interactions, such as climbing. Considering additional moments, the 64 pounds of weight on the drawer face is approximately equivalent to a 40-pound child climbing the extended drawer. A 40-pound weight corresponds to a 75th percentile 3-year-old child, 50th percentile 4-year-old child, and 25th percentile 5-year-old child.[45]

For these reasons, the Commission finds that compliance with AS/NZS 4935 is not likely to adequately reduce the risk of injury associated with CSU tip overs.

[40] The NPR also explained CPSC's concerns with the tip restraint requirements in ASTM F2057–19 and ASTM F3096–14. These include that the 50-pound weight does not represent the force on a tip restraint from child interactions, and the standards do not assess the connection between the tip restraint and the wall or CSU, which are potential points of failure. However, CPSC did not review tip restraint requirements in detail because staff determined that CSUs should be inherently stable to account for lack of consumer use of tip restraints and additional barriers to proper installation and use of tip restraints.

[41] Although this testing involved ASTM F2057–14, the stability requirements were the same as in ASTM F2057–19. The test results are available at: *https://www.cpsc.gov/s3fs-public/2016-Tipover-Briefing-Package-Test-Results-Update-August-16-2017.pdf?yMCHvzY_YtOZmBAAj0GJih1lXE7vvu9K.*

[42] This testing also found that 91 percent of CSUs (56 of 61) did not comply with the labeling requirements in ASTM F2057–14, and 43 percent (26 of 61) did not comply with the tip restraint requirements.

[43] Staff tested exemplar units, meaning the model of CSU involved in the incident, but not the actual unit involved in the incident.

[44] The CSUs were identified from the Consumer Reports study ''Furniture Tip-Overs: A Hidden Hazard in Your Home'' (Mar. 22, 2018), available at: *https://www.consumerreports.org/furniture/furniture-tip-overs-hidden-hazard-in-your-home/.*

[45] Fryar, C.D., Carroll, M.D., Gu, Q., Afful, J., Ogden, C.L. (2021). Anthropometric reference data for children and adults: United States, 2015–2018. National Center for Health Statistics. Vital Health Stat 3(46).

C. ISO 7171 (2019)

The International Organization for Standardization (ISO) developed the voluntary standard ISO 7171 through the Technical Committee ISO/TC 136, *Furniture* and published the first version in May 1988. The current 2019 version was published in February 2019.

1. Scope

ISO 7171 (2019) describes methods for determining the stability of freestanding storage furniture, including bookcases, wardrobes, and cabinets, but the standard does not define these terms.

2. Stability Requirements

ISO 7171 (2019) includes three stability tests, all of which occur on a level test surface. The first uses a weight/load on an open drawer. The second involves all drawers being filled and a load/weight placed on a single open drawer. In the loaded test, one drawer is opened to the outstop, and if no outstops exist, the drawer is opened to two-thirds of its full extension length. The test weight is either 44 or 55 pounds, depending on the height of the unit, and is applied to the top face of the opened drawer. The fill density ranges from 6.25 pounds per cubic foot to 12.5 pounds per cubic foot, depending on the clearance height and volume of the drawer. The third test is an unloaded test with all drawers open. For this test, doors are open and drawers and extendible elements are open to the outstop or, if there are no outstops, to two-thirds of their extension length. Existing interlock systems are not bypassed for this test.

An additional unfilled, closed drawer test is required for units greater than 1000 mm in height, where a vertical force of 350 N (77 pounds) along with a simultaneous 50 N (11 pounds) outward horizontal force is applied to the top surface of the unit.

ISO 7171 (2019) does not include criteria for determining whether a unit passed or failed the loaded stability test. However, it includes a table of ''suggested'' forces, depending on the height of the unit.

3. Tip Restraint Requirements

ISO 7171 (2019) does not require tip restraints to be provided with units, but does specify a test method for them. The tip restraints are installed in both the wall and unit during the test and a 300 N (67.4 pounds) horizontal force is applied in the direction most likely to overturn the unit.

4. Labeling Requirements

The standard does not have any requirements or test methods related to warning labels.

5. Assessment of Adequacy

The Commission concludes that the stability requirements in ISO 7171 (2019) are not adequate to address the CSU tip-over hazard because they do not account for carpeted flooring, or dynamic and horizontal forces generated by children's interactions with the CSU, such as climbing or pulling on the top drawer. In addition, although ISO 7171 (2019) includes a stability test with filled drawers, the multiple open drawer test does not include filled drawers, and the simultaneous conditions of multiple open and filled drawers during a child interaction are not tested. As discussed in this preamble, these factors are commonly involved in CSU tip-over incidents and testing indicates that they decrease the stability of CSUs. Finally, test weights are provided only as recommendations and there are no criteria for determining whether a unit passes.

For these reasons, the Commission finds that compliance with ISO 7171 (2019) is not likely to adequately reduce the risk of injury associated with CSU tip overs.

D. EN 14749: 2016

EN 14749: 2016 is a European Standard that was prepared by Technical Committee CEN/TC 207 ''Furniture.'' This standard was approved by the European Committee for Standardization (CEN) on November 21, 2015, and supersedes EN 14749:2005, which was approved on July 8, 2005, as the original version. EN 14749:2016 is a mandatory standard and applies to all CEN members.

1. Scope

EN 14749: 2016 describes methods for determining the stability of domestic and non-domestic furniture with a height ≥600 mm (23.6 inches) and a potential energy, based on mass and height, exceeding 60 N-m (44.25 pound-feet). Kitchen worktops and television furniture are the only furniture types defined. The test methods in this standard are taken from EN 16122: 2012, *Domestic and non-domestic storage furniture-test methods for the determination of strength, durability and stability,* which covers ''all types of domestic and non-domestic storage furniture including domestic kitchen furniture.''

2. Stability Requirements

EN 14749: 2016 includes three stability tests, which are conducted with the units freestanding. In the first loaded test, a 75 N (16.9 pounds) test weight is applied to the top of the drawer face, when pulled to the outstop or, if no outstops exist, to two-thirds of its full extension length. In the second test, doors are open and all drawers and extendible elements are open to the outstop or, if no outstops are present, to two-thirds of their extension lengths. Existing interlock systems are not bypassed for this test. The third test involves filled drawers and a load; all storage areas are filled with weight and the loaded test procedure (above) is carried out but with a test weight that is 20 percent of the mass of the unit, including the drawer fill, not exceeding 300 N (67.4 pounds). Similar to ISO 7171, an additional unfilled, closed drawer test is required for units greater than 1000 mm in height, where a vertical force of 350 N (77 pounds) along with a simultaneous 50 N (11 pounds) outward horizontal force are applied to the top surface of the unit.

Relevant to the portions of stability testing that involve opening drawers, the standard also accounts for interlock systems, requiring one extension element to be open to its outstop, or in the absence of an outstop, two-thirds of its operational sliding length, and a 100 N (22 pounds) horizontal force to be applied to the face of all other extension elements. This is repeated multiple times on each extension element and all combinations of extension elements are tested.

3. Tip Restraint Requirements

EN 14749: 2016 does not include any requirements regarding tip restraints.

4. Labeling Requirements

EN 14749: 2016 does not include any requirements regarding warning labels.

5. Assessment of Adequacy

The Commission concludes that the stability requirements in EN 14749: 2016 are not adequate to address the CSU tip-over hazard because they do not account for carpeted flooring, or dynamic and horizontal forces generated by children's interactions with the CSU, such as climbing or pulling on the top drawer. In addition, although the standard includes a stability test with filled drawers, the multiple open drawer test does not include filled drawers, and the simultaneous conditions of multiple open and filled drawers during a child interaction are not tested. Moreover, the fill weight ranges from 6.25 pounds per

cubic foot to 12.5 pounds per cubic foot, which includes fill weights lower than staff identified for drawers filled with clothing (discussed in section VII. Technical Analysis Supporting the Rule). As discussed in this preamble, these factors are commonly involved in CSU tip-over incidents and testing indicates that they effect the stability of CSUs.

For these reasons, the Commission finds that compliance with EN 14749: 2016 is not likely to adequately reduce the risk of injury associated with CSU tip overs.

E. ANSI/BIFMA SOHO X6.5–2022

In the NPR, staff reviewed the requirements in ANSI/SOHO S6.5–2008 (R2013), *Small Office/Home Office Furniture—Tests American National Standard for Office Furnishings.* The standard does not address CSUs, but rather, applies to office furniture, such as file cabinets. However, CPSC considered the standard because it addresses interlock systems, which some CSUs include and are relevant to stability testing. On April 5, 2022, ANSI/BIFMA published a new version of the standard, ANSI/BIFMA X6.5–2022. Although this update included several revisions, the interlock strength test requirements remained unchanged.

This standard specifies tests for ''evaluating the safety, durability, and structural adequacy of storage and desk-type furniture intended for use in the small office and/or home office.'' ANSI/BIFMA X6.5–2022 includes testing to evaluate interlock systems. The test procedure calls for one extendable element to be fully extended while a 30 pound horizontal pull force is applied to all other fully closed extendable elements. Every combination of open/closed extendable elements [46] must be tested. The interlock system must be fully functional at the completion of this test and no extendable element may bypass the interlock system.

As discussed in section IX. Description of and Basis for the Rule, child strength studies show that children between 2 and 5 years old can achieve a mean pull force of 17.2 pounds. Therefore, CPSC considers a 30-pound horizontal pull force adequate to evaluate the strength of an interlock system. However, because ANSI/BIFMA X6.5–2022 does not include stability tests or requirements reflecting the real-world factors involved in CSU tip overs, the Commission finds that compliance with ANSI/BIFMA X6.5–2022 is not likely to adequately reduce the risk of injury associated with CSU tip overs.

VI. Technical Background

This preamble and the NPR and final rule briefing packages include technical discussions of engineering concepts, such as center of gravity (also referred to as center of mass), moments, and fulcrums. Tab D of the NPR briefing package provides detailed background information on each of these terms, including how staff applies them to CSU tip-over analyses. This section provides a brief overview of that information; for further information, see Tab D of the NPR briefing package.

A. Center of Gravity and Center of Mass

Center of Gravity (CG) or Center of Mass (CM) [47] is a single point in an object, about which its weight (or mass) is located . In terms of freestanding CSUs, if the CSU's CG is located behind the front foot, the CSU will not tip over due to its own weight. Alternatively, if the CSU's CG is in front of the front foot, the CSU is unstable and will tip over. The CG (and CM) of an object is dependent on the CG and the weight of each component that makes up the object. For example, CSU drawers typically have a front that is thicker and larger than the back, which causes the drawer's CG to be closer to the front. The CSU's CG is defined by the position and weight of the CSU cabinet, without doors or extendable elements (*i.e.,* drawers or pull-out shelves), combined with the position and weight of each door and extendable element. A CSU's CG is equal to the sum of the products of the CG position and the weight of each component, divided by the total weight.

The CG of a CSU will change as a result of the position of the doors and extendable elements (open or closed). Opening doors and extendable elements shifts the CG towards the front of the CSU. The closer the CG is to the front leg, the easier it is to tip forward if a force is applied to the door or extendable element. Therefore, CSUs will tip more easily as more doors and extendable elements are opened. The CG of a CSU will also change depending on the position and amount of clothing in each extendable element. Closed extendable elements filled with clothing tend to stabilize a CSU, but as each filled extendable element is pulled out, the CSU's CG will shift further towards the front.

B. Moment and Fulcrum

Moment, or torque, is an engineering term to describe rotational force acting about a pivot point, or fulcrum. The moment is created by a force or forces acting at a distance, or moment arm, away from a fulcrum. One simple example is the moment or torque created by a wrench turning a nut. The moment or torque about the nut is due to the perpendicular force on the end of the wrench applied at a distance (moment arm) from the fulcrum (nut). Likewise, a downward force on an open CSU door or extendable element creates a moment about the fulcrum (front leg) of the CSU. A CSU will tip over about the fulcrum due to a force (*e.g.,* weight of a child positioned over the front of a drawer) and the moment arm (*e.g.,* extended drawer).

Downward force or weight applied to the door or extendable element tends to tip the CSU forward around the fulcrum at the base of the unit, while the weight of the CSU opposes this rotation. The CSU's weight can be modeled as concentrated at a single point: the CSU's CG. The CSU's stability moment is created by its weight, multiplied by the horizontal distance of its CG from the fulcrum. A child can produce a moment opposing the weight of the CSU, by pushing down or sitting in an open drawer. This moment is created by the vertical force of the child, multiplied by the horizontal distance to the fulcrum. The CSU becomes unbalanced and tips over when the moments applied at the front of the CSU exceed the CSU's stability moment.

Horizontal forces applied to pull on a door or extendable element also tend to tip the CSU forward around the front leg (pivot point or fulcrum) at the base of the unit, while the weight of the CSU opposes this rotation. In this case, the moment produced by the child is the horizontal pull force transmitted to the CSU (for example, through a drawer stop), multiplied by the vertical distance to the fulcrum. The CSU becomes unbalanced and tips over when the moments applied at the front of the CSU exceed the CSU's stability moment.

When a child climbs a CSU, both horizontal forces and vertical forces acting at the hands and feet contribute to CSU tip over. Figure 1 shows a typical combination of forces acting on a CSU while a child is climbing, and it describes how those forces contribute to a tip-over moment. Note that when the horizontal force at the hands and feet are approximately equal, which will occur when the child's CM is balanced in front of the drawers, the height of the bottom drawer becomes irrelevant when

[46] Excluding doors, writing shelves, equipment surfaces, and keyboard surfaces.

[47] For CSU-sized objects, CG and CM are effectively the same. Therefore, CG and CM are used interchangeably in this preamble.

determining the tip-over moment. In this case, only the height of the hands above the feet matters. As Figure 1 shows, a child climbing on drawers opened distance A1 from the fulcrum, with feet at height B1 from the ground and hands at height B2 above the feet, will act on the CSU with horizontal forces F_H and vertical forces F_V. The CSU's weight at a distance A2 from the CSU's front edge touching the ground creates a stabilizing moment. The CSU will tip if Moment 1 is greater than Moment 2.

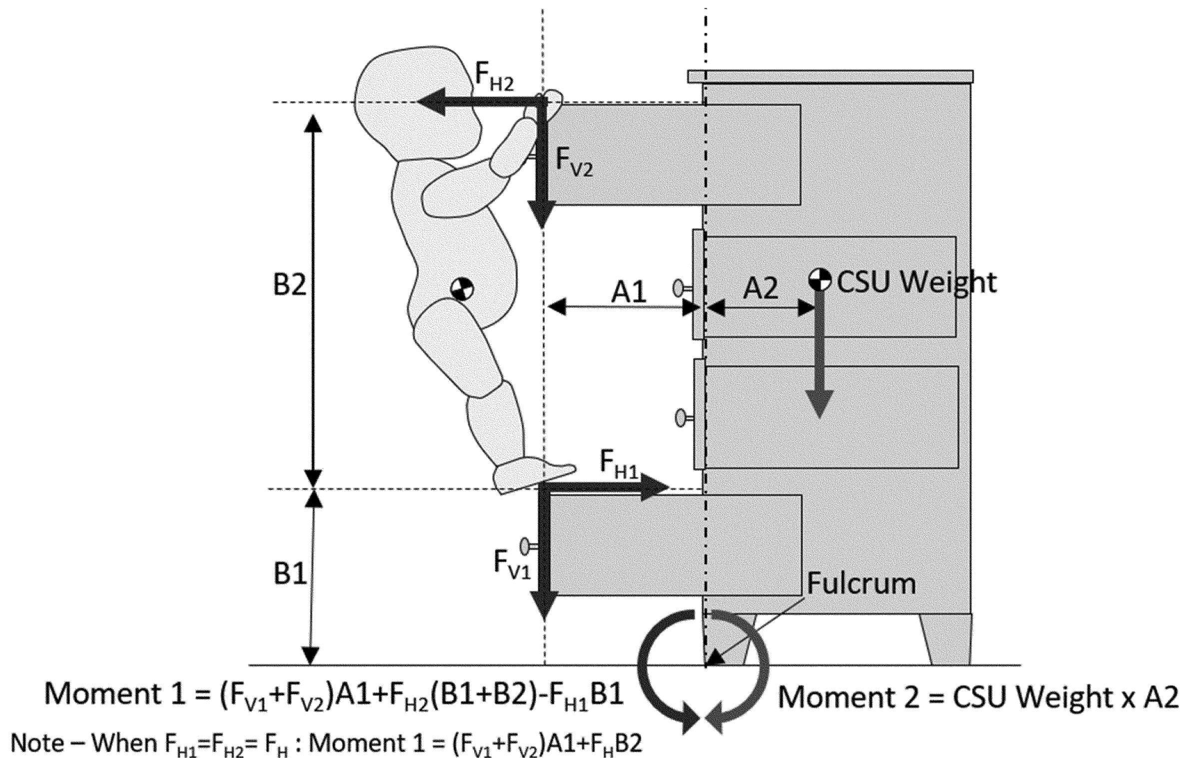


Figure 1: An example of opposing moments acting on a CSU.

VII. Technical Analysis Supporting the Rule

In addition to reviewing incident data, CPSC staff conducted testing and analyses, analyzed tip-over incidents, and commissioned several contractor studies to further examine factors relevant to CSU tip overs. This section provides an overview of that testing and analysis; for additional details see the NPR and NPR briefing package.

A. Multiple Open and Filled Extendable Elements [48]

Staff's technical analysis, as confirmed by testing, indicates that multiple open extendable elements [49] decrease the stability of a CSU, and filled extendable elements further decrease stability when more than half of the extendable elements by volume are open, but increase stability when more than half of the extendable elements by volume are closed. Thus, while multiple open extendable elements, alone, can make a unit less stable, whether the extendable elements are full when open is also a relevant consideration. When filled extendable elements are closed, the clothing weight contributes to the stability of the CSU, because the clothing weight is behind the front legs (fulcrum). However, open extendable elements contribute to the CSU being less stable because the clothing weight is shifted forward in front of the front legs (fulcrum).

To assess the effect of open extendable elements and filled extendable elements on CSU stability, CPSC staff conducted testing to evaluate the effect of various combinations of open/closed and filled/empty drawers using a convenience sample of CSUs.[50] Before this testing, staff assessed the appropriate fill weight to use for testing. Then staff conducted two phases of testing (Phase I and Phase II). The purpose of the testing was to assess the weight at which a CSU became unstable and tipped over with various configurations of drawers open/closed and filled/empty. This section provides an overview of the results; for more details regarding the study, see the NPR and NPR briefing package.

1. Fill Weight

To determine the appropriate method for simulating CSU drawers that are partially filled or fully filled, staff considered previous analyses and conducted additional testing. In working on ASTM F2057, the ASTM F15.42 subcommittee has considered a ''loaded'' (filled) drawer requirement and test method using an assumed clothing weight of 8.5 pounds per cubic foot. Kids in Danger and Shane's Foundation found a similar density (average of 8.9 pounds per cubic foot) when they filled CSU drawers with boys' t-shirts in a 2016 study on

[48] Further details about the effect of open and filled drawers on CSU stability is available in Tabs D, L, and O of the NPR briefing package.

[49] Although staff's testing focused on CSUs with drawers, rather than pull-out shelves, the same effects on stability would apply to pull-out shelves because both drawers and pull-out shelves are extendable elements that hold contents. See section VII. Technical Analysis Supporting the Rule for more details regarding pull-out shelves and why they can hold the same content capacity as drawers.

[50] Staff used the stability test methods in ASTM F2057–19, with some alterations to collect information about variables ASTM does not address (*e.g.,* open/closed drawers, filled/empty drawers, tip weight). Because of the limited number of units tested, this study provides useful information, but the results are limited to the tested units.

furniture stability.[51] Staff conducted testing to assess whether 8.5 pounds per cubic foot reasonably represents the weight of clothing in a drawer.

As part of this assessment, staff looked at four drawer fill conditions. Staff considered folded and unfolded clothing with a total weight equal to 8.5 pounds per cubic foot of functional drawer volume in the drawer; and the maximum amount of folded and unfolded clothing that could be put into a drawer that would still allow the drawer to open and close. For these tests, staff used an assortment of boys' clothing in sizes 4, 5, and 6. Staff used a CSU with a range of drawer sizes to assess small, medium, and large drawers; the functional drawer volume of these 3 drawer sizes was 0.76 cubic feet, 1.71 cubic feet, and 2.39 cubic feet, respectively. Staff determined the calculated clothing weight for the 8.5 pounds per cubic foot drawer fill conditions by multiplying 8.5 by the drawer's functional volume, defined as:[52]

$$Functional\ Volume = \left\{[Interior\ Area](ft^2)\left[Clearance\ Height - \frac{1}{8}\right](in)\left[\frac{1}{12}\right]\left(\frac{ft}{in}\right)\right\}$$

For all three drawer sizes, staff was able to fit 8.5 pounds per cubic foot of folded and unfolded clothing in the drawers. When the clothing was unfolded, the clothing fully filled the drawers, but still allowed the drawer to close. Because the unfolded clothing was stuffed into the drawer fairly tightly, it was not easy to see and access clothing below the top layer. When the clothing was folded, the clothing also fully filled the drawers and still allowed the drawer to close. The folded clothing was tightly packed, but allowed for additional space when compressed. The maximum unfolded clothing fill weight was 6.52, 14.64, and 21.20 pounds for the three drawer sizes, respectively; and the maximum folded clothing fill weight was 7.72, 16.08, and 22.88 pounds for the three drawer sizes, respectively.

Staff also compared the calculated clothing weight (*i.e.,* using 8.5 pounds per cubic foot), maximum unfolded drawer fill weight, and maximum folded drawer fill weight for each drawer. The maximum unfolded clothing fill weight was slightly higher than the calculated clothing fill weight for all tested drawers. The difference between the maximum unfolded clothing fill weight and the calculated clothing weight ranged from 0.08 pounds to 0.87 pounds. The maximum folded clothing fill weight was higher than both the maximum unfolded clothing fill weight and the calculated clothing fill weight for all tested drawers; however, the differences were relatively small. The difference between the maximum folded clothing fill weight and the calculated clothing weight ranged from 1.28 to 2.55 pounds. The maximum unfolded clothing fill density was slightly higher than 8.5 pounds per cubic foot for all tested drawers; and the maximum unfolded clothing fill density ranged from 8.56 to 8.87 pounds per cubic foot, depending on the drawer. The maximum folded clothing fill density was higher than both the maximum unfolded clothing fill density and 8.5 pounds per cubic foot for all tested drawers. The maximum folded clothing fill density ranged from 9.40 to 10.16 pounds per cubic foot, depending on the drawer. Thus, there does not appear to be a large difference in clothing fill density based on drawer size.

Based on this testing, staff found that 8.5 pounds per cubic foot of clothing will fill a drawer; however, this amount of clothing is less than the absolute maximum amount of clothing that can be put into a drawer, especially if the clothing is folded. The maximum amount of unfolded clothing that could be put into the tested drawers was only slightly higher than 8.5 pounds per cubic foot. Although staff achieved a clothing density as high as 10.16 pounds per cubic foot with folded clothing, staff considers it unlikely that consumers would fill a drawer to this level because it requires careful folding, and it is difficult to remove and replace individual pieces of clothing. Therefore, staff concluded that 8.5 pounds per cubic foot of functional drawer volume is a reasonable approximation of the weight of clothing in a fully filled drawer.

The NPR raised the possibility that fill weight for pull-out shelves may be lower than for drawers (*e.g.,* 4.25 pounds per cubic foot or half that of drawers) if consumers are less likely to fill the open area of a pull-out shelf because it is less contained than a drawer. Accordingly, staff conducted further assessment after the NPR and found that pull-out shelves can hold the same volume of clothing as drawers and still remain fully functional and sufficiently contain the clothing content during moving of the shelf. Moreover, requirements ASTM is considering use the same fill weight as in the final rule for both drawers and pull-out shelves.[53]

2. Phase I and II Testing

Phase I of the study focused on CSUs with a single column of drawers and drawers of the same size. Results showed that CSUs tipped over under the same weights with the same configuration of open/closed, regardless of which drawers were opened and on which drawer the tip weight was applied.

Phase II of the study included more complex CSUs with multiple columns of drawers and more combinations of open/closed and filled/empty drawers. Staff also supplemented this data with results from other CSU testing staff had performed. In general, the results indicated that CSUs were less stable as more drawers were opened, and that filled drawers have a variable effect on stability. A filled closed drawer contributes to stability, while a filled open drawer decreases stability. Depending on the percent of drawers that are open and filled, having multiple drawers open decreased the stability of the CSU.

B. Forces and Moments During Child Interactions With CSUs[54]

As indicated above, some of the common themes that staff identified in CSU tip-over incident data involve children interacting with CSUs, including climbing on them and opening drawers. To determine the forces and other relevant factors that exist during these expected interactions between children and CSUs, CPSC contracted with UMTRI to conduct research. The researchers at UMTRI, in collaboration with CPSC staff, designed a study to collect information about children's measurements and

[51] Kids in Danger and Shane's Foundation (2016). Dresser Testing Protocol and Data. Data set provided to CPSC staff by Kids in Danger, January 29, 2021.

[52] "Clearance height" is the height from the interior bottom surface of the drawer to the closest vertical obstruction in the CSU frame. "Functional height" is clearance height minus ⅛ inch.

[53] For details regarding staff's assessment of clothing fill in pull-out shelves, see Tab C of the final rule briefing package.

[54] Further information about the study described in this section, and forces and moments generated by children's interactions with CSUs, is available in Tabs C, D, and R of the NPR briefing package.

proportions, interest in climbing and climbing behaviors, and the forces and moments children can generate during various interactions with a CSU. The study consisted of an interactive portion and a focus group portion. Forty children, age 20 months to 65 months old, participated in the study. This section provides and overview and key results of this study. For additional details about the study, including the test apparatus, data acquisition, additional behaviors assessed, and analyses, see the NPR and UMTRI's full report in Tab R of the NPR briefing package.

1. Overview of Interaction Portion of UMTRI Study

The interaction portion of the study included children interacting with a CSU test apparatus with instrumented handles and a simulated drawer and tabletop (to simulate the top of a CSU or other tabletop or furniture unit). Researchers measured the forces of the children acting on the test apparatus and calculated moments generated by the children based on the location of the CSU's front leg tip point (fulcrum). The researchers based the fulcrum's location on a dataset of CSU drawer extensions and heights provided by CPSC staff.[55]

The interaction portion of the study looked at forces associated with several climbing-related interactions of interest, which staff and researchers selected based on CSU tip-over incidents, videos of children interacting with CSUs and similar furniture items, and plausible interactions based on children's developmental abilities. Staff focused on the ascent/climbing[56] interaction for this rulemaking because climbing incidents were the most common interaction among fatal CPSRMS incidents and nonfatal NEISS incidents, where the interaction was reported, and they were the second most common interaction in nonfatal CPSRMS incidents, where the interaction was reported.

UMTRI researchers created the test apparatus shown in Figure 2, which used a padded force plate to measure interactions with the floor and included a column to which the various instrumented test fixtures were attached. Tests were conducted with a pair of handlebars (simulating drawer handles or fronts), a simulated drawer, and a simulated top. In preparation for the study, CPSC staff worked with UMTRI researchers to develop a test fixture that modeled the climbing surfaces of a CSU. CPSC staff provided information to UMTRI researchers on drawer extension and heights from the sample of dressers used in CPSC staff's evaluation (Tab N of the NPR briefing package). Researchers selected and constructed a parallel bar test fixture, representing a lower foothold and an upper handhold. These bars represent a best-case CSU climbing surface, similar to the top of a drawer.

UMTRI researchers configured the test fixtures based on each child's anthropometric measurements. Researchers set the upper bar to three different heights relative to the padded floor surface: low (50 percent of the child's upward grip reach), mid (75 percent of the child's upward grip reach), and high (100 percent of the child's upward grip reach). Researchers set the lower bar to two different heights: low (4.7 inches from the padded floor surface) and high (the child's maximum step height above the padded floor). The heights for the bars were within plausible heights for CSU drawers. Researchers set the horizontal position of the upper bar to two different positions: ''aligned'' with the lower bar, or ''offset'' from the lower bar, at a distance equal to 20 percent of the child's upward grip height. Tabs C and R of the NPR briefing package contain more information about the test fixture configurations. The bars, drawer, and tabletop, as well as the floor in front of the test fixture, had force measurement instrumentation that recorded forces over time in the horizontal (fore-aft, x) and vertical (z) directions.

[55] CPSC staff provided UMTRI researchers with a dataset of drawer extensions and drawer heights from the ground from a sample of approximately 180 CSUs. The researchers selected the 90th percentile drawer extension (12 inches) and drawer height (16 inches) as the basis for placing the moment fulcrum in most of their analysis.

[56] Ascending is a subcategory of climbing, and is described as a child's initial step to climb up on to a CSU. Therefore, ascending is an integral part of climbing. The UMTRI study provided information about forces children generate during ascent, because that testing measured forces children generate during an initial step onto the CSU test fixture. Those forces can be used to model children climbing because ascent is the first and integral step to climbing, but not all climbing interactions can be modeled with ascent, as forces associated with some other behaviors can exceed those for ascent. The term ''climbing'' is often used in this preamble and the NPR and final rule briefing package because that is the general behavior described in many incidents. Both climbing and ascending are used to refer to the force children generate on a CSU, for purposes of the rule.

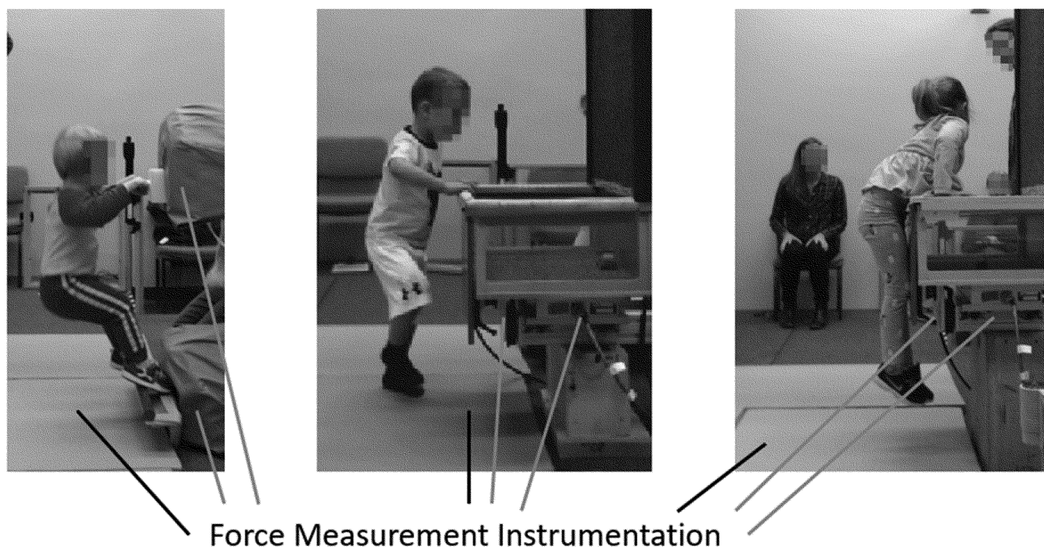


Figure 2: The test setup and location of instruments used to measure force during handle trials (left), box/drawer trials (center), and table trials (right).

CPSC staff worked with UMTRI researchers to develop a set of scripted interactions. Staff focused on realistic interactions in which the child's position and/or dynamic interactions were the most likely to cause a CSU to tip over. The interactions were based on incident data and online videos of children interacting with CSUs and other furniture items. The interactions UMTRI researchers evaluated included:

- *Ascend:* climb up onto the test fixture;
- *Bounce:* bounce vigorously without leaving the bar;
- *Lean back:* lean back as far as possible while keeping both hands and feet on the bars;
- *Yank:* from the lean back position, pull on the bar as hard as possible;
- *1 hand & 1 foot:* take one hand and foot (from the same side of the body) off the bars and then lean as far away from the bars as possible;
- *Hop up:* hold the upper bar and try to jump from the floor to a position where the arms are straight and the hips are in front of the upper bar, an action similar to hoisting oneself out of a swimming pool;
- *Hang:* hold onto the upper bar, lift feet off the floor by bending knees, hang still for a few seconds, and then straighten legs to return to the floor; and
- *Descend:* climb down from the test fixture.

As described above, the ascend interaction best models the climbing behavior commonly seen in incidents, and is analogous to a child's initial step to climb up on to the CSU, which is an integral climbing interaction. The other, more extreme interactions, such as bounce, lean, and yank, were identified as plausible interactions, based on child behavior; but these interactions were not directly observed in the incident data.

After the children performed the interaction, the researchers reviewed video from each trial to isolate and characterize interactions of interest. Researchers analyzed forces from each extracted behavior to identify peak forces and moments. Participant postures have strong effects on the horizontal forces exerted by the child and the subsequent calculated moments, due to the location of the child's CM during each behavior. Thus, the CM of the child is important when evaluating the stability or tip-over propensity of the child/CSU-combined system. UMTRI researchers used the images of the subjects to estimate the location of the child's CM. The UMTRI researchers extracted video frames at time points of interest (typically when the child produced the maximum moment during the interaction) and manually digitized the series of landmarks on the image of the child. The location of the CM was estimated, based on anthropometric information on children,[57] as 33 percent of the distance from the buttock landmark to the top-of-head landmark.

The UMTRI researchers estimated the location of the child's CM by examining the side-view images from the times of maximum moment, as shown in Figure 3. The children in the study extended their CM an average of about 6 inches from the handle/foothold while ascending.

[57] Snyder, R.G., Schneider, L.W., Owings, C.L., Reynolds, H.M., Golomb, D.H., Schork, M.A., Anthropometry of Infants, Children and Youths to Age 18 for Product Safety Design (Report No. UM–HSRI–77–17), prepared for the U.S. Consumer Product Safety Commission (1977).

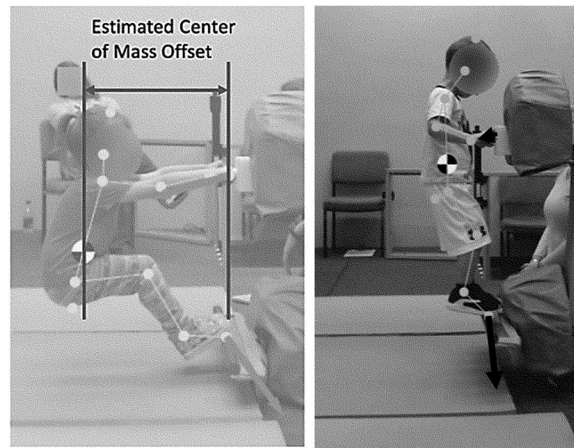


Figure 3. Example of digitized frame with estimated CM location and offset from upper handle. The lean behavior is shown on the left, and the ascend behavior is shown on the right. Forces at the hands and feet are shown with scaled arrows.

Figure 4 shows side-view images of examples of children interacting with the handle fixture. The frames were taken at the time of peak tip-over moment. Forces exerted by the child at the hands and feet are illustrated using scaled vectors (longer lines indicate greater force magnitude; arrow direction indicates force direction). Digitized landmarks and estimated CM locations are shown. The images demonstrate that forces at both the hands and feet often have substantial horizontal components, and usually, but not always, the foot forces are larger than the hand forces. The horizontal components at the hands and feet are also in opposite directions: the horizontal foot forces are forward (toward the test fixture), while the hand forces are rearward (toward the child).

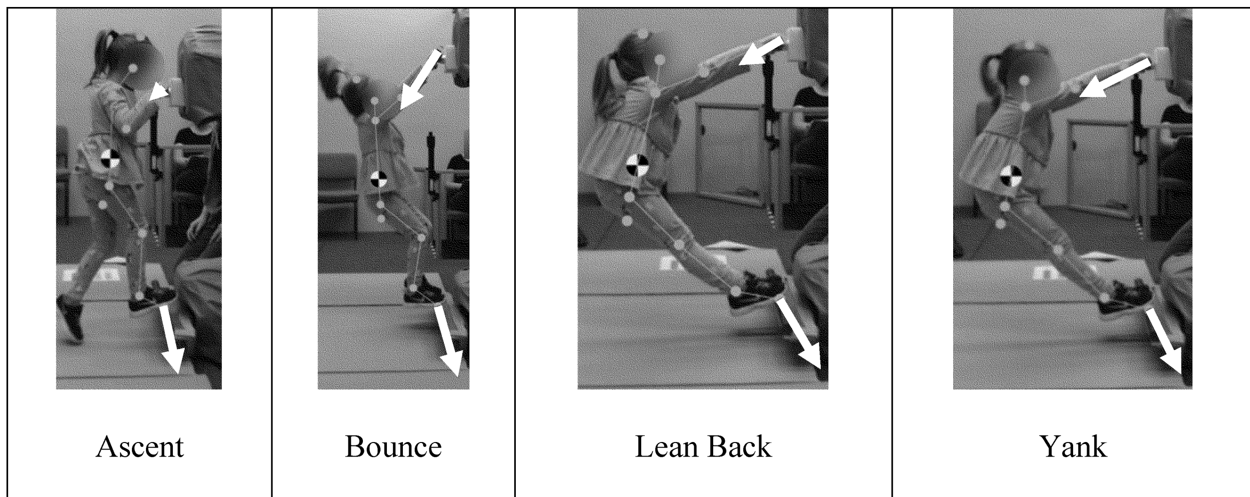


Figure 4: Depicts examples of interactions. Arrows illustrate the directions and relative magnitudes of forces at the hands and feet.

UMTRI researchers modeled a child interacting with a CSU with opened drawers, by measuring forces at instrumented bars representing a drawer front or handle. Figure 5 is the free-body diagram of the child climbing the CSU. The horizontal and vertical forces at the hands and feet correspond to the positive direction of the measured forces. The CSU drawers were modeled using the top handle and bottom handle height, and the drawer extension was modeled from 0 inches to 12 inches.[58] The UMTRI researchers calculated the moment about the CSU's front foot or fulcrum, using the measured forces, vertical location of the top and bottom handles, and the defined drawer extension length (Fulcrum X).

[58] Here, 0 inches corresponds with a closed drawer when the fulcrum lines up with the drawers. Additionally, 12 inches represents the 90th percentile drawer extension length in a dataset of approximately 180 CSUs.

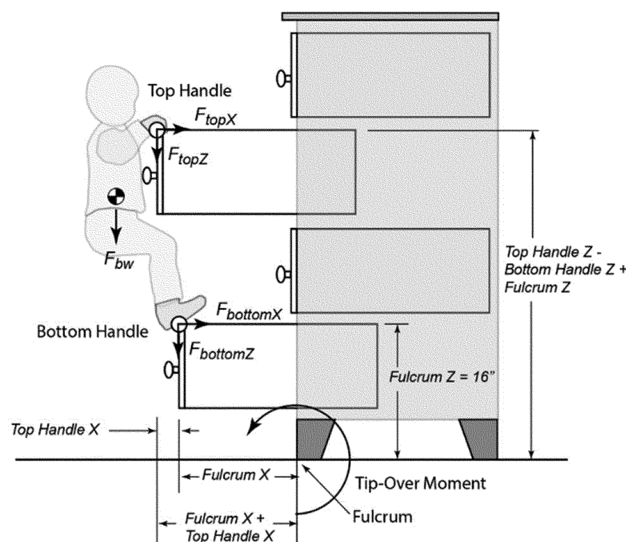


Figure 5. Free-body diagram of a child climbing a CSU.

Figure 5 shows that the child's body weight will generally be distributed between the two bars, but that the child's CM location will also typically be outboard of the bars (farther from the fulcrum than the bars). The quasi-static climbing moment is approximately equal to the location of the child's CM (the horizontal distance of the CM to the fulcrum), multiplied by the child's weight. In reality, the moment created by dynamic forces generated by the child during the activities in the UMTRI study, such as during ascend, exceed the moment created by body weight alone as a result of the greater magnitude horizontal and vertical forces.

UMTRI researchers analyzed the force data as generating a moment around a tip-over fulcrum. The UMTRI researchers calculated the maximum moment about a virtual fulcrum, based on the measured force data for each test and the location of the force. Figure 6 shows the test setup and the forces measured. Note that the test setup mimics a CSU with the drawers closed and the *Fulcrum X = 0.* UMTRI researchers defined the horizontal *Fulcrum X* distance of 1-foot (based on the 90th percentile drawer extension) to simulate a 1-foot drawer extension. The bottom handle vertical *Fulcrum Z* was set to 16 inches (based on the 90th percentile drawer height from the floor), and the *Top Handle Z* varied, depending on the size of the child.[59] Researchers calculated the moment that would be generated for a child interacting on a 1-foot extended CSU drawer, where Fulcrum X = 1 foot.

[59] The top handle varied from 7.4 to 47.3 inches above the bottom handle.

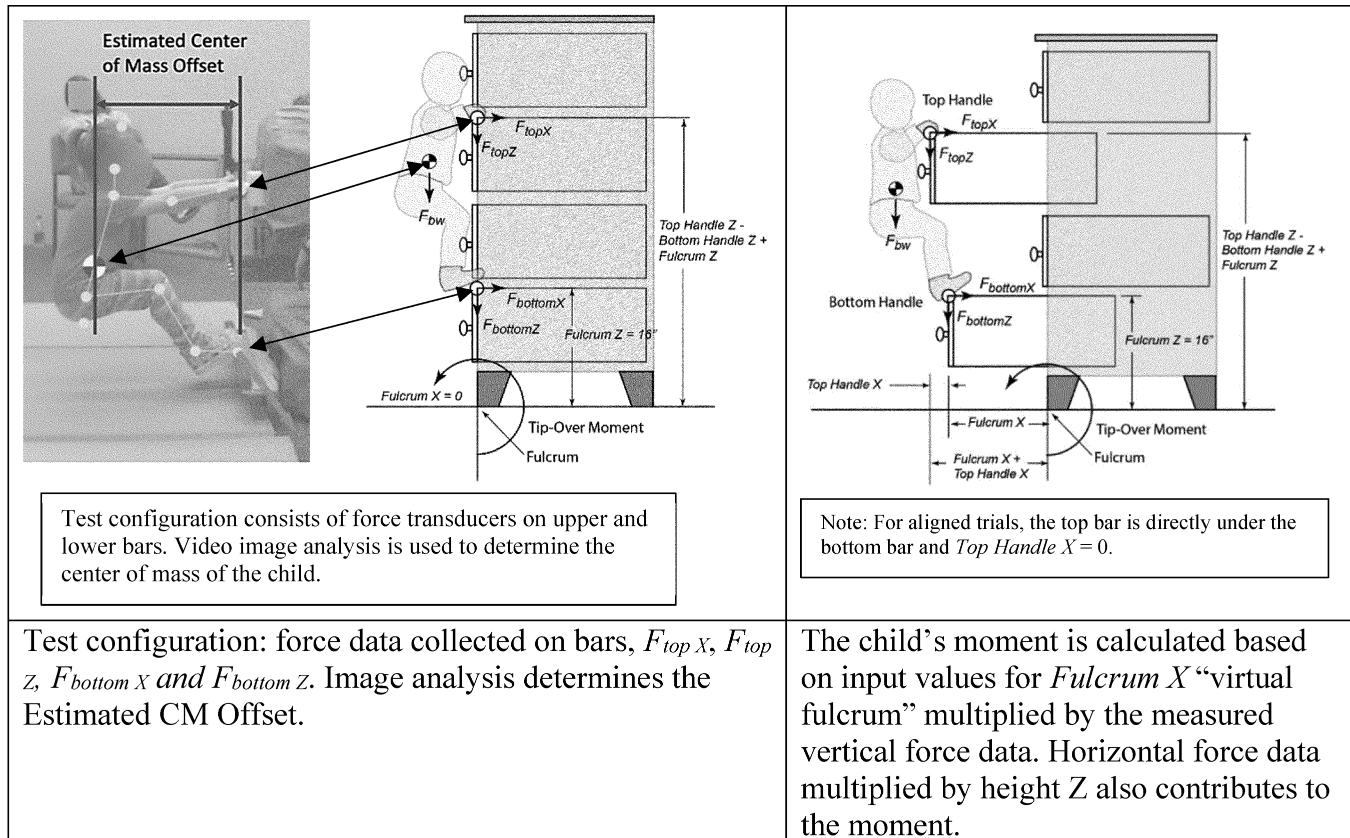


Figure 6. These diagrams illustrate how the test configuration was used to determine the child's moment acting on the CSU.

Figure 20 in Tab D of the NPR briefing package (also Figure 44 in Tab R) shows the calculated maximum moment for each interaction of interest versus the child's body weight, and shows that the maximum moment tends to increase with body weight. UMTRI researchers normalized the moment by dividing the calculated moment by the child's body weight to enable the effects of the behaviors to be examined independent of body weight, as shown in Figure 21 in Tab D of the NPR briefing package (also Figure 46 in Tab R). As the figure illustrates, the greatest moments were generated in the Yank interaction, followed in descending order by Lean, Bounce, 1 Hand, and Ascend. As the weight of the child increased, so did the maximum moment. For all of the interactions, the maximum moment exceeded the weight of the child.

The preceding analysis was based on a 12-inch (one foot) horizontal distance between the location of force exertion and the fulcrum. The following analysis shows the effects of varying the *Fulcrum X* value, which is equivalent to a CSU's drawer extension from the fulcrum.

The net moment can be calculated using a *Fulcrum X* = 0 position, as shown in Figure 7, to bound the effects of drawer extension. Placing the fulcrum directly under the hands and feet in the aligned conditions eliminates the effects of vertical forces on moment, while amplifying the relative effects of horizontal forces.

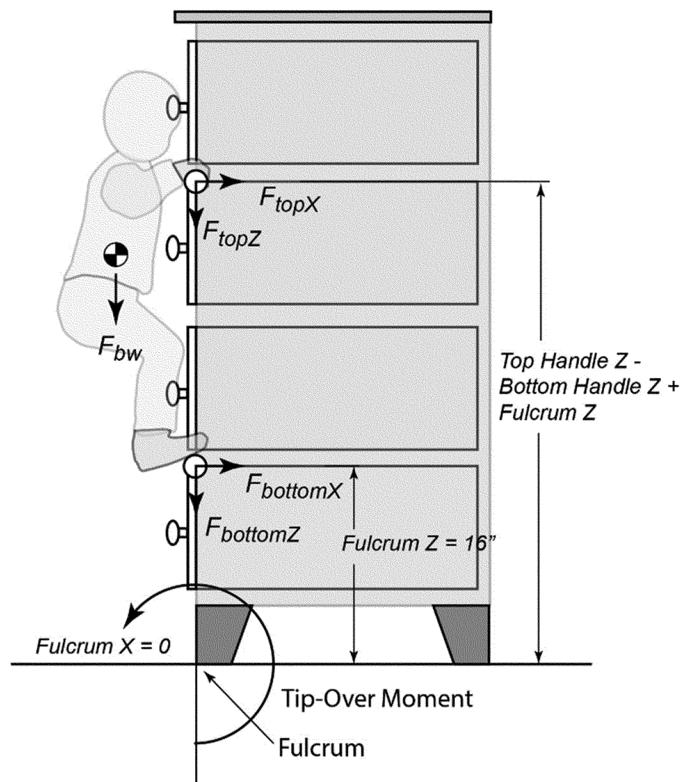


Figure 7. Depicts a schematic of effects of reducing *Fulcrum X* to zero (compare with Figure 5, which depicts a non-zero *Fulcrum X* distance).

UMTRI researchers analyzed the effects of the *Fulcrum X* (which corresponds to the drawer extension[60]) on the tip-over moment for the targeted behaviors. Since the moment about the fulcrum was calculated based on measured force data and input values for *Fulcrum X* distance, the researchers were able to analyze the effects of the fulcrum position by varying the *Fulcrum X* value from 0 to 12 inches. UMTRI researchers used this virtual *Fulcrum X* value to calculate the corresponding maximum moment.

Figure 23 in Tab D of the NPR briefing package (also Figure 51 in Tab R) shows the maximum moments versus the *Fulcrum X* values of 0 and 12 inches across behaviors for aligned conditions. For example, the calculated moment for Ascend at X = 0 is about 17.5 pound-feet. The moment when X = 0 is due entirely to horizontal forces. These horizontal forces exerted by the children on the top and bottom handles of the test apparatus are necessary to balance their outboard CM. UMTRI researchers concluded that the children's CM due to their postures have strong effects on the horizontal forces exerted and the calculated moments. Consequently, the location of the child's CM during the behavior is an important variable.

As previously discussed, the UMTRI researchers normalized the moment by dividing the calculated moment of each trial by the child's body weight to enable the effects of the behaviors to be examined independent of body weight. The graphs of Figure 23 in Tab D of the NPR briefing package show how the moments and the normalized moments increase with the fulcrum distance (which corresponds to the drawer extension). For the normalized moments shown in the bottom graph, this can be interpreted as the effective CM location outboard of the front foot of the CSU (fulcrum), in feet. For example, a child climbing on a drawer extended 12 inches (1 foot) from the front foot fulcrum will have an effective CM that is about 19 inches (1.6 feet) from the fulcrum. At *Fulcrum X* = 0, the contribution of vertical forces to the moment are eliminated, and only the horizontal forces exerted at the hands and feet contribute to the moment. The horizontal forces exerted by the child on the top and bottom handles are necessary to balance his/her outboard CM. The effective moment where the fulcrum = 0 is about 6 inches (0.5 feet) for the Ascend behavior, and it is primarily due to the outboard CM position of the child about 6 inches (0.5 feet) from the fulcrum.[61]

As the drawer is pulled out farther from the fulcrum, vertical forces have a greater impact on the total moment contribution. UMTRI researchers reported that at the time of peak moment during ascent, the average (median) vertical force, divided by the child's body weight, was close to 1 (staff estimates this value is approximately 1.08 for aligned handle trials).[62] This suggests child body weight is the most significant vertical force, although dynamic forces also contribute. Based on the Normalized Moment for Ascend shown in the bottom graph of Figure 23 in Tab D of the NPR briefing package, CPSC staff estimated the Ascend line with the following equation 1:

Equation 1. *Normalized Moment for Ascend = 1.08 × [Fulcrum X (ft)] + 0.52 ft.*

Equation 1 can be multiplied by a child's weight to estimate the moment *M* generated by the child ascending, as shown in Equation 2:

[60] Drawer extension data provided by CPSC staff to UMTRI researchers was measured from the extended drawer to the front of the CSU, and did not account for how the fulcrum position will vary with foot geometry and position. UMTRI researchers assumed that the fulcrum was aligned with the front of the CSU to simplify their analysis.

[61] UMTRI researchers reported that the average CM offset was 6.1 inches (0.51 feet) during ascent at the time the maximum moment was measured.

[62] Refer to Figure 48 in the UMTRI report (Tab R of the NPR briefing package).

Equation 2. $M = \{1.08 \times [1\ ft] + 0.52\ ft\} \times child\ body\ weight\ (lb)$

For example: for a 50-pound child *ascending* the CSU with a 1-foot drawer extension, the moment at the fulcrum is:

$$M = \{1.08 \times [1\ \text{ft}] + 0.52\ \text{ft}\} \times 50\ \text{lb} = 54\ \text{lb-ft} + 26\ \text{lb-ft}$$

$$M = 80\ \text{lb-ft}$$

The child in the example above produces a total moment of 80 pound-feet about the fulcrum. The contribution to the total moment from vertical forces, such as body weight and vertical dynamic forces, is 54 pound-feet. The contribution to the total moment from horizontal forces, such as the quasi-static horizonal force used to balance the child's CM in front of the extended drawer and dynamic forces, is 26 pound-feet.

Similar climbing behaviors for drawer and tabletop trials (*e.g.,* climbing into the drawer or climbing onto the tabletop) generated lower moments than ascent. Therefore, the equation for ascend is expected to cover those behaviors as well.

To summarize the findings from the UMTRI study, researchers found that the moments caused by children climbing furniture exceed the effects of body weight alone. CPSC staff used the findings to develop an equation that could be used to calculate the moment generated by children ascending a CSU, based on the child's body weight and the drawer extension from the CSU fulcrum, shown in Equation 2. This equation, combined with the weight for the children involved in CSU tip-over incidents, is the basis for the moment requirements in this rule.

2. Focus Group Portion of UMTRI Study

In addition to examining the forces children generate when interacting with a CSU, in the UMTRI study, the researchers also asked participants and their caregivers questions about participants' typical climbing behaviors. This portion of the study identified many household items that children showed interest in climbing, including: CSUs, tables, desks, counters, cabinets, shelves, windows, sofas, chairs, and beds. In the same study, six children climbed dressers, based on caregivers' reports. Caregivers described various tactics the children used for climbing, such as "jumped up," "hands and feet," "ladder style," and "grab and pull up," but the most common strategy was stepping into or onto the lowest drawer. Caregivers also mentioned children using chairs, stools, and other objects to facilitate climbing, including pulling out dresser drawers.

C. Flooring [63]

To examine the effect of flooring on the stability of CSUs, staff reviewed existing information and conducted testing. As background, staff considered a 2016 study on CSU stability, conducted by Kids in Danger and Shane's Foundation.[64] In that study, researchers tested the stability of 19 CSUs, using the stability tests in ASTM F2057–19 on both a hard, flat surface, and on carpeting. The results showed that some CSUs that passed on the hard surface, tipped over when tested on carpet.

To further examine the effect of carpeting on the stability of CSUs, staff tested 13 CSUs, with a variety of designs and stability, on a carpeted test surface. For this testing, staff used a section of wall-to-wall tufted polyester carpeting with polypropylene backing from a major home-supply retailer and typical of wall-to-wall carpeting, based on staff's review of carpeting on the market. Staff installed and secured the carpet, with a carpet pad, on a plywood platform, and conditioned the CSU and carpeting by weighting the unit for 15 minutes. Staff then tested the unit using the same methods and CSU configurations (*i.e.,* number and position of open and filled drawers) as used with these units in the Multiple Open and Filled Drawers testing conducted on the hard surface (Tab O of the NPR briefing package).

Using the 1,221 pairs of tip weights (*i.e.,* tip weight on the flat surface and on the carpet, with various configurations of multiple open and filled drawers), staff calculated the difference in tip weight when on the hard surface, compared to the carpeted surface for each CSU (tip weight difference). A CSU had a positive tip weight difference if the tip weight was higher on the hard surface than on the carpet, indicating that CSUs are less stable on carpet. The testing showed the CSUs tended to be more stable on the hard surface than they were on carpet. Of the 1,221 tip-over weight differences, the tip weight difference was positive for 1,149 (94 percent) of them; negative for 33 (3 percent) of them; and was zero (*i.e.,* the tip-over weights were equal) for 39 (3 percent). For all 1,221 combinations, the mean tip weight difference was 7.6 pounds, but for individual units, the mean tip weight difference ranged from 4.1 to 16.0 pounds. For all 1,221 combinations, the median tip weight difference was 7 pounds, but for individual units, the median ranged from 2 to 16 pounds. The standard deviation for the entire 1,221 data set was 5.1 pounds, but was smaller for individual units, ranging from 1.8 to 4.7 pounds, indicating that most of the variability in tip weight differences was between units, as opposed to within units, which suggests that some units are affected more than others by carpeting.

To further assess the effect of flooring on stability, staff also analyzed the relationship between tip weight difference and open/closed drawers and filled/empty drawers. The mean tip weight difference was 7.6 pounds (median was 7 pounds) when most of the drawers on the unit were open, and 8.5 pounds (median was 8 pounds) when most of the drawers were closed, indicating that the units were more stable (required more weight to tip over) when more drawers were closed. The mean tip weight difference was 7.2 pounds (median was 6 pounds) when most of the drawers on the unit were empty, and 7.7 pounds (median was 7 pounds) when most of the drawers were filled.[65] This shows that, in general, CSUs are less stable on carpet. All units tested, under various conditions, tended to tip with less weight on the carpet than on the hard surface.

Staff used the results from this study to determine a test method that approximated the effect of carpet on CSU stability by tilting the unit forward (Tab D of the NPR briefing package). Using the CSUs that were involved in CSU tip-over incidents (Tab M of the NPR briefing package), staff compared 9 tip weights on carpet with tip weights for the same units in the same test configuration when tilted at 0, 1, 2, and 3 degrees in the forward direction on an otherwise hard, level, and flat surface.

The tip weight of CSUs on carpet corresponded with tilting the CSUs 0.8 to 3 degrees forward, depending on the CSU; the mean tilt angle that corresponded to the CSU tip weights on carpet was 1.48 degrees. This suggests that a forward tilt of 0.8 to 3 degrees replicated the test results on carpet. Staff also conducted a mechanical analysis of the carpet and pad used in

[63] Details regarding staff's assessment of the effect of flooring on CSU stability is available in Tabs D and P of the NPR briefing package.

[64] *Furniture Stability: A Review of Data and Testing Results* (Kids in Danger and Shane's Foundation, August 2016).

[65] To further assess whether the effect of carpet changed based on the CSU's stability—that is, to determine if the results reflected the change in flooring, or the overall stability of the unit—staff calculated the percent tip weight difference, as: percent tip weight difference = (hard surface tip weight − carpet tip weight)/hard surface tip weight. This revealed that, as the weight to tip the unit on a hard surface increased, shifting to a carpeted surface had less of an impact in terms of the percentage of the tip-over weight.

the test assembly and found a similar forward tilt of 1.5 to 2.0 degrees would replicate the effects of carpet for one CSU.

D. Incident Recreation and Modeling[66]

CPSC staff analyzed incidents and tested products that were involved in CSU tip-over incidents to better understand the real-world factors that contribute to tip overs. Staff analyzed 7 CSU models, associated with 13 tip-over incidents. The CSUs ranged in height from 27 to 50 inches and weighed between 45 and 195 pounds. One of these CSU models did not comply with sections 7.1 or 7.2 in ASTM F2057–19; three models complied with the requirements in section 7.1, but not section 7.2; two models complied with both sections 7.1 and 7.2; and one was borderline.[67] Through testing and analysis, staff recreated the incident scenarios described in the investigations and determined the weight that caused the unit to tip over in a variety of use scenarios, such as a child climbing or pulling on the dresser, multiple open drawers, filled and unfilled drawers, and the flooring under the CSU.

Based on this analysis and testing, staff identified several factors that contributed to the tip-over incidents. One factor was whether multiple drawers were open simultaneously. Opening multiple drawers decreased the stability of the CSU. A related factor was whether the drawers of the CSU were filled, and to what extent. Staff's testing indicated that the weight of filled drawers increases the stability of a CSU when more drawers are closed, and reduces overall stability when more drawers are open. Generally, when more than half of filled drawers were open (by volume), the CSU was less stable.

Another factor was the child's interaction with the CSU at the time of the incident. In some incidents, the child was likely exerting both a horizontal and vertical force on the CSU. Staff found that, for some CSUs, either a vertical or horizontal force, alone, could cause the CSU to tip over, but that the presence of both forces significantly increased the tip-over moment acting on the CSU. These forces, in combination with the other factors staff identified, further contributed to the instability of CSUs. Some of the incident recreations indicated that the force on the edge of an open drawer associated with tipping the CSU was greater than the static weight of the child standing on the edge of an open drawer of the CSU. The equivalent force consists of the child's weight, the dynamic force on the edge of the drawer due to climbing, and the effects of the child's CG extending beyond the edge of the drawer. Some of the incident recreations indicated that a child pulling on a drawer could have contributed to the CSU tipping over.

Another factor that contributed to instability was flooring. Staff's testing indicated that the force needed to tip a unit over was less when the CSU was on carpet/padding than when it was on a hard, level floor.

E. Consumer Use Study[68]

In 2019, the Fors Marsh Group (FMG), under contract with CPSC, conducted a study to assess factors that influence consumer attitudes, behaviors, and beliefs regarding CSUs. The study consisted of two components. In the first component, the researchers conducted six 90-minute in-home interviews (called ethnographies). Three of the participants had at least one child between 18 and 35 months old in the home, and three participants had at least one child between 36 and 72 months old in the home. In this phase of the study, the researchers collected information about family interactions with and use of CSUs in the home.

In the second component of the study, FMG conducted six 90-minute focus groups, using a total of 48 participants. Each focus group included eight participants with the same caregiver status (parents of a child between 1 and 5 years old, people who are visited regularly by a child between 1 and 5 years old, and people who plan to have children in the next 5 years) and homeowner status (people who own their home, and people who rent their home). Participants included parents of children 12 to 72 months old, people without young children in the home who were planning to have children in the next 5 years, and people without young children in the home who are visited regularly by children 12 to 72 months old. The focus groups assessed consumer perceptions of and interactions with CSUs, perceptions of warning information, and factors that influence product selection, classification, and placement.

In describing CSUs, participants mentioned freestanding products; products that hold clothing; features to organize or protect clothing (*e.g.,* drawers, doors, and dividers); and named, as examples, dressers, armoires, wardrobes, or units with shelving or bins. Participants noted that whether storage components were large enough to fit clothing was relevant to whether a product was a CSU. However, participants also noted that they may use smaller, shorter products, with smaller storage components as CSUs in children's rooms so that children can access the drawers, and because children's clothes are smaller. In distinguishing nightstands from CSUs, participants noted the size and number of drawers, and some reported storing clothing in them. Some participants reported that how products were displayed in stores or in online marketing did not influence how they used the unit in their homes and indicated that although a product name may have some influence on their perception of the product, they would ultimately choose and use a product based on its function and ability to meet their needs.

Focus group participants were provided with images of various CSU-like products, and asked what they would call the product, what they would put in it, and where they would put it. Participants provided diverse answers for each product, with products participants identified as buffets, nightstands, entry/side/hall tables, or entertainment/TV/media units also being called dressers or armoires by other participants. Products that participants were less likely to consider a CSU or use for clothing had glass doors, removable bins/baskets, or a small number of small drawers.

Participants primarily kept CSUs in bedrooms and used them to store clothing. However, they also noted that they had products that could be used as CSUs in other rooms to store non-clothing and had changed the location and use of products over time, moving them between rooms and storing clothing or other items in them, depending on location.

Focusing on units that the participants' children interacted with the most, the researchers noted that CSUs in children's rooms held clothing and were 70 to 80 percent full of folded clothing. Participants reported that the children's primary interaction with CSUs was opening them to reach clothing, but also reported children climbing units to reach into a drawer or

[66] Details about staff's incident recreation and modeling are in Tabs D and M of the NPR briefing package.

[67] Staff tested the borderline model two separate times. In one case, the tip weight just exceeded the ASTM F2057–19 minimum acceptable test fixture weight. In another case, the model tipped over just below the minimum allowed test fixture weight. These results are consistent with earlier staff testing that found that the model tipped when tested with a 49.66-pound test fixture; but did comply when tested with a 48.54-pound test fixture.

[68] The full report from FMG, *Consumer Product Safety Commission: Furniture Tipover Report* (Mar. 13, 2020), is available in Tab Q of the NPR briefing package.

to reach something on top of the unit. A few participants reported having anchored a CSU. As reasons for not anchoring furniture, participants stated that they thought the unit was unlikely to tip over, particularly smaller and lighter units used in children's rooms, and they do not want to damage walls in a rental unit.

F. Tip Weight Testing [69]

As discussed earlier in this preamble, in 2016 and 2018–2019, CPSC staff tested CSUs to assess compliance with requirements in ASTM F2057. As part of the 2018–2019 testing, staff also assessed whether CSUs could hold weights higher than the 50-pound weight required in ASTM F2057, testing the CSUs with both a 60-pound test weight, and to the maximum test weight they could hold before tipping over. For this testing, staff assessed 188 CSUs, including 167 CSUs selected from among the best sellers from major retailers, using a random number generator; 4 CSU models that were involved in incidents; [70] and 17 units assessed as part of previous test data provided to CPSC.[71] Appendix A to Tab N in the NPR briefing package describes the test procedure staff followed. To summarize, after recording information about the weight, dimensions, and design of the CSU, staff used a test procedure similar to section 7.2 in ASTM F2057–19 (loaded weight testing), but with a 60-pound test fixture, and with test fixtures that allowed staff to add additional weight, in 1-pound increments, up to a maximum of 134 pounds.

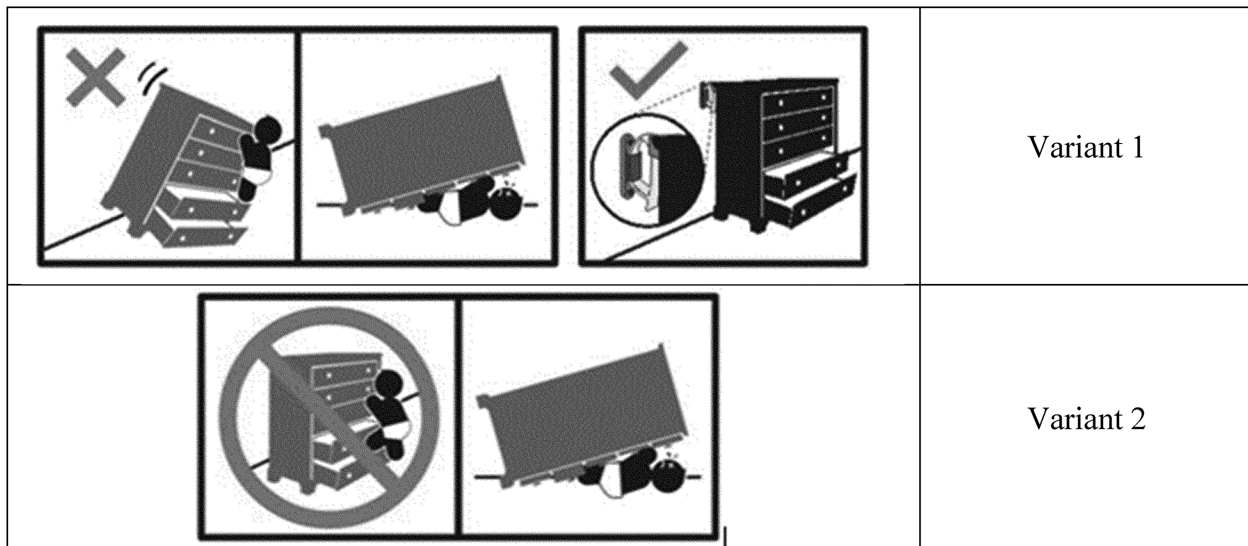
Of the 188 CSUs staff tested, 98 (52 percent) held the 60-pound weight without tipping over. The mean weight at which the CSUs tipped over was 61.7 pounds and the median was 62 pounds.[72] The lowest weight that caused a CSU to tip over was 12.5 pounds. The next lowest tip weights were 22.5 pounds (2 CSUs), 25 pounds (6 CSUs), and 27.5 pounds (3 CSUs). One CSU did not tip over when the maximum 134-pound test weight was applied. The next highest tip weights were 117.5 pounds (1 CSU), 112.5 pounds (1 CSU), 102.5 pounds (1 CSU), 97.5 pounds (1 CSU), 95 pounds (1 CSU), and 90 pounds (4 CSUs). Most CSUs tipped over with between 45 and 90 pounds of weight.

G. Warning Label Symbols [73]

In 2019, CPSC contracted a study to evaluate a set of 20 graphical safety symbols for comprehension, in an effort to develop a family of graphical symbols that can be used in multiple standards to communicate safety-related information to diverse audiences.[74] The contractor developed 10 new symbols for the project, including one showing the CSU tip-over hazard and one showing the CSU tip-over hazard with a tip restraint; the remaining 10 symbols already existed. The contractor recruited 80 adults and used the open comprehension test procedures described in ANSI Z535.3, *American National Standard Criteria for Safety Symbols* (2011). ANSI Z535.3 defines the criteria for ''passing'' as at least 85 percent correct interpretations (strict), with fewer than 5 percent critical confusions (*i.e.,* the opposite action is conveyed).

One of the existing symbols the contractor evaluated is the child climbing symbol from the warning label in ASTM F2057–19. The symbol showed passing comprehension (87.5 percent) when scored with lenient (*i.e.,* partially correct) scoring criteria, but poor comprehension (63.8 percent) when scored with strict scoring criteria. There was no critical confusion with the symbol.

The contractor conducted focus groups consisting of 40 of the 80 comprehension study participants. Based on the feedback received in the comprehension study and in focus groups, the contractor developed two new symbol variants, shown in Figure 8.



[69] A full discussion of this testing and the results is available in Tab N of the NPR briefing package.

[70] Staff tested exemplar units, using the model of CSU involved in the incident, but not the actual incident unit.

[71] The CSUs were identified from the Consumer Reports study ''Furniture Tip-Overs: A Hidden Hazard in Your Home'' (Mar. 22, 2018), available at: *https://www.consumerreports.org/furniture/furniture-tip-overs-hidden-hazard-in-your-home/.*

[72] This is based on the results for 185 of the units; staff omitted the test weight for 3 of the CSUs because of data discrepancies.

[73] Details regarding staff's analysis of warning label symbols are available in Tab C of the NPR and final rule briefing packages.

[74] Kalsher, M., CPSC Gather Consumer Feedback: Final Report (2019), available at: *https://www.cpsc.gov/s3fs-public/CPSC%20Gather%20Consumer%20Feedback%20-%20Final%20Report%20with%20CPSC%20Staff%20Statement%20-%20REDACTED%20and%20CLEARED.pdf?GTPK5CxkCRmftdywdDGXJyVIVq.GU2Tx.*

Figure 8: Two variant symbols being tested (one showing the importance of anchoring the CSU, the other demonstrating the tip-over hazard as a result of climbing). Note: the symbols are reproduced in grayscale here, but the color version includes a red ''x'' and prohibition symbol, and a green check mark. See Tab C of the final rule briefing package for the color version.

The NPR explained that staff was working with the contractor to test these new symbol variants using the same methodology applied in the previous study; would assess whether one of the two variants performed better in comprehension testing than the F2057 child climbing symbol; and would consider requiring the use of these symbols as part of the warning requirements in the final rule.

In November 2021, CPSC released the contractor report on the assessment of Variants 1 and 2.[75] The results indicated that Variant 1 passed ANSI Z535.3 comprehension testing with both lenient (95.0 percent) and strict (87.5 percent) scoring criteria, with no critical confusions. The comprehension scores for Variant 2 were lower than those for Variant 1 and the ASTM symbol.

H. Tip Restraints and Anchoring[76]

CPSC considered several studies regarding consumer anchoring of furniture to evaluate the potential effectiveness of tip restraints to help address the tip-over hazard. These studies indicate that many consumers do not anchor furniture, including CSUs, in their homes, and that there are several barriers to anchoring, including consumer beliefs, and lack of knowledge about what anchoring hardware to use or how to properly install it.

A CPSC Consumer Opinion Forum survey in 2010, with a convenience sample of 388 consumers, found that only 9 percent of those who responded to the question on whether they anchored the furniture under their television had done so (27 of 295).[77] Although a majority of respondents reported that the furniture under their television was an entertainment center, television stand, or cart, 7 percent of respondents who answered this question (22 of 294) reported using a CSU to hold their television.[78] The consumers who reported using a CSU to hold their television had approximately the same rate of anchoring the CSU, 10 percent (2 of 21[79]), as the overall rate of anchoring furniture found in the study.

In 2018, Consumer Reports conducted a nationally representative survey[80] of 1,502 U.S. adults, and found that only 27 percent of consumers overall, and 40 percent of consumers with children under 6 years old at home, had anchored furniture in their homes. The study also found that 90 percent of consumers have a dresser in their homes, but only 10 percent of those with a dresser have anchored it. Similarly, although 50 percent of consumers have a tall chest or wardrobe in their homes, only 10 percent of those with a tall chest or wardrobe have anchored it. The most common reasons consumers provided for not anchoring furniture, in declining order, included that their children were not left alone around furniture; they perceived the furniture to be stable; they did not want to put holes in the walls; they did not want to put holes in the furniture; the furniture did not come with anchoring hardware; they did not know what hardware to use; and they had never heard of anchoring furniture.

As discussed earlier in this preamble, the Commission launched the education campaign—Anchor It!—in 2015 to promote consumer use of tip restraints to anchor furniture and televisions. In 2020, a CPSC-commissioned study assessed consumer awareness, recognition, and behavior change as a result of the Anchor It! campaign.[81] The study included 410 parents and 292 caregivers of children 5 years or younger from various locations in the United States. The survey sought information about whether participants had ever anchored furniture in their homes, and their reasons for not anchoring furniture. The study found that 55 percent of respondents reported ever having anchored furniture, with a greater percentage of parents reporting anchoring furniture (59 percent) than other caregivers (50 percent), and a greater percentage of homeowners reporting ever having anchored furniture (57 percent) than renters (51 percent). For participants who did not report anchoring furniture or televisions, the most common reasons respondents gave for not anchoring, in declining order, were that they did not believe it was necessary, they watch their children, they have not gotten to it yet, it would damage walls, and they do not know what anchors to use.

These results indicate that one of the primary reasons parents and caregivers of young children do not anchor furniture is a belief that it does not need to be anchored if children are supervised. However, research shows that 2- to 5-year-old children are out of view of a supervising parent for about 20 percent of the time that they are awake, and are left alone significantly longer in bedrooms, playrooms, and living room areas.[82] CSUs are likely to be in bedrooms, where children are expected to have unsupervised time, including during naps and overnight. Many of the CSU tip-over incidents occurred in children's bedrooms during these unsupervised times. According to the Consumer Reports study, 76 percent of consumers with children under 6 years old reported that dressers are present in rooms where children sleep or play; and the UMTRI study found that nearly all (95 percent) of child participants had dressers in their bedrooms. Notably, among the 89 fatal incidents, 55 occurred in a child's bedroom, 11 occurred in a bedroom, 2 occurred in a parent's bedroom, and 2 occurred in a sibling's bedroom. None of the fatal incidents occurred when the child was under direct adult supervision. However, some nonfatal incidents occurred during supervised time when parents were in the room with the child. As this indicates, supervision is neither a practical, nor

[75] Kalsher & Associates, LLC. *CPSC Warning Label Safety Symbol Research: Final Report.* Oct. 27, 2021. Available at: *https://www.cpsc.gov/s3fs-public/CPSC-Warning-Label-Safety-Symbol-Research-Final-Report-with-CPSC-Staff-Statement.pdf?VersionId=qCnIivtD0HRs3dEW69p.UVSDxTxvvESq.*

[76] Further information about tip restraints and anchoring is in Tab C of the NPR briefing package.

[77] Butturini, R., Massale, J., Midgett, J., Snyder, S. Preliminary Evaluation of Anchoring Furniture and Televisions without Tools, Technical Report CPSC/EXHR/TR—15/001 (2015), available at: *https://www.cpsc.gov/s3fs-public/pdfs/Tipover-Prevention-Project-Anchors-without-Tools.pdf.*

[78] Three consumers identified the furniture as an ''armoire,'' and 19 consumers identified the furniture as a ''dresser, chest of drawers, or bureau.''

[79] Although 22 respondents reported using a CSU under their television, one of these respondents answered ''I don't know'' to the question about whether they anchored the furniture.

[80] Consumer Reports, Furniture Wall Anchors: A Nationally Representative Multi-Mode Survey (2018), available at: *https://article.images.consumerreports.org/prod/content/dam/surveys/Consumer_Reports_Wall_Anchors_Survey_2018_Final.*

[81] The report for this study, Fors Marsh Group, CPSC Anchor It! Campaign: Main Report (July 10, 2020), is available at: *https://www.cpsc.gov/s3fs-public/CPSC-Anchor-It-Campaign-Effectiveness-Survey-Main-Report_Final_9_2_2020....pdf?gC1No.oOO2FEXV9wmOtdJVAtacRLHIMK.*

[82] Morrongiello, B.A., Corbett, M., McCourt, M., Johnston, N. Understanding unintentional injury-risk in young children I. The nature and scope of caregiver supervision of children at home, Journal of Pediatric Psychology, 31(6): 529–539 (2006); Morrongiello, B.A., Ondejko, L., Littlejohn, A. Understanding Toddlers' In-Home Injuries: II. Examining Parental Strategies, and Their Efficacy, for Managing Child Injury Risk. Journal of Pediatric Psychology, 29(6), pp. 433–446 (2004).

effective way to prevent tip-over incidents.

Another common reason caregivers provided for not anchoring furniture was the perception that the furniture was stable. CPSC staff testing and modeling found that there is a large difference in stability of CSUs, depending on the number of drawers open. Adults are likely to open only one or a couple of drawers at a time on a CSU; as such, adults may only have experience with the CSUs in their more stable configurations and may underestimate the tip-over hazard. In contrast, incident analysis shows that some children open multiple or all drawers on a CSU simultaneously, potentially putting the CSU in a much less stable configuration; and children contribute further to instability by climbing the CSU.

CPSC staff also has concerns about the effectiveness of tip restraints and identified tip-over incidents in which tip restraints detached or broke. Overall, given the low rates of anchoring, the barriers to anchoring, and concerns about the effectiveness of tip restraints, CPSC concludes that tip restraints are not effective as the primary method of preventing CSU tip overs. Effective tip restraints may be useful as a secondary safety system to enhance stability, such as for interactions that generate particularly strong forces (*e.g.,* bouncing, jumping), or to address interactions from older/heavier children. In addition, tip restraints may help reduce the risk of tip overs for CSUs that are already in homes, since this rule only applies to CSUs manufactured after the effective date. In future work, CPSC may evaluate appropriate requirements for tip restraints, and will continue to work with ASTM to update its tip restraint requirements.

VIII. Response to Comments

CPSC received 66 written comments during the NPR comment period and 8 oral comments during the public hearing. The comments are available on: *www.regulations.gov,* by searching under docket number CPSC–2017–0044. This section describes key comments CPSC received on the substantive requirements in the NPR and responds to them. For more details about the comments CPSC received on the NPR, and CPSC's response to them, see Tab K of the final rule briefing package.

A. Incident Data

Comment: CPSC received comments regarding the rates of CSU tip-over incidents. Some commenters noted the decline in tip-over injuries reported in the NPR and most recent stability report, while others noted that the number of incidents is still too high.

Response: Although there has been a statistically significant decline in NEISS incidents, a high number of fatalities and nonfatal incidents continue and present an unreasonable risk of injury that necessitates rulemaking. As indicated in the NPR, when considering fatalities by year, other than 2010, there were at least three reported CSU tip-over fatalities to children without a television involved, each year, for the years 2001 through 2017. In 2018, there was one CSU tip-over fatality to a child without a television involved; and in 2019, there were two. Although reporting is considered incomplete for fatalities occurring in 2020 and later years, CPSC is already aware of one CSU tip-over fatality with no television involved to a child in 2020, and five child fatalities with no television involved in 2021. Similarly, between 2000 and 2019, there was at least one CSU tip-over death to an adult or a senior in each year, without a television involved, with the exception of 2006 and 2018. In addition, CPSC notes that the estimated number of injuries treated in EDs were likely influenced by the COVID–19 pandemic for the years 2020 and 2021.[83]

B. Scope and Definitions

Comment: Several commenters requested that specific products be excluded from the scope of the rule. These included comments to exclude wardrobes from the rule because they are covered by an ANSI standard, to exclude file cabinets, and to exclude nightstands.

Response: The final rule does not exclude wardrobes from the definition of a CSU because wardrobes have been involved in tip-over incidents and it is reasonable to address children putting their body weight on doors and drawers of such units, based on physical and cognitive abilities and demonstrated interactions in incidents. Moreover, staff reviewed existing standards and determined that they do not adequately reduce the hazard and the ANSI standard is not mandatory. The final rule does not explicitly exclude file cabinets from the scope, although some file cabinets may not meet the criteria in the CSU definition (*e.g.,* reasonably expected to be used for storing clothing). The rule does not exclude file cabinets generally because some may meet the criteria in the definition and, as consumer studies indicate, consumers use products as CSUs when they serve the functions identified for such products. The final rule also does not exclude nightstands because staff has identified products that are sold as nightstands but feature all of the characteristics of a CSU; consumer studies found that consumers identified and would use such products as CSUs; and CPSC is aware of incidents in which children climbed on nightstands. However, any nightstands that do not meet the criteria in the CSU definition (*e.g.,* under 27 inches tall, insufficient closed storage, reasonable expected use, or extendable elements/doors) would not fall within the scope of the rule.

As explained, the criteria for determining whether a product is a CSU are based on specific factors that contribute to instability and indicate that consumers are likely to perceive and use the product as a CSU. As explained, products that look and function just like a CSU may be marketed as something else, but consumers will still use it as a CSU. Accordingly, the final rule relies on criteria, rather than product names, to determine scope.

Comment: A commenter suggested excluding pull-out shelves from the scope of the rule because of a lack of reported tip-over incidents involving CSUs with such features. The commenter also suggested that, if included in the rule, the fill weight for pull-out shelves should be reduced to 4.25 pounds per cubic feet, representing half of the 8.5 pounds used for a drawer's fill weight.

Response: The final rule includes testing of pull-out shelves because these are elements that extend outward from the case of the CSU and are reasonably likely to be loaded with a clothing weight. As such, when open and loaded, a pull-out shelf would increase the instability of a CSU like an open and filled drawer.

As explained above, the NPR proposed to use the same fill weight of 8.5 pounds per cubic foot of functional volume for drawers and pull-out shelves, but raised the possibility that fill weight for pull-out shelves may be lower than for drawers (*e.g.,* 4.25 pounds per cubic foot) if pull-out shelves can hold less clothing fill than a drawer while remaining operable and containing the clothing when the shelf moves. CPSC did not receive any data regarding this in comments on the NPR. However, staff has further assessed this possibility and found that pull-out shelves can hold the same volume of

[83] Schroeder, T., Cowhig, M. (2021). Effect of Novel Coronavirus Pandemic on 2020 NEISS Estimates (March–December, 2020), available at: *https://www.cpsc.gov/s3fs-public/Covid-19-and-final-2020-NEISS-estimates-March-December-6b6_edited20210607_0.pdf.*

clothing as drawers and remain fully functional and sufficiently contain the clothing content when moving the shelf.[84] Accordingly, the final rule retains the 8.5 pounds per cubic foot of functional volume fill density for pull-out shelves.

Comment: One commenter suggested adding to the definition of a CSU that it includes ''a top surface and side panels that are rigid and solid'' and specifying that they are ''typically found in a bedroom environment.''

Response: Most CSUs are made of rigid and solid materials because these features are generally necessary to enable the unit to stand upright and hold extension elements. However, there are CSUs that have some non-rigid elements, retain extension elements, and present the same tip-over hazard. As such, these features are not included in the definition. The final rule also does not include ''typically found in a bedroom environment'' in the definition of a CSU because consumers use CSUs in rooms other than bedrooms and use as CSUs in a bedroom furniture that looks and functions just like a CSU but is marketed for non-bedroom use. As the studies discussed in the NPR indicate, consumers use products as CSUs based on their functionality, not where they are typically located in a residence.

Comment: One commenter suggested changing the CSU volume criterion from 1.3 cubic feet to 3 cubic feet, which the commenter believed better represents a volume that consumers associate with a CSU.

Response: The final rule retains the 1.3 cubic feet minimum proposed in the NPR. As explained in the NPR, the minimum drawer size that can reasonably accommodate clothing is fairly small. The smallest total functional volume of the closed storage for a CSU involved in a nonfatal incident without a television was 1.38 cubic feet; this unit was advertised to hold about five pairs of folded pants or 10 t-shirts in each of its two drawers.[85] As such, 1.3 cubic feet is a reasonable closed storage volume threshold, and a larger threshold would exclude from the scope of the rule products likely to be used as CSUs that pose the same tip-over hazard.

Comment: One commenter requested clarification of the terms ''open storage'' and ''open space'' that are relevant to the definition of a CSU.

Response: The final rule retains the same meaning of these terms, but includes wording modifications and the addition of examples to clarify the definitions. These revisions are discussed in section IX. Description of and Basis for the Rule.

Comment: CPSC received several comments suggesting that the scope of the rule should exclude CSUs that weigh less than 30 pounds when empty. A manufacturer of lightweight plastic CSUs stated that approximately 15 million such units over 27 inches tall were sold over the past 25 years and the rule would ban such products because they would be unable to meet the stability requirements. Commenters stated that such a ban would not serve a safety purpose, citing a lack of incident data involving lightweight CSUs. In support of the 30-pound threshold, commenters noted that ASTM is considering a similar limit in revising its CSU standard and that it aligns with the 34-pound CSU described in the NPR as being involved in a fatal tip-over incident and the 31-pound CSU involved in a nonfatal incident.

Response: The final rule includes in the definition of a CSU that it is limited to products that have a mass greater than or equal to 57 pounds with all extendable elements filled with at least 8.5 pounds/cubic foot times their functional volume (cubic feet). This will exclude some lighter weight CSUs from the scope of the rule, while continuing to cover CSUs that pose a risk of serious injuries and death when they tip over. This revision is discussed in detail in the section IX. Description of and Basis for the Rule.

Comment: CPSC received a comment stating that the ''closed storage'' definition should include both opaque drawers and doors, and not just opaque doors.

Response: The final rule includes ''opaque doors'' in the definition because consumer research showed that consumers perceive glass (non-opaque) doors to be for display instead of clothing storage. In contrast, there are CSUs on the market with clear drawers or drawer fronts, including lightweight plastic units, that have non-opaque drawers and that consumers use as CSUs. Consequently, the definition only applies to doors, and not opaque drawers to reflect consumer perceptions and use.

Comment: A commenter stated that the definition of ''drawer'' should include ''rigid, solid, and enclosed'' and exclude ''bins'' because such features do not appear to be involved in incident data.

Response: Although most drawers in CSUs are rigid, solid, and enclosed, some units have drawers with flexible sides (*e.g.,* cloth or mesh over rigid frames, cardboard, plastic) that are marketed and can be used as CSUs; can be loaded to sufficient weight to pose a hazard; and can present the same tip-over hazard as CSUs with rigid/solid drawers. For this reason, the final rule does not include ''rigid, solid, and enclosed'' as part of the definition of a drawer. However, staff also recognizes that the hazard presented by a drawer or similar feature is that it serves as an extension element that can bear forces/weight (*e.g.,* of clothing load or child interactions) that contribute to the instability of a CSU. For this reason, CPSC considers it appropriate to distinguish between such units and those for which the extendable element would not have this destabilizing effect. As such, the final rule defines a ''drawer'' as a furniture component intended to contain or store items that slides horizontally in and out of the furniture case and may be attached to the case by some means, such as glides. This is the same as in the NPR. However, the final rule also adds to the definition an explanation that only components that are retained in the case when extended up to ⅔ the shortest internal length, when empty, are included in this definition. This revision is discussed in section IX. Description of and Basis for the Rule.

Comment: Several comments suggested expanding the scope of the rule to include CSUs that are 24 inches or taller, instead of 27 inches or taller, and one commenter suggested a height limit of 12.1 inches, based on child heights.

Response: As discussed in the NPR, the shortest height determined for a CSU involved in a fatal incident without a television was 27.5 inches. Staff is aware of nonfatal incidents involving units shorter than 27 inches, but the number of incidents associated with shorter units is small and these incidents did not result in deaths or serious injuries. Therefore, the final rule retains the 27-inch height limit proposed in the NPR.

Comment: Several commenters suggested removing from the scope of the rule CSUs that have only doors and no drawers. They stated that these units are less susceptible to children climbing and less represented in incident data.

Response: Although the storage on CSUs with only doors does not extend, such CSUs typically have shelves or other features that children can use to climb or interact with, just like other CSUs. Moreover, it is easily within the physical and cognitive capabilities of children, including younger ones, to open doors, and it is consistent with

[84] For details regarding staff's assessment of clothing fill in pull-out shelves, see Tab C of the final rule briefing package.

[85] See Tab C of the NPR briefing package.

children's physical and cognitive abilities to expect that children will put their body weight on doors, creating a similar effect on instability as children putting their weight on drawers. The child climbing study (Tab R of the NPR briefing package) found that the vertical forces associated with a child hanging by the hands are close to the body weight of a child. In addition, CSUs with only doors have been involved in tip-over incidents. As discussed in the NPR, CPSC identified a fatal tip-over incident involving a unit with doors only (no drawers or other extension elements). For these reasons, CSUs with only doors present a similar tip-over hazard as CSUs with drawers or other extendable elements and the final rule retains these within the scope.

Comment: One commenter suggested only regulating CSUs that are children's products, while another commenter suggested requiring more stringent standards for children's products, and others suggested that the rule should apply to all CSUs.

Response: As explained in the NPR, general-use CSUs are more heavily represented in the incident data than children's products, and children's interactions are not limited to CSUs intended for children. In addition, general-use CSUs are commonly used in children's rooms, as indicated by the studies discussed in the NPR. Accordingly, focusing the rule on only children's products or requiring more stringent requirements only for children's products would not adequately address the hazard.

C. Stability Requirements

CPSC received comments regarding the stability requirements, including interlock requirements, in the rule, as well as definitions relevant to those requirements. Those comments are discussed in section IX. Description of and Basis for the Rule to explain revisions made to the rule in response to the comments. Additional details are also available in Tabs D and K of the final rule briefing package.

D. Marking and Labeling Requirements

Comment: Several commenters expressed concern that warnings are not an effective way to address the tip-over hazard, suggesting that consumers may not read or heed warnings.

Response: Warning labels, on their own, are a less effective way to address a hazard than performance or design requirements that reduce or eliminate a hazard, in part because warning labels rely on consumers seeing, understanding, and following the warnings. For this reason, the final rule includes requirements to provide for inherent stability of CSUs. However, there are steps consumers can take to further reduce the risk of CSU tip overs, and these steps are presented on the required warning labels. The content, format, and placement requirements are intended to improve the likelihood that consumers will notice, comprehend, and comply with the warnings.

Comment: Commenters suggested revisions to the warning label content requirements, including allowing manufacturers to determine what hazards to address on the label, and how; providing warnings about the use of CSUs on carpet; and including warnings in Spanish.

Response: CPSC staff developed the warning label requirements in the rule based on commonly used approaches in voluntary standards, ASTM's warning label requirements, consumer studies, research, human factors assessments, and staff's expertise. As such, the warning label requirements are designed to include content and format requirements that are likely to be effective. Allowing manufacturers to modify content may detract from the effectiveness of the label and would not benefit from staff's insights and expertise. To clarify that the warning label content must precisely match that in the final rule, the final rule also includes a statement that the content must not be modified or amended except as specifically permitted in the rule. However, nothing in the rule prevents manufacturers from placing a separate label on CSUs to communicate their desired content.

The final rule does not include in the warning label statements regarding the use of CSUs on carpet. This is because consumers commonly have carpet where they place CSUs and may not have the option to remove the carpet. As explained in the NPR, warnings that are inconsistent with expected consumer use are not likely to be effective.

Although the final rule does not require that warning labels be provided in languages other than English, manufacturers may include such labels, separate from the required label, and commonly do so for other products on the U.S. market.

Comment: As discussed above and in the NPR, CPSC contracted a focus group study to evaluate comprehension of potential variants to the symbol proposed for the warning label in the NPR. That study found that one of the variants performed better in comprehension than the alternatives under consideration; that variant is required in the final rule. One commenter noted that, although they support the variant, they are concerned about the type of anti-tip device shown in the symbol.

Response: The rationale for selecting the variant in the final rule is discussed below. However, to address the commenter's concern, the final rule specifies that the panel in the symbol that shows the anti-tip device may be modified to show a specific anti-tip device included with the CSU.

Comment: The rule requires that the identification label be legible and attached after it is tested using the methods specified in section 7.3 of ASTM F2057–19. A major manufacturer and retailer commented that the identification label should not be limited to a ''label'' because other means of applying the information to the product (*e.g.,* printing, etching, engraving, or burning) can also be sufficiently permanent and more cost-effective.

Response: The permanency testing requirements in section 7.3 of ASTM F2057–19 include requirements for paper labels, non-paper labels, and those applied directly to the surface of the product. As such, the rule does not prevent firms from applying the identification label in various ways that can be tested and comply with the requirements in section 7.3 of ASTM F2057–19. However, to make this clear, the final rule includes the term ''mark,'' in addition to ''label,'' to signal the availability of marking applied directly to the product for meeting the requirement.

E. Hang Tags

Comment: Several commenters expressed concerns with the rating scale, which the NPR proposed to range from 0 to 5, with a minimum score of 1 necessary to comply with the stability requirements in the rule. For the lower range of the scale, commenters noted that the scale need not start at 0 since CSUs may not have a rating below 1. For the upper limit of the scale, commenters stated that CPSC's and industry testing indicate that, even with modifications, CSUs that are currently on the market cannot exceed a stability rating of 2. Consequently, a scale that goes up to 5 may confuse consumers when they cannot find CSUs with ratings higher than 2 or may suggest that CSUs with a rating of 2 are unsafe. One commenter expressed concern that it will be costly to modify CSUs to achieve the required minimum rating of 1, let alone higher ratings. Commenters also requested clarification on whether the stability rating may be rounded, and suggested that CPSC use whole numbers, rather

than decimals, to avoid consumer confusion.

Response: As indicated in the NPR, CPSC staff's testing found that CSUs currently on the market do not exceed a stability rating of 2, even when modified to comply with the rule. Based on those test results and the above comments, the stability rating scale in this final rule ranges from 1 to ''2 or more.'' This is consistent with the minimum required rating of 1 and reflects realistic maximum stability ratings, while still allowing for designs to exceed a rating of 2. The final rule also specifies that stability ratings are to be rounded to one decimal place, which facilitates comparisons of CSUs with ratings between 1 and 2 and allows for easy comparison of CSUs (*e.g.,* a CSU with a rating of 2 is twice as stable as a CSU with a rating of 1). If CSUs increasingly achieve stability ratings greater than 2, the Commission can adjust the upper end of the scale in future rulemaking. As for costs, it is common in other product sectors with safety rating scales for manufacturers to offer products with a variety of ratings and prices to meet different consumer demands.

Comment: Some commenters stated that a stability rating hang tag may create a false sense of security in consumers, making them less likely to take added safety precautions, such as anchoring CSUs to a wall.

Response: The hang tag includes statements, such as ''no unit is completely safe from tip over'' and ''always secure the unit to the wall'' to warn consumers of the risk of tip overs and steps they can take to reduce those risks. Additional explanations on the back of the hang tag and on required warning labels provide further information about the hazard and ways to mitigate it.

Comment: Several commenters recommended places the hang tag information should be provided to ensure it is useful to consumers. Suggestions included at points of sale, including in showrooms and on sales websites; in instructions; on packages; on receipts; via emails provided by sellers upon purchase; and as permanent labels on CSUs so the information is visible to second-hand users. Some commenters recommended not requiring the hang tag appear on a CSU itself or on packaging, but only at points of sale, because that is when consumers make buying decisions.

Response: Consistent with the purpose of section 27(e) of the CPSA, the above comments, and the goal stated in the NPR of providing comparative safety information to consumers at the time they make buying decisions, the final rule requires that the hang tag information be provided at physical points of purchase, such as retail stores; on the CSU and package; and on manufacturer or importer websites where consumers may purchase the CSU directly. As the NPR discussed, requiring the hang tag be visible at a physical point of sale ensures the safety information is available to consumers when making a buying decision in stores. The final rule retains the requirement that the hang tag be provided on the CSU and its packaging because this ensures that the hang tag is visible to consumers at the time of purchase, regardless of how the product is displayed in a store (*e.g.,* assembled and displayed, or packaged). Because consumers also buy CSUs online, this is also a ''time of purchase'' where it is important for consumers to have the comparative safety information to make informed buying decisions. This requirement is limited to manufacturer and importer websites where the CSU can be purchased because section 27(e) of the CPSA only grants the Commission authority to require manufacturers (which includes importers) to provide performance and technical data, and it may only be required at the ''time of original purchase.'' Similarly, because section 27(e) only grants authority with respect to an ''original purchase'' and ''the first purchaser,'' the rule does not require the hang tag be placed in a way that would make it available to second-hand users. However, warning label requirements elsewhere in the rule make tip-over information available to second-hand users.

Comment: One commenter stated that the information on the back of the hang tag should be on the front to ensure consumers see an explanation of the rating. Another commenter expressed concern that using text is problematic for consumers who are not fluent in English.

Response: To ensure consumers can quickly understand the meaning of the stability rating, the final rule requires an additional statement on the front of the hang tag stating, ''This unit is [rating value] times more stable than the minimum required,'' with the stability rating of the CSU inserted for the bracketed text. Regarding English text, although the hang tag requirement only includes English, the rule does not prevent manufacturers from including a separate hang tag in another language.

F. Stockpiling Requirement

Comment: Several commenters expressed support for the anti-stockpiling provisions in the NPR, noting that industry members had sufficient notice of the rule given the duration of the rulemaking and that stockpiling limits are necessary to prevent industry members from increasing production of noncompliant CSUs. One commenter recommended a shorter and more limited stockpiling requirement and another recommended a limit based on the ''best'' year in the past 5 years, rather than the 13 months proposed in the NPR, because the previous 13 months are not representative due to supply chain issues during that period.

Response: The stockpiling provisions in the final rule balance the competing policy goals of addressing the hazard and preventing stockpiling and sales of noncompliant CSUs while accounting for realistic supply chain limits and the cost to businesses to comply with the rule. The Commission considers the provisions appropriate to balance these interests.

G. Economic Analyses

CPSC received numerous comments regarding the economic analyses in the NPR, including the preliminary regulatory flexibility analysis and the preliminary regulatory analysis. Comments addressed the costs of compliance for small businesses and ways to reduce those burdens, as well as the estimated costs and benefits of the rule, including: costs for manufacturers and importers, including for testing; costs to consumers; costs of interlocks; lost sales of matching furniture; the impact of the scope of products covered by the rule on benefits and costs; the Injury Cost Model and value of statistical life used to estimate benefits; the effective date; and alternatives. Comments from the U.S. Small Business Administration's Office of Advocacy are addressed in the final regulatory flexibility analysis in this preamble. A summary of comments and responses regarding the economic analyses are provided in Tabs H, I, and K of the final rule briefing package. As the briefing package explains, CPSC has updated the economic analyses for this final rule based on commenter input.

IX. Description of and Basis for the Rule

A. Scope and Definitions [86]

The final rule includes provisions regarding the scope of the standard and definitions of terms in the standard. The definition of a ''CSU'' is the basis for the

[86] For additional information about scope and definitions, see Tabs C and D of the NPR briefing package, and Tabs C, D, and K of the final rule briefing package.

scope of the rule and several terms within that definition are also defined in the standard. The final rule includes minor revisions to the application section of the rule and some definitions in the rule that do not alter the substance of these provisions. For example, the application section no longer includes the CPSA definition of a ''consumer product'' because the definitions section notes that CSUs are ''consumer products'' and refers to the definitions provided in the CPSA.

In addition, the final rule includes some substantive revisions to the definitions to address issues raised by commenters and identified by CPSC staff. This section focuses on the definition of a CSU and key terms used in that definition and defined in the standard, particularly terms for which the definitions have been revised since the NPR (*i.e.,* ''drawers,'' ''freestanding,'' ''open storage,'' and ''open space''). Additional definitions in the standard are discussed in the section below on stability requirements, where those terms are relevant.

1. Final Rule Requirements

The final rule applies to CSUs, defined as a consumer product that is a freestanding furniture item, with drawer(s) and/or door(s), that may be reasonably expected to be used for storing clothing, that is designed to be configured to greater than or equal to 27 inches in height, has a mass greater than or equal to 57 pounds with all extendable elements filled with at least 8.5 pounds/cubic foot times their functional volume (cubic feet), has a total functional volume of the closed storage greater than 1.3 cubic feet, and has a total functional volume of the closed storage greater than the sum of the total functional volume of the open storage and the total volume of the open space.

The rule specifically states that whether a product is a CSU depends on whether it meets this definition. However, to demonstrate which products may meet the definition of a CSU, the standard provides names of common CSU products, including chests, bureaus, dressers, armoires, wardrobes, chests of drawers, drawer chests, chifforobes, and door chests. Similarly, it names products that, depending on their design, generally do not meet the criteria in the CSU definition, including shelving units, office furniture, dining room furniture, laundry hampers, built-in closets, and single-compartment closed rigid boxes (storage chests).

Additionally, the rule exempts from its scope two products that generally would meet the definition of a CSU— clothes lockers and portable storage closets. It defines ''clothes locker'' as a predominantly metal furniture item without exterior drawers and with one or more doors that either lock or accommodate an external lock; and defines ''portable storage closet'' as a freestanding furniture item with an open frame that encloses hanging clothing storage space and/or shelves, which may have a cloth case with a curtain(s), flap(s), or door(s) that obscures the contents from view.

2. Basis for Final Rule Requirements

To determine the scope of products that the rule should address to adequately reduce the risk of injury from CSU tip overs, CPSC considered the nature of the hazard, assessed what products were involved in tip-over incidents, and assessed the characteristics of those products in relation to stability and children's interactions.

a. The Hazard

The CSU tip-over hazard relates to the function of CSUs, where they are used in the home, and their design features. A primary feature of CSUs is that typically they are used for clothing storage; however, putting clothing in a furniture item does not create the tip-over hazard on its own. Rather, the function of CSUs as furniture items that store clothing means that consumers and children are likely to have easy access to the unit and interact with it daily, resulting in increased exposure and familiarity. In addition, caregivers may encourage children to use a CSU on their own as part of developing independent skills. As a result, children are likely to know how to open drawers of a CSU, and are likely to be aware of their contents, which may motivate them to interact with the CSU. For this reason, one element of the definition of ''CSUs'' is that they are reasonably expected to be used for storing clothing.

CSUs are commonly used in bedrooms, an area of the home where children are more likely to have unsupervised time. As stated in the NPR, most CSU tip-over incidents occur in bedrooms: among the 89 fatal tip-over incidents reviewed in the NPR involving children and CSUs without televisions, 99 percent of the incidents with a reported location (70 of 71 incidents) occurred in a bedroom. This use means that children have more opportunity to interact with the unit unsupervised, including in ways more likely to cause tip over (*e.g.,* opening multiple drawers and climbing) that a caregiver may discourage.

Another primary feature of CSUs is closed storage, which is storage within drawers or behind doors. These drawers and doors are elements that can extend from the furniture case, which allow children to exert vertical force further from the tip point (fulcrum) than they would be able to without drawers and doors and that make it more likely that a child will tip the product during interactions. In addition, these features may make the product more appealing to children as a play item. Children can open and close the drawers and doors and use them to climb, bounce, jump, or hang; they can play with items in the drawers or get inside the drawers or cabinet. Children can also use the CSU drawers and doors for functional purposes, such as climbing to reach an item on top of the CSU. Accordingly, the definition of ''CSUs'' includes a minimum amount of closed storage and the presence of drawers and/or doors as an element. The element of the definition that indicates that a CSU has a total functional volume of the closed storage greater than 1.3 cubic feet and greater than the sum of the total functional volume of the open storage and the total volume of the open space is based on the total functional drawer volume for the shortest/lightest reported CSU involved in a nonfatal incident without a television. CPSC rounded the volume down, so that CSUs with this closed storage would be included in the definition.

The CSUs definition also states that the products are freestanding furniture items, which means that they remain upright, without needing attachment to the wall or other upright structures, in their normal use position. The lack of permanent attachment to the building structure means that CSUs are more susceptible to tip over than built-in storage items in the home.

b. Product Categories in Incident Data

For this rulemaking, staff focused on product categories that commonly meet the general elements of the definition of a CSU, in analyzing incident data; these included chests, bureaus, dressers, armoires, wardrobes, portable storage closets, and clothes lockers. As detailed in the discussion of incident data, of the child fatalities involving CSUs, 196 involved a chest, bureau, or dresser; 2 involved a wardrobe; 1 involved an armoire; and none involved a portable storage closet or clothes locker. Of the 1,154 reported CSU tip-over incidents (all ages), 1,148 incidents involved a chest, bureau, or dresser; 5 involved an armoire; 1 involved a wardrobe; and none involved a portable storage closet or clothes locker.

Based on these data, the definition of CSUs names chests, bureaus, dressers, wardrobes, and armoires as examples of CSUs that are subject to the standard. The rule exempts clothes lockers and portable storage closets from the scope of the standard because there are no reported tip-over fatalities or injuries to children that involved those products. Compared to chests, bureaus, and dressers, wardrobes and armoires have been involved in fewer tip-over incidents. However, the rule includes these products because there are some tip-over fatalities and injuries involving them, they are similar in design to the other CSUs included in the scope (unlike portable storage closets), and they are more likely to be used in homes than clothes lockers.

c. Product Height

As explained in the NPR, the height of the CSU was reported for 53 fatal and 72 nonfatal CPSRMS tip-over incidents involving children and CSUs without televisions. The shortest reported CSU involved in a fatal incident without a television was a 27.5-inch-tall, 3-drawer chest, which tipped over onto a 2-year-old child. Results from FMG's CSU focus group [87] suggest that consumers seek out low-height CSUs for use in children's rooms ''because participants would like a unit that is an appropriate height (*i.e.,* short enough) for their children to easily access their clothes.'' The average shoulder height of a 2-year-old is about 27.4 to 28.9 inches.[88] In the in-home interviews, researchers observed that CSUs in children's rooms typically were low to the ground and wide. Based on this information, children may have more access and exposure to low-height CSUs than taller CSUs.

For these reasons, the rule defines ''CSUs'' as including products that are designed to be configured to greater than or equal to 27 inches in height. The definition of a ''CSU'' in the NPR included that the unit be 27 inches tall or greater. The final rule retains this criteria, but also clarifies that this is determined by the height to which the CSU is designed to be configured. Staff has identified CSUs that are designed such that the height can be adjusted from below 27 inches to 27 inches or greater (such as by adjusting levelers or glides). Therefore, consistent with the NPR and to ensure that any units 27 inches tall or more are covered by the rule, the wording in the final rule has been adjusted accordingly.

d. Product Names and Marketed Use

The definition of ''CSUs'' relies on characteristics of the unit to identify covered products, rather than product names or the manufacturer's marketed use of the product. This is because, as the NPR and this preamble discuss, there are various products that consumers identify and use as CSUs and that pose the same tip-over hazard, regardless of how the product is named or marketed.

In the FMG CSU use study,[89] participants showed flexibility in how they used CSUs and other similar furniture in the home, depending on their needs, aesthetics, and where the unit was placed within the home. For example, one participant put a large vintage dresser in their living room and used it for non-clothing storage; one participant said that their dresser was used as a changing station and held diapers, wipes, creams, and medical supplies, but is now used to store clothes; and a participant said that the dresser in their child's room was originally used to store dishes.

Some participants in the in-home interviews and focus groups used nightstands for clothing storage, including for shirts; socks; pajamas; slippers; underwear; smaller/lighter items, such as tights or nightwear; seasonal items; and accessories. Participants also had a wide variety of interpretations of the marketing term ''accent piece,'' with some saying that they use accent pieces for clothing storage, and one identifying a specific accent piece in their home as a CSU.

As part of the study, researchers asked focus group participants to fill out a worksheet with pictures of unnamed furniture items with dimensions. Participants were asked to provide a product label (category of product) and answer the question: ''What would you store in this piece of furniture?'' ''Where would you put this piece of furniture in your home?'' Participants then discussed the items as a group. Results suggest that there is wide variety in how people perceive a unit. For example, one unit in the study was classified by participants as a cabinet, television stand, accent/occasional/entryway piece or table, side table/sideboard, nightstand, kitchen storage/hutch/drawer, and dresser. Another was classified as an accent piece, buffet/sideboard, dresser, entry/hall/side table, chest/chest of drawers, kitchen storage unit/cabinet, sofa table, bureau, and china cabinet. Overall, the results from the study suggest that there is not a distinct line between units that people will use for clothing storage, as opposed to other purposes; and even within a unit, the use can vary, depending on the consumer's needs at the time.

CPSC also is aware of products that are named and advertised as generic storage products with multiple uses around the house, or they are advertised without context suggesting a particular use. Many of these items clearly share the design features of CSUs, including closed storage behind drawers or doors. In addition, CPSC is aware of products that appear, based on design, to be CSUs, but are named and advertised for other purposes (*e.g.,* an ''accent piece'' with drawers staged in a foyer, and large multi-drawer ''nightstands'' over 27-inches tall). CPSC is also aware of hybrid products that combine features of CSUs with features of other product categories.

Using the criteria in the definition of a CSU, products typical of shelving units, office furniture, dining room furniture, laundry hampers, built-in units, and single-compartment closed rigid boxes likely would not be CSUs. The rule generally excludes these products, by including in the definition of ''CSUs'' that a CSU is freestanding; has a minimum closed storage functional volume greater than 1.3-cubic feet; has a closed storage functional volume greater than the sum of the open storage functional volume and open space volume; has drawer(s) and/or door(s); and is reasonably expected to be used for clothing. In contrast, some furniture, such as occasional/accent furniture, and nightstands could be CSUs. The criteria for identifying a CSU in the rule would keep some of these products within scope, and exclude others, depending on their closed storage, reasonable expected use, and the presence of doors/drawers, such that those products that may be used as CSUs and present the same hazard, would be within the scope of the standard, while those that would not, would be excluded.

Because consumers select units for clothing storage based on utility, rather than marketing, and there are products that are not named or advertised as CSUs but are indistinguishable from CSUs based on their design, the ''CSU'' definition does not rely on how a product is named or advertised by a manufacturer.

e. Product Weight

NPR and final rule. In the NPR, the Commission did not propose to include a weight criterion as part of the

[87] See Tab Q of the NPR briefing package.

[88] The mean standing shoulder height of a 2-year-old male is 28.9 inches and 27.4 inches for a 2-year-old female. Pheasant, S., Bodyspace Anthropometry, Ergonomics & Design. London: Taylor & Francis (1986).

[89] See Tab Q of the NPR briefing package.

definition of a CSU, noting that consumers use light weight units as CSUs and such units can be loaded to weigh as much as CSUs involved in fatal tip-over incidents when filled with 8.5 pounds per cubic foot of storage volume (*i.e.,* the load representative of normal clothing fill). However, the NPR did raise the possibility of excluding certain lightweight units that may not pose the same risk of death or serious injury in a tip-over incident. The NPR noted that CPSC did not identify any tip-over incidents involving lightweight plastic units, but also indicated that the type and weight of unit was undetermined in many incidents. The NPR explained that the lowest-weight non-modified [90] CSU involved in a fatal tip-over incident weighed 57 pounds total at the time of the incident (because the unit was reportedly empty), and other lower-weight units in fatal incidents weighed 57.5 pounds and 68 pounds. The NPR also requested comments on excluding certain lightweight units from the scope of the rule.

The final rule includes in the definition of a CSU the criterion that the unit have a mass greater than or equal to 57 pounds with all extendable elements (*i.e.,* drawers and pull-our shelves) filled with at least 8.5 pounds per cubic foot times their functional volume. This results in excluding certain lightweight units from the definition of a CSU and the scope of the rule. Specifically, if the weight of the empty CSU and a clothing fill weight of 8.5 pounds per cubic foot of functional storage volume totals 57 pounds or more, then the unit falls within the scope of the rule. If the total weight of the empty CSU and this clothing fill is less than 57 pounds, the unit is excluded from the definition of a CSU. This revision is based on comments received on the NPR, staff's assessment of the mechanism of injury with lightweight CSUs, lightweight CSU incidents discussed in the NPR, staff's assessment of the total weights such units can achieve, and the effect of a lightweight exception on the effectiveness of the final rule.

Comments on the NPR. Several comments on the NPR suggested that lightweight units with an empty weight of 30 pounds or less should be excluded from the scope of the rule. This suggestion is consistent with a change ASTM is considering for its standard on CSUs. Commenters noted that, for incidents in which the type/weight of the unit is known, there are no known incidents involving such lightweight units and that lighter weight units would not be able to meet the stability requirements in the rule, thereby removing such products from the market.

Mechanism of injury. CPSC staff assess that heavier CSUs pose a greater potential for injuries and for more severe injuries because the mass/weight of the CSU is a key component in the mechanisms that cause injury or death in a CSU tip-over. Accordingly, lighter weight CSUs may pose less of a risk of serious injury and death in a tip-over incident than heavier weight units. Head injuries, compressional and mechanical asphyxia, and strangulation are the leading causes of injuries in CSU tip-over incidents. The mass/weight of the CSU is one key factor that contributes to these injuries because higher mass CSUs create greater impact forces and compressional forces, thereby increasing the risk and severity of injuries. High mass/weight CSUs also make self-rescue more difficult because children are less likely to be able to move the fallen CSU or get out from under it.

Incident analysis. Staff considered what weight limit would capture CSUs that are heavy enough to present an unreasonable risk of injury during a tip-over incident, while excluding lighter weight units that are unlikely to pose the same hazard. To identify an appropriate weight limit for CSUs, staff reexamined the incident data where the CSU weights were reported or where staff could determine the weight of the CSUs based on product information or other data sources. Table 1 shows the lightest weight CSUs involved in fatal and nonfatal incidents. Note that Table 1 includes units with heights less than 27 inches, which would result in them not meeting the definition of a CSU in the rule. However, staff included these in the analysis because they were the lightest weight units involved in incidents and, as such, indicate the lowest weights that may result in injuries.

TABLE 1—LIGHTEST WEIGHT CSUS INVOLVED IN FATAL AND NONFATAL TIP-OVER INCIDENTS

Injury	CSU empty weight (pounds)	CSU height (inches)	In scope under NPR	In scope under final rule
Fatal Incidents				
Death—chest compression	34 (with 3 bottom drawers missing from a 5-drawer unit).	42	Yes	Yes.
Death—neck compression	57 (empty at time of incident)	27.5	Yes	Yes.
Death—waist compression	57.5	39.5	Yes	Yes.
Death—chest compression	66.5	33	Yes	Yes.
Death—waist compression	68	30.8	Yes	Yes.
Death—neck compression	68	30.8	Yes	Yes.
Death—neck compression	68	30.8	Yes	Yes.
Nonfatal Incidents				
Minor bruise under eye	28.5 *	26.8	No	No.
Bruising to both legs	31 *	26	No	No.
Scratches and bruises	31 *	26	No	No.
Laceration to cheek	39.7 *	22.6	No	No.
Laceration requiring 3 stitches	39.7 *	22.6	No	No.
Laceration to top of foot and a bruise to calf	45	28.1	Yes	Yes.

* CPSC could not determine the weight of the CSU alone, so this is the package weight (*i.e.,* combined weight of the CSU and packing material), as listed on the manufacturer's website.

[90] There was a CSU identified in a fatal tip-over incident without a television that weighed 34 pounds, but that was missing several drawers at the time of the incident, and the drawer fill was unknown, making the total weight unclear.

As Table 1 indicates, the lightest weight CSU involved in a fatal incident was 34 pounds. However, the configuration and weight of this CSU at the time of the incident is uncertain. The CSU was a 5-drawer unit and, at the time the incident was investigated, the 3 bottom drawers of the unit were not with the CSU; 2 of the drawers were in another room and 1 was ''disassembled'' in a separate room. It is not clear whether these 3 drawers were installed at the time the unit tipped over and were moved out of the way after the incident, or if the drawers were removed at the time of the incident. With only the 2 drawers installed, the coroner's report indicates that the unit weighed 34 pounds. As such, CPSC does not know the total weight of the CSU or its weight at the time of the incident. For this reason, CPSC cannot rely on the weight reported for this incident and did not use this incident to determine an appropriate weight limit for the rule.

The next lightest CSU involved in a fatal tip-over incident weighed 57 pounds. This unit was intact (*i.e.,* not missing drawers) and reportedly empty at the time of the incident, making the total weight 57 pounds. In this incident, the victim was laying on her back with the CSU on top of her neck between the CSU drawers. The CSUs in the remaining fatal incidents weighed more than 57 pounds. Three of the remaining victims were found with the CSU on their necks and three were found with the CSU compressing their chests or waists. The mechanism for these injuries is the weight of the CSU and contents pressing against the victim's body, which provides further indication that the weight/mass of a CSU is a key factor in the potential occurrence and severity of injuries or death in a CSU tip over. As such, it is reasonable to account for CSU weight in determining the scope of the rule. Overall, these incidents indicate that the 57 pounds total weight is the lowest weight shown to result in fatality during a CSU tip over.

As Table 1 and the NPR indicate, lighter weight units have been involved in nonfatal incidents. The lightest weight CSU involved in a nonfatal incident was 45 pounds; the lighter units would not meet the definition of a CSU because they are not 27 inches tall, but staff considered these incidents as a possible indication of the lowest weights that could result in injuries during a tip-over incident. However, none of these lighter-weight nonfatal incident units resulted in serious injuries. All of the injuries were relatively minor, including bruising and lacerations. Staff also considered two incidents involving plastic units in the NEISS nonfatal data. Although the weight of these units was not reported, staff considered them because, as plastic units, they are likely to have been lightweight. In one incident, the unit tipped over, resulting in an unspecified head injury for which the child was treated and released, suggesting the injury was likely not serious. In the other incident, the unit caused a laceration to the right eye, which also resulted in the child being treated and released. Because of the minor nature of the injuries in these nonfatal incidents, CPSC does not consider these incidents a good representation of the weight of CSUs that have the potential to cause serious injuries or death in a tip-over incident. For this reason, the final rule relies on the lowest-weight unit involved in a fatal incident—57 pounds—because this indicates the lowest weight shown to pose a risk of serious injury or death.

Having identified an appropriate total weight at which to establish a threshold for the final rule, CPSC also considered how to determine the total weight. As explained, the 57-pound CSU involved in a fatal incident was empty at the time of the incident. Thus, its total weight at the time of the incident was 57 pounds. However, incident data indicates that for CSU tip-over incidents with a reported drawer fill, most involve partially or fully filled drawers (95 percent of fatal CPSRMS incidents and 90 percent of nonfatal CPSRMS incidents with reported drawer fill), and this use is expected because CSUs are intended to store clothing. As such, it is necessary to consider clothing fill weight, in addition to the empty weight of the CSU, when determining whether a CSU reaches the total weight of 57 pounds that poses a risk of severe injury or death. As discussed in this preamble, staff has determined that 8.5 pounds per cubic foot of functional storage volume represents a reasonable fill weight of clothing in CSUs. Consistent with this, the NPR explained that lightweight units that can reach the total weight, with clothing fill, that presents a hazard, need to be addressed in the rule. Therefore, the final rule uses this fill weight to determine whether a CSU can reach a total weight of 57 pounds and poses a risk of serious injury or death.

Effect of 57-pound criteria. To determine what effect this exclusion would have on units included in the scope of the rule and whether it would continue to address all known CSU tip-over incidents, staff assessed the filled weights of CSUs on the market and involved in incidents.

To assess units on the market, staff selected 3 lightweight CSUs, with a variety of designs (*i.e.,* number of drawers, configurations, and materials), all taller than 27 inches and weighing less than 30 pounds empty. Information about these units is shown in Table 2.

TABLE 2—LIGHTWEIGHT CSU TESTING

Unit	Description	Dimensions (width, height, depth) (inches)	Empty weight (pounds)	Calculated drawer fill weight* (pounds)	Total weight (pounds)
A	6 drawers in one column, plastic	33.75 × 48 × 15.5	16.0	53.4	69.5
B	8 drawers in 2 columns (4 drawers per column), cloth drawer, metal frame, wooden top.	33.75 × 39.5 × 15.5	25.2	54.4	79.6
C	6 drawers arranged with 2 small drawers in the top row and 4 large drawers below in a single column, plastic.	23.75 × 38.75 × 15.75.	19.2	39.3	58.5

* Calculated using 8.5 pounds per cubic foot.

As Table 2 indicates, although all of these units weighed less than 30 pounds empty (which is the weight exclusion requested by commenters) and they all weighed more than 57 pounds when filled with a reasonable clothing fill density. This demonstrates why it is necessary to consider the total filled weight of a CSU, and not the empty weight of a CSU, in establishing a weight threshold for the scope of the rule.

Staff also reviewed information about lightweight units on the market to determine the extent to which they

would be excluded or included in the scope of the rule. Staff found that many lightweight units on the market are less than 27 inches tall and, as such, would not fall within the scope of the rule, regardless of their weight. Staff also noted that the lightest weight units in nonfatal tip-over incidents were almost all under 27 inches in height. Smaller units with lower capacities would be excluded from the scope of the rule. Overall, the number of lightweight units that are 27 inches or taller and weigh less than 57 pounds when filled is small, making the impact of the rule similar to that proposed in the NPR.

To ensure that the tip-over hazard would still be sufficiently addressed, CPSC also assessed whether any CSUs involved in tip-over incidents would be excluded from the scope of the rule as a result of this weight criterion. Staff found that the 57-pound filled weight criterion would not exclude from the scope of the rule any CSUs that were involved in fatal CPSRMS incidents or nonfatal CPSRMS incidents that were not already excluded from the scope based on height.[91] As such, the weight criterion retains within the scope of the rule CSUs that have been demonstrated to and are likely to present the risk of serious injuries or death in a tip-over incident, while excluding units that are not likely to and have not been demonstrated to present the same risk.

f. Definition of Drawers

The final rule defines a ''drawer'' as a furniture component intended to contain or store items that slides horizontally in and out of the furniture case and may be attached to the case by some means, such as glides. This is the same as in the NPR. However, the final rule also adds to the definition an explanation that only components that are retained in the case when extended up to ⅔ the shortest internal length, when empty, are included in this definition.

As the language in the NPR and final rule indicates, drawers may be attached to the case, but do not have to be. CPSC received a comment on the NPR indicating that bins should be excluded from the definition of a drawer. CPSC agrees that features that extend from the case of a CSU contribute to instability differently depending on their retention within the case. An extended element contributes to a CSU's instability by shifting the CG of the CSU forward, and this contribution to instability increases when the extended element is filled with clothing. As such, components that fall out of the case when extended will not shift the CG of the CSU forward because once the component falls out of the case, it is no longer part of the CSU and forces on it do not affect the CSU.

Staff examined how to distinguish between drawers and furniture components that are intended to contain or store items but are not usable as extendable elements that are likely to contribute to instability when extended. One way to capture attached and unattached components that can contribute to instability is provided in ANSI/BIFMA X6.5–2022, *Home Office and Occasional-Use Desk, Table and Storage Products,* which includes in the definition of ''extendible element,'' ''[e]xtendible elements have an outstop OR will remain in the drawer case/cabinet (in its normal use position) when it is extended up to ⅔ of its depth.'' Staff assessed this with CSUs with unattached extension features and found that for some units, these elements were retained within the case of the CSU when extended to ⅔ of their shortest internal length, which is the measurement used in the rule for drawer depth. Other such extension elements did not remain in the CSU case when extended to ⅔ of their depth. Staff found that the ⅔ extension criterion reasonably excludes components that are not usable as extendable elements and are unlikely to contribute to instability. Moreover, the ⅔ extension criterion aligns with the definition of ''maximum extension'' in the rule, which includes, ''[i]f the manufacturer does not provide a recommended use position by way of a stop, [maximum extension] is ⅔ the shortest internal length of the drawer measured from the inside face of the drawer front to the inside face of the drawer back.''

For these reasons, the definition of a ''drawer'' includes the clarification that the term includes components that are retained in the case when extended to ⅔ the shortest internal length, when empty. This retains the definition from the NPR, which includes components that are attached or unattached to the CSU case, while ensuring that the definition only captures those components that would contribute to instability, consistent with the purpose of the rule.

g. Definition of Freestanding

The final rule defines ''freestanding'' to mean that the unit remains upright, without needing attachment to the wall or other upright rigid structure, when it is fully assembled and empty, with all extendable elements and doors closed and specifies that built-in units are not considered freestanding. This definition remains the same as in the NPR, but with modifications to address comments and provide better clarity.

As discussed above, a CSU only includes freestanding products because the lack of permanent attachment to a building structure means that CSUs are susceptible to tip over, whereas built-in storage items are unlikely to pose a tip-over hazard. Examples of built-in/permanently attached items provided in the NPR were bathroom vanities and kitchen cabinets, which are typically permanently attached to walls and/or floors in a sufficiently secure manner to make it unlikely they will tip over. The NPR also explained that CSUs need to be inherently stable, rather than rely on tip restraints, because of various reasons tip restraints may not be used, installed properly, or be effective. The NPR also noted that how a manufacturer intends a product to be used/installed (*e.g.,* with tip restraints) is not determinative of whether it is a CSU because consumers will use products that function as CSUs as CSUs, regardless of marketing or manufacturer intent. As such, tip restraints and similar features, alone, would not make a unit non-freestanding.

However, CPSC received several comments seeking clarification of the term ''freestanding,'' including the meaning of permanent attachment to the building structure, confusion about reference to a tip restraint, and specific items that may be permanently installed in a home. To address these comments, the final rule adds ''other upright rigid structure'' to possible attachments since any attachment to such a structure, not just to the wall, could render a unit non-freestanding; removes reference to tip restraints, since that was confusing to commenters; and removes the examples provided in the NPR. Kitchen cabinets and bathroom vanities may have caused confusion as examples because they are unlikely to meet other criteria of the CSU definition (*e.g.,* use for clothing storage, sufficient closed storage).

These revisions retain the same meaning of ''freestanding'' as in the NPR and remain consistent with the purpose of including only freestanding items in the definition of a CSU by focusing on how consumers will foreseeably install and use products and whether they will be sufficiently attached to make them unlikely to tip over.

h. Definitions of Open Storage and Open Space

As described in the NPR, the definition of a CSU was developed, in

[91] Staff based their assessment on the available information, including reported product weights, identification, descriptions, and pictures. However, staff does not have details on all incident-involved units.

part, based on consumer perceptions, as indicated during the CSU use study focus group [92] One of the design features of a CSU that staff identified was that a CSU has more closed storage than display storage (*e.g.,* storage behind glass doors) and other open storage (*e.g.,* cubbies), and/or open space (*e.g.,* space under legs). This is because consumers reported using CSUs to protect clothing, whereas they perceive glass doors as typically used to display items, making them unlikely to be used as CSUs. Researchers also found that legs and the bottom of a product are features consumers often consider when classifying something as a CSU. To address this, the final rule definition of a CSU includes, as one element, that the total closed storage functional volume is greater than 1.3 cubic feet and greater than the sum of the open storage functional volume and the open space volume.

The final rule defines ''open storage'' as the space within the frame of the furniture, that is open (*i.e.,* is not in a drawer or behind an opaque door) and that can be reasonably used for storage (*e.g.,* has a flat bottom surface) and provides, as examples, open shelf space that is not behind a door, display space behind a non-opaque door, and framed open clothing hanging space. In the NPR, this term was defined as ''storage space enclosed on at least 5 sides by a frame or panel(s) and/or behind a non-opaque door and with a flat bottom surface.'' The final rule defines ''open space'' as space within the frame of the furniture, but without a bottom surface and provides, as examples, open space between legs, such as with a console table, or between separated storage components, such as with a vanity or a desk. The definition of ''open space'' further specifies that it does not include space inside the furniture case (*e.g.,* space between a drawer and the case) or any other space that is not visible to a consumer standing in front of the unit (*e.g.,* space behind a base panel). The NPR defined ''open space'' as space enclosed within the frame, but without a bottom surface.

CPSC received a comment on the NPR requesting clarification of how to classify certain spaces within or around a furniture piece for purposes of determining ''open storage'' and ''open space.'' To address this comment for ''open storage,'' the final rule replaces ''storage space enclosed on at least 5 sides by a frame or panel(s) and/or behind a non-opaque door'' with ''space within the frame of the furniture that is open (*i.e.,* is not in a drawer or behind an opaque door).'' These descriptions convey the same meaning but address the confusion expressed by the commenter. The final rule also replaces ''with a flat bottom surface'' with ''reasonably can be used for storage (*e.g.,* has a flat bottom surface)'' based on a comment that open storage may not have a flat bottom surface. The definition now also includes examples, based on descriptions and examples in the NPR and from the commenter. Overall, this definition remains consistent with the NPR and aligns with that of ''closed storage'' in the rule.

To address the comment for ''open space,'' the final rule slightly modifies wording and adds examples, consistent with the description in the NPR. The modification includes changing ''under legs'' to ''open space between legs,'' based on the commenter's suggestion. The definition also adds that ''open space'' does not include space inside the furniture case or space that is not visible to a consumer (with examples), which is consistent with the purpose of aligning the CSU definition with consumer perceptions.

B. Stability Requirements [93]

1. Final Rule Requirements

The requirements for stability of CSUs consist of configuring the CSU for testing, performing testing using a prescribed procedure, and determining whether the performance results comply with the criteria for passing the standard. There are several terms used in the stability requirements that are defined in the standard.

To configure the CSU for testing, the rule requires the CSU to be placed on a hard, level, flat surface in the orientation most likely to cause a tip over. If the CSU has levelling devices, the devices are adjusted to the lowest level and then according to the manufacturer's instructions. The CSU is then tipped forward using a test block that is at least 0.43 inches thick to simulate carpet. All doors, drawers, and pull-out shelves that are not locked by an interlock that withstood interlock testing (see below) are then open to the least stable configuration and fill weights are placed in drawers and pull-out shelves, depending on the proportion of drawers and pull-out shelves that are open. Because the test configuration differs, depending on the presence and effectiveness of interlocks, the rule requires testing the interlocks before conducting the stability testing.

The interlock testing consists of placing the CSU on a hard, level, flat surface; levelling to the lowest level and then according to manufacturer instructions; securing the unit to prevent sliding or tip over; and opening the number of doors, drawers, or pull-out shelves necessary to engage the interlock. A 30-pound horizontal pull force is then applied at the center of the pull area on each interlocked door, drawer, or pull-out shelf, one at a time, over a period of 5 seconds, and held for at least 10 seconds. This pull test is repeated until all possible combinations of doors, drawers, and pull-out shelves have been tested. If any interlocked door, drawer, or pull-out shelf opens without retracting the originally open element, or the interlock is damaged or does not function as intended during this testing, then the interlock is to be disabled or bypassed for the stability testing. In general, when interlocks are provided, they must be pre-installed and automatically engage as part of normal use.

For the stability testing, all doors, drawers, and pull-out shelves that are not locked by an interlock meeting the requirements of the interlock test are open to the maximum extension (as defined in the standard), in the configuration most likely to cause a tip over (typically the largest drawers in the highest position open). If 50 percent or more of the drawers and pull-out shelves by functional volume are open, a fill weight is placed in the center of each drawer or pull-out shelf, including those that remain closed. The fill weight of 8.5 pounds per cubic foot times the functional volume (cubic feet) is the minimum permitted in open drawers and pull-out shelves, and the maximum permitted in closed elements. If less than 50 percent of the drawers and pull-out shelves by functional volume are open, no fill weight is placed in any drawers or pull-out shelves.

The rule provides two test methods for the tip-over test. Test Method 1 must be used for CSUs with drawers or pull-out shelves that extend at least 6 inches from the fulcrum. It involves applying weights to the face of one or more extended drawers or pull-out shelves to cause the unit to tip over. At that point, the tip-over moment of the unit is calculated by multiplying the tip-over force (as defined in the standard) by the horizontal distance from the center of force application to the fulcrum (as defined in the standard).

Test Method 2 must be used for any CSU for which Test Method 1 does not apply. It involves applying a horizontal force to the CSU orthogonal (*i.e.,* at a right angle) to the fulcrum to cause the

[92] See Tab Q of the NPR briefing package.

[93] For additional information about the stability requirements in the rule, including interlock testing and relevant definitions, see Tabs C and D of the NPR and final rule briefing packages.

unit to tip over. The tip-over moment is then calculated by multiplying the tip-over force by the vertical distance from the force application point to the fulcrum.

If a failed component prevents the completion of either test method, then to continue testing, the failed components must be repaired or replaced to their original specifications and, if necessary, be secured to prevent the components from failing, as long as the modifications do not increase the tip-over moment.

Once the tip-over moment for the CSU has been determined, that value must be greater than several comparison moments, as applicable, depending on the design of the CSU. The first comparison moment applies to CSUs with drawers or pull-out shelves and is 55.3 pounds times the drawer or pull-out shelf extension from the fulcrum distance (as defined in the standard, in feet), plus 26.6 pounds feet. The second comparison moment is for units with doors and is 51.2 pounds times the door extension from fulcrum distance (as defined in the standard, in feet), minus 12.8 pounds feet. The third comparison moment applies to all CSUs and is 17.2 pounds times the maximum handhold height (as defined in the standard, in feet). The greatest of these three comparison tip-over moments is considered the threshold moment, which the tested CSU's tip-over moment must exceed.

2. Basis for Final Rule Requirements

As described in this preamble and the NPR, there are several factors that are commonly involved in CSU tip-over incidents that contribute to the instability of CSUs, and a number of these factors often occur simultaneously. These include multiple open and filled drawers or pull-out shelves, carpeting, and forces generated by children's interactions with the CSU (such as climbing and opening/pulling on drawers). The rule includes requirements to simulate or account for all of these factors, in order to accurately assess the stability of CSUs during real-world use.

The stability testing in the rule simulates these factors simultaneously (*e.g.,* all drawers and pull-out shelves open and filled, on carpet, and accounting for child interaction forces). This is because incident data indicate that these factors commonly exist at the same time. For example, incidents include children climbing on open drawers, filled with clothing.

This section discusses the basis for the stability requirements in the final rule as well as the definitions of terms relevant to those requirements. Based on comments received in response to the NPR, the final rule includes revisions to the stability requirements and relevant definitions. Accordingly, this section also notes the provisions and relevant definitions that have been revised and discusses the comments and justifications for those revisions.

a. Definitions

This section discusses definitions that are relevant to stability testing that have been revised or added since the NPR to address comments submitted on the NPR and staff's assessments. Additional terms that are defined in the standard are addressed in the discussion of the stability requirements, below.

Door extension from fulcrum distance. The NPR specified that, for purposes of determining the doors extension from fulcrum distance, the door was to be ''in a position where the center of mass of the door is extended furthest from the front face of the unit'' and that this is ''typically 90 degrees.'' As the NPR explained, all doors and extendable elements should be open to the maximum extension and least stable configuration for stability testing because this is consistent with the purpose of the testing provisions to assess CSUs in their least stable likely configuration during real-world use. CPSC received comments regarding the same wording in the stability requirements on how to open doors for testing; the comments indicated that testers misunderstood the requirement to mean that they must measure the CM of the door to determine what position to which to open it. To clarify the meaning of this provision, the final rule states that the door is to be in the least stable configuration, which is typically 90 degrees. This accomplishes the same purpose as the NPR provision, but should eliminate confusion on how to configure the door, and make clear that testers need not measure the CM of the door.

Extendable elements. The proposed rule included numerous requirements for ''drawers and pull-out shelves'' and those terms are both defined in the rule. Several furniture-related voluntary standards use the term ''extendable element'' to refer to drawers and pull-out shelves. Because the term ''extendable element'' has the same meaning as ''drawers and pull-out shelves,'' but is more concise and does not diminish understanding, the final rule replaces references to ''drawers and pull-out shelves'' with ''extendable elements.'' This does not change any requirements in the rule; it merely uses more concise terminology.

Fulcrum. Intuitively, the fulcrum is located at the front of the bottom-most surface of the CSU. This is the point or line about which the CSU pivots when it tips forward. Therefore, the rule defines the fulcrum as the bottom point or line of the CSU touching the ground about which the CSU pivots when a tip-over force is applied. The fulcrum is typically located at the line connecting the front feet. However, for CSUs without feet, or for CSUs with an atypical pattern of feet, the fulcrum may be in a different location. Some CSUs may have multiple fulcrums that will vary, depending on the direction the tip-over force is applied. The fulcrum that results in the smallest tip-over moment should be determined.

The proposed rule defined ''fulcrum'' as ''the point or line at the base of the CSU about which the CSU pivots when a tip-over force is applied (typically the front feet).'' The fulcrum position is used in four measurements within the stability requirements. The first is the *extendable element extension from fulcrum distance* and the second is the *door extension from fulcrum distance.* Both of these distance measurements are used to determine the threshold moment, which establishes the minimum stability requirement of the CSU. The third and fourth measurements for which the fulcrum position is used are to determine the tip-over moment in Test Methods 1 and 2, which determine whether the CSU meets the minimum stability requirement.

CPSC received several comments relating to consistent measurements to the fulcrum, some of which sought clarity on when to determine the fulcrum position. It is possible that the fulcrum position may shift forward as a CSU tilts or pivots forward during the test. For most CSUs, this positional shift is small and does not have a significant effect on measurements to the fulcrum. However, some CSUs with may extend the fulcrum forward significantly while they are tilting forward. Depending on when certain measurements to the fulcrum are made, a forward-shifted fulcrum could either result in a smaller threshold moment (making the test easier to pass) or in a reduced moment arm for the tip-over moment (making the test more difficult to pass). For this reason, the fulcrum position should be determined before a tip-over force is applied since the fulcrum position is used as a reference point for several measurements. Based on comments, this was not clear in the NPR. Because a lack of clarity on this could lead to potential inconsistencies in measurement, the final rule revisions to make clear at

what point to determine the fulcrum and at what stage of the stability test measurements to the fulcrum are to be made. Specifically, the fulcrum definition is revised to indicate that the fulcrum position is determined while the CSU is on a hard, level, flat test surface with all doors and extendable elements closed. This establishes a clear reference that can be used at any stage of testing, making the stability test repeatable and reproducible. In addition, Test Method 1 and Test Method 2 specify that the appropriate time to record the distance measurement to the fulcrum is before the load is applied.

Another comment asked what distance to use for determining the fulcrum for CSUs with drawers that extend to different lengths. The NPR regulatory text depicted in a figure a CSU with drawers extended to different lengths, and showed the drawer extension from fulcrum distance measured to the drawer with the longest extension. However, the comment suggests that may not be sufficiently explicit. Lack of clarity on this issue could lead to potential inconsistencies in measurement. To address this, the final rule adds to the stability test configuration requirements that, after the CSU has been leveled, to record the maximum handhold height and the longest extendable element extension from fulcrum distance and door extension from fulcrum distance, as applicable. This establishes a clear time when the appropriate measurements are to be taken, and makes clear that the longest extendable element extension from fulcrum distance is to be used, without relying on figures to express the intended measurement.

Interlock. In the NPR, ''interlock'' was defined as ''a device that restricts simultaneous opening of drawers. An interlock may allow only one drawer to open at a time, or may allow more than one drawer, but fewer than all the drawers, to open simultaneously.'' The rule addresses interlocks because they are an option for increasing the stability of a CSU by decreasing the mass that can be opened from the case of the CSU simultaneously. As such, the rule includes testing provisions that accommodate these features and assess the strength of these features to ensure they function during real-world use conditions.

One manufacturer commented that the definition should account for the fact that interlocks are not limited to drawers and could also be used for pull-out shelves and doors. Doors and extendable elements all extend from the case of a CSU, shifting the CG of the unit outward, thereby making the CSU less stable. As such, interlocks, which restrict the extension of any such extended elements, could be used to improve CSU stability, and it is important that the rule allow for these features for design flexibility and ensure that interlocks are strong enough to function as intended under real-world use conditions. Although the NPR did not explicitly include pull-out shelves and doors in the requirements regarding interlocks, the NPR did indicate that the purpose of the interlock requirements in the NPR was to ensure interlocks function effectively and are accommodated in the test requirements and that other similar standards that address interlock integrity apply to all extendable elements. To address these comments and provide design flexibility, the final rule includes doors and pull-out shelves in the definition of an ''interlock'' and adds these features to provisions regarding interlocks.

A commenter also stated that the second sentence of the definition in the NPR was unnecessary as it did not add to the explanation. Because the first sentence of the definition provides sufficient explanation of the term and the requirements in the standard address interlocks that do not affect all extendable elements, the final rule removes the second sentence from the definition. Another commenter requested that the term ''device'' be changed to ''feature'' to provide as much design flexibility as possible. Although CPSC does not believe this wording change affects the scope of products that meet the definition of an ''interlock,'' the final rule uses ''feature'' to address this comment and ensure adequate clarity about the range of features that can serve as an interlock.

Maximum handhold height. In the NPR, ''maximum handhold height'' was defined as ''the highest position at which a child may grab hold of the CSU. This includes the top of the CSU. This height is limited to a maximum of 4.12 feet from the ground, while the CSU is on a flat and level surface.'' The definition also included a reference to a figure, which indicated a maximum height of 4.12 feet.

CPSC received a comment on the NPR, asking to add to this definition that it is ''a handhold feature at or below 4.12 ft,'' which suggests that the commenter misunderstood the definition in the NPR. The maximum handhold height includes the top of the CSU, but is limited to a maximum of 4.12 feet from the ground, which is based on the overhead reach height for a 95th percentile 3-year-old male.[94] Therefore, the maximum handhold height is either: (1) the height of the unit, if the unit is under 4.12 feet tall, or (2) 4.12 feet if the unit is that tall or taller. Because the comment suggests some potential for misunderstanding this, the final rule rewords the definition to make it clear that maximum handhold height means the highest position at which a child may grab hold of the CSU, measured while the CSU is on a hard, level, and flat test surface. For units shorter than 4.12 feet, this is the top of the CSU. For units 4.12 feet or taller, this is 4.12 feet. The final rule also includes a revised figure to illustrate this.

Test block. To replicate the effects of carpet during stability testing, the NPR proposed to require that the CSU be tilted forward 1.5 degrees during testing by raising the rear of the unit, placing the CSU on an inclined surface, or using other means. The NPR explained the testing used to determine that 1.5 degrees was the average angle that replicates the effect of carpet (see discussion of tip angle below).

CPSC received several comments recommending that a test block be used to achieve an appropriate angle, rather than specifying an angle, to make the test easier to conduct, aid repeatability and reproducibility, and because tilt angle could be affected by CSU attributes such as weight or depth. A manufacturer recommended that a 0.43-inch-thick test block would achieve the same purpose as the test angle in the NPR. To evaluate whether a test block could achieve a comparable tilt angle to that determined to simulate the effect of carpet, staff assessed the tilt angle that a 0.43-inch-thick test block would produce on most CSUs. Staff used the depth measurements for CSUs that were previously identified by staff[95] and calculated the angle that would be produced by raising the rear of the CSU 0.43 inches.[96] Staff determined that raising the rear of the CSU 0.43 inches tilted the CSU forward at an average angle of 1.5 degrees. The total range of angles produced by this test block was 1.2 degrees to 2.3 degrees, which is within the range of angles staff previously determined simulated the

[94] See Tab C of the NPR briefing package.

[95] See Tab N of the NPR briefing package.

[96] Staff reduced the measured depth by 1 inch for this calculation to account for feet placement. The depth of these units was measured at the top surface, and staff estimates the feet are inset at least 1 inch total from the top, on average. Because a test block would be placed under the feet of a CSU, staff adjusted the depth measurement accordingly.

effect of carpet, which was 0.8 degrees to 3.0 degrees.

Based on this assessment, using a 0.43 inch test block would provide an equivalent tilt angle to that in the NPR and adequately simulate the effect of carpet. In addition, using a test block would be easier than tilting the unit forward 1.5 degrees because it is easier for a test lab to create test blocks of a specific thickness than to create multiple blocks for individual units that will raise them 1.5 degrees, or to create a test platform that angles exactly 1.5 degrees. For these reasons, the final rule revises the tilt requirement and adds a definition of ''test block'' that states it is a block constructed of a rigid material such as steel or aluminum with the following dimensions: at least 0.43 inch thick, at least 1 inch deep, at least 1 inch wide. The final rule also includes a figure illustrating these dimensions. The final rule also updates the figures in the stability requirements to show the test block.

To ensure that a test block properly simulates the effect of carpet, the positioning of the block is important to achieve the correct angle. A block positioned too far toward the front of the CSU will increase the angle; a block positioned too far toward the rear of the CSU will decrease the angle. Therefore, to accommodate the requested change to a test block, the position of the block must be specified. For CSUs that have rear feet with glides or levelers smaller than the block, the entire glide or leveler should be over the block. Otherwise, the back of the block can be easily aligned with the back edge of the rear support. To ensure proper placement of the test block, the test configuration requirements are also updated in the final rule to state the unit must be tilted forward by placing the test block(s) under the unit's most rear floor support(s) such that either the entire floor support contact area is over the test block(s) or the back edge of the test block(s) is aligned with the back edge of the rear floor supports.

Tip over. The NPR defined ''tip over'' as ''the point at which a clothing storage unit pivots forward such that the rear feet or, if there are no feet, the edge of the CSU lifts at least ¼ inch from the floor and/or is supported by a non-support element.''

CPSC received several comments on this definition including that it does not allow for new designs that may intentionally use extension elements to stabilize the CSU; that one side of a CSU may lift from the floor before the other side; and that it is difficult to measure ¼ inch during testing. Commenters suggested using a definition like that in voluntary standards, such as an ''event at which a furniture unit pivots forward to the point at which the unit continues to fall'' or ''the condition where the unrestricted unit will not return to its normal upright position.''

As explained in the NPR, the definition of ''tip over'' in the NPR was based on staff's assessments and its utility for purposes of testing. However, based on these comments, staff reassessed the ¼ inch criteria and found that for most CSUs, the tip-over force, when measured with a force gauge, is determined immediately as the rear of the CSU lifts off the ground, before the rear of the CSU lifts at least ¼ inch off the ground, but for other CSUs, when measuring the tip-over force using weights, the rear may rise up to ¼ inch or more, but remain balanced. To address this and the comments, the final rule revises the definition of ''tip over'' to mean an event at which a clothing storage unit pivots forward to the point at which the CSU will continue to fall and/or be supported by a non-support element, which is similar to the commenters' suggested revisions.

This change allows the ''tip over'' assessment to be made without the CSU continuously falling forward and without simultaneous measurements of the tip-over force and the height that the rear of the CSU lifts. This also allows tip-over force measurements to be determined with weights, without potential confusion caused by the CSU balancing with the rear of the CSU raised. Additionally, the tip-over force measured with a force gauge is typically determined as the rear of the CSU lifts off the ground, before it reaches the ¼ inch height proposed in the NPR, and this change allows testers to make that determination, as appropriate. In addition, this revision allows for design flexibility, including features that prevent tip over but may permit the unit to lift ¼ inch from the floor. This change may, in some instances, result in tip-over forces being slightly higher when measured with weights, but is not expected to affect tip-over forces when measured with a force gauge and such slight increases are not expected to significantly affect stability test results.

b. Requirements for Interlocks

Because the fill level, as well as the stability of a CSU, depends on how many doors and extendable elements can open, the standard also includes a requirement that any interlock system must withstand a 30-pound horizontal pull force. Without such a requirement, consumers may disengage the interlock, or the interlock may break, resulting in more filled drawers being open during real-world use, and less stability, than assessed during stability testing.

General requirement. The NPR specified that for CSUs with interlocks, the interlocks must be pre-installed, automatically engage when the consumer installs the drawers in the unit, and must engage automatically as part of normal use. CPSC received a comment that misinterpreted this requirement to mean that CSUs are required to have interlocks. Although the NPR clearly indicated that interlocks are not required, the final rule clarifies this by adding to the interlock provisions that they only apply to CSUs with interlocks.

Configuration. For the interlock pull test, the NPR stated that the CSU was to be secured to prevent sliding or tip over. This is because the unit must remain stable to accurately assess the integrity of the interlock system. CPSC received a comment recommending that this provision specify that the CSU is to be secured without interfering with the interlock function. The purpose of this provision is to assess the strength of the interlock system and its ability to remain fully functional and effective during real-world use conditions. As such, the preliminary step of securing the unit from sliding or tip over clearly should not be done in a way that interferes with the effectiveness of the interlock. However, to ensure this is clear, the final rule adds that securing the CSU must not interfere with the interlock function.

The NPR also stated to adjust a levelling device to the lowest level and then in accordance with the manufacturer's instructions, for interlock testing. The purpose of this requirement is to ensure that the CSU is level for testing and is consistent with configuring the unit in accordance with manufacturer instructions. However, CPSC recognizes that CSUs may have more than one levelling device. To ensure this levelling is performed for all levelling devices on a CSU, which is consistent with the purpose in this NPR, this wording has been revised to include multiple levelling devices.

Interlock testing. Staff assessed the pull strength of children to determine an appropriate pull force requirement for the interlock test (and the comparison moment for pulling open a CSU), and found that the mean pulling strength of 2- to 5-year-old children on a convex knob (diameter 40 mm) at their elbow height is 59.65 Newton (13.4 pound-force) for males and 76.43 Newton (17.2 pound-force) for

females.[97] In the study from which staff drew these values, participants were asked to exert their maximum strength at all times, described as the highest force they could exert without causing injury. Participants were instructed to build up to their maximum strength in the first few seconds, and to maintain maximum strength for an additional few seconds. Participants were instructed to use their dominant hand. Based on this, children between 2 and 5 years old can achieve a mean pull force of 17.2 pounds. ANSI/BIFMA X6.5–22 includes a higher horizontal pull force of 30-pounds in its stability requirements. To ensure that the standard adequately assesses the integrity of interlock systems, the proposed rule includes a 30-pound horizontal pull force.

CPSC received a comment seeking clarity on where the force should be applied. The pull area is where a person would typically interact with or pull on the extendable element or door. Because the test requirements in the rule are intended to simulate real-world use conditions, the typical interaction area is a reasonable location to apply the force. A pull force test is typically applied where a pull (such as a knob, bar, handle, or other handhold) is already present; however, for long pulls or multiple pulls, it may not be clear where the pull force should be applied. Elements with multiple pulls or long continuous pulls should be tested an equal number of times as units with a single pull, rather than testing such units multiple times with each pull feature. The location where the pull force is applied may affect the outcome of the test, making it important that this force be applied consistently by testers. To address the comment, provide clarity, and ensure reliable test results, the final rule specifies that the pull force is to be applied ''at the center of the pull area.'' For elements with more than one pull area on a single extendable element or door (*e.g.,* 2 knobs on a single drawer), the center of the pull areas would typically mean at a knob, midway between two knobs, or at the center of a bar, handle, or other handhold and testers could determine how to apply the force to the center, such as by connecting them with rope or wire.

Performance criteria. The NPR specified that, if during interlock testing, a locked drawer opens or the interlock is damaged, then the interlock must be disabled or bypassed for stability testing. CPSC has become aware of interlocks which, rather than locking an extendable element in the case, instead allow the extendable element to extend while retracting already extended elements. These features restrict simultaneous extension of extendable elements, which addresses the hazard of multiple open drawers. The purpose of this requirement in the NPR was that, if the interlock does not function as intended or cannot withstand the real-world use conditions in the test, it should not be used during stability testing because it cannot be relied on to provide added stability for the CSU during real-world use. Consistent with this purpose and to provide design flexibility, the final rule has been modified to address the newly identified interlock type, such that it is also permissible as long as it withstands the required testing.

c. Stability Testing Configuration

Assembly. The test configuration provisions in the NPR required testers to assemble the unit according to the manufacturer's instructions. CPSC received a comment on the NPR seeking clarification of what this means for CSUs where the manufacturer's instructions direct consumers to attach the unit to the wall. As the NPR emphasized, the rule is intended to address the inherent stability of CSUs, without attachment to the wall, because staff's data and analysis (in Tab C of the NPR briefing package) demonstrated that consumers do not commonly attach CSUs to the wall and, even if they do, the attachment may not be effective or installed correctly. Consistent with this purpose and to clarify this requirement, the final rule adds that the unit must not be attached to the wall or other upright structure for testing. This will ensure CSUs are tested for inherent stability.

Orientation on test surface. The NPR proposed to require that testing occur on a hard, level, flat test surface, which the NPR defined as sufficiently hard to not bend or break under the weight of the CSU and testing loads, smooth and even, and with no more than 0.5 degrees of variation. CPSC received comments that the angle of the test surface is critical to the test and a test laboratory determined that the allowable tolerance on the test surface could result in a 4 percent overestimate or a 3 percent underestimate from the nominal test result. The final rule retains the definition of a ''hard, level, and flat test surface'' that was in the NPR, but adds to the stability test configuration requirements that, in placing the CSU on this surface, it must be placed in the orientation most likely to cause tip over. This is consistent with the aim stated in the NPR of generally testing CSUs in their least stable configurations to best ensure that stability testing assesses real-world worst-case conditions. This revision will address the possibility of overestimating stability by not allowing the CSU to be placed in a more stable orientation than level.

CPSC also received a comment that a CSU can slide during the stability test and affect test results. To address this, the final rule adds to the test configuration requirements that, if necessary, testers may secure the unit from sliding. Testers could prevent a unit from sliding using high friction surfaces or specially designed blocks, among other options. However, the addition also specifies that such securement must not prevent the CSU from tipping over. It is implicit in stability testing requirements that the unit should not be secured from tipping over during testing, as that would defeat the purpose of the testing. Thus, while securement may be appropriate to facilitate testing, it must not interfere with the accuracy of the stability assessment. Thus, the additional wording clarifies that testers may secure the unit from sliding, but remains consistent with the proposed configuration and the purpose of stability testing by making clear that such securement must not prevent the CSU from tipping over.

Leveling. Like for interlock testing, the NPR stated to adjust a levelling device to the lowest level and then in accordance with the manufacturer's instructions, for stability testing. As explained above, the purpose of this requirement is to ensure that the CSU is level for testing and is consistent with configuring the unit in accordance with manufacturer instructions. However, CPSC recognizes that CSUs may have more than one levelling device. To ensure this levelling is performed for all levelling devices on a CSU, which is consistent with the purpose in this NPR, this wording has been revised to include multiple levelling devices for the stability testing configuration as well.

In addition, for stability testing after configuring the CSU according to manufacturer instructions, leveling it, and tilting it to simulate carpet, the NPR further stated that, if the CSU has a levelling device intended for a carpeted surface, to adjust the level in accordance with the manufacturer's instructions for a carpeted surface. CPSC received several comments that allowing levelling devices to be adjusted for a carpeted surface would allow CSUs to be tested in a more stable position, although consumers may not make these levelling adjustments at home. As the

[97] DTI (2000). Strength Data for Design Safety—Phase 1 (DTI/URN 00/1070). London: Department of Trade and Industry.

NPR explains, the purpose of the rule is to assess the stability of CSUs under real-world use conditions that contribute to instability. This includes testing CSUs on a surface that simulates the effect of carpeting, since carpet is shown to be associated with increased instability. This also includes accounting for real-world conditions, such as consumers not leveling for carpet. Therefore, consistent with the purpose of the NPR and in consideration of these comments, the final rule does not include the direction to adjust the level for a carpeted surface in the stability test.

Carpeting. As incident data indicates, of the fatal CPSRMS tip-over incidents involving children and only CSUs that reported the type of flooring the CSU was on, 81 percent involved carpeting. Of the incidents that provided photos, the carpet was typical wall-to-wall carpet, with most being cut pile, and a few being looped pile. Of the nonfatal CPSRMS tip-over incidents involving children and only CSUs that reported the type of flooring, 74 percent involved carpeting. Thus, for incidents where flooring type was reported, carpet was by far the most prevalent flooring type.

As discussed earlier, staff testing showed that CSUs with a variety of designs and stability levels were more stable on a hard flooring surface than they were on carpeting. Consistent with incident data, staff used wall-to-wall carpet for this testing and tested the CSU stability with various configurations of open and filled drawers. For 94 percent of the comparison weights (including multiple variations of open and filled drawers), the units were more stable on the hard surface than on carpet, with a mean difference in tip weight of 7.6 pounds.

Therefore, based on incident data and testing, CSUs are commonly on carpet during CSU tip-over incidents, and carpet increases the instability of the CSU. Accordingly, the rule includes a requirement that simulates the effect of carpet in order to accurately mimic real-world factors that contribute to CSU instability. To determine how to simulate the effect of carpet, section VII. Technical Analysis Supporting the Rule explains that staff compared the tip weights of CSUs on carpet with the tip weights for the same units when tilted forward to various degrees on a hard, level, flat surface. Staff found that the tip weight of CSUs on carpet corresponded with tilting the CSUs forward 0.8 to 3 degrees, depending on the CSU, with the mean tilt angle that corresponded to the CSU tip weights on carpet being 1.48 degrees. Therefore, a forward tilt of 1.5 degrees replicates the effect of carpet on CSU stability, and this was included in the CSU configuration requirements for the stability testing in the NPR.

However, as discussed above (see discussion of ''test block'' definition), comments on the NPR indicated that requiring a test block that created a comparable angle to that in the NPR and equivalently simulated the effect of carpet was preferable to specifying an angle because it would make the test easier to conduct, aid repeatability and reproducibility, and because tilt angle could be affected by CSU attributes such as weight or depth. In addition, using a test block would be easier than tilting the unit forward 1.5 degrees because it is easier for a test lab to create test blocks of a specific thickness than to create multiple blocks for individual units that will raise them 1.5 degrees, or to create a test platform that angles exactly 1.5 degrees. To address this, staff assessed what height test block would provide a comparable requirement to the 1.5 degrees proposed in the NPR and determined that a 0.43-inch-thick test block would provide an equivalent tilt angle to that in the NPR and adequately simulate the effect of carpet. Accordingly, the final rule replaces the test angle with a test block of specified dimensions and require specific placement of that block to ensure they achieve the correct angle.

Multiple open and filled extendable elements. As incident data indicates, opening extendable elements of a CSU was a common interaction in CSU tip overs involving children and only a CSU. It was the most common reported interaction (54 percent) in nonfatal CPSRMS incidents; it was the second most common reported interaction (8 percent) in nonfatal NEISS incidents; and it was the third most common reported interaction (8 percent) in fatal CPSRMS incidents. Children as young as 11 months were involved in incidents where the child was opening one or more extendable elements of the CSU, and the incidents commonly involved 2- and 3-year-olds. In numerous incidents, the children opened multiple or all of the extendable elements. The youngest child reported to have opened all extendable elements was 13 months old.

The incident analysis also indicates that, of the CSU tip overs involving children and only CSUs for which the reports indicated the contents of the CSU, 95 percent of fatal CPSRMS incidents involved partially filled or full extendable elements; and 90 percent of the nonfatal CPSRMS incidents involved partially filled or full extendable elements. Most items in the extendable elements were clothing.

As this preamble explains, opening doors or extendable elements (*i.e.,* drawers or pull-out shelves) shifts the CG towards the front of the CSU, and the closer the CG is to the front leg, the easier it is to tip forward if a force is applied to the extended element. Therefore, CSUs will tip more easily as more extendable elements are opened. The CG of a CSU will also change depending on the position and amount of clothing in each drawer or pull-out shelf. Closed extendable elements filled with clothing tend to stabilize a CSU, but as each filled extendable element is pulled out, the CG of the CSU will further shift towards the front. Staff's testing demonstrates this principle, finding that multiple open drawers decrease the stability of a CSU, and filled drawers further decrease stability when more than half of the drawers by volume are open, but increase stability when more than half of the drawers by volume are closed.

Taken together, this information indicates that children commonly open multiple filled drawers simultaneously during CSU tip-over incidents, and that doing so decreases the stability of the CSU if half or more of the drawers by volume are open. Accordingly, the rule includes multiple open and filled extendable elements as part of the unit configuration for stability testing, and varies whether extendable elements are filled depending on how many of the extendable elements can open, as determined by an interlock system.

As staff testing showed, when all CSU extendable elements are pulled out and filled, the unit is more unstable. However, when CSU extendable elements have interlocks or other means that prevent more than half of the extendable elements by volume from being pulled out simultaneously, the CSU tips more easily with all extendable elements empty. Accordingly, when an interlock or other means prevents more than half of the extendable elements by interior volume from being opened simultaneously, the rule requires that no fill weight be placed in the extendable elements.

The rule requires that extendable elements be opened to the maximum extension for both interlock testing and stability testing, and defines ''maximum extension.'' The purpose of these requirements is that all extendable elements are opened fully, or if there is an interlock, the worst-case extendable elements that can be opened at the same time are opened fully. Maximum extension for extendable elements is the furthest manufacturer recommended use position, as indicated by way of a stop; if there are multiple stops, they are open

to the stop that allows the furthest extension; if there is no stop, they are open to ⅔ of the shortest internal length of the extendable element.

Open doors. The stability testing provisions also require that all doors be opened. Incident data indicates that, although there are fewer incidents involving CSUs with doors than extendable elements, children are able to open doors and there are fatal and nonfatal incidents involving wardrobes and armoires, which include doors. Based on these incidents and children's capabilities and climbing behavior demonstrated in incidents, the rule also includes opening all doors to simulate the least stable configuration of these units. Children may put their body weight on open doors or on extendable elements behind doors, both of which would contribute to instability in the same way as open extendable elements.

The NPR specified that doors were to be open outward or downward to the position where the CM of the door is extended furthest from the front face of the unit, which is typically 90 degrees. As the NPR explained, all doors and extendable elements should be open to the maximum extension and least stable configuration for stability testing, as this is consistent with the purpose of these testing provisions to assess CSUs in their least stable likely configuration during real-world use. CPSC received comments requesting that the test provisions be simplified, and staff identified the door position requirement as a potential point of confusion that could be simplified. Staff considered that testers may misunderstand the requirement to mean that they must measure the CM of the door. To clarify and simplify the meaning of this requirement, the final rule states to open all hinged doors that open outward or downward to the least stable configuration, which is typically 90 degrees. This accomplishes the same purpose as the NPR provision, but should eliminate confusion on how to comply, and make clear that testers need not measure the CM of the door.

Fill density. As discussed in section VII. Technical Analysis Supporting the Rule, staff assessed the appropriate method for simulating CSU drawers that are partially filled or fully filled.[98] To do this, staff looked at the standard that ASTM considered (8.5 pounds per cubic foot) and the results of the Kids in Danger and Shane's Foundation study[99] (which found an average density of 8.9 pounds per cubic foot). To assess whether the 8.5 pounds per-cubic-foot measure reasonably represents the weight of clothing in a drawer, CPSC staff conducted testing with folded and unfolded children's clothing on drawers of different sizes. For all three drawer sizes, staff was able to fit 8.5 pounds per cubic foot of unfolded and folded clothing fill in the drawers. When the clothing was folded and unfolded, the clothing fully filled the drawers, but still allowed the drawer to close. The maximum unfolded clothing fill density was slightly higher than 8.5 pounds per cubic foot for all tested drawers; and the maximum unfolded clothing fill density ranged from 8.56 to 8.87 pounds per cubic foot, depending on the drawer. The maximum folded clothing fill density ranged from 9.40 to 10.16 pounds per cubic foot, depending on the drawer. Although staff achieved a clothing density as high as 10.16 pounds per cubic foot with folded clothing, consumers may be unlikely to fill a drawer to this level because it requires careful folding, and it is difficult to remove and replace individual pieces of clothing. On balance, CPSC considers 8.5 pounds per cubic foot of functional drawer volume a reasonable approximation of the weight of clothing in a fully filled drawer.

Because CSUs are reasonably likely to be used to store clothing, and incident data indicates that CSUs involved in tip-over incidents commonly include drawers filled with clothing, the rule requires 8.5 pounds per cubic foot as fill weight when more than half of the drawers by volume are open.

As discussed above, staff assessed whether the same fill weight is appropriate for pull-out shelves and found that pull-out shelves can hold the same volume of clothing as drawers and still remain fully functional and sufficiently contain the clothing content during moving of the shelf. Accordingly, the same fill weight applies to drawers and pull-out shelves.[100]

The NPR specified that fill weights must consist of a uniformly distributed mass that is 8.5 (pounds/cubic feet) times the functional volume (cubic feet). The NPR did not specify a tolerance for the fill weight density. CPSC received comments stating that achieving precisely 8.5 pounds per cubic feet of functional volume would depend on the accuracy and precision of measurement instruments, which may affect stability results, decreasing a CSU's stability rating by as much as 3 percent to 6 percent. Accordingly, commenters recommended providing a tolerance for the fill weight density. To address these comments, the final rule specifies that the 8.5 pounds per cubic feet density is the minimum for open extendable elements and a maximum for closed extendable elements. This is because, as explained in the NPR, fill weight in closed extendable elements contributes to stability and fill weight in open extendable elements contribute to instability. Because the goal of the stability testing is to simulate the least stable likely configuration during real-world use of a CSU, the tolerance allows for heavier loads in open drawers, but not in closed drawers.

The NPR also specified that fill weights were to be placed in the center of the extendable element, meaning the center of the storage space. CPSC received comments requesting clarification and more specificity on where to place the fill weights, indicating that the position could be a source of testing error. Based on these comments, the meaning of the requirement in the NPR may not have been sufficiently clear and the final rule specifies that the fill weights are to be placed in the center of the bottom surface of the extendable element. This should eliminate potential confusion about what space to use to determine "center." This is consistent with the direction in the NPR and the general approach of determining the volume of the storage space of an extendable element using the bottom surface of it.

CPSC received a comment recommending that the rule require that fill weights be secured to prevent sliding. Some provisions in the NPR included this, but some did not. The final rule specifies that fill weights are to be secured to prevent sliding, but only if necessary. It is not always necessary to secure fill weights to prevent sliding, though it can be helpful at times. Requiring the fill weights to be secured when it is not necessary could be more onerous than is necessary. Moreover, a sliding fill weight tends to slide forward and reduce the tip-over moment (and reduce the likelihood of passing the test), rather than increase the tip-over moment. As such, the final rule provides the flexibility to secure fill weights from sliding, when necessary.

The final rule also removes redundant requirements regarding fill weights. In the NPR, fill requirements were stated separately for units without an interlock and units with an interlock. However, the fill requirements for units without an interlock are the same as the requirements for units with interlocks where 50 percent or more extendable

[98] See Tab L of the NPR briefing package.

[99] Kids in Danger and Shane's Foundation (2016). Dresser Testing Protocol and Data. Data set provided to CPSC staff by Kids in Danger, January 29, 2021.

[100] See Tab C of the final rule briefing package.

elements are open. At this stage of the stability test, the interlock (if present) has already been tested and interlocks that do not meet the test criteria have been disabled or bypassed. As such, for the fill weights, it only matters whether 50 percent or more of the extendable elements by volume can be extended simultaneously. For this reason, the final rule streamlines these provisions to eliminate redundancy. Similarly, because the requirements for acceptable interlock systems are stated in the interlock testing provisions, it is not necessary to restate these in the stability testing section, and the final rule has been revised accordingly.

d. Stability Test Methods

Test Methods. The rule provides two test methods for applying force to a CSU to determine its tip-over moment. The first test method is required for CSUs with extendable elements that extend at least 6 inches from the fulcrum. The test involves applying weights to the face of an extended extendable element, causing the CSU to tip over. The second test is required for CSUs for which Test Method 1 does not apply and involves applying a horizontal force to the CSU orthogonal (*i.e.,* at a right angle) to the fulcrum, causing it to tip forward. Both test methods require the location of the fulcrum to be determined and the distance from the center of the force application the fulcrum to be measured. For both test methods, the tip-over moment of the unit is then calculated by multiplying the tip-over force by the distance from the force application to the fulcrum.

The NPR requirements were largely the same, but provided an option for which test method to use; it specified that Test Method 1 is more appropriate for CSUs with extendable elements, while Test Method 2 is appropriate for any CSU. In the NPR, Test Method 1 involved applying a vertical force to the face of the uppermost open extendable element to cause the unit to tip over and Test Method 2 involved applying a horizontal force to the back of the CSU orthogonal to the fulcrum to cause the unit to tip over. CPSC received numerous comments requesting revisions to these requirements.

One issue for which commenters sought clarity was when to measure the distance from the force application to the fulcrum. As discussed in the definition of a fulcrum, the fulcrum position should be determined before a tip-over force is applied because the fulcrum position is used as a reference point for several measurements. However, comments indicated that this was not clear in the NPR, and the wording in Test Methods 1 and 2 contributed to that confusion by stating to record the distance from the force application point to the fulcrum and the tip-over force at the same time. To address this confusion, the final rule specifies that the distance measurements to the fulcrum are to be taken before the force is applied in Test Method 1 and Test Method 2.

Comments also suggested that the force in Test Method 1 should be applied with weights. For Test Method 1, the NPR directed testers to gradually apply a vertical force to a specified location, leaving the option of how to apply that force open. However, several commenters stated that the test methods lacked repeatability and reproducibility, indicating that results may vary by tester and by how the force is applied (*e.g.,* with a force gauge by hand, with weights, by machine). Test reports provided with comments indicated that testing by hand yielded the most variable results; testing with weights yielded consistent results, but was limited to Test Method 1; and testing by machine yielded consistent results within a test method, but differed when comparing Test Method 1 to Test Method 2. CPSC reviewed the comments and the laboratory report and found that much of the subjectivity and variability in the results came from the testers applying the force by hand. To address these comments, ensure that stability testing results are reliable and consistent, and provide clarity for testers, the final rule specifies that Test Method 1 must be conducted using weights.

Because the final rule now specifies that weights are to be used, it also specifies where to place the weights and includes additional information about placement to address comments. In the NPR, the vertical force in Test Method 1 was applied to the face of the uppermost extended extendable element to cause the unit to tip over. However, commenters raised concerns that this would cause drawers to break during testing, implying that testers would not be able to complete the test as a result. The final rule states that weights are to be applied to the face of an extended extendable element, and are to be placed on a single drawer face or distributed evenly across multiple drawer faces or as adjacent as possible to the pull-out shelf face, all while not interfering with other extended extendable elements. Testers that choose to be precise can determine the exact CG of the applied weights. The top center of the drawer face is a reasonable approximation for linear drawer faces because the CG of the applied weights will be aligned with this location. For curved drawers, the center of the drawer face where the most rearward weight is to be placed is a conservative and reasonable approximation. These revisions allow the test weights to be distributed across multiple drawers, which reduces the risk of drawers breaking and preventing completion of testing.

The CG of the applied weight is equivalent to the force application point described in the NPR; while this change may slightly alter the measured tip-over force and the measured distance from the force application point to the fulcrum, it will not affect the tip-over moment determined by multiplying the required measurements. Additionally, the weights are not allowed to interfere with extended extendable elements so as to not alter the CG of the CSU. Therefore, this change will not affect the test results.

In the NPR, Test Method 2 required a horizontal force to be applied to the back of the unit orthogonal to the fulcrum to cause the unit to tip over. The NPR did not specify how to apply the force, allowing either a push or pull force for this purpose. Like Test Method 1, CPSC received comments stating that Test Method 2 lacked repeatability and reproducibility. Staff assessed the repeatability and reproducibility of Test Method 2 by reviewing the laboratory test report that was provided by two trade associations, and by comparing the test to other furniture stability tests that apply a horizontal force. The laboratory report indicated variability in both methods, with Test Method 1 being almost twice as variable as Test Method 2 when both tests were conducted by hand (3.5 to 7.0 percent, compared to 2.0 to 4.5 percent, respectively). Staff identified the force location and application method as potential contributors to variability. The final rule addresses the variability of Test Method 1 with a recommendation to require the test to be conducted with weights, as described above. To address the variability of Test Method 2, CPSC considered possible modifications to the force location and application method by looking at other furniture stability tests that apply a horizontal load.

Staff identified three applicable tests: ANSI/BIFMA X6.5–2022, section 4.9; ANSI/BIFMA X6.5–2022, section 4.10; and balloted revisions to ASTM F2057–19. Two of these tests differ from Test Method 2 in that they apply a horizontal pull force to the drawer, rather than to the back of the unit; the other test applies a push force to the back of the unit, consistent with the NPR, and to other locations. All three of the tests are

otherwise similar in methodology; the key remaining difference is in the types of storage units to which they apply, suggesting that different force application sites may be appropriate for different CSUs.

The NPR already allowed either a push force or a pull force, so long as it was applied to the back of the unit orthogonal to the fulcrum; based on these other test methods and the comments on the NPR, test laboratories may prefer to apply a force to a location other than the back of the unit, and the preference and appropriateness of a method may vary depending on the design of the unit. CPSC has no information that indicates that any of these tests, all conducted by hand, would produce more or less consistent results than the others. Therefore, consistent with the comments, the final rule removes the requirement that the force be applied to the back of the CSU because the appropriate force application location may differ depending on the unit design and this will allow testers the flexibility to determine the best location to apply a force when using Test Method 2 for each unit. The tester's preference may slightly reduce variability in results, but CPSC does not expect this revision to alter stability test results in general.

The final rule also addresses which Test Method to use. The NPR specified that Test Method 1 could be used for CSUs with extendable elements and that Test Method 2 could be used for any CSU. The NPR indicated that the test methods produced approximately equal tip-over moments, and therefore either test method could be used. As discussed, there were several comments stating that Test Method 1 and Test Method 2 yield different results, primarily due to differences in force application methods, but also partly due to differences between the two test methods. However, the differences between the two test methods appear to be small. A test laboratory reported only a 3 percent difference when comparing Test Method 1 conducted with weights to Test Method 2 conducted by hand. These small differences between test method and force application methods corroborates the conclusion in the NPR that the two tests (with the above revision to force application methods) yield comparable stability results. However, CPSC considered revisions that may reduce this potential variation further to ensure that CSUs yield consistent and reliable stability test results, which is important for ensuring they are adequately stable. In addition, many commenters, including consumer safety advocates, recommended requiring only one test method to simplify testing, but commenters differed in which test method they recommended.

The final rule retains two test methods for several reasons. For one, although Test Method 2 is similar in variability to other voluntary standards that use a horizontal load, Test Method 1 with weights is the most accurate and least variable method for assessing stability, based on commenters' data. For this reason, the Commission is not requiring only Test Method 2. However, the Commission is not requiring only Test Method 1 because Test Method 1 cannot be used for CSUs without extendable elements since it requires applying a vertical force to an extendable element, and it is not appropriate for units with short extendable elements because the high loads required to induce tip over increases the potential for drawers to break and placing heavy weights on the drawer front is difficult (see discussion below). Therefore, Test Method 2 is a necessary option for testing CSUs for which Test Method 1 is not appropriate. However, the final rule removes the overlap of these test methods by specifying that Test Method 2 is only to be used when Test Method 1 does not apply. This will eliminate the inconsistent results between test methods raised by commenters and simplify testing.

The final rule also now specifies that, for Test Method 1, it is for units with extendable elements that extend at least 6 inches from the fulcrum, whereas the NPR did not specify an extension distance criteria. Test Method 1 requires that weight be placed on the unit's extendable element face until the unit tips over; that weight is multiplied by the distance it is applied from the fulcrum to determine the tip-over moment. The tip-over moment is then compared to the threshold moment, evaluated in the performance requirement section, and later turned into the stability rating on the hang tag. The tip-over moment is required to be greater than the threshold moment, for a minimum stability rating of 1.0. Using Test Method 1, there is a minimum weight required on an extendable element for a unit to have a stability rating of 1.0. As explained in the NPR, applying force at a location further from the CG of the CSU increases instability more than applying the force closer to the CG of the CSU (*e.g.,* this is why testing is done with open drawers with weights placed on them). Therefore, the minimum weight to meet the performance requirement increases as the extendable element distance from the fulcrum decreases. When extendable elements have very short distances from the fulcrum, the load required on the extendable element becomes so high that Test Method 1 becomes impractical because the weight takes up more space on the drawer face or the pull-out shelf, and the likelihood of the extendable element breaking increases. For example, a drawer with the median extension of 9.75 inches requires at least 88 pounds to meet the climbing threshold moment, while a drawer with a 6-inch extension requires at least 109 pounds (almost a 25 percent increase) and the rate at which the weight rises increases rapidly as the extension distance decreases.

In general, for CSUs with long extendable element extensions, vertical forces (such as a child's body weight) play a dominant role in producing a tip-over moment. However, as extendable element extensions are shorted or removed, horizontal forces (such as a pull force, or the forces required for a child to hold his or her body in front of the CSU face) dominate the tip-over moment. Vertical forces have very little ability to produce a tip-over moment when extendable element extensions from the fulcrum are sufficiently short.[101] The NPR addressed this by allowing Test Method 2 for any CSU. However, because the final rule eliminates the overlap of the test methods, it is necessary to establish a lower limit on which extendable element extensions can be tested using Test Method 1, and apply Test Method 2 to only those units with extendable element extensions shorter than the limit (or with no extendable elements).

In the dataset of 180 CSU drawer extensions CPSC staff provided to UMTRI researchers, the median drawer extension was approximately 0.81 feet (9.75 inches), with an approximate range of 0.53 feet (6.38 inches) to 1.15 feet (13.75 inches).[102] Consistent with the minimum drawer extension from the fulcrum identified in this information, 6 inches is the threshold used in the final rule. The use of Test Method 1 for units with extendable elements that extend at least 6 inches from the fulcrum is consistent with the NPR because it still applies to CSUs with extendable elements.

[101] A detailed analysis of the combination of forces produced by climbing interactions and how these forces produce a tip-over moment is in Tab D of the NPR briefing package.

[102] Tab D of the NPR and final rule briefing package provide further information about drawer extensions, including Figure 24 in Tab D of the NPR briefing package and Figure 7 in Tab D of the final rule briefing package.

Repairs. The NPR included a note regarding repairs under Test Method 1, which specified that if a drawer breaks during the test due to the force, use Test Method 2 or secure or reinforce the drawer, as long as the modifications do not increase the tip-over moment. This was included in the NPR so that Test Method 1 could be completed even if the force applied to the drawer face resulted in the drawers breaking, but ensured that such modifications would not improve stability. This provision is appropriate because the test is intended to address the stability of the product, not the strength of the product. To accomplish this, it may be necessary for a tester to conduct repairs or modifications to complete stability testing if weaker components break during the test. Staff's testing experience indicates that most CSUs require more than 80 pounds on the drawer front to meet the minimum performance requirement but that some CSU drawer designs cannot hold much more than 60 pounds without requiring additional reinforcement.

CPSC received comments indicating that testing may result in drawers needing repairs and requesting guidance on how to address components that break during testing, so that testing may be completed. To address these comments, the final rule applies the repair provisions to both test methods (rather than just Test Method 1). This is because Test Method 2 is no longer an alternative to Test Method 1; the purpose is to allow for needed repairs to complete testing, regardless of which test; and although breakage is less likely during Test Method 2, it is possible. The final rule also expands the wording to apply to any component (not just drawers) and to allow for repair, replacement, or securement (not just securement or reinforcement). This is consistent with the purpose of this provision, which is to allow breakage of weaker components that interferes with completing testing to be corrected. Consistent with the NPR, the final rule retains the requirement that any such modifications must not increase the tip-over moment so as not to undermine the integrity of stability test results.

e. Performance Requirements

Pass-fail criteria. Once the tip-over moment has been determined using one of the methods above, the rule specifies that the tip-over moment of the CSU must be greater than several comparison tip-over moments that represent a child interacting with the CSU (the greatest of which is considered the threshold moment). These comparison tip-over moments determine whether the tip-over moment of the CSU is sufficient to withstand tipping over when child interactions identified in incidents and measured by UMTRI occur. Staff developed three pass-fail criteria based on three child interactions that can lead to CSU tip-over incidents. The first interaction is a child climbing (ascending) a CSU; the second is a child pulling on a handhold of a CSU (*e.g.,* while opening or attempting to open an extendable element); and the third is a child climbing (hanging) on the door of a CSU. The comparison tip-over moment for ascending the CSU likely is the most onerous requirement for most CSUs. However, some CSUs with particular geometric features, or without extendable elements, may have greater tip-over moments associated with the alternative criteria, based on children's interactions with the CSU.

Climbing. As incident data indicates, climbing was the most common reported interaction (76 percent) in fatal CPSRMS incidents; it was the most common reported interaction (77 percent) in nonfatal NEISS incidents; and it was the second most common reported interaction (26 percent) in nonfatal CPSRMS incidents. Fatal and nonfatal climbing incidents most often involved children 3 years old and younger.

CPSC staff's analyses of tip-over incidents in Tab M of the NPR briefing package outlined several scenarios where children climbing or interacting with the front of a CSU caused the CSU to tip over. In some of the scenarios, the force on the edge of an open drawer associated with tipping the CSU was greater than the static weight of a child standing on the edge of an open drawer of the CSU. The equivalent force consists of the child's weight, the dynamic force on the edge of the drawer due to climbing, and the effects of the child's CG extending beyond the edge of the drawer. Based on the UMTRI study, staff estimated the equivalent force to be more than 1.6 times the weight of the child for typical drawer extensions. Therefore, these tip-over incidents occurred because the forces and moments associated with children climbing on a CSU exceeded the static body weight of a child standing on the edge of an open drawer.

Staff determined that the ascend interaction from the UMTRI child climbing study was the most representative of a child climbing interaction seen in the incident data. As discussed in Tab D of the NPR briefing package, based on the UMTRI study of child climbing behaviors (Tab R of the NPR briefing package), ascent can be described by the following equation:

$$M = \{1.08\ [Fulcrum\ X\ (\text{ft})] + 0.52\ \text{ft}\} \times Weight\ of\ child\ (\text{lb})$$

In this equation, Fulcrum X is the horizontal distance from the front of the extended drawer to the fulcrum.

In the UMTRI study, other measured climbing interactions involving climbing into drawers and climbing onto the tabletop generated lower moments than ascent; thus, they are included within performance requirements based on ascent.

Because most climbing incidents involved children 3 years old and younger, the rule uses the 95th percentile weight of 3-year-old children (51.2 pounds) in this equation to generate the first comparison tip-over moment. The 95th percentile weight of 3-year-old boys is 51.2 pounds and the 95th percentile weight of 3-year-old girls is 42.5 pounds.[103] To address the heaviest of these children, the rule uses 51.2 pounds. Moreover, this is consistent with the weight of children involved in tip-over incidents, particularly for climbing incidents, when known, or when estimated by their age.

Based on these considerations, to pass the moment requirement for a child ascending a CSU, the tip-over moment (M_{tip}) of the CSU must meet the following criterion: M_{tip} (pound-feet) > 51.2 (1.08X + 0.52), where X is the horizontal distance (in feet) from the front of the extended drawer to the fulcrum.[104] Simplified, this is M_{tip} (pound-feet) > 55.3X + 26.6.

CPSC staff calculates that CSUs that meet a requirement based on the climbing force generated by a 51.2-pound child and that considers the effects of all doors and extendable elements open and extendable elements filled, plus the effect of carpet on stability, likely will protect 95 percent of 3-year-old children and virtually all younger children. This requirement would also protect 92 percent of 4-year-old children, 64.5 percent of 5-year-old children, 50 percent of 6-year-old children, 25 percent of 7-year-old children, and 7.1 percent of 8-year-old children. These are likely low estimates because they assume that all climbing incidents occurred with all open and filled drawers on CSUs located on a

[103] Fryar, C.D., Carroll, M.D., Gu, Q., Afful, J., Ogden, C.L. (2021). Anthropometric reference data for children and adults: United States, 2015–2018. National Center for Health Statistics. Vital Health Stat 3(46). Three years of age covers children who are at least 36 months old and under 48 months old.

[104] For a CSU without drawers, X is measured from the fulcrum to the front edge of the farthest extended element, excluding doors. If the CSU has no extension elements (other than doors), X is measured from the fulcrum to the front of the CSU.

carpeted surface, which is a worst-case stability condition.

Pulling handholds. As incident data indicates, opening drawers was the most common reported interaction (54 percent) in nonfatal CPSRMS incidents; it was the second most common reported interaction (8 percent) in nonfatal NEISS incidents; and it was the third most common reported interaction (8 percent) in fatal CPSRMS incidents. Additional incidents involved other interactions (*e.g.,* pushing down on an open drawer, putting items in or taking items out of a drawer) that indicate the child opened the drawer as well. For the NPR data set, looking at both fatal and nonfatal CPSRMS tip overs involving children and only CSUs, where the interaction involved opening drawers, about 53 percent involved children opening one drawer, 10 percent involved opening two drawers, almost 17 percent involved opening ''multiple'' drawers, and additional incidents reported children opening ''all'' drawers or a specific number of drawers that may have represented all of the drawers on the unit. The youngest child reported to have opened all drawers was 13 months old. Incidents involving opening drawers most commonly involved children 3 years old and younger.

As discussed earlier, it is possible for CSUs to tip over from the forces generated by open drawers and their contents, alone, without additional interaction forces. However, pulling on an extendable element or door to open it applies an increased force that contributes to instability. The moment generated with a horizontal force is higher as the location of the force application gets farther from the floor. Therefore, the rule includes as the second required comparison tip-over moment, the moment associated with a child pulling horizontally on the CSU at the top reachable extendable element or other handhold within the overhead reach dimension of a 95th percentile 3-year-old. This is because children 3 years old and younger are most commonly involved in these incidents.

The rule establishes a comparison moment based on a horizontal pull force applied to the top of an extended drawer in the top row of drawers, or to another potential handhold, that is less than or equal to 4.12 feet high (49.44 inches). The 4.12-foot height limit is based on the overhead reach height for a 95th percentile 3-year-old male; the rule uses the overhead reach height of 3-year-olds because most children involved in opening drawer incidents were 3 years old or younger.[105] Consistent with this overhead reach height, staff's analysis of 15 incidents shows that the highest pull location was 46 inches from the floor.[106]

The rule includes a 17.2 pound-force of horizontal pull force. This pull force is based on the mean pull strength of 2- to 5-year-old females exerted at elbow level on a convex knob. The mean pulling strength of 2- to 5-year-old females is 76.43 Newton (17.2 pound-force), and 59.65 Newton (13.4 pound-force) for males.[107] In the study that provided these pull strengths, participants were 2 to 5 years old, and the mean participant weight was 16.3 kilograms (36 pounds). Participants were asked to exert their maximum strength at all times, described as the highest force they could exert without causing injury, using their dominant hand. Participants were instructed to build up to their maximum strength in the first few seconds, and to maintain maximum strength for an additional few seconds.

The rule uses this 17.2 pound-force pull strength because, in the study, females had a higher mean strength than males, and these incidents most commonly involve children 3 years old and younger. The weight of children in the study (36 pounds) is over the 50th percentile weight of 3-year-old children. Therefore, the pull force test requirement will address drawer opening and pulling on CSU incidents for 50 percent of 3-year-olds, 95 percent of 2-year-olds, 100 percent of children under 2 years, 25 percent of 4-year-olds, 10 percent of 5-year-olds, and will not address these incidents for children 6 years old and older.

Based on this 17.2-pound horizontal force on a handhold at a height of up to 4.12 feet, the moment created by this interaction can be described with the equation M (pound-feet) = 17.2 (pounds) × Z (feet), where Z is the vertical distance (in feet) from the fulcrum to the highest handhold that is less than or equal to 4.12 feet high. Using this equation, the tip-over moment of the CSU in the second comparison value in the proposed rule is M_{tip} (pound-feet) > 17.2Z.

Climbing on doors. As discussed, incident data also indicates that fatal and nonfatal tip-over incidents involved wardrobes and armoires, which include doors. In most of these incidents, children were interacting with things inside the CSU, indicating that the doors were open. The ages of the children in these incidents ranged from 3 to 11 years, although opening doors is easily within the physical and cognitive abilities of younger children. Once CSU doors are open, children are capable of putting their body weight on the open doors (*i.e.,* open and climbing/hanging), provided the child has a sufficient hand hold, and incident data indicates that climbing in general is a common interaction. For this reason, the third comparison tip-over moment in the rule represents the force from a 95th percentile 3-year-old child hanging on an open door of the CSU.

UMTRI researchers found that the vertical forces associated with children hanging by the hands were close to the body weight of the child.[108] For this reason, the third comparison tip-over moment, representing a child hanging on an open door, uses the weight of a 95th percentile 3-year-old child, or 51.2 pounds. Staff considers the weight placement location for testing doors in ASTM F2057–19 (section 7.2) reasonable. Therefore, the proposed rule uses the test location from the voluntary standard, which is approximately half the width of the test fixture, or 3 inches, from the edge of the door, to obtain the equation describing a 95th percentile weight 3-year-old child hanging from an open door of a CSU: M (pound-feet) = 51.2 (pounds) × [Y—0.25 (feet)], where Y is the horizontal distance (in feet) from the fulcrum to the edge of the door in its most extended position. Based on this equation, the tip-over moment of a CSU with doors must meet the following criterion: M_{tip} (pound-feet) > 51.2(Y—0.25). Simplified, this is M_{tip} (pound-feet) > 51.2Y − 12.8 pound-feet.

Additional addressability. For the reasons described above, the rule focuses on the interactions of children climbing on and opening CSUs. Although other plausible climbing-associated behaviors (*e.g.,* yank, lean, bounce, one hand) included in the UMTRI study generated higher moments, there was no direct evidence of these interactions in the incident data. However, depending on the child's age, weight, and strength, some of these interactions could be addressable with the performance requirements. Other measured climbing interactions (*e.g.,*

[105] Pheasant, S. (1986). Bodyspace Anthropometry, Ergonomics & Design. London: Taylor & Francis.

[106] Staff assessed 15 child incidents in which the height of the force application could be calculated based on descriptions of the incidents. Force application heights ranged from less than one foot to almost four feet (46.5 inches), and children pulled on the lowest, highest, and drawers in between.

[107] DTI, Strength Data for Design Safety—Phase 1 (DTI/URN 00/1070). London: Department of Trade and Industry (2000).

[108] See Figure 48 in Tab R of the NPR briefing package.

hop up, hang, in drawer, and climbing onto the tabletop) generated lower moments than ascent, making these interactions addressable by the final rule.

In addition, although the rule focuses on addressing the CSU tip-over hazard to children, improving the stability of CSUs should also reduce incidents involving adults. Most incidents involving adults included opening drawers, getting items in and out of drawers, or leaning on the CSU. These interactions are likely to be less onerous or equally onerous to the forces addressed in the rule.

C. Marking and Labeling

1. Final Rule Requirements

The final rule includes requirements for a warning label. The warning label requirements address the size, content, symbols, and format of the label. The warning statements address the CSU tip-over hazard, and how to avoid it. They indicate that children have died from furniture tipping over, and direct consumers how to reduce the risk of tip overs, by securing furniture to the wall; not allowing children to stand, climb, or hang on units; not defeating interlock systems (if the unit has them); placing heavier items in lower drawers; and not putting a television on CSUs (when the manufacturer indicates they are not designed for that purpose). The format, font, font size, and color requirements incorporate by reference the provisions in ASTM F2057–19. The rule also includes requirements for the location of the warning label, addressing placement in drawers or doors, and the height of the label in the unit. The rule also requires the warning label to be legible and attached after it is tested using the methods specified in ASTM F2057–19.

The rule also includes requirements for an informational mark or label. It requires the mark or label to include the name and address of the manufacturer, distributor, or retailer; the model number; the month and year of manufacture; and state that the product complies with the proposed rule. There are size, content, format, location, and permanency requirements as well. The mark or label must be visible from the back of the unit when the unit is fully assembled and must be legible and attached after it is tested using the methods specified in ASTM F2057–19.

2. Basis for Final Rule Requirements

The final rule requires a warning label to inform consumers of the tip-over hazard, indicate steps consumers can take to reduce the risk (*e.g.,* use anti-tip devices, do not let children climb on the CSU, placing the heaviest items in the lowest drawer), and motivate consumers to take those steps.

a. Warning Label Text

For a warning label to be effective, consumers must read the message, comprehend the message, and decide whether the message is consistent with their beliefs and attitudes. In addition, consumers must be motivated enough to spend the effort to comply with the warning-directed safe behavior. Warnings should allow for customization of hazard avoidance statements based on unit design, to reflect incident data (*e.g.,* television use). Similarly, the warning text should be understandable, not contradict typical CSU use, and be expressed in a way that motivates consumers to comply.

The FMG CSU use study considered these factors, with focus group participants evaluating the ASTM F2057–19 warning label text, which is similar to the final rule. Based on the principles above and the focus group findings, the warning statements in the final rule are similar to those in the ASTM standard. The warning label includes warnings about the hazard, television use (where appropriate for the product), and placing heavier items in lower drawers, but does not include a statement to not open multiple drawers because a majority of focus group participants said that they and their children open multiple drawers simultaneously. In addition, the tip-restraint warning explicitly directs the consumer to secure the CSU to the wall and uses a term for tip restraint that consumers will likely understand. ''Tipover restraint,'' used in ASTM F2057–19, might confuse some consumers because restraints generally describe what they contain (*e.g.,* child restraint), rather than what they prevent. Terminology such as ''anti-tip device'' is clearer.

The warning text requirements in the final rule are the same as those proposed in the NPR, but the final rule makes explicit that the content of the warning label must not be modified or amended, except as specifically permitted in the rule. The NPR explained that the warning text in the proposed regulation must be used for the warning label, except for specified modifications regarding televisions and interlocks, which varied depending on the CSU. The final rule makes this explicit for several reasons. For one, CPSC received comments on the NPR recommending that the Commission allow manufacturers to determine what hazards to address on the label, and how. As explained in the discussion of comments, above, CPSC developed the warning label requirements, including the text, based on commonly used approaches in voluntary standards, ASTM's warning label requirements, consumer studies, research, human factors assessments, and staff's expertise. Such insights and expertise would be lost, and warnings likely would be less effective, if manufacturers were permitted to determine the warning content.

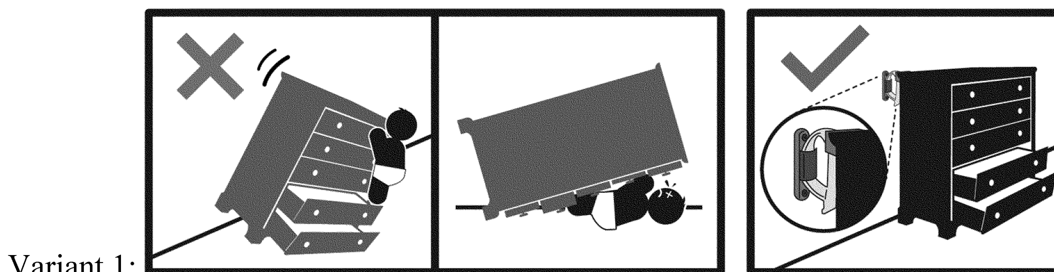
In addition, the primary U.S. voluntary consensus standard on product safety signs and labels, ANSI Z535.4, *Product Safety Signs and Labels,* states that word messages should be concise, readily understandable, and restricted to the most critical information. Requiring that warning label text precisely meet the requirements in the rule and not include additional content, as well as requiring that specific features (*i.e.,* interlocks and televisions) only be addressed when appropriate for the particular CSU, achieves this.

b. Warning Label Symbols

The final rule requires the ASTM F2057–19 ''no television'' symbol for CSUs that are not designed to hold a television, as proposed in the NPR. The final rule also requires a three-panel child climbing symbol on the warning label. The NPR presented three possible child climbing symbols that the Commission was considering, displayed in Figure 9, below.

Proposed in the NPR:

Variant 1:



Variant 2:

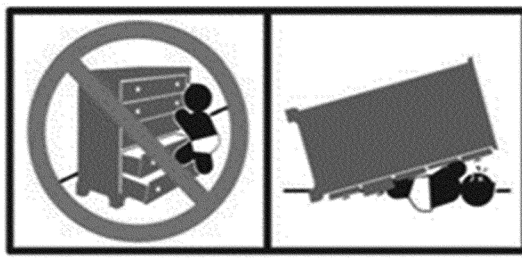


Figure 9: The three child climbing symbols presented in the NPR. Note: the symbols are reproduced in grayscale here, but the color version includes a red ''x'' and prohibition symbol, and a green check mark.

The NPR proposed to require the first symbol displayed in Figure 9, which is the symbol used in ASTM F2057–19, and raised as possible alternatives to that symbol, the two variants. As the NPR explained, CPSC was working with contractors to test the two variants using the same methodology as the previous comprehension study. Based on the subsequent findings of that study, discussed earlier in this preamble, surpassed the ASTM symbol and Variant 2 in comprehension testing.

CPSC also received comments on the three possible warning symbols, which expressed a preference for Variant 1. Based on comments and because Variant 1 showed better comprehension than the ASTM symbol or Variant 2, the final rule requires that Variant 1 be provided as part of the warning label. The rule allows the third panel of the symbol (*i.e.,* the one depicting attachment to the wall) to be modified to show the specific anti-tip device included with the CSU. This is based on a comment expressing concern with the specific type of anti-tip device depicted and on CPSC staff's assessment that consumers will better understand the function and set up of an anti-tip device provided with a CSU if the symbol depicts that specific type of device.

c. Warning Label Format

The rule requires the warning label to be at least 2 inches wide by 2 inches tall. This size is consistent with the required content and format for the label, and it ensures that the label is not too narrow or short. CPSC staff regularly uses ANSI Z535.4, *American National Standard for Product Safety Signs and Labels*—the primary U.S. voluntary consensus standard for the design, application, use, and placement of on-product warning labels—when developing or assessing the adequacy of warning labels. The rule uses the warning format in ASTM F2057–19, which is consistent with ANSI Z535.4. These requirements are the same as those in the proposed rule.

d. Warning Label Placement

For CSUs with drawers, the rule requires the warning label to be placed at the top and front of the interior side panel of a drawer in the uppermost drawer row or, if the top of the drawer in the uppermost drawer row is more than 56 inches from the floor, the label must be on the interior side panel of a drawer on the uppermost drawer row below 56 inches from the floor. The 56-inch criteria is based on the 5th percentile standing eye height of women in the United States, to ensure that the label is visible.[109] For CSUs with doors, the warning label must be on an interior side or back panel of the cabinet behind the door or on the interior door panel, and must not be obscured by a shelf or other interior element. For CSUs that are assembled by consumers, the warning label must be pre-attached to the panel and the assembly instructions must direct consumers to place that panel according to the placement requirements for drawers and doors that are specified in the rule. These requirements are the same as in the NPR.

[109] Nesteruk, H.E.J. (2017). Human Factors Analysis of Clothing Storage Unit Tipover Incidents and Hazard Communication. In Staff Briefing Package Advance Notice of Proposed Rulemaking: Clothing Storage Units. Available at: *https://www.cpsc.gov/s3fs-public/ANPR%20-%20Clothing%20Storage%20Unit%20Tip%20Overs%20-%20November%2015%202017.pdf.*

The placement requirements in the rule are consistent with the information CPSC obtained from the FMG study, regarding placement of warnings. In the FMG CSU use study,[110] researchers evaluated warning labels in in-home interviews and focus groups. They found that participants indicated that they had not paid attention to or noticed warning labels on the units in their children's rooms, even when the researchers noted they were present. Focus group participants identified the inside the top drawer of a unit as a location where a warning label could be seen easily and be more likely to grab their attention. Participants also expressed that they would remove labels that were too conspicuous (*e.g.,* on the outside or top of a unit).

e. Warning Label Permanency

To be effective, a warning label must remain present. Label permanency requirements are intended to prevent the warning label from being removed inadvertently and to provide resistance to purposeful removal by the consumer. The final rule requires that the warning label be legible and attached after it is tested using the methods in section 7.3 of ASTM F2057–19. CPSC staff evaluated the ASTM F2057–19 label permanency requirements[111] and concluded that they are sufficiently effective. This is the same as proposed in the NPR.

f. Identification Mark or Label

As indicated in the NPR, CPSC was able to identify the manufacturer and model of CSU associated with only 22 of the 89 fatal CPSRMS incidents involving children and CSUs without televisions and 230 of the 263 nonfatal CPSRMS incidents involving children and CSUs without televisions. In the case of recalls, consumers must be able to identify whether their CSUs are subject to the recall and are potentially unsafe. Accordingly, an identification label that provides the model, manufacturer information, date of manufacture, and a statement of compliance with the rule is important to facilitate identification and removal of potentially unsafe CSUs.

For this reason, the final rule requires an identification mark or label containing this information. The mark or label must be at least 2-inches wide by 1-inch tall, which is consistent with the required content and format, and ensures that the label is not too narrow or short. The rule requires text size that is consistent with ANSI Z535.4. The mark or label must be visible from the back of the unit when the unit is fully assembled because it is not necessary for the label to be visible to the consumer during normal use, but it should be visible to anyone inspecting the unit. In addition, the rule requires the mark or label remain legible and attached after it is tested with the methods in section 7.3 of ASTM F2057–19 to increase the likelihood that the label remains attached to the CSU and will be legible when needed.

These requirements are the same as the NPR except that the final rule refers to this as an ''identification mark or label,'' rather than just an ''identification label.'' This does not change the meaning of the requirements, but addresses a comment that expressed concern that the term ''label'' meant that other means of applying the information to the product (*e.g.,* printing, etching, engraving, or burning) were not permissible. The permanency testing requirements in section 7.3 of ASTM F2057–19 include requirements for paper labels, non-paper labels, and those applied directly to the surface of the product. As such, the final rule does not prevent firms from applying the informational label in various ways that can be tested and comply with the requirements in section 7.3 of ASTM F2057–19. However, to make this clear, the final rule includes the term ''mark,'' in addition to ''label,'' as ''mark'' more clearly conveys the availability of direct application to the surface of the product for meeting the requirement.

D. Hang Tags

1. Final Rule Requirements

As discussed above, section 27(e) of the CPSA authorizes the Commission to issue a rule to require manufacturers of consumer products to provide ''such performance and technical data related to performance and safety as may be required to carry out the purposes of [the CPSA].'' 15 U.S.C. 2076(e). The Commission may require manufacturers to provide this information to the Commission or, at the time of original purchase, to prospective purchasers and the first purchaser for purposes other than resale, as necessary to carry out the purposes of the CPSA. *Id.*

The final rule sets out requirements for providing performance and technical data related to performance and safety to consumers at the time of original purchase and to the first purchaser of the CSU (other than resale) in the form of a hang tag. The hang tag provides a stability rating, displayed on a scale of 1 to ''2 or more,'' that is based on the ratio of tip-over moment (as determined in the testing required in the rule) to the minimally allowed tip-over moment (provided in the rule). The rule includes size, content, icon, and format requirements for the hang tag. It also includes requirements that the hang tag be attached to the CSU and clearly visible to a person standing in front of the unit; that lost or damaged hang tags be replaced such that they are attached and provided, as required by the rule; and that the hang tags may be removed only by the first purchaser. In addition, the rule includes placement requirements that the hang tag appear on the product and the immediate container of the product in which the product is normally offered for sale at retail; that for RTA furniture, the hang tag must appear on the main panel of consumer-level packaging; that any units shipped directly to consumers contain the hang tag on the immediate container of the product; and that the hang tag information be provided on manufacturers' and importers' online sales interfaces from which the CSU may be purchased. For a detailed description of the requirements, see the regulatory text.

2. Basis for Final Rule Requirements

a. Purpose

Consistent with the requirements in section 27(e) of the CPSA, the hang tag requirements help carry out the purpose of the CPSA by ''assisting consumers in evaluating the comparative safety of consumer products.'' 15 U.S.C. 2051(b)(2). The rule requires CSUs to meet a minimum level of stability (*i.e.,* exceed a threshold tip-over moment). However, above that minimum level, CSUs may have varying levels of stability. A hang tag provided on the CSU offers consumers comparative information about the stability of products, based on the tip-testing protocol in the rule. By providing product information at the time of original purchase, the hang tag informs consumers who are evaluating the comparative safety of different CSUs and making buying decisions. This information may also improve consumer safety by incentivizing manufacturers to produce CSUs with higher levels of stability, to better compete in the market, thereby increasing the overall stability of CSUs on the market.

b. Background

CPSC based the formatting and information requirements in the hang tag on work CPSC has done previously to develop performance and technical

[110] See Tab Q of the NPR briefing package.

[111] See Tab F of the NPR briefing package.

data requirements,[112] as well as the work of other Federal agencies that require comparative safety information on products.[113] As part of CPSC's development of a similar requirement for recreational off-highway vehicles (ROVs), CPSC issued a contract for cognitive interviews and focus group evaluation to refine the proposed ROV hang tag. The contractor (EurekaFacts) developed recommendations regarding the content, format, size, style, and rating scale, based on consumer feedback during this work.[114]

Studies on the usefulness and comprehension of point-of-sale product information intended to help consumers evaluate products and make buying decisions support the effectiveness of hang tags, and linear scale graphs, in particular. For example, a study on the EnergyGuide label for appliances, which also uses a linear scale, indicated that the label increased consumer awareness of energy efficiency as an important purchasing criterion.[115]

c. Specific Elements of the Final Rule Requirements

Applicability. Section 27(e) of the CPSA authorizes the Commission to apply requirements for performance and technical information to manufacturers. Under the CPSA, a ''manufacturer'' is ''any person who manufactures or imports a consumer product.'' 15 U.S.C. 2052(a)(11). As such, these requirements apply to manufacturers and importers.

Content. The required hang tag includes a symbol on the front and back of the hang tag. Research has shown that pictorial symbols and icons make warnings more noticeable and easier to detect than warnings without them.[116] Additionally, including a graphic before introducing text may serve as a valuable reference for consumers, by maintaining attention and encouraging further reading.[117] In addition, presenting information both graphically and textually offers a better chance of comprehension by a wide range of users, such as non-English-literate users. Both symbols depict a CSU tipping over, and one of them shows a child climbing a CSU that is tipping over. These symbols identify the product and hazard.

The hang tag also includes a title—Stability Rating—to make clear what information is provided on the tag. To allow consumers to identify exactly what product the label describes, the hang tag requires the manufacturer's name and the model number of the unit.

The performance criteria in the stability provisions of the final rule require the tested moment of a CSU to be greater than a calculated threshold moment requirement. The tip rating number on the hang tag is the ratio of tested moment to threshold requirement. This provides a simple calculation that results in a number greater than 1,[118] which can be easily represented on a scale. Additionally, due to the nature of a ratio, a rating of 1.5 means the unit can withstand 1 and half times the threshold moment, a rating of 2 means the unit can withstand twice the threshold moment, and so forth. The graph starts with the minimally acceptable tip rating of 1 [119] and indicates that it is the minimum, so that consumers can evaluate the extent to which the rating of a particular CSU meets or exceeds the minimum permissible rating. The NPR proposed to start the scale at 0 and mark 1 on the scale as the minimally acceptable rating. However, based on comments, the final rule begins the scale at 1 because there is no need to show a lower rating since a CSU with a stability rating lower than 1 would not meet the stability requirements of the rule and would be impermissible.

The NPR proposed to require the maximum rating displayed on the scale to be 5. CPSC staff testing suggests that most CSUs on the market today would achieve ratings between 1 and 2, once modified to comply with the stability requirements in the rule. CPSC also received numerous comments on the NPR indicating that, even with modifications, CSUs currently on the market would not exceed a stability rating of 2. Commenters expressed concern that displaying a scale that goes higher than 2 would confuse consumers looking for higher rated CSUs and would suggest that a rating of 2 is not sufficiently stable. To address these concerns, the final rule modifies the maximum rating displayed on the scale to ''2 or more.'' This reflects currently achievable stability ratings and still allows for future designs that may exceed a rating of 2. If CSU designs evolve to commonly exceed a rating of 2, the Commission can adjust the maximum rating on the scale in a future rulemaking.

Because the stability rating scale ranges from 1 to ''2 or more,'' many stability ratings will fall between these whole numbers. As such, the final rule specifies that the stability rating must be displayed rounded to one decimal place (*e.g.* 1.5). Although, as the NPR noted, research suggests that consumers prefer whole numbers, keeping a scale of 1 to 2 and reflecting differences with decimals allows for better relative comparisons because, with this scale, a consumer can easily understand that a CSU with a rating of 1.5 is one and a half times more stable than a CSU with a rating of 1.0. To ensure this is clear, the final rule also includes a requirement that the front of the hang tag include such an explanatory statement (*e.g.,* ''This unit is 1.5 times more stable than the minimum required'').

Because the linear scale on the hang tag is a graphical representation of the stability information, the requirement also includes text to explain the importance of the graph, and the significance and meaning of the tip-over resistance value of the CSU so that consumers understand the data on the tag. The back of the hang tag includes a technical explanation of the graph and rating to explain how to interpret and use the graphic and number. In addition, based on comments provided on the NPR, the final rule adds an additional statement to the front of the hang tag (stating ''This unit is X times more stable than the minimum required,'' with the stability rating being inserted for X) to make a brief explanation of the technical information more quickly visible and understandable to consumers. The front of the hang tag also must state that ''Higher numbers represent more stable units'' to further explain the meaning of the rating. The front of the hang tag also includes statements to connect the technical information (*i.e.,* the stability

[112] *E.g.,* 16 CFR 1401.5, 1402.4, 1404.4, 1406.4, 1407.3, and 1420.3.

[113] *E.g.,* the Federal Trade Commission's EnergyGuide label for appliances in 16 CFR part 305, requiring information about capacity and estimated annual operating costs; and the National Highway Traffic Safety Administration's New Car Assessment Program star-rating for automobiles, providing comparative information on vehicle crashworthiness.

[114] EurekaFacts, LLC, *Evaluation of Recreational Off-Highway (ROV) Vehicle Hangtag: Cognitive Interview and Focus Group Testing Final Report* (Aug. 31, 2015), available at: *https://www.cpsc.gov/s3fs-public/pdfs/ROVHangtagEvaluationReport.pdf.*

[115] National Research Council. *Shopping for Safety: Providing Consumer Automotive Safety Information—Special Report 248.* Washington, DC: The National Academies Press (1996).

[116] Wogalter, M., Dejoy, D., Laughery, K. (1999). *Warnings and Risk Communication.* Philadelphia, PA: Taylor & Francis, Inc.

[117] Smith, T.P. (2003). *Developing consumer product instructions.* Washington, DC: U.S. Consumer Product Safety Commission.

[118] The equation is $Moment_{tested}/Moment_{threshold}$. If $Moment_{tested} = Moment_{threshold}$, then $Moment_{tested}/Moment_{threshold} = 1$. But the performance requirement is that $Moment_{tested}$ *exceed* $Moment_{threshold}$. Therefore, all units must have a ratio greater than 1, although it may be only a small fraction over 1.

[119] Although the minimally acceptable rating is just above 1, for simplicity, the hang tag marks the minimally acceptable rating as 1.

rating) with the safety concern, such as ''this is a guide to compare units' resistance to tipping over,'' ''always secure the unit to the wall,'' and ''tell children not to climb furniture.''

Size, color, and format. As proposed in the NPR, the final rule requires the physical hang tag to be at least 5 inches wide by 7 inches tall. This size requirement is consistent with the recommendations by EurekaFacts and similar requirements in other standards. The EurekaFacts report found that participants preferred hang tags to be large because they were more noticeable and easier to read. In addition, participants preferred a vertical orientation. Also as proposed in the NPR, the final rule requires the front of the hang tag to be yellow. This increases the likelihood that consumers will notice the tag, is consistent with EurekaFacts' findings regarding effective hang tags, and aligns with other similar Federal hang tag requirements (such as the EnergyGuide for household appliances). The rule also requires the hang tag to be formatted as shown in the figure provided, which provides consistency and ease of comparisons across CSU models.

Attachment and placement. Like the NPR, the final rule requires hang tags to be attached to the CSU at the time of original purchase in a place that is clearly visible to a person standing in front of the unit and that hang tags be replaced if lost or damaged to ensure they are available at the time of original purchase. In addition, the hang tag must be on the immediate container of the CSU in which it is normally offered for sale at retail; on the main panel of consumer-level packaging for RTA furniture; on the immediate container of the CSU for units shipped directly to consumers; and remain on the product/packaging/container until the time of original purchase.

The final rule also requires that manufacturers and importers of CSUs with an online sales interface from which consumers may purchase CSUs provide on the online sales interface where the CSUs are offered the same information required on physical hang tags, with some modifications and additions to reflect differences in online and physical displays. The final rule includes this additional online hang tag requirement because many consumers buy CSUs online and not just in physical stores. As such, the ''time of original purchase'' includes online sales and consumers buying online would only see the comparative safety information provided on the hang tag if it is provided in these online sales interfaces as well. Consistent with this, numerous commenters noted that online sales interfaces are also places consumers buy CSUs and the hang tag information is necessary in these venues to facilitate informed decision making. This requirement is also consistent with similar Federal requirements to provide performance and technical information, such as EnergyGuide labels for appliances, which apply to sales websites.[120]

In general, an online hang tag is required to meet the same content, form, and sequence requirements as physical hang tags. This ensures that consumers have the same information, in the same easily comparable form, whether shopping online or in stores, and facilitates comparisons between online and in-store products. The only difference in content between online and physical hang tags is that online hang tags need not contain the statements ''See back side of this tag for more information'' and ''This tag not to be removed except by consumer'' since these statements are not applicable to non-physical hang tags.

The online hang tag requirements also address placement and visibility on the website to ensure that, similarly to physical hang tags, online hang tags are noticeable and legible to consumers. Because of the large amount of content in the hang tag and the importance of this information being visible, for online sales interfaces, the stability rating must be displayed in a font size that is equivalent to that of the price and in proximity to the price of the product. This ensures that the stability rating will be visible to consumers when making their buying decisions and that the information will not be buried in less visible places on the interface. Also because of the large amount of content in the hang tag, online sales interfaces must provide the full hang tag through a link that is accessible through one user action (such as through a mouse click, mouse roll-over, or tactile screen expansion) on the displayed stability rating. This provides the same comparative information, in the same format, as physical hang tags, but also accommodates the need for other information on the website for the product. These requirements are consistent with those for online EnergyGuide labels as well as the European Union's online energy label requirements.[121]

Together, the physical and online hang tag requirements ensure that the hang tag information is available and visible to consumers at the time of original purchase, whether they are purchasing in a store or online, and whether the CSU is assembled and on display, or in packaging. These requirements are necessary for consumers to be able to use the information to make informed buying decisions. These requirements are consistent with similar standards and align with the limits provided in section 27(e) of the CPSA, which limit performance and technical data requirements manufacturers and the time of original purchase.

E. Prohibited Stockpiling

1. Final Rule Requirements

The final rule prohibits manufacturers and importers of CSUs from manufacturing or importing CSUs that do not comply with the requirements of the rule in any 1-month period between the date the rule is promulgated and the effective date of the rule at a rate that is greater than 105 percent of the rate at which they manufactured or imported CSUs during the base period for the manufacturer. The rule defines the base period as the calendar month with the median manufacturing or import volume within the last 13 months immediately preceding the month of promulgation of the final rule. This is the same limit as proposed in the NPR.

2. Basis for Final Rule Requirements

The purpose of the stockpiling limit is to prevent manufacturers and importers from stockpiling products that will be subject to a mandatory rule, in an attempt to circumvent the final rule. Because most firms will need to modify their CSUs to comply with the requirements in the rule, and the modifications may be costly, CPSC believes it is necessary to prevent stockpiling of noncompliant products. The stockpiling limit will allow manufacturers and importers sufficient flexibility to meet normal levels and fluctuations in demand for CSUs, while limiting their ability to stockpile large quantities of CSUs that do not comply with the rule for sale after the effective date. CPSC received several comments on the stockpiling limits in the NPR, most of which supported the provisions.

Based on comments largely supporting the stockpiling limits in the NPR and the need for such provisions to allow manufacturers and the industry to meet existing or foreseeable increases

[120] *See* Federal Trade Commission (2013) EnergyGuide Labeling: FAQs for Appliance Manufacturers, available at: *https://www.ftc.gov/business-guidance/resources/energyguide-labeling-faqs-appliance-manufacturers.*

[121] *See* European Commission, internet Labelling—Nested Display Arrows For Labels, available at: *https://ec.europa.eu/energy/eepf-labels/label-type/internet-labels.*

in the demand for CSUs, without allowing large quantities of CSUs that do not meet the standard to be stockpiled, the final rule retains the stockpiling provisions proposed in the NPR. This stockpiling provision reflects a balance between the competing goals of addressing the hazard but also considering the compliance cost and practicalities for businesses and potential impacts on consumers.

X. Final Regulatory Analysis [122]

The Commission is issuing this rule under sections 7 and 9 of the CPSA. The CPSA requires that the Commission publish a final regulatory analysis with the text of the final rule. 15 U.S.C. 2058(f)(2). This section provides the final regulatory analysis of the rule. For additional details, see Tab H of the NPR and final rule briefing packages. For significant comments received on the regulatory analysis provided in the NPR, see section VIII. Response to Comments.

A. Market Information

Retail prices of CSUs vary substantially, with the least-expensive units retailing for less than $100, while some more expensive units may retail for several thousand dollars. The less expensive units may be in use for only a few years, while the most expensive units may remain in use for decades, and possibly be passed from one generation to the next. CPSC staff used sales information provided by large furniture associations during the NPR comment period to estimate an average price per CSU of $338.50 in 2021 dollars, for this analysis.[123]

CPSC staff used multiple sources of information to estimate the annual revenues from the sale of CSUs within the scope of the final rule and estimates that there were $6.99 billion retail sales in 2021 of CSUs within the scope of the rule.[124] CPSC staff estimates that there were 20.64 million units sold in 2021 by dividing the $6.99 billion in sales revenue by the average price of $338.50. A large majority of these CSUs were likely imported, mainly from Asia. CPSC staff also developed an estimate of the number of models sold each year. To develop this estimate, staff used the assumption that, on average, 10,000 individual CSUs of each CSU model are sold. CPSC staff divided the number of CSUs sold in each year by 10,000 units of estimated sales per model, to generate a rough approximation that 2,064 new CSU models were sold in 2021.

CPSC staff estimated the number of CSU units in use using estimates of historic sales of CSUs, in combination with a statistical distribution of CSU failure rates (*i.e.,* when CSUs are discarded by consumers, based on the average lifecycle of 15 years). The estimate of CSUs in use was constructed iteratively, to reflect that CSUs in use may remain in use for varied periods beyond the 15-year period. Using this approach, CPSC staff estimates that there were 229.94 million CSUs in use in 2021. CPSC staff estimated the number of CSU models in use in a similar fashion, estimating that the number of CSU models in use in 2021 is 6,365.

B. Benefits Associated With the Rule

CPSC staff measured the benefits of the rule as the expected reduction in societal costs of deaths and injuries from implementation of the rule.

Death and injury estimates. In addition to the incident data discussed in this preamble from the CPSRMS and NEISS databases, staff used estimates generated by CPSC's Injury Cost Model (ICM).[125] The ICM uses data from NEISS's representative hospitals to generate national estimates of the total number of ED-treated injuries and hospital admissions. Beyond injuries initially treated in EDs and through hospital admissions, many product-related injuries are treated in other medical settings, such as physicians' offices, clinics, and ambulatory surgery centers. Some injuries also result in direct hospital admission, bypassing the hospital ED entirely. Therefore, the ICM also estimates the number of injuries treated outside of hospital EDs.

For this benefit-cost analysis, CPSC staff chose a 15-year timeframe (*i.e.,* 2007–2021) to reflect the average product life of a CSU and excluded data from 2022 because it is not complete. CPSC staff identified at least 60 deaths related to CSU tip-over incidents without televisions and involving children, for an average of 4 deaths per year. The ICM estimated that there were 44,652 injuries to children under the age of 18 years involving CSU tip-overs from 2007 through 2021, or an average of 2,977 per year that were treated in EDs or through hospital admissions. The ICM also projected an additional 58,351 CSU tip-over injuries to children treated in other settings during the same 15-year period, or an average of 3,890 per year. Combined, there were an estimated 103,003 injuries from 2007 through 2021, or an average of 6,867 per year to children from CSU tip overs.

From 2007 through 2021, there were 22 adult fatalities involving CSU tip-overs, an average of 1.5 a year. The ICM produced a national estimate of 23,695 adults treated in EDs and through hospital admissions because of injuries received when CSUs tipped over. The ICM also projected that there were 50,119 adult injuries treated in other medical settings, for a total of 73,814 medically attended injuries to adults involving CSU tip overs, or an average of 4,921 a year.

Societal costs of deaths and injuries. CPSC staff used the U.S. Environmental Protection Agency's value of statistical life (VSL) of $10.5 million [126] to estimate the societal costs of CSU-related deaths. Using this VSL, the societal cost of annual child fatalities (involving only CSUs) is $42 million. The societal cost of the adult fatalities is $15.4 million a year. The aggregated societal cost components for injuries provided by the ICM include medical costs, work losses, and the intangible costs associated with pain and suffering. The estimated injury costs for children are $16,085 per injury treated in a physician's office, $36,206 for injuries treated and released from a hospital ED, and $465,992 for hospital admitted injuries (average costs of injuries admitted to the hospital after an assessment at the ED, and those admitted to the hospital bypassing the ED). The overall average cost of injuries to adults is slightly lower than the average cost of injuries to children: $30,859 vs. $35,003. The total cost of deaths and injuries to both children and adults totals $449.61 million per year.

Benefits associated with the rule. Staff estimates that 83.9 percent of nonfatal CSU tip-over incidents involving children are addressable with the final rule.[127] CPSC staff was not able to

[122] Further detail regarding the final regulatory analysis is available in Tab H of the final rule briefing package.

[123] Staff increased the average price per CSU from the value used in the NPR to reflect information provided by large furniture associations during the comment period.

[124] This estimate is higher than the 2018 estimate used in NPR of $5.15 billion. Sales data were updated to 2021 in order to reassess the number of CSUs in light of updated market prices provided during the NPR comment period.

[125] For additional information about the ICM, see Tab H of the final rule briefing package and CPSC's website at: *https://www.cpsc.gov/content/The-Consumer-Product-Safety-Commissions-Revised-Injury-Cost-Model-2018.*

[126] For additional information about VSL, see Tab H of the final rule briefing package.

[127] These figures are similar to the addressability estimates calculated for the NPR. Staff calculated the ratio of nonfatal addressable incidents by the total number of nonfatal incidents for each age, and took the average of those percentages to calculate the aggregate nonfatal addressability. See Tab C of the final rule briefing package for discussion of what incidents staff considered addressable. Staff assessed that the ratio of nonfatal addressable incidents can be considered a reasonable estimate of the ratio of fatal addressable incidents; and used it as such in the estimation of benefits.

estimate the exact portion of incidents involving adults that would be prevented. Instead, staff conservatively assumed that the final rule would prevent adult tip-over incidents at half the efficacy rate of child tip-over incidents, or 42 percent. Given these expected efficacy rates in reducing the number of fatal and nonfatal incidents, when all CSUs in use comply with the performance standards, the annual societal benefits from the final rule would be $307.17 million. This total is comprised of $41.71 million in reduced deaths and $265.46 million in reduced injuries, as shown in Table 3.

TABLE 3—SUMMARY OF EXPECTED ANNUAL BENEFITS

Description	Annual number of CSU incidents (no TV)	Annual societal costs ($M)	Expected efficacy of standard (%)	Expected reduction in incidents	Expected annual benefit ($M)
Fatalities	5.5	$57.40		4.0	$41.71
Children	4.0	42.00	83.9	3.4	35.25
Adults	1.5	15.40	42.0	0.6	6.46
Injuries	11,788	392.21		7,828	265.46
Children	6,867	240.36	83.9	5,763	201.73
Adults	4,921	151.85	42.0	2,065	63.73
Total	11,793	449.61		7,832	307.17

C. Costs Associated With the Rule

The costs associated with the rule include costs to manufacturers and importers, as well as costs to consumers. Costs to manufacturers and importers include the cost to redesign and modify CSUs to meet the requirements of the standard, testing CSUs for conformance, as well as the cost of the labor and materials required to produce compliant CSUs.

Costs of redesign and testing. Staff estimates that current conformance with the performance requirements in the final rule is very low. To comply with the final rule, most furniture manufacturers, during the first year of implementation, must produce updated designs that achieve the performance requirements of the final rule, and conduct testing to verify conformance. Manufacturers will also need to add stability-rating hang tags on each CSU, as well as provide the required certificates of compliance, identification label, and warning labels.

Industry would incur the cost of redesigning CSUs during the first year of implementation of the rule as a one-time cost. Future models would use the redesigned features of the models created during the first year of implementation of the rule. Under the assumption that, on average, 10,000 CSUs are produced of every CSU model, CPSC staff estimates that there will be a total of 6,334 existing CSU models that need to be redesigned in the first year of the rule.

Information provided by a large furniture manufacturer/retailer association indicated that it would take an average of 5 months to redesign one thousand different CSU models. CPSC staff assumed that a team of 20 full-time professionals, earning an average hourly compensation of $66.37 [128], would work a total of 17,333 hours [129] to produce the updated designs of one thousand CSU models. This results in a cost per model of $1,150.41 for labor ($66.37 per hour × 17,333 hours ÷ 1,000 models). Therefore, manufacturers will redesign all existing models at a total cost of $7.29 million ($1,150.41 per model × 6,334 existing CSU models). To calculate cost of redesign cost per CSU, staff divided the total cost of redesign, $7.29 million, by the number of CSUs expected to be produced during that first year, estimated at 17.68 million. This equates to a redesign cost of $0.41 per CSU.

Model testing would recur annually, as all new models will have to be tested to verify compliance with the standard. The cost of CSU model testing is estimated at $711.46 [130] per model as of the end of 2021. Using the assumption of 10,000 CSUs per model, average cost per model translates into a cost per CSU of around $0.071. In the first year of rule implementation, there will likely be a larger number of models to be tested, which prompted CPSC staff to round the average cost per CSU to $0.10.[131]

Costs of labor and materials to increase CSU stability. CPSC staff has identified several CSU modifications that could increase the stability of the CSU. These are (1) adding interlock mechanisms to limit the number of drawers, pull-out shelves, or doors that can be opened at one time; (2) reducing the maximum drawer extensions; (3) extending the feet or front edge of the CSU forward; (4) various devices and methods to raise the front of the unit; and (5) adding additional weight to the back of the CSU. Manufacturers can use combinations of more than one of these methods, or any other methods they develop, to increase the stability of a CSU model.

The cost of an interlock mechanism includes the cost of the interlock itself; the cost of design, materials, and labor required to manufacture an interlock adapted to the CSU model and install the mechanism into the CSU. Staff estimates the total cost of implementing interlock mechanisms, including labor, per CSU is $2.93 for CSUs that require a single interlock and up to $14.64 for CSUs that require more complex CSU mechanisms with significant redesign costs.

The cost of extending the feet or the front edge of the CSU forward can be very low. In some cases, no additional parts would be required, and the only cost would be the time it takes for the manufacturer to make the change in manufacturing procedure. In these cases, the cost of shifting the front edge forward could be less than $1 per unit. In other cases, feet might need to be added or redesigned at costs of up to $5

[128] Total hourly compensation for private service-providing industry workers in professional and related occupations as of the fourth quarter of 2021 from the Bureau of Labor Statistics compensation statistics.

[129] This is the result of 40 hours a week per full-employee times 20 employees, times 5 months of 4.33 weeks each (52 weeks a year/12 months).

[130] A large furniture association provided an estimate of $700 per model testing. Staff assumed the estimate corresponded to September 2021, and updated it to December 2021 using the Consumer Price Index for All Urban Consumers.

[131] Additional competition for resources needed to perform a large number of tests within a short timeframe may create price pressures. To use a conservative estimate, staff rounded the per-unit test cost estimate to the next tenth.

per CSU unit,[132] making the midpoint $3.

The cost of tipping the unit back by raising its front or providing adjustable leveling feet is estimated at $2.80 per CSU. CPSC staff estimated this cost based on information provided by one manufacturer—according to whom, the cost of devices to raise the front of the CSU could be as high as $5 per CSU; and, observed retail prices for leveling devices of 30 cents each, or $0.60 for a minimum of two devices needed to stabilize a CSU.

The cost of adding weight to a unit to improve its stability includes the cost of the additional materials, the cost of shipping heavier CSUs, and the cost of additional packing redesign and materials. Based on observed retail prices per pound of medium-density fiberboard costs, the average cost per additional pound is $0.24.[133] Staff estimated the average cost of additional shipping per pound at $0.16 [134] for a total cost of $0.40 per additional pound of weight.

If the additional weight required is a few pounds, then companies only incur the cost of additional materials because minimal manufacturing changes would be needed, and it is unlikely additional packing materials would be required. When the additional weight required to make a CSU compliant is high, then additional packing materials would likely be required. CPSC staff applied a 5-pound threshold in applying additional cost for added weight. CSUs that added 5 pounds or more in additional weight incur an additional packing expense of $1.61 [135] per CSU.

The manufacturing costs of reducing the maximum drawer extensions [136] is unquantified, but likely low [137] because it does not necessarily require additional parts [138] or labor time.

Summary of costs. As the NPR explained, staff assessed several CSUs that were representative of models involved in incidents and identified combinations of modifications that could be used to bring them into compliance with the rule. Considering those exemplar CSUs, the weighted average cost of labor and materials of all proposed modifications for the five representative CSU models are between $9.70 and $17.13. CPSC staff added $0.51 for the cost of redesign and testing to the weighted average cost of labor and material to get the total production cost for a representative model. In total, incremental costs for the five representative models are between $10.21 and $17.64. These represent the incremental cost of the draft final rule. To calculate total annual costs, CPSC staff assumed equal share among the five representative models for the 17.68 million CSUs estimated to be produced in the first year of rule.[139] The total estimated annual cost of the final rule is $250.90 million.

Costs to consumers. The costs also include the costs and impacts on consumers. These include the loss of utility if certain desired characteristics or styles are no longer available, or if compliant CSUs are less convenient to use. The costs of designing, manufacturing, and distributing compliant CSUs would be initially incurred by the manufacturers and suppliers, but most of these costs would likely be passed on to the consumers via higher retail prices. The costs involving the loss of utility because CSUs with certain features or characteristics are no longer available would be borne directly by those consumers who desired CSUs with those characteristics or features.

D. Sensitivity Analysis

The benefits and costs of the draft final rule are estimates that depend upon a relatively high number of inputs and assumptions. The benefits, for instance, are dependent on the different sets of incidents considered in the analysis, the value of a statistical life, and the societal cost of the different type of injuries; the benefits per CSU are also influenced by the number of CSUs in use and the expected CSU lifecycle, among other considerations. The costs of the draft final rule are also dependent on inputs and assumptions. Costs are driven by the modifications required to make the CSU compliant, the number of CSUs and CSU models, as well as other market variables. Some of these inputs and assumptions have a significant impact on the outcome of the analysis, while others are less significant.

In conducting the analysis, staff sought to use inputs and assumptions that best reflected reality. However, during the NPR comment period multiple commenters suggested that the analysis include alternative values for inputs and assumptions of significant uncertainty, as well as discuss the impacts of the trends observed over time in the data. Accordingly, staff examined the impact of using alternative values for some of the key inputs and assumptions of the analysis. Public comments suggested some of the alternative inputs used. See Tab H of the final rule briefing package for the sensitivity analysis.

E. Alternatives to the Rule

CPSC considered several alternatives to the rule. These alternatives, their potential costs and benefits, and the reasons CPSC did not select them, are described in detail in section XI. Alternatives to the Rule, below, and Tab H of the final rule briefing package.

XI. Alternatives to the Rule

The Commission considered several alternatives to reduce the risk of injuries and death related to CSU tip overs. However, as discussed below, the Commission concludes that none of these alternatives would adequately reduce the risk of injury.

A. No Regulatory Action

One alternative to the proposed rule is to take no regulatory action and, instead, rely on voluntary recalls, compliance with the voluntary standard, after-market anti-tip devices, and education campaigns. The Commission has relied on these alternatives to address the CSU tip-over hazard to date.

Between January 1, 2000, and July 1, 2022, 43 consumer-level recalls occurred in response to CSU tip-over hazards. The recalled products were responsible for 341 tip-over incidents, including reports of 152 injuries and 12 fatalities, and affected approximately 21,530,000 CSUs. ASTM F2057 has included stability requirements for

[132] Cost based on observed retail prices for furniture feet available on the internet. These prices are likely much higher than the prices many manufacturers would be able to obtain for large scale volumes of production.

[133] Furniture manufacturers most likely would purchase materials at much less than retail prices; however, to produce conservative estimates, CPSC staff did not include cost improvements associated with large scales of production and/or sourcing of materials. The use of higher retail prices might also offset the higher cost associated with short-term supply-chain disruptions in commodities markets, as well as the potential use of more expensive materials, argued by a few furniture manufacturers and associations during the NPR comment period.

[134] See Tab H of the final rule briefing package for explanation of this.

[135] See Tab H of the final rule briefing package for explanation of this.

[136] Reducing the maximum drawer extensions will decrease the tip-over moment, as defined by the draft final rule, by reducing the effective amount of weight added to the front of the CSU fulcrum when opening a drawer.

[137] The largest cost is likely the unquantified potential impact on consumer utility from CSUs with drawers that cannot open as widely.

[138] Out-stop devices are discussed in the 2014 update of the ASTM F2057 as part of the evaluation of the operational sliding length: ''In the absence of stops, the operational length is length measured from the inside back of the drawer to the inside face of the drawer front in its fully closed position with measurements taken at the shortest drawer depth dimension minus 3.5 in.''

[139] Forecasted sales for 2023 lower than 2021 sales due to staff considering sales for 2021 an aberration from the normal trend due to the recovery of the COVID–19 pandemic. Forecasted sales for 2023 follows pre-pandemic historical trends.

unloaded and loaded CSUs since its inception in 2000 and, based on CPSC testing, there is a high rate of compliance with the standard. In addition, CPSC's Anchor It! campaign—an education campaign intended to inform consumers about the risk of CSU tip overs, provide safety tips for avoiding tip overs, and promote the use of tip restraints—has been in effect since 2015.

Given that this alternative primarily relies on existing CPSC actions, the primary costs staff estimates for this alternative are associated with tip restraints. However, this alternative is unlikely to provide additional benefits to adequately reduce the risk of CSU tip overs. For one, CPSC does not consider ASTM F2057 adequate to address the hazard because it does not account for several factors involved in tip-over incidents that contribute to instability, including multiple open and filled drawers, carpeting, and forces generated by children's interactions with the CSU. In addition, numerous tip-over incidents have involved CSUs that comply with the ASTM standard.

In addition, as Tab C of the NPR briefing package explains, several studies indicate that the rate of consumer anchoring of furniture, including CSUs, is low. A 2010 CPSC survey found that 9 percent of participants who responded to a question about anchoring furniture under their television indicated that they had; the same survey found that 10 percent of consumers who used a CSU to hold their television reported anchoring the CSU. A 2018 Consumer Reports study found that 27 percent of consumers overall, and 40 percent of consumers with children under 6 years old in the home, had anchored furniture; the same study found that 10 percent of those with a dresser, tall chest, or wardrobe had anchored it. CPSC's 2020 study on the Anchor It! campaign found that 55 percent of respondents (which included parents and caregivers of children 5 years old and younger) reported anchoring furniture. As such, on their own, these options have limited ability to further reduce the risk of injury and death associated with CSU tip overs. CPSC's use of this alternative to date illustrates this since, despite these efforts, CSU tip-overs results in injuries and death continue to occur at a high rate.

B. Require Performance and Technical Data

Another alternative is to adopt a standard that requires only performance and technical data, similar to or the same as the hang tag requirements in the rule, with no performance requirements for stability. This could consist of a test method to assess the stability of a CSU model, a calculation for determining a stability rating based on the test results, and a requirement that the rating be provided for each CSU on a hang tag. A stability rating would give consumers information on the stability of CSU models they are considering, to inform their buying decisions, and potentially give manufacturers an incentive to achieve a higher stability rating to increase their competitiveness or increase their appeal to consumers that desire more stable CSUs. The hang tag could also connect the stability rating to safety concerns, providing consumers with information about improving stability.

Because this alternative would not establish a minimum safety standard, it would not require manufacturers to discontinue or modify CSUs. Therefore, the only direct cost of this alternative would be the cost to manufacturers of testing their CSUs to establish their stability rating and labeling their CSUs in accordance with the required information. Any changes in the design of the CSUs would be the result of manufacturers responding to changes in consumer demand for particular models.

However, the Commission does not consider this alternative adequate, on its own, to reduce the risk of injury from CSU tip overs. Similar to tip restraints, this alternative relies on consumers, rather than making CSUs inherently stable. This assumes that consumers will consider the stability rating, and accurately assess their need for more stable CSUs. However, this is not a reliable approach to address this hazard, based on the low rates of anchoring, and the FMG focus group, which suggests that caregivers may underestimate the potential for a CSU to tip over, and overestimate their ability to prevent tip overs by watching children. In addition, this alternative would not address the risk to children outside their homes (where the stability of CSUs may not have been considered), or CSUs purchased before a child's birth. The long service life of CSUs and the unpredictability of visitors or family changes in that timespan, and these potential future risks might not be considered at the time of the original purchase.

C. Adopt a Performance Standard Addressing 60-Pound Children

Another alternative is to adopt a mandatory standard with the same requirements as the rule, but addressing 60-pound children, rather than 51.2-pound children. This alternative would be more stringent than the rule. About 74 percent of CSU tip-over injuries to children involve children 4 years old and younger,[140] and these are addressed by the proposed rule, because the 95th percentile weight for 4-year-old children is approximately 52 pounds. The rule would also address some of the injuries to children who are 5 and 6 years old, as well, because many of these children also weigh less than 51.2 pounds. Mandating a rule that would protect 60-pound children would increase the benefits associated with the rule by further reducing injuries and fatalities. Presumably, the cost of manufacturing furniture that complies with this more rigorous alternative would be somewhat higher than the costs of manufacturing CSUs that comply with the rule, using similar, but somewhat more extensive modifications. Because this alternative would provide only a limited increase in benefits, but a higher level of costs than the rule, the Commission did not select this alternative.

D. Mandate ASTM F2057 With a 60-Pound Test Weight

Another alternative would be to mandate a standard like ASTM F2057–19, but replace the 50-pound test weight with a 60-pound test weight. Sixty pounds approximately represents the 95th percentile weight of 5-year-old children, which is the age ASTM F2057–19 claims to address. This alternative was discussed in the ANPR.

This alternative would be less costly than the rule, because, based on CPSC testing, about 57 percent of CSUs on the market would already meet this requirement. The cost of modifying CSUs that do not comply is likely to be less than modifying them to comply with the rule, which is more stringent. By increasing the test weight, it is possible that this alternative would prevent some CSU tip overs. However, this alternative still would not account for the factors that occur during CSU tip-over incidents that contribute to instability, including multiple open and filled drawers, carpeting, and the horizontal and dynamic forces from children's interactions with the CSU. As this preamble and the NPR briefing package explain, a 60-pound test weight does not equate to protecting a 60-pound child. The UMTRI study demonstrates that children generate forces greater than their weight during certain interactions with a CSU, including interactions that are common in CSU tip-over incidents. Because this

[140] Based on NEISS estimates for 2015 through 2019.

alternative does not account for these factors, staff estimates that it may only protect children who weigh around 38 pounds or less, which is approximately the 75th percentile weight of 3-year-old children. For these reasons, the Commission does not believe this alternative would adequately reduce the CSU tip-over hazard, and did not select this alternative.

E. Wait for Potential Update to ASTM F2057

Another alternative would be to wait for ASTM to finalize a new version of ASTM F2057. At that point, the Commission could rely on the voluntary standard, in lieu of rulemaking; mandate compliance with the voluntary standard if the voluntary standard was likely to adequately reduce the risk of injury but there was not substantial compliance with it; or mandate the requirements that have been considered for the potential new ASTM standard.

This alternative may reduce costs associated with the rule because the provisions in the draft version of the ASTM standard are generally less stringent than those in this rule. As such, they would require less cost for labor and materials, and more CSUs would comply with the standard without modifications. ASTM balloted possible changes to the ASTM F2057 standard in May 2022 and July 2022. However, as of September 2022, ASTM has not finalized a new version of the standard and CPSC staff have submitted letters and votes indicating that the balloted revisions would not adequately address the hazards. As such, CPSC does not know whether ASTM will update the standard; what specific provisions the update would contain, if issued; does not consider the current draft form of the update adequate to address the hazard; and does not know what level of compliance there would be with an updated standard. Therefore, although this alternative may improve the stability of CSUs to some extent, continuing to wait for ASTM would delay the benefits of the rule, and staff does not consider the current draft revisions adequate to address the hazard, even if they were adopted.

F. Longer Effective Date

Another alternative would be to provide a longer effective date than the 180-day effective date in the rule. It is likely that hundreds of manufacturers, including importers, will have to modify potentially several thousand CSU models to comply with the rule, which will require understanding the requirements, redesigning the CSUs, and manufacturing compliant units. Delays in meeting the effective date could result in disruptions to the supply chain, or fewer choices being available to consumers, at least in the short term. A longer effective date could reduce the costs associated with the rule and mitigate potential disruption to the supply chain. However, delaying the effective date would delay the safety benefits of the rule as well. As such, the Commission did not select this alternative.

XII. Paperwork Reduction Act

This rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). The preamble to the proposed rule discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of CPSC's estimates. 87 FR 6246 (Feb. 3, 2022). The estimates included the time for preparing and providing required markings and labels as well as performance and technical information required on hang tags. These requirements fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

OMB has assigned control number 3041–0191 to this information collection. CPSC did not receive any comments regarding the information collection burden in the NPR through OMB. CPSC received one comment, through the docket for this rulemaking on *www.regulations.gov,* that stated that producing the hang tag in a foreign country and shipping it would be difficult to achieve during the 30-day effective date proposed in the NPR. However, in response to comments and other considerations, the final rule provides a 180-day effective date. CPSC also received comments and obtained additional information regarding economic considerations, which resulted in the final rule updating the number of estimated manufacturers and CSUs. The final rule also includes requirements for online hang tags, which were not specified in the NPR; however, these requirements are not expected to create additional economic burdens because they can be addressed by simply adding a soft copy of the physical design to the manufacturer website.

Accordingly, the estimated burden of this collection of information is modified, as follows:

Title. Safety Standard for Clothing Storage Units.

Summary of information collection. The consumer product safety standard prescribes the safety requirements, including labeling or marking and hang tag requirements, for CSUs. These requirements are intended to reduce or eliminate an unreasonable risk of death or injury to consumers from CSU tip overs.

Requirements for marking and labeling, in the form of warning labels or markings, and requirements to provide performance and technical data by labeling, in the form of a physical and online hang tag, will provide information to consumers. Warning labels or markings on CSUs will provide warnings to the consumer regarding product use. Hang tags will provide information to the consumer regarding the stability of the unit. These requirements fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

Section 27(e) of the CPSA authorizes the Commission to require, by rule, that manufacturers of consumer products provide to the Commission performance and technical data related to performance and safety as may be required to carry out the purposes of the CPSA, and to give notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of the product. 15 U.S.C. 2076(e). Section 2 of the CPSA provides that one purpose of the CPSA is to ''assist consumers in evaluating the comparative safety of consumer products.'' 15 U.S.C. 2051(b)(2).

Section 14 of the CPSA requires manufacturers, importers, or private labelers of a consumer product subject to a consumer product safety rule to certify, based on a test of each product or a reasonable testing program, that the product complies with all rules, bans or standards applicable to the product. In the case that a CSU could be considered to be a children's product, the certification must be based on testing by an accredited third-party conformity assessment body. The final rule for CSUs specifies the test procedure be used to determine whether a CSU complies with the requirements. For products that manufacturers certify, manufacturers would issue a general certificate of conformity (GCC).

Identification and labeling requirements will provide information to consumers and regulators needed to locate and recall noncomplying products. Identification and labeling requirements include content such as the name and address of the manufacturer.

Warning labels or markings will provide information to consumers on hazards and risks associated with product use. Warning label or marking requirements specified in the final rule include size, content, format, location, and permanency.

The standard requires that CSU manufacturers provide technical information for consumers on a hang tag at the time of original purchase. The information provided on the hang tag would allow consumers to make informed decisions on the comparative stability of CSUs when making a purchase and would provide a competitive incentive for manufactures to improve the stability of CSUs. Specifically, the manufacturer of a CSU would provide a physical hang tag with every CSU and on retail packaging visible at points of sale and when shipped to consumer directly that explains the stability of the unit. For online sales, the hang tag information must be provided on manufacturer websites from which consumers may purchase a CSU.[141] CSU hangtag requirements include:

- *Size:* Every hangtag shall be at least 5 inches wide by 7 inches tall.
- *Content:* Every CSU shall be offered for sale with a hang tag that states the stability rating for the CSU model.
- *Attachment:* Every hang tag shall be attached to the CSU and clearly visible. The hang tag shall be attached to the CSU and lost or damaged hang tags must be replaced. The hang tags may be removed only by the first purchaser.
- *Placement:* The hang tag shall appear on the product and immediate container of the product in which the product is normally offered for sale at retail. RTA furniture shall display the hang tag on the main panel of consumer-level packaging. Any units shipped directly to consumers shall contain the hang tag on the immediate container of the product. For manufacturer websites from which consumers can purchase a CSU, a link to the hang tag information must be provided in the same form as the physical hang tag and be available in close proximity to the price listed on the website.
- *Format:* The format of the hang tag is provided in the final rule and the hang tag must include the elements shown in the figure provided.

The requirements for the GCC are stated in section 14 of the CPSA. Among other requirements, each certificate must identify the manufacturer or private labeler issuing the certificate and any third-party conformity assessment body, on whose testing the certificate depends; the date and place of manufacture; the date and place where the product was tested; each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results. The certificates must be in English. The certificates must be furnished to each distributor or retailer of the product and to CPSC, if requested.

Respondents and frequency. Respondents include manufacturers and importers of CSUs, many of which are considered small private firms. More than 3 thousand manufacturers and close to 18 thousand importers will have to comply with the information collection requirements when the CSUs are manufactured or imported; this is addressed further in the discussion of estimated burden. CPSC estimates that more than 95 percent of respondents that will have to comply with the information collection requirements are small firms.

Estimated burden. CPSC has estimated the respondent burden in hours and the estimated labor costs to the respondent. The hourly burden for labeling includes designing the label and the hang tag that will be used for each model, physically attaching the label and hang tag to each CSU, and, where applicable, posting the hang tag online. Additionally, the burden for third-party testing is estimated for a subset of CSUs that are children's products.

Manufacturers will have to place a hang tag on each CSU sold. CPSC staff estimated that there were 20.64 million units sold in 2021. This would be a reasonable estimate of the number of responses per year.[142] CPSC estimates that there are about 6,365 different models of CSUs in use. The estimated number of models in use was also updated in the final rule.[143]

Estimate of Respondent Burden. The hourly reporting burden imposed on firms includes the time it will take them to design and update hang tags, and identification labeling, including warning labels, as well as the hourly burden of attaching them to all CSUs sold domestically.

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN

Burden type	Type of supplier	Total annual reponses	Length of response	Annual burden (hours)
Labeling, design and update	Manufacturer or Importer	2,122	60 min	2,122
Labeling, attachment	Manufacturer, Importer, or Retailer	20.64 million	.06 min	20,640
Total Labeling Burden				22,762
Third-party recordkeeping, certification	Manufacturers of Children's CSUs	21	3 hours	63
Total Hourly Burden				22,825

CPSC estimates that it could take an hour for a supplier to design the hang tags and labeling or marking per CSU model, and that the design could be used for a period of three years, or until the CSU is redesigned.[144] At 60 minutes per hang tag design, the hourly burden for designing a hang tag that will be used for three years is 20 minutes per

[141] The online hang tag is an additional requirement, not specified in the NPR. However, because hang tags must exactly match the figure provided in the regulation, the same design would be used for both physical and online hang tags. Therefore, the economic burden of the online hang tags is only the cost of adding a picture per model to the manufacturer website, and the virtual space required to post the hang tags. CPSC considers these costs to be small, or practically negligible for the purpose of estimating the burden of this information collection.

[142] The final rule updated the estimate of number of CSUs sold in the United States, based on new data from commenters and from additional staff analysis.

[143] The changes in the final rule to estimates of U.S. sales of CSUs and models in use reduced the estimated respondent burden by about half as compared to the ICR for the proposed rule.

[144] The lifespan of a CSU model was reduced from five years in the NPR to three years in the final rule. This update takes into consideration an accelerating trend in furniture design that demands new designs with a much higher frequency, in some cases even on a yearly basis.

year; or equivalently, it could be assumed that one third of all CSU models are redesigned each year (2,122 or 6,365 ÷ 3 years). Therefore, the annual burden would be 2,122 hours at a burden of one hour per CSU model.

CPSC estimates it could take 0.06 minutes (3.6 seconds or 1,000 hang tags per hour) for a supplier to attach the hang tag to the CSU, for each of the 20.64 million units sold in the United States annually. Attaching the hang tag to the CSU would amount to an hourly burden of 20,640 hours (0.06 min × 20,640,000 CSUs/60 mins per hour).

In addition, three types of third-party testing of children's products are required: certification testing, material change testing, and periodic testing. Requirements state that manufacturers conduct sufficient testing to ensure that they have a high degree of assurance that their children's products comply with all applicable children's product safety rules before such products are introduced into commerce. If a manufacturer conducts periodic testing, it is required to keep records that describe how the samples of periodic testing are selected. The hour burden of recordkeeping requirements will likely vary greatly from product to product, depending on such factors as the complexity of the product and the amount of testing that must be documented. Therefore, estimates of the hour burden of the recordkeeping requirements are somewhat speculative.

CPSC estimates that up to 1 percent of all CSUs models sold annually,[145] or 21 CSUs, are children's products and would be subject to third-party testing, for which 3 hours of recordkeeping and record maintenance will be required. Thus, the total hourly burden of the recordkeeping associated with certification is 63 hours (3 × 21).

Labor Cost of Respondent Burden. According to the U.S. Bureau of Labor Statistics (BLS), Employer Costs for Employee Compensation, the total compensation cost per hour worked for all private industry workers was $38.61 (March 2022, Table 4, *https://www.bls.gov/news.release/archives/ecec_06162022.pdf*). Based on this analysis, CPSC staff estimates that the labor cost of respondent burden would impose a cost to industry of approximately $881,273 annually (22,825 hours × $38.61 per hour = $881,273.25).

Respondent Costs Other Than Burden Hour Costs. In addition to the labor burden costs addressed above, the hang tag requirement imposes additional annualized costs. These costs include capital costs for cardstock used for each hang tag to be displayed and the wire or string used to attach the hang tag to the CSU. CPSC estimates the cost of the printed hang tag and wire for attaching the hang tag to the CSU will be about $0.10. Therefore, the total cost of materials to industry would be about $2.06 million per year ($0.10 × 20.64 million units).

Most domestic firms that are expected to manufacture or import CSUs subject to the final rule are small businesses. CPSC provides a variety of resources to help both new and experienced small businesses learn about safety requirements that apply to consumer products, including the CPSC Regulatory Robot, small business education videos, and the Small Business Ombudsman. Many of these resources can be accessed online at: *https://www.cpsc.gov/Business--Manufacturing/Small-Business-Resources.* Small firms can reach the Small Business Ombudsman by calling (888) 531–9070.

Cost to the Federal Government. The estimated annual cost of the information collection requirements to the Federal Government is approximately $4,304, which includes 60 staff hours to examine and evaluate the information as needed for Compliance activities. This is based on a GS–12, step 5 level salaried employee. The average hourly wage rate for a mid-level salaried GS–12 employee in the Washington, DC metropolitan area (effective as of January 2022) is $48.78 (GS–12, step 5). This represents 68.0 percent of total compensation (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2022, Table 2, percentage of wages and salaries for all civilian management, professional, and related employees: *https://www.bls.gov/news.release/archives/ecec_06162022.pdf*). Adding an additional 32.0 percent for benefits brings average annual compensation for a mid-level salaried GS–12 employee to $71.74 per hour. Assuming that approximately 60 hours will be required annually, this results in an annual cost of $4,304 ($71.74 per hour × 60 hours = $4,304.40).

XIII. Final Regulatory Flexibility Analysis[146]

Whenever an agency is required to publish a proposed rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires that the agency prepare an initial regulatory flexibility analysis (IRFA) for the NPR and a final regulatory flexibility analysis (FRFA) for the final rule. 5 U.S.C. 603, 604. These analyses must describe the impact that the rule would have on small businesses and other entities. The FRFA must contain:

(1) a statement of the need for and objectives of the rule;

(2) significant issues raised by commenters on the IRFA, the agency's assessment of those issues, and changes made to the result as a result of the comments;

(3) a response to comments filed by the Chief Counsel for Advocacy of the U.S. Small Business Administration (Office of Advocacy), and changes made as a result of those comments;

(4) a description and estimate of the number of small entities to which the rule will apply;

(5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(6) steps the agency has taken to minimize the significant economic impact on small entities, consistent with the objective of the applicable statute, including the factual, policy, and legal reasons for selecting the alternative in the final rule and why other alternatives were rejected.

A. Need for and Objectives of the Rule

The final rule would establish mandatory performance requirements for CSUs. The purpose of the final rule is to reduce the risks of death and serious injury from CSU tip overs. Incident data indicates that tip-overs commonly involve CSUs and children and result in serious injuries and death. Incidents and staff's testing also indicate that factors such as child interactions, open and filled drawers, and carpeting contribute to the instability of CSUs. The rule would require CSUs to be tested for stability, exceed minimum stability requirements, be marked or labeled with safety and identification information, and bear a hang tag providing performance and technical data about the stability of the CSU. Manufacturers of CSUs would be required to test CSUs for compliance

[145] CPSC updated its estimate of the proportion of CSU models that are children's products, broadly based on an online search of available CSU models for children.

[146] Further details about the final regulatory flexibility analysis are available in Tab I of the final rule briefing package. Additional information about costs associated with the rule are available in Tab H of the final rule briefing package. *See also* Tabs H and I of the NPR briefing package for additional details.

with the stability requirements and provide the required labeling and hang tag.

B. Comments on the IRFA

CPSC received comments on the substantive requirements in the proposed rule. CPSC also received comments on the costs and benefits calculations presented in the preliminary regulatory analysis and IRFA, the cost and benefit impacts of the scope and effective date of the proposed rule, and other possible economic impacts of the rule, including economic impacts on firms, the utility of the product for consumers, hazard costs associated with the product, and alternative actions that the Commission could take. A summary of the comments, CPSC staff's assessment of them, and changes to the final rule as a result of comments, are discussed in section VIII. Response to Comments of this preamble and Tab K of the final rule briefing package. To summarize, based on comments relevant to economic considerations, the final rule extends the effective date of the rule to 180 days and excludes from the scope of the rule lightweight CSUs if the combined weight of the CSU and the contents of filled drawers is less than 57 pounds. These changes should reduce the costs associated with compliance with the rule for businesses of all sizes. The change in the effective date will give businesses more time to manufacture or import CSUs that are compliant with the rule. The exclusion of lightweight units from the scope of the rule means that manufacturers of those units, which represent about 10 percent of U.S. annual sales of CSUs by number of units, will not need to test for compliance with this rule, or provide a certificate of compliance with this rule. Staff made other clarifying changes on scope and test methods that should make it more clear how companies of all sizes must comply with the rule, but that should not impact either costs or benefits.

C. Comments From the Office of Advocacy

The Office of Advocacy filed comments on the proposed rule. The Office of Advocacy commented: ''CPSC should consider reasonable alternatives to the proposed rule that would ease the burden on small businesses while still meeting the Commission's stated objectives'' and described specific issues and concerns raised by small businesses, including manufacturers, importers, and retailers. Alternatives to the proposed rule, and their expected impact on small businesses, were discussed in the IRFA and Preliminary Regulatory Analysis that accompanied the NPR and are also discussed in this preamble. The issues raised by the Office of Advocacy, and CPSC's response are as follows.

Comment: The Office of Advocacy stated that ''CPSC's Initial Regulatory Flexibility Act analysis underestimates the impact the proposed rule will have on small businesses.'' The Office of Advocacy also noted that almost all of the industry is small businesses, adding: ''One small importer estimated that additional packing materials and costs plus the increased shipping weight will drive up per unit costs by 44 percent. This does not include costs to test the CSUs or ship them to third parties for testing, nor does it include the cost increases this importer's suppliers will incur in the manufacturing process. Other small manufacturers and importers reported similar estimates of the impacts of the proposed rule, stating that the costs will increase approximately 30–40 percent. These small businesses report that an increase of this magnitude will put many of them out of business.'' The Office of Advocacy also expressed concern that the rule would impact small retailers, because the compliant CSUs would be so heavy the units would injure the delivery drivers.

Response: The economic analyses have been revised to reflect these and other commenters' input on costs of compliance. This rule does not require third-party testing, except for CSUs that are children's products, which are already subject to third-party testing requirements. In addition, the assumptions of higher costs by the Office of Advocacy and others were based on increased costs for shipping and packaging, assuming that compliance with the performance standard is achieved by adding weight to the CSU, which is not required by the final rule. The regulation is a performance standard, not a design standard; and as discussed in the Final Regulatory Analysis, there are multiple ways to comply with the final rule that may not involve adding weight to the unit. Suppliers can select the lowest-cost option to achieve compliance, which, in some cases, will likely be interlock hardware or foot extensions that add minimal weight to the unit, or one of those options in combination with added weight. Thus, there are many options to achieve compliance where shipping and packaging cost increases could be minimal, if any. Additionally, the Office of Advocacy did not provide data to demonstrate these costs of compliance would disproportionately affect small businesses.

The Office of Advocacy provided an estimate of the total cost to small businesses of 30 percent to 40 percent above current costs, but it did not provide any specific breakdown of increased costs to small manufacturers or importers from components, redesign, packaging, and shipping. This estimate is on the high end of the range of estimates provided by other commenters, primarily trade associations and large businesses, that did provide a breakout of increased costs for components, redesign, shipping, and packaging. Larger businesses and trade associations that provided comments generally assumed that wholesale prices would rise to cover costs of compliance, and they also assumed that retail prices would rise to cover all or nearly all of the increased cost to manufacturers and importers. It is unlikely, given that large suppliers apparently plan to raise prices to cover the cost of compliance, that small suppliers would not be able to pass any of the cost of regulatory compliance on to retail customers, as is implied by the Office of Advocacy's comments. That would only occur if demand were highly elastic (any price increase would cause demand to drop sharply), so suppliers are unable to pass any of the cost of compliance on to retail consumers. The Final Regulatory Analysis assumes that demand is somewhat elastic, so that both small and large suppliers will be able to cover some or all of the compliance costs of the rule by raising wholesale prices, which, in turn, will result in higher retail prices. The deadweight loss analysis portion of the Final Regulatory Analysis discusses that some manufacturers may exit the market because their increased marginal costs will exceed the price consumers are willing to pay for their product.

An industry trade association commenter noted that more than 90 percent of CSUs sold in the United States are imported. This means that very few U.S. manufacturers will directly bear the cost of redesign or testing, which, instead, will fall on foreign manufacturers. Small importers will be able to choose a compliant foreign supplier for their products, rather than incur the cost of redesign themselves, although the cost of compliance will likely be reflected in the wholesale cost. The economies of scale for larger manufacturers, as compared to small manufacturers, may not be an issue in a U.S. industry that is primarily importers, not manufacturers.

On specifics of shipping costs, the Final Regulatory Analysis includes an estimate of shipping furniture with added weight for an average of 16 cents per additional pound, which is highly unlikely to add 30 percent to the cost of a unit, given the average retail price of a CSU is estimated to be $338.50. Again, adding weight to the unit is not required by the final rule, and suppliers are free to choose a different compliance method that does not add significant weight to the unit, such as drawer interlocks or foot extensions. The Preliminary Regulatory Analysis that accompanied the proposed rule estimated the cost of added weight at 24 cents per pound, based on the retail price of medium density fiberboard (MDF); manufacturers would likely pay far less for MDF. The Preliminary Regulatory Analysis used the retail price as a conservative estimate of the cost of added weight, in part because the retail price included the price of shipping the MDF to the customer. CPSC did not receive any comments that the MDF price estimate in the Preliminary Regulatory Analysis that included the cost of shipping MDF to the consumer point of purchase was inaccurate.

On the issue of economies of scale for any specific technology for compliance, while it is possible that large manufacturers would have a lower cost per unit for the components, due to economies of scale, no small manufacturers provided specific price data on this issue. Again, an industry trade association noted that nearly all (more than 90 percent) of the CSUs sold in the United States are imported, so it will largely be foreign manufacturers who decide the best way to achieve compliance with the standard in the most cost-effective way.

Comment: The Office of Advocacy stated that ''CPSC should consider a later effective date for the rulemaking, and in the interim require small businesses to educate and assist consumers with existing product safety options.'' They also stated that ''small businesses will not have enough time to redesign their products to comply with the proposed requirements. Small businesses that import products will incur additional difficulties due to existing supply chain disruptions, as well as normal lead times required for some of these products.''

Response: Other commenters representing large businesses and trade associations had similar comments about the burden of the effective date. In response to these comments, the final rule effective date is 180 days after the publication of the rule, rather than 30 days after, as proposed in the NPR. The effective date applies to the date of manufacture, which addresses concerns from commenters regarding the status of items manufactured in foreign countries before the effective date of the rule, but still in transport when the rule becomes effective. Because the effective date applies to the date of manufacture, items manufactured in foreign countries before the effective date that do not comply with the rule could still legally be imported and sold.

The Office of Advocacy provided no data about why small businesses would find the effective date a greater burden than larger businesses. Given that most CSUs are imported, not manufactured domestically, it is unclear whether small importers would find the effective date more burdensome than large importers. In fact, the rule's effective date may temporarily disproportionally benefit U.S. manufacturers, including small manufacturers, who will have shorter shipping times for units manufactured in the United States than importers of any size.

Comment: The Office of Advocacy commented that ''CPSC should reconsider its two proposed testing methods, as they produce different results that may be confusing for consumers and small businesses alike.''

Response: Other commenters representing large businesses and trade associations had similar comments. The final rule has been revised so that only one of the test methods applies to any given CSU (this change is discussed in detail in section IX. Description of and Basis for the Rule).

Comment: The Office of Advocacy commented that ''CPSC should consider updating existing voluntary standards if it is appropriate to do so'' and that ''updating existing standards will ensure that industry has a voice in the process, which may help in minimizing the impacts to small businesses.''

Response: Other commenters representing large businesses and trade associations had similar comments favoring the alternative of voluntary standards. The Office of Advocacy did not provide data or any detailed information that would lead staff to conclude that adopting the voluntary standard would minimize the impacts on small businesses, or provide adequate levels of safety for consumers. As explained in this preamble, staff has reviewed existing standards that address CSU instability and concluded that they do not adequately reduce the risk of injury. The primary current voluntary standard, ASTM F2057–19, does not adequately reduce the risk of injury associated with CSU tip overs because it does not address the multiple factors demonstrated to contribute to instability and that exist in incidents (*i.e.,* the effect of carpet, multiple open and filled drawers, and dynamic forces generated by common interactions). In addition, staff found that many specific CSU models involved in injuries and fatalities during tip-over incidents would meet the current ASTM standard, thus demonstrating that the current standard is not adequate to address the hazard. CPSC staff worked closely with ASTM to update ASTM F2057–19, and ASTM has balloted revisions to the standard. However, staff considers several balloted items inadequate to reduce the risk of injury and therefore has submitted negative votes on several items. Moreover, ASTM has worked on updating its standard for several years and has not succeeded in doing so. Therefore, the Commission does not consider it appropriate to continue to wait for ASTM to update the standard, particularly since the updates under consideration do not adequately address the risk. Finally, a voluntary standard does not require compliance. Therefore, for a voluntary standard to be effective at reducing the hazard, it would need to be both effective and have a high level of compliance. Thus, even if ASTM were to develop an effective standard, the level of compliance would be relevant to whether it would be as effective as the mandatory draft final rule.

Comment: The Office of Advocacy commented that ''CPSC should clarify that once a product has been tested and certified, small importers and retailers may rely on that certification without incurring additional testing costs.''

Response: Parts 1109 and 1110 of CPSC's regulations include requirements for relying on component part testing or certification and for certificates of compliance. Once a product has been tested and certified, importers and retailers of any size may rely on the certificate of compliance as evidence that the product has met the testing and certification requirements. This applies to both children's products (for which 16 CFR part 1109 applies) and general use products (for which 16 CFR part 1110 applies). These CPSC regulations apply to many products and are not new or specific to CSUs.

D. Small Entities to Which the Rule Will Apply

The final rule would affect firms or individuals that manufacture or import CSUs that fall within the scope of the rule. Therefore, the rule would apply to small entities that manufacture or import CSUs. As discussed in the IRFA that accompanied the NPR,

manufacturers of CSUs are principally classified in the North American Industrial Classification (NAICS) category 337122 (non-upholstered wood household furniture manufacturing) but may also be categorized in NAICS codes 337121 (upholstered household furniture manufacturing), 337124 (metal household furniture manufacturing), or 337125 (household furniture (except wood and metal) manufacturing). According to data from the U.S. Census Bureau, in 2019, there were a total of 3,303 firms classified in these four furniture categories. Of these firms, 1,992 were primarily categorized in the non-upholstered wood furniture category. More than 99 percent of the firms primarily categorized as manufacturers of non-upholstered wood furniture would be considered small businesses, as were 97 percent of firms in the other furniture categories, according to the U.S. Small Business Administration's size standards.[147] These categories are broad and include manufacturers of other types of furniture, such as tables, chairs, bed frames, and sofas. It is also likely that not all the firms in these categories manufacture CSUs. Production methods and efficiencies vary among manufacturers; some make use of mass production techniques, and others manufacture their products one at a time, or on a custom-order basis.

The number of U.S. firms that are primarily classified as manufacturers of non-upholstered wood household furniture has declined over the last few decades, as retailers have turned to international sources of CSUs and other wood furniture. Additionally, firms that formerly produced CSUs domestically have shifted production to foreign plants.

Sixty-seven percent of the value of apparent consumption of non-upholstered wood furniture (net imports plus domestic production for the U.S. market) in 2020 was comprised of imported furniture, and the share held by imports has grown in recent years (up from 56 percent in 2017). Although CSUs are not reported as a separate category by the U.S. Department of Commerce, an even greater proportion of CSUs purchased by U.S. consumers could be imported. An industry trade association commented on the proposed rule, noting that more than 90 percent of CSUs sold in the United States are imported products. Firms that import CSUs would also be impacted by the final rule, because imported CSUs would have to comply with the standards; although, as noted above, importers may rely on a certificate of compliance from the foreign manufacturer.

The final rule would apply to products manufactured after the effective date of the rule. As such, the rule would not directly apply to retailers, unless they are also manufacturers or importers. However, because retailers may be indirectly affected by changes made by manufacturers or importers, staff also considered the effects of the rule on retailers. Under the NAICS classification system, importers are classified as either wholesalers or retailers. Furniture wholesalers are classified in NAICS category 423210 (Furniture Merchant Wholesalers). According to the Census Bureau data, in 2019, there were 4,824 firms involved in household furniture importation and distribution. A total of 4,609 of these wholesalers (or 96 percent) are classified as small businesses because they employ fewer than 100 employees (which is the SBA size standard for NAICS category 423210). Furniture retailers are classified in NAICS category 442110 (Furniture Stores). According to the Census Bureau, there were 13,142 furniture retailers in 2019. The SBA considers furniture retailers to be small businesses if their gross revenue is less than $20.5 million. Using these criteria, at least 97 percent of the furniture retailers are small (based on revenue data from the 2012 Economic Census of the United States). Wholesalers and retailers may obtain their products from domestic sources or import them from foreign manufacturers. Retailers would be indirectly impacted by this rule only to the extent that they would need to buy compliant units from manufacturers or importers. Retailers can increase the retail price of units to reflect any increase in their wholesale costs and to maintain their profit margin. However, given that demand is responsive to price (somewhat elastic), it is possible that retailers will see lower sales of CSUs. Given that most furniture stores sell a wide mix of furniture and accessory products, it is unlikely that any indirect impact of this rule on small retailers would be substantial (more than 1 percent of annual revenue).

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final rule establishes a mandatory standard that all CSUs must meet to be sold in the United States. The requirements in the rule are discussed in this preamble and include stability testing requirements, warning and identification label requirements, hang tag requirements, stockpiling limits, and certification requirements.

As discussed above, most of the entities to which the rule would apply are small businesses. No specialized professional skills or training are needed for the preparation of the record of compliance. CPSC's public website provides guidance on how to create a certificate of compliance, and an example one-page certificate.[148] CSU suppliers already would have had to provide such a general certificate of compliance for other applicable CPSC regulations, such as lead paint, so this rule should not require any new skills or training for certificates of compliance. The compliance testing requirements are described in detail this document and many suppliers are already performing similar tests to demonstrate compliance with the voluntary standard. Third-party testing is not required, except for CSUs that are also children's products. The text and graphics for the required labels and hang tags are provided in the rule, so a graphics designer will not be required to make the labels and hang tags. Because the Commission is issuing the hang tag requirement under section 27(e) of the CPSA, a regulatory analysis or regulatory flexibility analysis is not required. However, the cost of hang tags will be about 10 cents for materials and less than a minute of labor to attach to the unit. As noted earlier, the labeling or marking of the unit should have similarly minor costs for manufacturing.

F. Steps Taken To Minimize Significant Impacts on Small Entities

As discussed in section XI. Alternatives to the Rule, CPSC examined several alternatives to the rule, which could reduce the burden on firms, including small entities. Because most domestic firms that are expected to manufacture or import CSUs subject to the final rule are small businesses, an exemption for small manufacturers/importers is not a feasible alternative. As described in section XI. Alternatives to the Rule, the Commission concluded that the additional alternatives would not adequately reduce the risk of injury and death associated with CSU tip overs and did not select those alternatives. The Commission did, however, extend the effective date for the rule to 180 days, which was an alternative discussed in the NPR. This will likely reduce burdens on firms of all sizes.

[147] *Table of Small Business Size Standards Matched to North American Industry Classification System Codes,* available at: *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[148] Available at: *https://www.cpsc.gov/Business--Manufacturing/Testing-Certification/General-Certificate-of-Conformity-GCC.*

XIV. Incorporation by Reference

This rule incorporates by reference ASTM F2057–19. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, in the preamble, an agency must summarize the incorporated material and discuss the ways in which the material is reasonably available to interested parties or how the agency worked to make the materials reasonably available. 1 CFR 51.5(a). In accordance with the OFR requirements, section V. Relevant Existing Standards, subsection *A. ASTM F2057–19* summarizes the standard. In this rule, the Commission requires compliance with specific provisions of ASTM F2057–19. Section IX. Description of and Basis for the Rule of this preamble summarizes those provisions.

The standard is reasonably available to interested parties and interested parties can purchase a copy of ASTM F2057–19 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; telephone: 610–832–9585; *www.astm.org.* Once this rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

XIV. Testing, Certification, and Notice of Requirements

Section 14(a) of the CPSA includes requirements for certifying that children's products and non-children's products comply with applicable mandatory standards. 15 U.S.C. 2063(a). Section 14(a)(1) addresses required certifications for non-children's products, and sections 14(a)(2) and (a)(3) address certification requirements specific to children's products.

A ''children's product'' is a consumer product that is ''designed or intended primarily for children 12 years of age or younger.'' *Id.* 2052(a)(2). The following factors are relevant when determining whether a product is a children's product:

- manufacturer statements about the intended use of the product, including a label on the product if such statement is reasonable;
- whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
- whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and
- the Age Determination Guidelines issued by CPSC staff in September 2002, and any successor to such guidelines.

Id. ''For use'' by children 12 years and younger generally means that children will interact physically with the product based on reasonably foreseeable use. 16 CFR 1200.2(a)(2). Children's products may be decorated or embellished with a childish theme, be sized for children, or be marketed to appeal primarily to children. *Id.* § 1200.2(d)(1).

As discussed above, some CSUs are children's products and some are not. Therefore, this rule requires CSUs that are not children's products to meet the certification requirements under section 14(a)(1) of the CPSA and requires CSUs that are children's products to meet the certification requirements under section 14(a)(2) and (a)(3) of the CPSA. The Commission's requirements for certificates of compliance are codified at 16 CFR part 1110.

Non-children's products. Section 14(a)(1) of the CPSA requires every manufacturer (which includes importers[149]) of a non-children's product that is subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other law enforced by the Commission to certify that the product complies with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a)(1).

Children's products. Section 14(a)(2) of the CPSA requires the manufacturer or private labeler of a children's product that is subject to a children's product safety rule to certify that, based on a third-party conformity assessment body's testing, the product complies with the applicable children's product safety rule. *Id.* 2063(a)(2). Section 14(a) also requires the Commission to publish a notice of requirements (NOR) for a third-party conformity assessment body (*i.e.,* testing laboratory) to obtain accreditation to assess conformity with a children's product safety rule. *Id.* 2063(a)(3)(A). Because some CSUs are children's products, the rule is a children's product safety rule, as applied to those products.

The Commission published a final rule, codified at 16 CFR part 1112, entitled *Requirements Pertaining to Third Party Conformity Assessment Bodies,* which established requirements and criteria concerning testing laboratories. 78 FR 15836 (Mar. 12, 2013). Part 1112 includes procedures for CPSC to accept a testing laboratory's accreditation and lists the children's product safety rules for which CPSC has published NORs. When CPSC issues a new NOR, it must amend part 1112 to include that NOR. Accordingly, this rule amends part 1112 to add this standard for CSUs to the list of children's product safety rules for which CPSC has issued an NOR.

Testing laboratories that apply for CPSC acceptance to test CSUs that are children's products for compliance with the new rule would have to meet the requirements in part 1112. When a laboratory meets the requirements of a CPSC-accepted third party conformity assessment body, the laboratory can apply to CPSC to include 16 CFR part 1261, *Safety Standard for Clothing Storage Units,* in the laboratory's scope of accreditation listed on the CPSC website at: *www.cpsc.gov/labsearch.*

XV. Environmental Considerations

The Commission's regulations address whether CPSC is required to prepare an environmental assessment (EA) or an environmental impact statement (EIS). 16 CFR 1021.5. Those regulations list CPSC actions that ''normally have little or no potential for affecting the human environment,'' and therefore, fall within a ''categorical exclusion'' under the National Environmental Policy Act (42 U.S.C. 4231–4370h) and the regulations implementing it (40 CFR parts 1500–1508) and do not require an EA or EIS. 16 CFR 1021.5(c). Among those actions are rules that provide performance standards for products. *Id.* § 1021.5(c)(1). Because this rule would create performance requirements for CSUs, the rule falls within the categorical exclusion, and thus, no EA or EIS is required.

XVI. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.'' A ''major rule'' is one that OIRA finds has resulted in or is likely to result in:

- an annual effect on the economy of $100,000,000 or more;

[149] The CPSA defines a ''manufacturer'' as ''any person who manufactures or imports a consumer product.'' 15 U.S.C. 2052(a)(11).

• a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or

• significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign enterprises in domestic and export markets.

Id. 804(2).

Because CPSC estimates the annual effect of this rule to be $100,000,000 or more, OIRA determined that this is a major rule. To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

XVII. Preemption

Executive Order (E.O.) 12988, *Civil Justice Reform* (Feb. 5, 1996), directs agencies to specify the preemptive effect of a rule in the regulation. 61 FR 4729 (Feb. 7, 1996), section 3(b)(2)(A). In accordance with E.O. 12988, CPSC states the preemptive effect of the rule, as follows:

The Commission issues the regulations for CSUs under authority of the CPSA. 15 U.S.C. 2051–2089. Section 26 of the CPSA provides that whenever a consumer product safety standard under the Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard. 15 U.S.C. 2075(a). The Federal Government, or a state or local government, may establish or continue in effect a non-identical requirement for its own use that is designed to protect against the same risk of injury as the CPSC standard if the Federal, state, or local requirement provides a higher degree of protection than the CPSA requirement. *Id.* 2075(b). In addition, states or political subdivisions of a state may apply for an exemption from preemption regarding a consumer product safety standard, and the Commission may issue a rule granting the exemption if it finds that the state or local standard: (1) provides a significantly higher degree of protection from the risk of injury or illness than the CPSA standard, and (2) does not unduly burden interstate commerce. *Id.* 2075(c).

Thus, with the exception of the allowances in 15 U.S.C. 2075(b) and (c), the requirements in part 1261 preempt non-identical state or local requirements for CSUs designed to protect against the same risk of injury and prescribing requirements regarding the performance, composition, contents, design, finish, construction, packaging or labeling of CSUs.

XVIII. Effective Date

The CPSA requires that consumer product safety rules issued under sections 7 and 9 must take effect at least 30 days after the date the rule is promulgated, but not later than 180 days after the date the rule is promulgated unless the Commission finds, for good cause shown, that an earlier or a later effective date is in the public interest and, in the case of a later effective date, publishes the reasons for that finding. 15 U.S.C. 2058(g)(1).

In addition, the CRA includes requirements regarding effective dates for ''major rules.'' As discussed in section XVI. Congressional Review Act, this is a major rule. In general, unless Congress disapproves a rule, a major rule must take effect no earlier than 60 days after the rule is published in the **Federal Register** or Congress receives a report of the rule, whichever is later. 5 U.S.C. 801(a)(3).

The NPR proposed that the rule would take effect 30 days after publication of the final rule in the **Federal Register**. CPSC received numerous comments regarding the effective date. Most comments asserted that the proposed 30-day effective date would be unrealistic given the time, costs, and logistics necessary to modify CSUs to comply with the standard, particularly since nearly all CSUs would not meet the standard. Commenters explained that work necessary to comply with the rule would include: testing CSUs in their current state, modifying CSU designs as necessary and within reasonable cost ranges, working with suppliers, redesigning packaging, reworking logistics, changing manufacturing processes, communicating with and training stakeholders, and adjusting costing including with retailers. Commenters also stated that significant supply chain issues affect a realistic effective date. Commenters asserted that under normal conditions, product lead time would be 4 to 6 weeks longer than 30 days, but with current supply chain issues, product lead time from ordering to manufacturing to delivery is between 9 and 12 months and orders sit in process for 6 months or more. Accordingly, they assert that orders placed before the final rule takes effect could not be met, as manufacturing would not occur for several months. Commenters noted that these issues could also increase consumer prices. Several commenters recommended that an effective date of 180 days may be sufficient to accommodate these considerations, and several stated that 360 days was more in line with the normal product development process and would still be short, since they asserted that this process typically takes several years.

Based on these comments, and staff's analysis of the costs associated with the rule (Tab H), the rule (including the amendment to part 1112) will go into effect May 24, 2023 and will apply to all CSUs that are subject to the rule that are manufactured after that date.

XIX. Findings

As explained, the CPSA requires the Commission to make certain findings when issuing a consumer product safety standard. 15 U.S.C. 2058(f)(1), (f)(3). These findings are stated in § 1261.8 of the rule and are based on information provided throughout this preamble and the staff's briefing packages for the proposed and final rules.

XX. Conclusion

For the reasons stated in this preamble, the Commission concludes that CSUs that do not meet the requirements specified in this rule, and are not exempt from the rule, present an unreasonable risk of injury associated with CSU tip overs.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third-party conformity assessment body.

16 CFR Part 1261

Consumer protection, Imports, Incorporation by reference, Information, Labeling, Safety.

For the reasons discussed in the preamble, the Commission amends chapter II, subchapter B, title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding reserved paragraph (b)(53) and paragraph (b)(54) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(54) 16 CFR part 1261, Safety Standard for Clothing Storage Units.

* * * * *

■ 3. Add part 1261 to read as follows:

PART 1261—SAFETY STANDARD FOR CLOTHING STORAGE UNITS

Sec.

1261.1 Scope, purpose, application, and exemptions.
1261.2 Definitions.
1261.3 Requirements for interlocks.
1261.4 Requirements for stability.
1261.5 Requirements for marking and labeling.
1261.6 Requirements to provide performance and technical data by labeling.
1261.7 Prohibited stockpiling.
1261.8 Findings.

Authority: 15 U.S.C. 2051(b), 2056, 2058, 2063(c), 2076(e).

§ 1261.1 Scope, purpose, application, and exemptions.

(a) *Scope and purpose.* This part, a consumer product safety standard, prescribes the safety requirements, including labeling and hang tag requirements, for clothing storage units, as defined in § 1261.2(a). The requirements in this part are intended to reduce or eliminate an unreasonable risk of death or injury to consumers from clothing storage unit tip overs.

(b) *Application.* Except as provided in paragraph (c) of this section, all clothing storage units that are manufactured after May 24, 2023, are subject to the requirements of this part.

(c) *Exemptions.* The following products are exempt from this part:

(1) Clothes lockers, as defined in § 1261.2(b); and

(2) Portable storage closets, as defined in § 1261.2(t).

§ 1261.2 Definitions.

In addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052), the following definitions apply for purposes of this part:

(a) *Clothing storage unit* means a consumer product that is a freestanding furniture item, with drawer(s) and/or door(s), that may be reasonably expected to be used for storing clothing, that is designed to be configured to greater than or equal to 27 inches in height, has a mass greater than or equal to 57 pounds with all extendable elements filled with at least 8.5 pounds/cubic foot times their functional volume (cubic feet), has a total functional volume of the closed storage greater than 1.3 cubic feet, and has a total functional volume of the closed storage greater than the sum of the total functional volume of the open storage and the total volume of the open space. Common names for clothing storage units include, but are not limited to: chests, bureaus, dressers, armoires, wardrobes, chests of drawers, drawer chests, chifforobes, and door chests. Whether a product is a clothing storage unit depends on whether it meets this definition. Some products that, depending on their design, may not meet the criteria in this definition and, therefore, may not be considered clothing storage units are: shelving units, office furniture, dining room furniture, laundry hampers, built-in closets, and single-compartment closed rigid boxes (storage chests).

(b) *Clothes locker* means a predominantly metal furniture item without exterior drawers and with one or more doors that either locks or accommodates an external lock.

(c) *Closed storage* means storage space inside a drawer and/or behind an opaque door. For this part, both sliding and hinged doors are considered in the definition of closed storage.

(d) *Door* means a hinged furniture component that can be opened or closed, typically outward or downward, to form a barrier; or a sliding furniture component that can be opened or closed by sliding across the face or case of the furniture item. This does not include vertically opening hinged lids.

(e) *Door extension from fulcrum distance* means the horizontal distance measured from the farthest point of a hinged door that opens outward or downward, while the door is in the least stable configuration (typically 90 degrees), to the fulcrum, while the clothing storage unit is on a hard, level, and flat test surface. See figure 1 to this paragraph (e). Sliding doors that remain within the clothing storage unit case are not considered to have a door extension.

Figure 1 to paragraph (e)—(Top View)

The door extension from fulcrum distance, illustrated by the letter Y.

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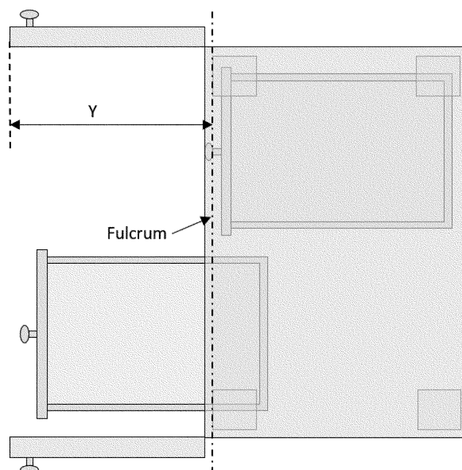


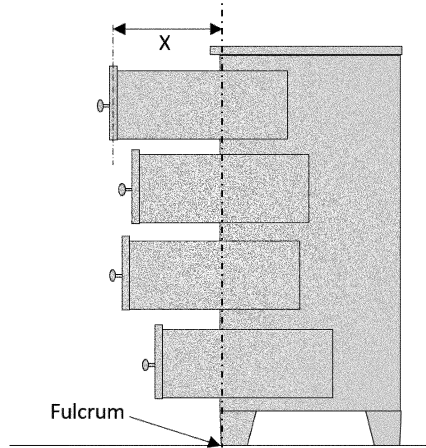
(f) *Drawer* means a furniture component intended to contain or store items that slides horizontally in and out of the furniture case and may be attached to the case by some means, such as glides. Only components that are retained in the case when extended up to ⅔ the shortest internal length,

when empty, are included in this definition.

(g) *Extendable element* means a drawer or pull-out shelf.

(h) *Extendable element extension from fulcrum distance* means the horizontal distance measured from the centerline of the front face of the drawer or the outermost surface of the pull-out shelf to the fulcrum, when the extendable element is at the maximum extension and the clothing storage unit is on a hard, level, and flat test surface. For a curved or angled surface this measurement is taken where the distance is at its greatest. See figure 2 to this paragraph (h).

Figure 2 to paragraph (h)—The extendable element extension from fulcrum distance, illustrated by the letter X.



(i) *Freestanding* means that the unit remains upright, without needing attachment to the wall or other upright rigid structure, when it is fully assembled and empty, with all extendable elements and doors closed. Built-in units are not considered freestanding.

(j) *Functional volume* of an extendable element means the interior bottom surface area multiplied by the effective extendable element height, which is distance from the bottom surface of the extendable element to the top of the extendable element compartment minus ⅛ inches (see figure 3 to this paragraph (j)). Functional volume behind a door means the interior bottom surface area behind the door, when the door is closed, multiplied by the height of the storage compartment (see figure 4 to this paragraph (j)). Functional volume of open storage means the interior bottom surface area multiplied by the effective open storage height, which is distance from the bottom surface of the open storage to the top of the open storage compartment minus ⅛ inches.

Figure 3 to paragraph (j)—Functional volume of extendable element.

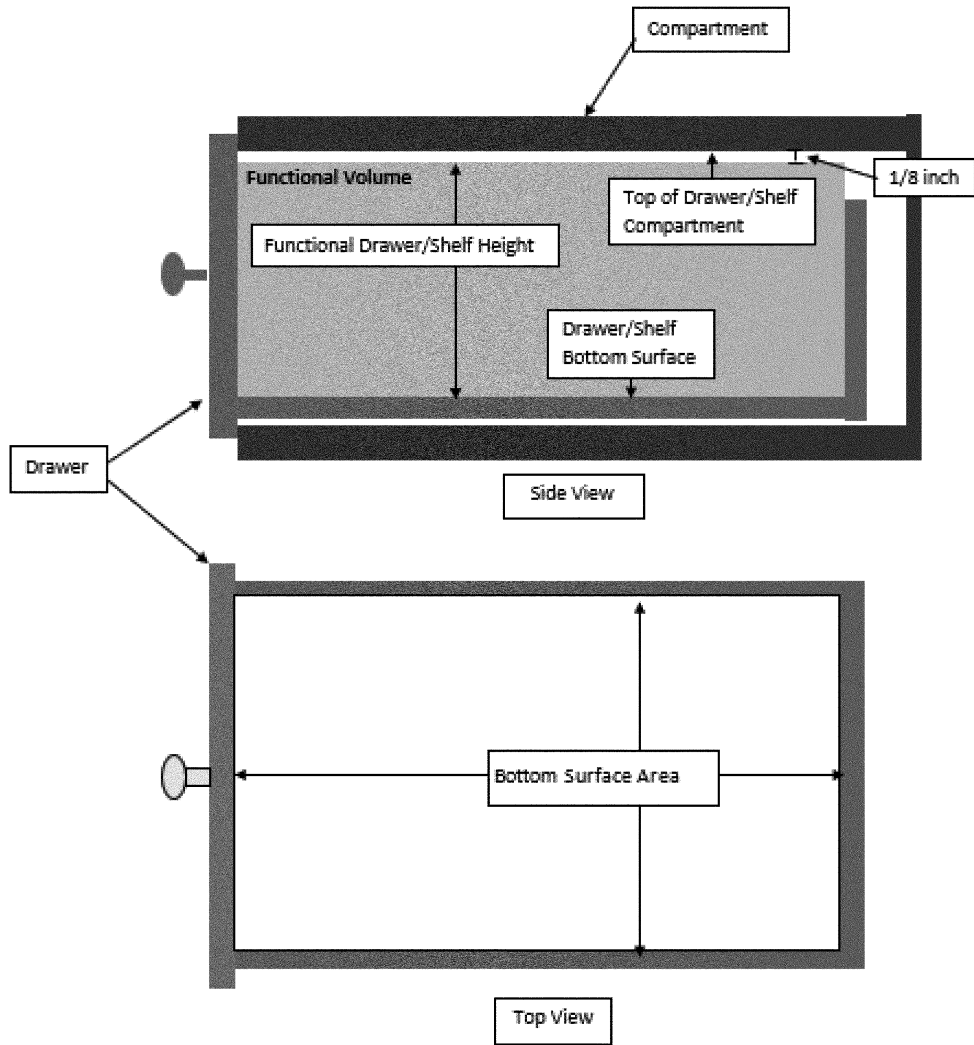
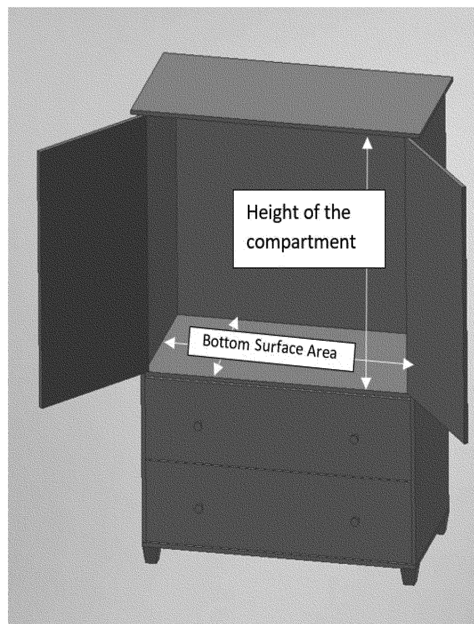


Figure 4 to paragraph (j)—Functional volume behind a door.



(k) *Fulcrum* means the point or line at the base of the clothing storage unit about which the clothing storage unit pivots when a tip-over force is applied (typically the front feet). The fulcrum position is determined while the clothing storage unit is on a hard, level, and flat test surface with all doors and extendable elements closed.

(l) *Hard, level, and flat test surface* means a test surface that is:

(1) Sufficiently hard to not bend or break under the weight of a clothing storage unit and any loads associated with testing the unit;

(2) Level with no more than 0.5 degrees of variation; and

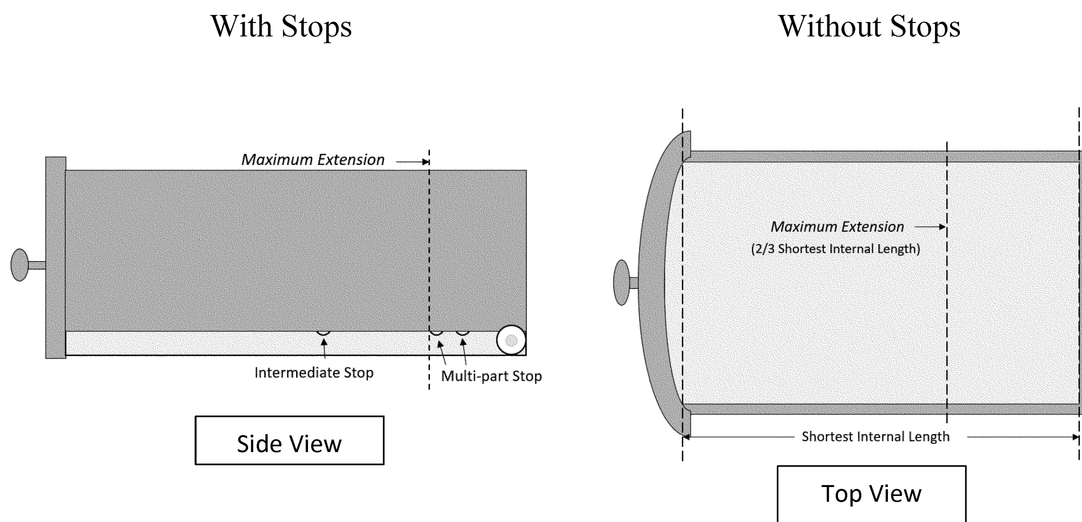
(3) Smooth and even.

(m) *Interlock* means a device(s) that restricts simultaneous opening of extendable elements or doors.

(n) *Levelling device* means an adjustable device intended to adjust the level of the clothing storage unit.

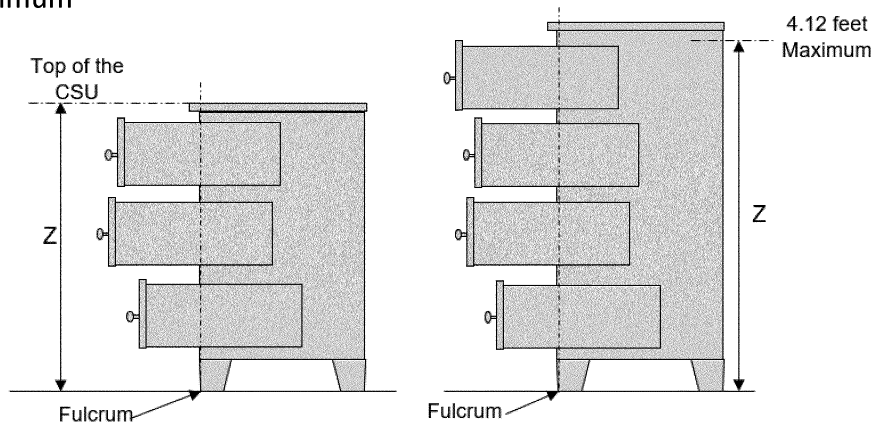
(o) *Maximum extension* means a condition when an extendable element is open to the furthest manufacturer recommended use position, as indicated by way of a stop. In the case of slides with multiple intermediate stops, this is the stop that allows the extendable element to extend the furthest. In the case of slides with a multipart stop, such as a stop that extends the extendable element to the furthest manufacturer recommended use position with an additional stop that retains the extendable element in the case, this is the stop that extends the extendable element to the manufacturer recommended use position. If the manufacturer does not provide a recommended use position by way of a stop, this is ⅔ the shortest internal length of the drawer measured from the inside face of the drawer front to the inside face of the drawer back or ⅔ the shortest internal length of the pull-out shelf. See figure 5 to this paragraph (o).

Figure 5 to paragraph (o)—Example of maximum extension on extendable elements with stops and without stops.



(p) *Maximum handhold height* means the highest position at which a child may grab hold of the clothing storage unit, measured while the clothing storage unit is on a hard, level, and flat surface. For units shorter than 4.12 feet, this is the top of the clothing storage unit. For units 4.12 feet or taller, this is 4.12 feet. See figure 6 to this paragraph (p).

Figure 6 to paragraph (p)—The maximum handhold height, illustrated by the letter Z for a unit shorter than 4.12 feet (left) and for a unit 4.12 feet or taller (right).



(q) *Moment* means a moment of a force, which is a measure of the tendency to cause a body to rotate about a specific point or axis. It is measured in pound-feet, representing a force multiplied by a lever arm, or distance from the force to the point of rotation.

(r) *Open storage* means space within the frame of the furniture that is open (*i.e.,* is not in a drawer or behind an opaque door) and that reasonably can be used for storage (*e.g.,* has a flat bottom surface). For example, open shelf space that is not behind a door, display space behind a non-opaque door, and framed open clothing hanging space are considered open storage.

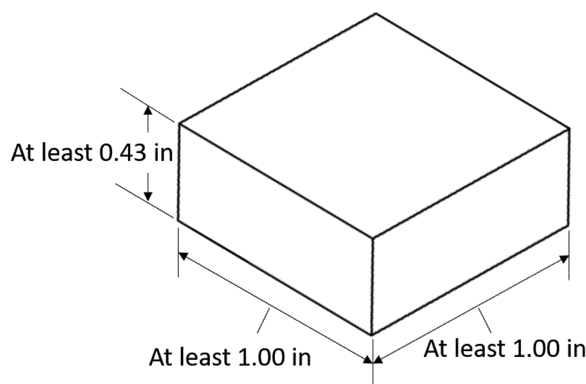
(s) *Open space* means space within the frame of the furniture, but without a bottom surface. For example, open space between legs, such as with a console table, or between separated storage components, such as with a vanity or a desk, are considered open space. This definition does not include space inside the furniture case (*e.g.,* space between a drawer and the case) or any other space that is not visible to a consumer standing in front of the unit (*e.g.,* space behind a base panel).

(t) *Portable storage closet* means a freestanding furniture item with an open frame that encloses hanging clothing storage space and/or shelves. This item may have a cloth case with curtain(s), flap(s), or door(s) that obscure the contents from view.

(u) *Pull-out shelf* means a furniture component with a horizontal flat surface that slides horizontally in and out of the furniture case and may be attached to the case by some means, such as glides.

(v) *Test block* means a block constructed of a rigid material, such as steel or aluminum, with the following dimensions: at least 0.43 inch thick, at least 1 inch deep, at least 1 inch wide. See figure 7 to this paragraph (v).

Figure 7 to paragraph (v)—Test block.



(w) *Tip over* means an event at which a clothing storage unit pivots forward to the point at which the clothing storage unit will continue to fall and/or be supported by a non-support element.

(x) *Tip-over force* means the force required to cause tip over of the clothing storage unit.

(y) *Tip-over moment* means the minimum moment in pound-feet about the fulcrum that causes tip over.

§ 1261.3 Requirements for interlocks.

(a) *General.* For all clothing storage units with interlocks, including consumer-assembled units, the interlock components must be pre-installed, and automatically engage when the consumer installs the interlocked extendable element(s) or door(s) in the unit. All interlocks must engage automatically as part of normal use.

(b) *Interlock pull test.* (1) If the unit is not fully assembled, assemble the unit according to the manufacturer's instructions.

(2) Place the unit on a hard, level, and flat test surface.

(3) If the unit has one or more levelling devices, adjust the levelling device(s) to the lowest level; then adjust the levelling device(s) in accordance with the manufacturer's instructions.

(4) Secure the unit, without interfering with the interlock function, to prevent sliding or tip over.

(5) Open any non-interlocked doors that are in front of the interlocked extendable elements.

(6) Engage the interlock by opening to the maximum extension the number of extendable elements or doors necessary to engage the interlock.

(7) Gradually apply over a period of at least 5 seconds a 30-pound horizontal pull force on each interlocked extendable element or door at the center of the pull area(s), one element at a time, and hold the force for at least 10 seconds.

(8) Repeat this test until all possible combinations of extendable elements and doors have been tested.

(c) *Performance requirement.* The interlock will be disabled or bypassed for the stability testing in § 1261.4(c) if, as a result of the testing specified in paragraph (b) of this section:

(1) Any interlocked extendable element or door extends during the test without retracting the originally open extendable element or door; or

(2) Any interlock or interlocked extendable element or door is damaged or does not function as intended after the test.

§ 1261.4 Requirements for stability.

(a) *General.* Clothing storage units shall be configured as described in paragraph (b) of this section, and tested in accordance with the procedure in paragraph (c) of this section. Clothing storage units shall meet the requirement for tip-over stability based on the tip-over moment as specified in paragraph (d) of this section.

(b) *Test configuration.* The clothing storage unit used for tip-over testing shall be configured in the following manner:

(1) If the unit is not fully assembled, assemble the unit according to the manufacturer's instructions. Units shall not be attached to the wall or any upright structure for testing.

(2) Place the unit on a hard, level, and flat test surface in the orientation most likely to cause tip over. If necessary, secure the unit from sliding without preventing tip over.

(3) If the clothing storage unit has one or more levelling devices, adjust the levelling device(s) to the lowest level; then adjust the levelling device(s) in accordance with the manufacturer's instructions.

(4) Record the maximum handhold height, the longest extendable element extension from fulcrum distance, and the longest door extension from fulcrum

distance, as applicable. These measurements are used in paragraph (d) of this section.

(5) Tilt the clothing storage unit forward by placing the test block(s) under the unit's most rear floor support(s) such that either the entire floor support contact area is over the test block(s) or the back edge of the test block(s) is aligned with the back edge of the rear floor supports.

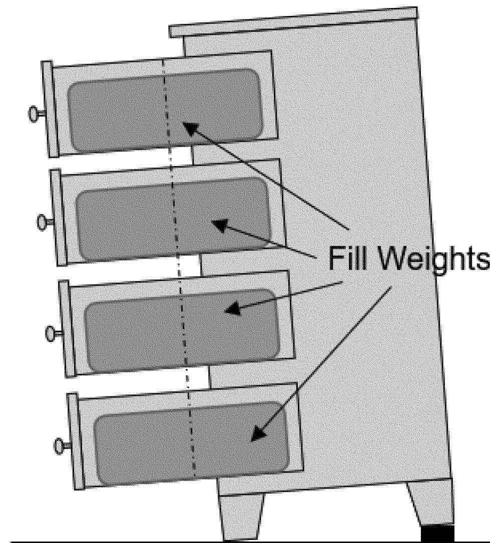
(6) Disable or bypass any interlock(s) in accordance with § 1261.3(c).

(7) Open all hinged doors that open outward or downward that are not locked by an interlock to the least stable configuration (typically 90 degrees).

(8) Open all extendable elements that are not locked by an interlock to the maximum extension, in the configuration most likely to cause tip over (typically the configuration with the largest drawers in the highest position open). Then place fill weights according to the following criteria:

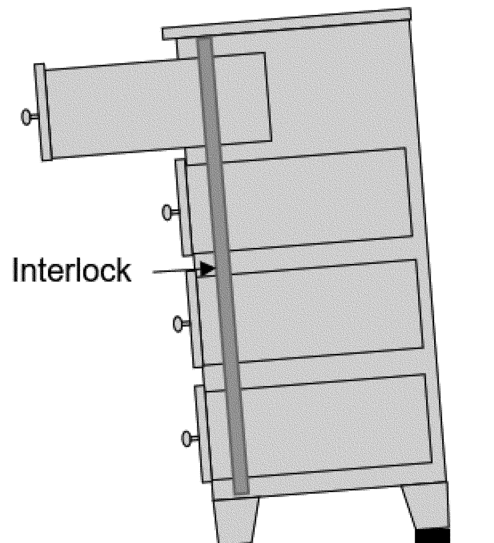
(i) If 50 percent or more of the extendable elements by functional volume are open, place a fill weight in the center of the bottom surface of each extendable element, including those that remain closed, that consists of a uniformly distributed mass in pounds. The fill weight in open extendable elements must be at least 8.5 pounds/cubic foot times the functional volume (cubic feet). The fill weight in closed extendable elements must be no more than 8.5 pounds/cubic foot times the functional volume (cubic feet). If necessary, secure the fill weights to prevent sliding. See figure 1 to this paragraph (b)(8)(i).

Figure 1 to paragraph (b)(8)(i)—Fill weights in all drawers if 50 percent or more of the extendable elements by functional volume are open.



(ii) If less than 50 percent of the extendable elements by functional volume are open, do not place a fill weight in or on any extendable element(s). See figure 2 to this paragraph (b)(8)(ii).

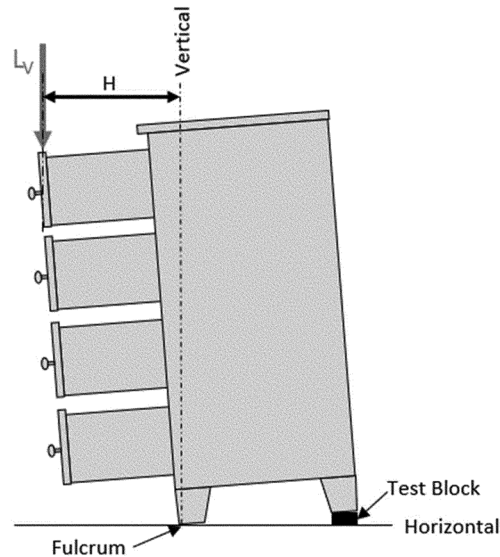
Figure 2 to paragraph (b)(8)(ii)—No fill weights if less than 50 percent of the extendable elements by functional volume are open.



(c) *Test procedure to determine tip-over moment of the unit.* Perform one of the following two tip-over tests (Test Method 1 or Test Method 2), whichever is the most appropriate for the unit:

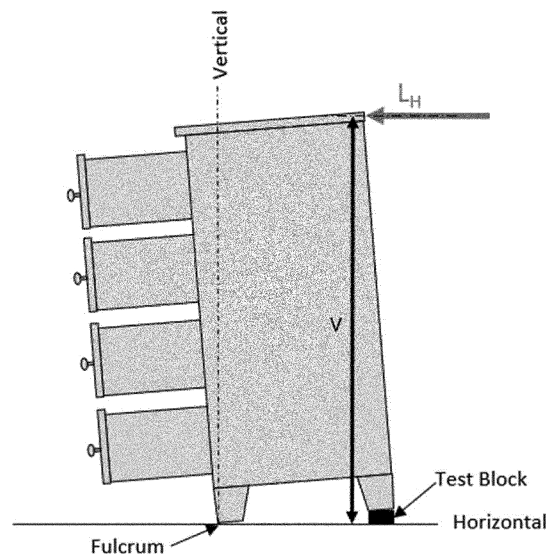
(1) Test Method 1 shall be used for units with extendable elements that extend at least 6 inches from the fulcrum. Record the horizontal distance from where the center of force will be applied (the center of gravity of the weights to be applied) to the fulcrum. Gradually apply over a period of at least 5 seconds weights to the face of an extended extendable element of the unit to cause the unit to tip over. The weights are to be placed on a single drawer face or distributed evenly across multiple drawer faces or as adjacent as possible to the pull-out shelf face. The weights shall not interfere with other extended extendable elements. Record the tip-over force. Calculate the tip-over moment of the unit by multiplying the tip-over force (pounds) by the horizontal distance from the center of the force application to the fulcrum (feet). See figure 3 to this paragraph (c)(1).

Figure 3 to paragraph (c)(1)—Illustration of force application methods for Test Method 1 with vertical load L_V (test block not to scale).



(2) Test Method 2 shall be used for any unit for which Test Method 1 does not apply. Record the vertical distance from where the center of force will be applied to the fulcrum. Gradually apply over a period of at least 5 seconds a horizontal force to the unit orthogonal to the fulcrum to cause the unit to tip over. Record the tip-over force. Calculate the tip-over moment of the unit by multiplying the tip-over force (pounds) by the vertical distance from the center of force application to the fulcrum (feet). See figure 4 to this paragraph (c)(2).

Figure 4 to paragraph (c)(2)—Illustration of force application methods for Test Method 2 with horizontal load L_H (test block not to scale).



(3) If a failed component prohibits completion of the test, then to continue testing, the failed component(s) must be repaired or replaced to the original specifications, or the component(s) must be replaced and the test repeated with the failed component(s) secured to prevent the component(s) from failing, as long as the modifications do not increase the tip-over moment.

(d) *Performance requirement.* The tip-over moment of the clothing storage unit must be greater than the threshold moment, which is the greatest of all of the applicable moments in paragraphs (d)(1) through (3) of this section:

(1) For units with an extendable element(s): 55.3 pounds times the extendable element extension from fulcrum distance in feet +26.6 pound-feet;

(2) For units with a door(s): 51.2 pounds times the door extension from fulcrum distance in feet −12.8 pound-feet; and

(3) For all units: 17.2 pounds times maximum handhold height in feet.

§ 1261.5 Requirements for marking and labeling.

(a) *Warning label requirements.* The clothing storage unit shall have a warning label, as defined in this paragraph (a).

(1) *Size.* The warning label shall be at least 2 inches wide by 2 inches tall.

(2) *Content.* (i) The warning label shall contain the text in figure 1 to this paragraph (a)(2)(i), with the text following brackets to be included only for the units specified in the brackets.

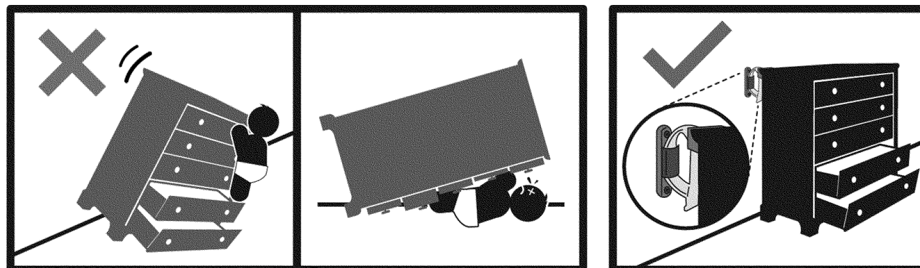
Figure 1 to paragraph (a)(2)(i)—Warning label content.

Children have died from furniture tip over. To reduce the risk of tip over:

- ALWAYS secure this furniture to the wall using an anti-tip device.
- NEVER allow children to stand, climb, or hang on drawers, doors or shelves.
- [for units with interlocks only] Do not defeat or remove the drawer interlock system.
- Place heaviest items in the lowest drawers.
- [for units that are not designed to hold a television only] NEVER put a TV on this furniture.

(ii) The warning label shall contain the three-panel child climbing symbol displayed in figure 2 to this paragraph (a)(2)(ii), with the prohibition symbol in red and the check mark in green. The third panel (*i.e.,* depicting attachment to the wall) may be modified to show a specific anti-tip device included with the clothing storage unit.

Figure 2 to paragraph (a)(2)(ii)—Three-panel child climbing symbol.



(iii) For units that are not designed to hold a television, the warning label also shall contain the no television symbol displayed in figure 3 to this paragraph (a)(2)(iii), with the prohibition symbol in red.

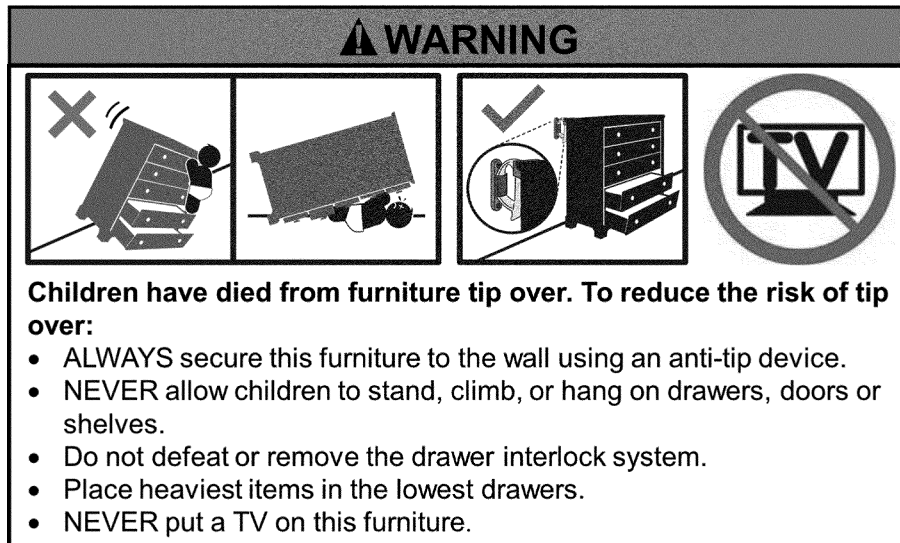
Figure 3 to paragraph (a)(2)(iii)—No television symbol.

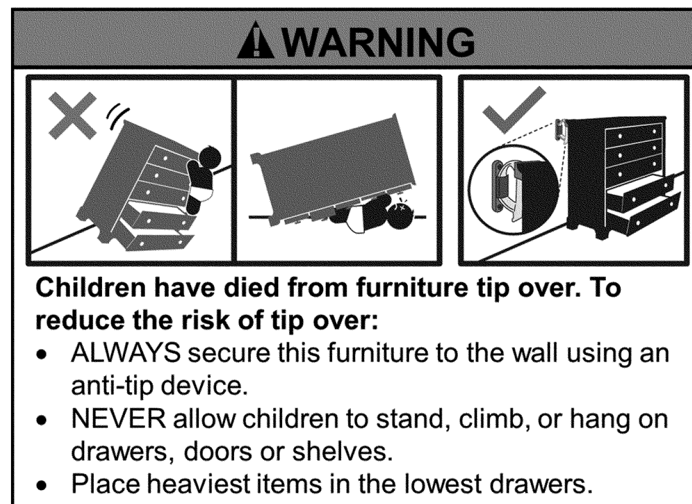
(iv) The content of the warning label required in this paragraph (a)(2) shall not be modified or amended except as specifically indicated.

(3) *Format.* The warning label shall use the signal word panel content and format specified in Section 8.2.2 of ASTM F2057–19, Standard Safety Specification for Clothing Storage Units, and the font, font size, and color specified in Section 8.2.3 of ASTM F2057–19 (incorporated by reference, see paragraph (c) of this section). Each safety symbol shall measure at least 1

inch by 1 inch. See figure 4 to this paragraph (a)(3).

Figure 4 to paragraph (a)(3)—Example warning label for a clothing storage unit with an interlock system that is not designed to hold a television (top) and for a clothing storage unit without an interlock system that is designed to hold a television (bottom).





(4) *Location.* (i) For units with one or more drawer(s):

(A) The warning label shall be located on the interior side panel of a drawer in the upper most drawer row or, if the top of the drawer(s) in the upper most drawer row is more than 56 inches from the floor, on the interior side panel of a drawer in the upper most drawer row below 56 inches from the floor, as measured from the top of the drawer.

(B) The top left corner of the warning label shall be positioned within 1 inch of the top of the drawer side panel and within the front ⅓ of the interior drawer depth.

(ii) For units with only doors: The warning label shall be located on an interior side or back panel of the cabinet behind the door(s), or on the interior door panel. The warning label shall not be obscured by a shelf or other interior element.

(iii) For consumer-assembled units: The warning label shall be pre-attached to the panel, and the assembly instructions shall direct the consumer to place the panel with the warning label according to the placement requirements in paragraphs (a)(4)(i) and (ii) of this section.

(5) *Permanency.* The warning label shall be legible and attached after it is tested using the methods specified in Section 7.3 of ASTM F2057–19, Standard Safety Specification for Clothing Storage Units (incorporated by reference, see paragraph (c) of this section).

(b) *Identification marking or labeling requirements.* The clothing storage unit shall have an identification mark or label, as defined in this paragraph (b).

(1) *Size.* The identification mark or label shall be at least 2 inches wide by 1 inch tall.

(2) *Content.* The identification mark or label shall contain the following:

(i) Name and address (city, state, and zip code) of the manufacturer, distributor, or retailer; the model number; and the month and year of manufacture.

(ii) The statement ''Complies with U.S. CPSC Safety Standard for Clothing Storage Units,'' as appropriate; this label

may spell out ''U.S. Consumer Product Safety Commission'' instead of ''U.S. CPSC.''

(3) *Format.* The identification mark or label text shall not be less than 0.1 in. (2.5 mm) capital letter height. The text and background shall be contrasting colors (*e.g.,* black text on a white background).

(4) *Location.* The identification mark or label shall be visible from the back of the unit when the unit is fully assembled.

(5) *Permanency.* The identification mark or label shall be legible and attached after it is tested using the methods specified in Section 7.3 of ASTM F2057–19, Standard Safety Specification for Clothing Storage Units (incorporated by reference, see paragraph (c) of this section).

(c) *Incorporation by reference.* ASTM F2057–19, Standard Safety Specification for Clothing Storage Units, approved on August 1, 2019, is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: (610) 832–9585; *www.astm.org.* A read-only copy of the standard is available for viewing on the ASTM website at *https://www.astm.org/READINGLIBRARY/.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email: *cpsc-os@cpsc.gov,* or 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.*

§ 1261.6 Requirements to provide performance and technical data by labeling.

Manufacturers of clothing storage units shall give notification of performance and technical data related to performance and safety to prospective purchasers of such products at the time of original purchase and to the first purchaser of such product for purposes other than resale, in the manner set forth in this section:

(a) *Consumer information requirements for physical points of sale, packaging, and on-product.* The manufacturer shall provide a hang tag with every clothing storage unit that provides the ratio of tip-over moment as tested to the minimally allowed tip-over moment of that model clothing storage unit. The label must conform in content, form, and sequence to the hang tag shown in figure 2 to this paragraph (a).

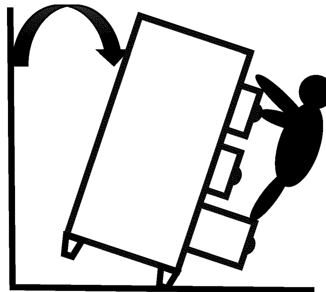
(1) *Size.* Every hang tag shall be at least 5 inches wide by 7 inches tall.

(2) *Side 1 content.* The front of every hang tag shall contain the following:

(i) The title—''TIP OVER GUIDE.''

(ii) The icon shown in figure 1 to this paragraph (a)(2)(ii):

Figure 1 to paragraph (a)(2)(ii)—Hang tag icon.



(iii) The statement—''Stability Rating.''

(iv) The manufacturer's name and model number of the unit.

(v) Ratio of tip-over moment, as tested per § 1261.4(c), to the threshold moment, as determined per § 1261.4(d), of that model clothing storage unit, displayed on a progressive scale. This value shall be the stability rating, rounded to one decimal place (*e.g.,* X.Y).

(vi) The scale shall start at 1 and end at 2.

(vii) ''MIN'' and ''OR MORE'' on the left and right sides of the scale, respectively.

(viii) A solid horizontal line from 1 to the calculated rating.

(ix) The statement—''This unit is [enter rating value] times more stable than the minimum required,'' with the stability rating to be inserted for bracketed text.

(x) The statement—''Compare with other units before you buy.''

(xi) The statement—''This is a guide to compare units' resistance to tipping over.''

(xii) The statement—''Higher numbers represent more stable units.''

(xiii) The statement—''No unit is completely safe from tip over.''

(xiv) The statement—''Always secure the unit to the wall.''

(xv) The statement—''Tell children not to climb furniture.''

(xvi) The statement—''See back side of this tag for more information.''

(xvii) The statement—''THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER.''

(3) *Side 2 content.* The reverse of every hang tag shall contain the following:

(i) The statement—''Stability Rating Explanation.''

(ii) The icon in paragraph (a)(2)(ii) of this section.

(iii) The stability rating determined in paragraph (a)(2)(v) of this section.

(iv) The statement—''Test data on this unit indicated it withstood [insert rating determined in paragraph (a)(2)(v) of this section] times the minimally acceptable moment, per tests required by the Consumer Product Safety Commission (see below),'' with the stability rating to be inserted for bracketed text.

(v) The statement—''Deaths and serious crushing injuries have occurred from furniture tipping over onto people.''

(vi) The statement—''To reduce tip-over incidents, the U.S. Consumer Product Safety Commission (CPSC) requires that clothing storage units, such as dressers, chests, bureaus, and armoires, resist certain tip-over forces. The test that CPSC requires measures the stability of a clothing storage unit and its resistance to rotational forces, also known as moments. This test is based on threshold rotational forces of a 3-year-old child climbing up, hanging on, or pulling on drawers and/or doors of this unit. These actions create rotational forces (moments) that can cause the unit to tip forward and fall over. The stability rating on this tag is the ratio of this unit's tip-over moment

(using CPSC's test) and the threshold tip-over moment. More information on the test method can be found in 16 CFR part 1261.''

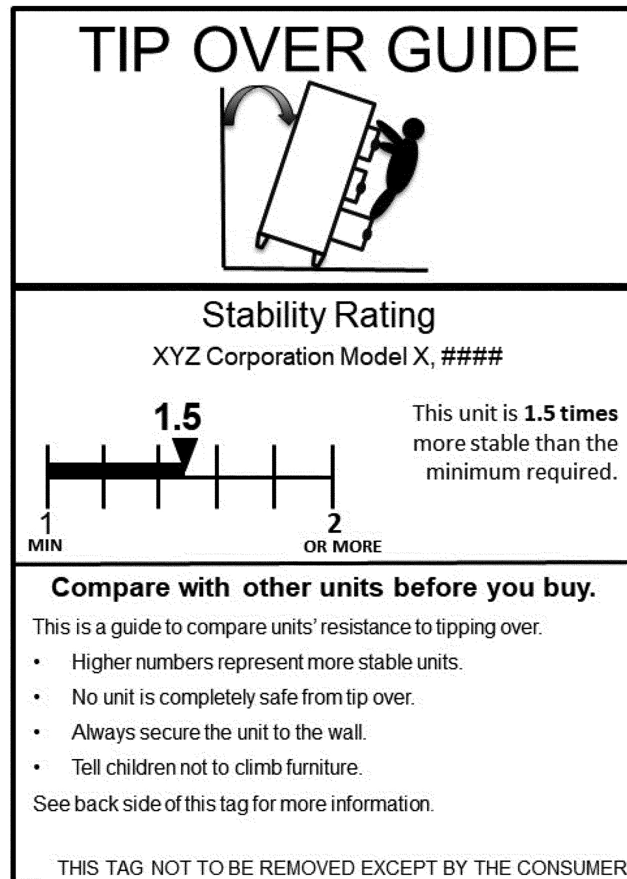
(4) *Format.* The hang tag shall be formatted as shown in figure 2 to this paragraph (a). The background of the front of the tag shall be printed in full bleed process yellow or equivalent; the background of the back of the tag shall be white. All type and graphics shall be printed in process black.

(5) *Attachment.* Every hang tag shall be attached to the clothing storage unit and be clearly visible to a person standing in front of the unit. The hang tag shall be attached to the clothing storage unit and lost or damaged hang tags must be replaced such that they are attached and provided, as required by this section, at the time of original purchase to prospective purchasers and to the first purchaser other than resale. The hang tags may be removed only by the first purchaser.

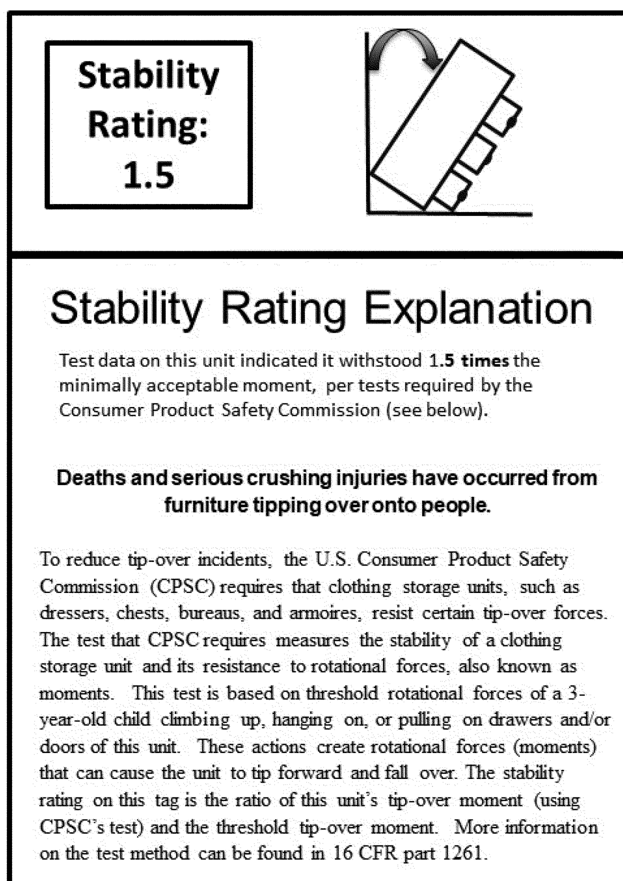
(6) *Placement.* The hang tag shall appear on the product and the immediate container of the product in which the product is normally offered for sale at retail. Ready-to-assemble furniture shall display the hang tag on the main panel of consumer-level packaging. The hang tag shall remain on the product/container/packaging until the time of original purchase. Any units shipped directly to consumers shall contain the hang tag on the immediate container of the product.

Figure 2 to paragraph (a)—Hang tag for a unit with a tip rating of 1.5.

SIDE 1



SIDE 2



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(b) *Consumer information requirements for online points of sale.* Any manufacturer or importer of a clothing storage unit with an online sales interface (*e.g.,* website or app) from which the clothing storage unit may be purchased shall provide on the online sales interface that offers the clothing storage unit for purchase:

(1) All of the content required by paragraphs (a)(2) and (3) of this section, in the form and sequence shown in figure 2 to paragraph (a) of this section, except that it need not contain the statements in paragraphs (a)(2)(xvi) and (xvii) of this section.

(2) The stability rating must be displayed in a font size equivalent to that of the price, in proximity to the price of the product, and a link to the virtual hang tag of the product must be provided through one user action (*e.g.,* mouse click, mouse roll-over, or tactile screen expansion) on the stability rating value or image.

§ 1261.7 Prohibited stockpiling.

(a) *Prohibited acts.* Manufacturers and importers of clothing storage units shall not manufacture or import clothing storage units that do not comply with the requirements of this part in any 1-month period between November 25, 2022 and May 24, 2023 at a rate that is greater than 105 percent of the rate at which they manufactured or imported clothing storage units during the base period for the manufacturer.

(b) *Base period.* The base period for clothing storage units is the calendar month with the median manufacturing or import volume within the last 13 months immediately preceding November 2022.

§ 1261.8 Findings.

(a) *General.* Section 9(f) of the Consumer Product Safety Act (15 U.S.C. 2058(f)) requires the Commission to make findings concerning the following topics and to include the findings in the rule. Because the findings are required to be published in the rule, they reflect the information that was available to the Consumer Product Safety Commission (Commission, CPSC) when the standard was issued on November 25, 2022.

(b) *Degree and nature of the risk of injury.* The standard is designed to reduce the risk of death an injury from clothing storage units tipping over onto children. The Commission has identified 199 clothing storage unit tip-over fatalities to children that were reported to have occurred between January 1, 2000, and April 30, 2022. There were an estimated 60,100 injuries, an annual average of 3,800 estimated injuries, to children related to clothing storage unit tip overs that were treated in U.S. hospital emergency departments from January 1, 2006, to December 31, 2021. Injuries to children, resulting from clothing storage units tipping over, include soft tissue injuries, skeletal injuries and bone fractures, and fatalities resulting from skull fractures, closed-head injuries, compressional and mechanical asphyxia, and internal organ crushing leading to hemorrhage.

(c) *Number of consumer products subject to the rule.* In 2021, there were approximately 229.94 million clothing storage units in use and about 20.64 million clothing storage units sold.

(d) *The need of the public for clothing storage units and the effects of the rule on their cost, availability, and utility.* (1) Consumers commonly use clothing storage units to store clothing in their

homes. The standard requires clothing storage units to meet a minimum stability threshold, but does not restrict the design of clothing storage units. As such, clothing storage units that meet the standard would continue to serve the purpose of storing clothing in consumers' homes. There may be a negative effect on the utility of clothing storage units if products that comply with the standard are less convenient to use. Another potential effect on utility could occur if, in order to comply with the standard, manufacturers modify clothing storage units to eliminate certain desired characteristics or styles, or discontinue models. However, this loss of utility would be mitigated to the extent that other clothing storage units with similar characteristics and features are available that comply with the standard.

(2) Retail prices of clothing storage units vary widely. The least expensive units retail for less than $100, while some more expensive units retail for several thousand dollars. CPSC estimates that the cost, per unit, to modify a clothing storage unit to comply with the rule is between $10.21 and $17.64, which includes the cost to redesign, modify (labor and materials), and test. Clothing storage unit prices may increase to reflect the added cost of modifying or redesigning products to comply with the standard, or to account for increased distribution costs. In addition, consumers may incur a cost in the form of additional time to assemble clothing storage units if additional safety features are included.

(3) If the costs associated with redesigning or modifying a clothing storage unit model to comply with the standard results in the manufacturer discontinuing that model, there would be some loss in availability of clothing storage units.

(e) *Other means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices.* (1) The Commission considered alternatives to achieving the objective of the rule of reducing unreasonable risks of injury and death associated with clothing storage unit tip overs. For example, the Commission considered relying on voluntary recalls, anti-tip devices, compliance with the voluntary standard, and education campaigns, rather than issuing a standard. This alternative would have minimal costs; however, it is unlikely to further reduce the risk of injury from clothing storage unit tip overs because the Commission has relied on these efforts to date.

(2) The Commission also considered issuing a standard that requires only performance and technical data, with no performance requirements for stability. This would impose lower costs on manufacturers, but is unlikely to adequately reduce the risk of injury from clothing storage unit tip overs because it relies on manufacturers choosing to offer more stable units; consumer assessment of their need for more stable units (which CPSC's research indicates consumers underestimate); and does not account for units outside a child's home or purchased before a child was born.

(3) The Commission also considered mandating a standard like the voluntary standard, but replacing the 50-pound test weight with a 60-pound test weight. This alternative would be less costly than the rule because many clothing storage units already meet such a requirement, and it would likely cost less to modify noncompliant units to meet this less stringent standard. However, this alternative is unlikely to adequately reduce the risk of clothing storage unit tip overs because it does not account for factors that are present in tip-over incidents that contribute to clothing storage unit instability, including multiple open and filled drawers, carpeting, and forces generated by a child interacting with the unit.

(4) Another alternative the Commission considered was providing a longer effective date. This may reduce the costs of the rule by spreading them over a longer period, but it would also delay the benefits of the rule, in the form of reduced deaths and injuries.

(f) *Unreasonable risk.* (1) Incident data indicates that there were 234 reported tip-over fatalities involving clothing storage units that were reported to have occurred between January 1, 2000, and April 30, 2022, of which 199 involved children, 11 involved adults, and 24 involved seniors. Of the reported child fatalities, 86 percent (171 fatalities) involved children 3 years old or younger.

(2) There were an estimated 84,100 injuries, an annual average of 5,300 estimated injuries, related to clothing storage unit tip overs that were treated in U.S. hospital emergency departments from January 1, 2006, to December 31, 2021. Of these, 72 percent (60,100) were to children, which is an annual average of 3,800 estimated injuries to children over the 16-year period. In addition, there were approximately 58,351 tip-over injuries involving clothing storage units and children treated in other settings from 2007 through 2021, or an average of 3,890 per year. Therefore, combined, there were an estimated 103,100 nonfatal, medically attended tip-over injuries to children from clothing storage units during the years 2007 through 2021.

(3) Injuries to children when clothing storage units tip over can be serious. They include fatal injuries resulting from skull fractures, closed-head injuries, compressional and mechanical asphyxia, and internal organ crushing leading to hemorrhage; they also include serious nonfatal injuries, including skeletal injuries and bone fractures.

(g) *Public interest.* This rule is intended to address an unreasonable risk of injury and death posed by clothing storage units tipping over. The Commission believes that adherence to the requirements of the rule will significantly reduce clothing storage unit tip-over deaths and injuries in the future; thus, the rule is in the public interest.

(h) *Voluntary standards.* The Commission is aware of four voluntary and international standards that are applicable to clothing storage units: ASTM F2057–19, Standard Consumer Safety Specification for Clothing Storage Units (incorporated by reference, see § 1261.5(c)); AS/NZS 4935: 2009, the Australian/New Zealand Standard for Domestic furniture—Freestanding chests of drawers, wardrobes and bookshelves/bookcases—determination of stability; ISO 7171 (2019), the International Organization for Standardization International Standard for Furniture—Storage Units—Determination of stability; and EN14749 (2016), the European Standard, European Standard for Domestic and kitchen storage units and worktops—Safety requirements and test methods. The Commission finds that these standards are not likely to adequately reduce the risk of injury associated with clothing storage unit tip overs because they do not account for the multiple factors that are commonly present simultaneously during clothing storage unit tip-over incidents and that testing indicates decrease the stability of clothing storage units. These factors include multiple open and filled drawers, carpeted flooring, and dynamic forces generated by children's interactions with the clothing storage unit, such as climbing or pulling on the top drawer.

(i) *Relationship of benefits to costs.* The aggregate benefits of the rule are estimated to be about $307.17 million annually and the cost of the rule is estimated to be about $250.90 during the first year the rule is in effect. Based on this analysis, the Commission finds that the benefits expected from the rule

bear a reasonable relationship to the anticipated costs of the rule.

(j) *Least burdensome requirement that would adequately reduce the risk of injury.* (1) The Commission considered less-burdensome alternatives to the rule, but concluded that none of these alternatives would adequately reduce the risk of injury.

(2) The Commission considered relying on voluntary recalls, anti-tip devices, compliance with the voluntary standard, and education campaigns, rather than issuing a mandatory standard. This alternative would be less burdensome by having minimal costs, but would be unlikely to reduce the risk of injury from clothing storage unit tip overs. The Commission has relied on these efforts to date, but despite these efforts, there continue to be a high number of child injuries from clothing storage unit tip overs.

(3) The Commission considered issuing a standard that requires only performance and technical data, with no performance requirements for stability. This would be less burdensome by imposing lower costs on manufacturers, but is unlikely to adequately reduce the risk of injury because it relies on manufacturers choosing to offer more stable units; consumer assessment of their need for more stable units (which CPSC's research indicates consumers underestimate); and does not account for clothing storage units outside a child's home or purchased before a child was born.

(4) The Commission considered mandating a standard like ASTM F2057–19, Standard Consumer Safety Specification for Clothing Storage Units (incorporated by reference, see § 1261.5(c)), but replacing the 50-pound test weight with a 60-pound test weight. This alternative would be less burdensome than the rule because many clothing storage units already meet such a requirement, and it would likely cost less to modify noncompliant units to meet this less stringent standard. However, this alternative is unlikely to adequately reduce the risk of tip overs because it does not account for several factors that are simultaneously present in clothing storage unit tip-over incidents and contribute to instability, including multiple open and filled drawers, carpeting, and forces generated by a child interacting with the unit.

(5) The Commission considered providing a longer effective date. This may reduce the cost burden of the rule by spreading the costs over a longer period, but it would also delay the benefits of the rule, in the form of reduced deaths and injuries.

(6) Therefore, the Commission concludes that the rule is the least burdensome requirement that would adequately reduce the risk of injury.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–24587 Filed 11–23–22; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0015; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BB27

Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are listing two Distinct Population Segments (DPSs) under the Endangered Species Act of 1973 (Act), as amended, for the lesser prairie-chicken (*Tympanuchus pallidicinctus*), a grassland bird known from southeastern Colorado, western Kansas, eastern New Mexico, western Oklahoma, and the Texas Panhandle. We determine threatened status for the Northern DPS and endangered status for the Southern DPS. This rule adds the DPSs to the List of Endangered and Threatened Wildlife. We also finalize a rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of the Northern DPS.

DATES: This rule is effective January 24, 2023.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov at* Docket No. FWS–R2–ES–2021–0015.

FOR FURTHER INFORMATION CONTACT: Beth Forbus, Regional ES Program Manager, Southwest Regional Office, 500 Gold Ave SW, Albuquerque, NM 87102; telephone 505–318–8972. 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 endangered in 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 Northern DPS of the lesser prairie-chicken meets the definition of a threatened species and that the Southern DPS of the lesser prairie-chicken meets the definition of an endangered species; therefore, we are listing them as such and finalizing a rule under section 4(d) of the Act for the Northern DPS. Listing a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act's rulemaking process.

What this document does. This rule revises the regulations in title 50 of the Code of Federal Regulations to list the Northern DPS of the lesser prairie-chicken as a threatened species with a rule under section 4(d) of the Act and the Southern DPS of the lesser prairie-chicken as an endangered species under the Act.

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 manmade factors affecting its continued existence. We have determined that both the northern and southern parts of the lesser prairie-chicken's range are discrete and significant under our DPS Policy and are, therefore, listable entities under the Act. The Southern DPS includes the Shinnery Oak Ecoregion in New Mexico and Texas, and the Northern DPS includes the Sand Sagebrush Ecoregion, the Mixed-Grass Ecoregion, and the Short-Grass/Conservation Reserve Program (CRP) Ecoregion in Texas, Oklahoma, Colorado, and Kansas. These two DPSs together encompass the entirety of the lesser prairie-chicken's range. The primary threat impacting both DPSs is the ongoing loss of large, connected blocks of grassland and shrubland habitat. The Southern DPS has low resiliency, redundancy, and representation and is particularly vulnerable to severe droughts due to being located in the dryer and hotter southwestern portion of the range. Because the Southern DPS is currently at risk of extinction, we are listing it as endangered.

In the Northern DPS, as a result of habitat loss and fragmentation, resiliency has been much reduced across two of the ecoregions in the Northern DPS when compared to historical conditions. However, this DPS still has redundancy across the three ecoregions and genetic and environmental representation. We expect habitat loss and fragmentation across the Northern DPS to continue into the foreseeable future, resulting in even further reduced resiliency. Because the Northern DPS is at risk of extinction in the foreseeable future, we are listing it as threatened. The section 4(d) rule for the Northern DPS of the lesser prairie-chicken generally prohibits the same activities as prohibited for an endangered species. It includes exceptions from take associated with continuation of routine agricultural practices on existing cultivated lands, implementation of prescribed fire for the purposes of grassland management, and implementation of prescribed grazing following a grazing management plan developed by a Service-approved party.

List of Acronyms

We use many acronyms in this rule. For the convenience of the reader, we define some of them here:

ACEC = Area of Critical Environmental Concern
BLM = Bureau of Land Management
CI = confidence interval
CCAA = candidate conservation agreement with assurances
CCA/CCAA = candidate conservation agreement and candidate conservation agreement with assurances
CDL = Cropland Data Layer
CHAT = Crucial Habitat Assessment Tool
CPW = Colorado Parks and Wildlife
CRP = Conservation Reserve Program
DOE = Department of Energy
DPS = Distinct Population Segment
EOR = Estimated occupied range
EOR+10 = Estimated occupied range plus a 10-mile buffer
FSA = U.S. Department of Agriculture's Farm Services Agency
KDWP = Kansas Department of Wildlife and Parks (formerly KDWPT: Kansas Department of Wildlife, Parks, and Tourism)
LPCI = Lesser Prairie-Chicken Initiative
NRCS = Natural Resources Conservation Service
ODWC = Oklahoma Department of Wildlife Conservation

PECE = Policy for the Evaluation of Conservation Efforts when Making Listing Decisions
PFW = the Service's Partners for Fish and Wildlife Program
RMPA = Resource Management Plan Amendment
RWP = Lesser Prairie-Chicken Range-wide Conservation Plan
SSA = Species Status Assessment
TPWD = Texas Parks and Wildlife Department
USDA = U.S. Department of Agriculture
USFS = U.S. Forest Service
WAFWA = Western Association of Fish and Wildlife Agencies
LWEG = Land-Based Wind Energy Guidelines

Previous Federal Actions

Please refer to the proposed listing rule for the Northern DPS and the Southern DPS of the lesser prairie-chicken for a detailed description of previous Federal actions concerning this species (86 FR 29432, June 1, 2021).

Summary of Changes From the Proposed Rule

Based upon our review of the public comments, State agency comments, peer review comments, and relevant information that became available since the proposed rule published, we updated information in our species status assessment report, including:

- adding references on the effects of overhead power lines,
- adding a discussion regarding the effects from competition with ring-necked pheasants,
- updating monitoring information related to the translocation efforts in the Sand Sagebrush Ecoregion,
- updating information related to conservation banks,
- updating information related to previous conservation efforts,
- adding discussion regarding the Southern Plains Grassland Program,
- updating information related to the recent purchase by the New Mexico Department of Game and Fish of additional lands to be managed for the lesser prairie-chicken, and
- updating current population abundance information using the 2021 aerial survey results.

We also made changes as appropriate in this final rule. In addition to minor clarifying edits and incorporation of additional information on the species' biology, populations, and threats, this determination differs from the proposal in the following ways:

(1) We included updated population trend data, including survey data made available since the publication of the proposed rule. Some of these population survey results became available after we finalized the SSA report. Thus, though the SSA report does not include those results, we have added them to this final rule and fully considered them in our determinations on the status of the two DPSs.

(2) We included new and updated conservation actions as submitted by commenters during the open comment period.

(3) Based on public comments, we expanded our Significant Portion of the Range analysis to explain why the Sand Sagebrush Ecoregion is not significant.

(4) Based on comments received from State agencies, local governments, industry groups, and private citizens, we have updated the section 4(d) rule to include one new exception from the section 9 take prohibitions:

The new exception is for take incidental to grazing management when land managers are following a site-specific grazing plan developed by a party that has been approved by the Service. When livestock grazing is managed in ways that are compatible with promoting the maintenance of the vegetative characteristics needed by the lesser prairie-chicken, this activity can be an invaluable tool necessary for managing healthy grasslands benefiting the lesser prairie-chicken. Therefore, we consider this new exception from prohibitions to be necessary and advisable to the conservation of the species.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the lesser prairie-chicken. 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 six appropriate specialists regarding the SSA. We received four responses. We also sent the SSA report to the five State fish and wildlife agencies within the range of the lesser prairie-chicken (Colorado, Kansas, New Mexico, Oklahoma, and Texas) and the four primary Federal agencies with whom we work to deliver conservation actions that could benefit the lesser prairie-chicken: the Bureau of Land Management (BLM) the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), and U.S. Forest Service (USFS). These partners include scientists with expertise in management of either the lesser prairie-chicken or the habitat upon which the lesser prairie-chicken depends. We received responses from USFS, BLM, and all five of the State wildlife agencies. Comments and feedback from partners and peer reviewers were incorporated into the SSA report as appropriate and have informed this final rule.

I. Final Listing Determination

Background

Below is a summary of the taxonomy, life history, and ecology of the lesser prairie-chicken; for a thorough review, please see the SSA report (version 2.3; Service 2022, pp. 5–14).

The lesser prairie-chicken is in the order Galliformes, family Phasianidae, subfamily Tetraoninae; it is generally recognized as a species separate from the greater prairie-chicken (*Tympanuchus cupido pinnatus*) (Jones 1964, pp. 65–73; American Ornithologist's Union 1998, p. 122).

Most lesser prairie-chicken adults live for 2 to 3 years and reproduce in the spring and summer (Service 2022, pp. 10–12). Males congregate on leks during the spring to attract and mate with females (Copelin 1963, p. 26; Hoffman 1963, p. 730; Crawford and Bolen 1975, p. 810; Davis et al. 1979, p. 84; Merchant 1982, p. 41; Haukos 1988, p. 49). Male prairie-chickens tend to exhibit strong breeding site fidelity, often returning to a specific lek many times, even in cases of declining female attendance and habitat condition (Copelin 1963, pp. 29–30; Hoffman 1963, p. 731; Campbell 1972, pp. 698–699, Hagen et al. 2005, entire, Harju et al. 2010, entire). Females tend to establish nests relatively close to the lek, commonly within 0.6 to 2.4 mile (mi) (1 to 4 kilometers (km)) (Copelin 1963, p. 44; Giesen 1994, p. 97), where they incubate 8 to 14 eggs for 24 to 27 days and then raise broods of young throughout the summer (Boal and Haukos 2016, p. 4). Some females will attempt a second nesting if the first nest fails (Johnsgard 1973, pp. 63–64; Merchant 1982, p. 43; Pitman et al. 2006, p. 25). Eggs and young lesser prairie-chickens are susceptible to natural mortality from environmental stress and predation. The appropriate vegetative community and structure is vital to provide cover for nests and young and to provide food resources as broods mature into adults (Suminski 1977, p. 32; Riley 1978, p. 36; Riley et

al. 1992, p. 386; Giesen 1998, p. 9). For more detail on habitat needs of the lesser prairie-chicken, please see the SSA report (Service 2022, pp. 9–14).

The lesser prairie-chicken once ranged across the Southern Great Plains of Southeastern Colorado, Southwestern Kansas, Western Oklahoma, the Panhandle and South Plains of Texas, and Eastern New Mexico; currently, it occupies a substantially reduced portion of its presumed historical range (Rodgers 2016, p. 15). Estimates of the potential maximum historical range of the lesser prairie-chicken (*e.g.,* Taylor and Guthery 1980a, p. 1, based on Aldrich 1963, p. 537; Johnsgard 2002, p. 32; Playa Lakes Joint Venture 2007, p. 1) range from about 64–115 million acres (ac) (26–47 million hectares (ha)). The more recent estimate of the historical range of the lesser prairie-chicken encompasses an area of approximately 115 million ac (47 million ha). Presumably, not all of the area within this historical range was evenly occupied by lesser prairie-chicken, and some of the area may not have been suitable to regularly support lesser prairie-chicken populations (Boal and Haukos 2016, p. 6). However, the current range of the lesser prairie-chicken has been significantly reduced from the historical range at the time of European settlement. Estimates as to the extent of the loss vary from greater than 90 percent reduction (Hagen and Giesen 2005, unpaginated) to approximately 83 percent reduction (Van Pelt et al. 2013, p. 3).

Lesser prairie-chicken monitoring has been occurring for multiple decades and has included multiple different methodologies. Estimates of population abundance prior to the 1960s are indeterminable and rely almost entirely on anecdotal information (Boal and Haukos 2016, p. 6). While little is known about precise historical population sizes, the lesser prairie-chicken was reported to be quite common throughout its range in the early 20th century (Bent 1932, pp. 280–281, 283; Baker 1953, p. 8; Bailey and Niedrach 1965, p. 51; Sands 1968, p. 454; Fleharty 1995, pp. 38–44; Robb and Schroeder 2005, p. 13). For example, prior to 1900, as many as two million birds may have existed in Texas alone (Litton 1978, p. 1). Information regarding population size is available starting in the 1960s when the State fish and wildlife agencies began routine lesser prairie-chicken monitoring efforts. However, survey methodology and effort have differed over the decades, making it difficult to precisely estimate trends.

The SSA report and this final rule rely on two main population estimates. The two methodologies largely cover different time periods, so we report the results of both throughout this final rule in order to give the best possible understanding of lesser prairie-chicken trends both recently and throughout the past decades.

The first of the two studies used historical lek surveys and population reconstruction methods to calculate historical trends and estimate male abundance from 1965 through 2016 (Hagen et al. (2017, pp. 6–9). We have concerns with some of the methodologies and assumptions made in this analysis including survey effort prior to the 1970s, variation in survey efforts between States, and completeness and accuracy of source data used. Others have also noted the challenges of using these data for long-term trends (for example, Zavaleta and Haukos 2013, p. 545; Cummings et al. 2017, pp. 29–30). While these concerns remain, including the very low sample sizes particularly in the 1960s, this work represents the only attempt to compile the historical ground lek count data collected by State agencies to estimate the number of males at both the range-wide and ecoregional scales, and represents the best available data for understanding historical population trends.

Following development of aerial survey methods (McRoberts et al. 2011, entire), the second summary of lesser prairie-chicken population data uses more statistically rigorous estimates of lesser prairie-chicken abundance (both males and females). This study was designed to address the shortcomings and limitations associated with ground-based survey efforts as discussed above. This second study uses data from aerial line-transect surveys throughout the range of the lesser prairie-chicken; these results are then extrapolated from the surveyed area to the rest of the range (Nasman et al. 2022, entire). The results of these survey efforts should not be taken as precise estimates of the annual lesser prairie-chicken abundance, as indicated by the large confidence intervals associated with these estimates. The confidence intervals are a calculation related to the degree of certainty or uncertainty that the sampling method results in estimates that represent the true population abundance.

Due to the lack of confidence in the precision of these population estimates as reflected by the large confidence intervals, conclusions regarding current population sizes or population changes should not be drawn based upon annual fluctuations. In addition to the large confidence intervals, the lesser prairie-chicken is considered a ''boom-bust'' species with a high degree of annual variation in rates of successful reproduction and recruitment. These annual and short-term patterns are largely driven by the influence of seasonal precipitation patterns. Periods of below-average precipitation and higher spring/summer temperatures cause less suitable grassland vegetation cover and less food available, resulting in decreased reproductive output (bust periods). Periods with above-normal precipitation and cooler spring/summer temperatures will support favorable habitat conditions and result in higher reproductive success (boom periods). Thus, annual population changes are not a measure of population health but instead largely represent the influence of short-term precipitation cycles whereas long-term population trends are tied to habitat availability. Instead of reporting the annual estimates, the best use of this data is for long-term trend analysis. Thus, in the SSA report and this final rule, we report the population estimate for the current condition as the average of the past 5 years of surveys.

The results of the study using ground-based lek data (abundance of males) indicate that lesser prairie-chicken range-wide abundance (based on a minimum estimated number of male lesser prairie-chickens at leks) peaked during 1965–1970 at a mean estimate of about 175,000 males (figure 1). The estimated mean population maintained levels of greater than 100,000 males until 1989, after which the population steadily declined to a low of 25,000 males in 1997 (Garton et al. 2016, p. 68). The mean population estimates following 1997 peaked again at about 92,000 males in 2006, albeit at a significantly lower value than the prior peak of 175,000. The mean population estimate subsequently declined to 34,440 males in 2012 (figure 1).

The aerial survey results from 2012 through 2022 (figure 2) estimated the lesser prairie-chicken population abundance, averaged over the most recent 5 years of surveys (2017–2022, no surveys in 2019), at 32,210 (including males and females; 90 percent confidence interval: 11,489, 64,303) (Nasman et al. 2022, p. 16; table 10).

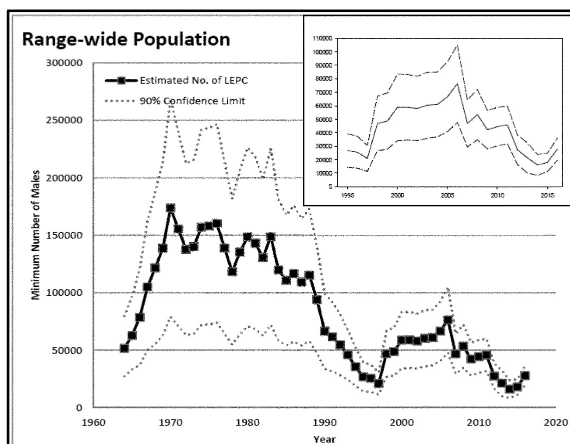


Figure 1. Estimated range-wide minimum number of lesser prairie-chicken males attending leks 1964–2016 (90% confidence interval). (Based on population reconstruction using 2016 aerial survey as the initial population size (reproduced from Hagen et al. 2017).)

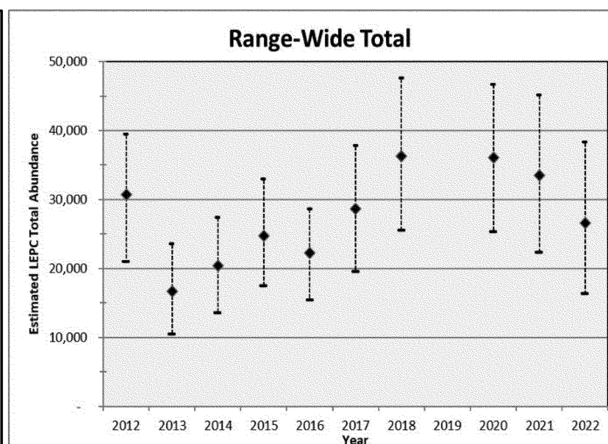
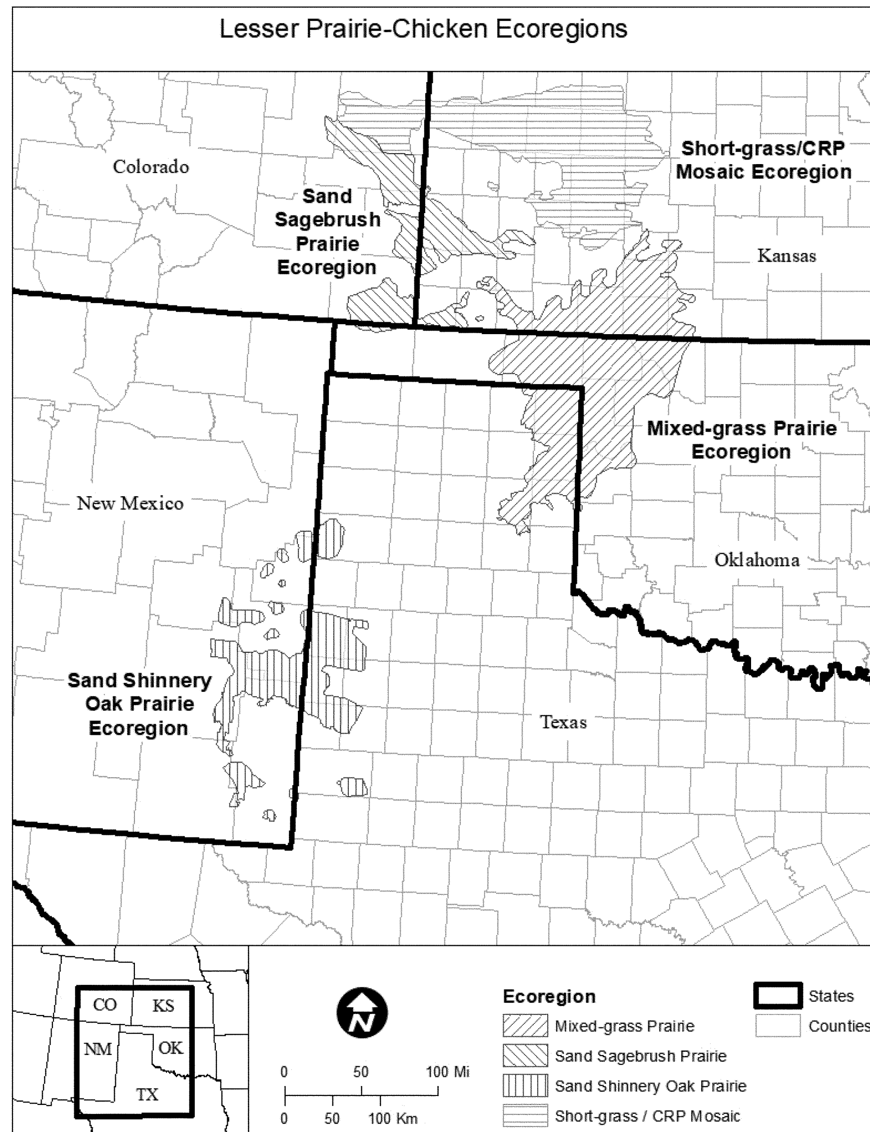


Figure 2. Annual estimates of total range-wide population size of lesser prairie-chicken from 2012–2022. Bars represent the bootstrapped 90% confidence intervals. Graph generated from Nasman et al. (2022, p. 16). There were no surveys in 2019.)

The preferred habitat of the lesser prairie-chicken is mixed-grass prairies and shrublands, with the exception of some areas in the northern extent of the range where shrubs play a lesser role. Lesser prairie-chickens appear to select areas having a shrub component dominated by sand sagebrush or sand shinnery oak when those areas are available (Donaldson 1969, pp. 56, 62; Taylor and Guthery 1980a, p. 6; Giesen 1998, pp. 3–4). In the southern and central portions of the lesser prairie-chicken range, small shrubs, such as sand shinnery oak, are important for summer shade (Copelin 1963, p. 37; Donaldson 1969, pp. 44–45, 62), winter protection, and as supplemental foods (Johnsgard 1979, p. 112). In some areas in the northern extent of the species' range, stands of grass that provide adequate vegetative structure likely serve the same roles. The absence of anthropogenic features as well as other vertical structures is important, as lesser prairie-chickens tend to avoid using areas with trees, vertical structures, and other disturbances in areas with otherwise adequate habitat conditions (Braun et al. 2002, pp. 11–13; Pruett et al. 2009, pp. 1256, 1258; Hovick et al. 2014a, p. 1685; Boggie et al. 2017, entire; Lautenbach 2017, pp. 104–142; Plumb et al. 2019, entire).

At the population scale, the most important requirement for the lesser prairie-chicken is having large, intact, ecologically diverse grasslands to complete their life history and maintain healthy populations (Fuhlendorf et al. 2017b, entire). As detailed in chapter 2 of the SSA report, the lesser prairie-chicken requires large ecologically diverse grasslands to meet specific resource needs, in terms of microhabitat conditions, which vary to some degree by life stage and activity (Service 2022, pp. 10–11). Historically, these ecologically diverse grasslands and shrublands were maintained by the occurrence of wildfires (keeping woody vegetation restricted to drainages and rocky outcroppings) and by grazing by bison and other large ungulates. The lesser prairie-chicken is a species that requires large, intact grasslands for functional self-sustaining populations (Giesen 1998, pp. 3–4; Bidwell et al. 2002, pp. 1–3; Hagen et al. 2004, pp. 71, 76–77; Haukos and Zavaleta 2016, p. 107).

The lesser prairie-chicken now occurs within four ecoregions (figure 3); these ecoregions were originally delineated in 2012 as part of the aerial survey designed to monitor long-term trends in lesser prairie-chicken populations. Each ecoregion is associated with unique environmental conditions based on habitat and climatic variables and some genetic differentiation (Boal and Haukos 2016, p. 5; Oyler-McCance et al. 2016, p. 653). These four ecoregions are the Short-Grass Prairie/CRP Ecoregion in Kansas; the Sand Sagebrush Prairie Ecoregion in Colorado, Kansas, and Oklahoma; the Mixed-Grass Prairie Ecoregion in Kansas, Texas, and Oklahoma; and the Shinnery Oak Prairie Ecoregion of New Mexico and Texas.



The Shinnery Oak Ecoregion occupies portions of eastern New Mexico and the South Plains of Texas (McDonald et al. 2012, p. 2). It has a variable vegetation community that contains a mix of shrubs such as sand shinnery oak (*Quercus havardii*) and sand sagebrush (*Artemisia filifolia*) as well as mixed and tall grasses and forbs (Grisham et al. 2016a, p. 317). The mean population estimate ranged between about 5,000 to 12,000 males through 1980, increased to 20,000 males in the mid-1980s and declined to ~1,000 males in 1997 (Hagen et al. 2017, pp. 6–9). The mean population estimate peaked again to ~15,000 males in 2006 and then declined again to fewer than 3,000 males in the mid-2010s. While population estimates for the Shinnery Oak Ecoregion have varied over recent years, the most recent surveys estimate a 5-year average population size of 2,806 birds (including males and females; 90 percent confidence intervals (CI): 179, 9,007). Approximately 9 percent of all lesser prairie-chicken occur in this ecoregion. Lesser prairie-chickens from the Shinnery Oak Ecoregion are genetically distinct and geographically isolated from the other three ecoregions by 95 mi (153 km) (figure 3; Oyler-McCance et al. 2016, p. 653). Historically, the Shinnery Oak Ecoregion was likely connected to the rest of the lesser prairie-chicken range but as a result of habitat loss and fragmentation from European settlement the lesser prairie-chicken in the Shinnery Oak Ecoregion have likely been isolated for over a century (Oyler-McCance et al. 2016, p. 655).

In New Mexico, the majority of the Shinnery Oak Ecoregion is privately owned (Grisham et al. 2016a, p. 315), with some portions owned by the State Game Commission and federally owned BLM lands. Nearly all of the area in the Texas portion of the ecoregion is privately owned and managed for agricultural use and petroleum production (Haukos 2011, p. 110). The remaining patches of shinnery oak prairie have become isolated, relict communities because the surrounding grasslands have been converted to row crop agriculture or fragmented by oil and gas exploration and urban development (Peterson and Boyd 1998, p. 22). Additionally, honey mesquite (*Prosopis glandulosa*) encroachment within this ecoregion has played a significant role in decreasing available space for the lesser prairie-chicken. Technological advances in irrigated row crop agriculture have led to more recent conversion of shinnery oak prairie habitat to row crops in Eastern New Mexico and West Texas (Grisham et al. 2016a, p. 316).

The Sand Sagebrush Ecoregion occurs in Southeast Colorado, Southwest Kansas, and a small portion of Western Oklahoma (McDonald et al. 2012, p. 2). The vegetation community in this area primarily consists of sand sagebrush and the associated mixed and tall grass species that are usually found in the sandier soils adjacent to rivers, streams, and other drainages in the area. Lesser prairie-chicken from the Sand Sagebrush Ecoregion show some genetic differentiation from other ecoregions but have likely contributed some individuals to the Short-Grass/CRP Ecoregion through dispersal (Oyler-McCance et al. 2016, p. 653).

Historically, the Sand Sagebrush Ecoregion supported the highest density of lesser prairie-chicken and was considered the core of the lesser prairie-chicken range (Haukos et al. 2016, p. 282). A single flock detected in Seward County, Kansas, was estimated to contain more than 15,000 birds (Bent 1932, p. 281). The population size is estimated to have peaked at more than 85,000 males in the 1970s (Garton et al. 2016, p. 62). More recent survey efforts estimate a 5-year average population size of 1,297 birds (including males and females; 90 percent CI: 56, 4,881; Nasman et al. 2022, p. 16). Less than 5 percent of all lesser prairie-chicken occur in this ecoregion (Service 2022, pp. 64–78). Most of the decline has been attributed to habitat deterioration and conversion of sand sagebrush to intensive row crop agriculture due to an increase in center pivot irrigation (Jensen et al. 2000, p. 172). Environmental conditions in this ecoregion can be extreme, with stochastic events such as blizzards negatively impacting lesser prairie-chicken populations.

The Short-Grass/CRP Ecoregion falls within the mixed- and short-grass prairies of Central and Western Kansas (McDonald et al. 2012, p. 2). As the name implies, much of this ecoregion historically consisted of short-grass prairie interspersed with mixed-grass prairie as well as sand sagebrush prairie along some drainages (Dahlgren et al. 2016, p. 260). By the 1980s, large expanses of prairies had been converted from native grass for crop production in this ecoregion. After the introduction of the CRP in 1985, landowners began to have enhanced incentives to convert croplands to perennial grasslands to provide cover for the prevention of soil erosion. The State of Kansas required those enrolling in the CRP to plant native mixed- and tall-grass species, which is notable because the grasses in this area historically consisted largely of short-grass species, which generally do not provide adequate habitat for the lesser prairie-chicken. For more information on the CRP, see the SSA report (Service 2022, pp. 52–54).

Prior to the late 1990s, lesser prairie-chickens in this ecoregion were thought to be largely absent (or occurred sporadically in low densities) (Hagen and Giesen 2005, unpaginated; Rodgers 1999, p. 19). We do not know what proportion of the eastern Short-Grass/CRP Ecoregion in Kansas was historically occupied by lesser prairie-chicken (Hagen 2003, pp. 3–4), and surveys in this ecoregion only began in earnest in 1999 (Dahlgren et al. 2016, p. 262). The CRP is an idle lands program, which requires establishment of grass cover and precludes tillage or agricultural commodity production for the duration of the contract, and has contractual limits to the type, frequency, and timing of management activities, such as burning, haying, or grazing of the established grasses. As a result of these factors, CRP often provides the vegetative structure preferentially used by lesser prairie-chickens for nesting. In the State of Kansas, the availability of CRP lands, especially CRP lands with interseeded or original seed mixture of forbs, resulted in increased habitat availability for the lesser prairie-chicken and, thus, an expansion of the known lesser prairie-chicken range and an increase in the abundance of the lesser prairie-chicken (Rodgers 1999, pp. 18–19; Fields 2004, pp. 11, 105; Fields et al. 2006, pp. 931, 937; Sullins et al. 2018, p. 1617).

The Short-Grass/CRP Ecoregion is now estimated to contain the majority of lesser prairie-chickens compared to the other ecoregions, with recent survey efforts estimating a 5-year average population size of 23,083 birds (including males and females; 90 percent CI: 9,653, 39,934), representing approximately 72 percent of the rangewide population. Recent genetic studies indicate that lesser prairie-chickens have moved northward largely from the Mixed-Grass Ecoregion and, to a lesser extent, the Sand Sagebrush Ecoregion into the Short-Grass/CRP Ecoregion (Oyler-McCance et al. 2016, p. 653).

The northern section of this ecoregion is the only portion of the lesser prairie-chicken's range where co-occurrence with greater prairie-chicken occurs. Hybridization rates of up to 5 percent have been reported (Pitman 2013, p. 5), and that rate seemed to be stable across multiple years, though sampling is limited where the species co-occur (Pitman 2013, p. 12). Limited additional work has been completed to further assess the rate of hybridization. There are concerns about the implications of genetic introgression (dilution) of lesser prairie-chicken genes, particularly given that potential effects are poorly understood (Dahlgren et al. 2016, p. 276). Unresolved issues include whether hybridization reduces fitness and alters behavior or morphological traits in either a positive or negative way and the historical occurrence and rate of hybridization.

The Mixed-Grass Ecoregion for the lesser prairie-chicken lies in the northeastern panhandle of Texas, the panhandle of northwestern Oklahoma, and south-central Kansas (McDonald et al. 2012, p. 2). The Mixed-Grass Ecoregion is separated from the Short-Grass/CRP Ecoregion in Kansas by the Arkansas River. The vegetation community in this ecoregion consists largely of a mix of perennial grasses and shrubs such as sand sagebrush, sand plum (*Prunus angustifolia*), yucca (*Yucca* spp.), and sand shinnery oak (Wolfe et al. 2016, p. 300). Based upon population reconstruction data, the mean population estimate was around 30,000 males in the 1970s and 1980s followed by a decline in the 1990s (Hagen et al. 2016, pp. 6–7). The mean population estimate peaked again in the early 2000s at around 25,000 males, before declining to and remaining at its lowest levels, less than 10,000 males since 2012 (Hagen et al. 2016, pp. 6–7). Although historical population estimates in the ecoregion reported some of the highest densities of lesser prairie-chicken in the range (Wolfe et al. 2016, p. 299), recent aerial survey efforts estimate a 5-year average population size of 5,024 birds (including males and females; 90 percent CI: 1,601, 10,481). The recent survey work indicates that about 15 percent of lesser prairie-chicken occur in this ecoregion. Lesser prairie-chicken from the Mixed-Grass Ecoregion are similar in genetic variation with the Short-Grass/CRP Ecoregion, with individuals likely dispersing from the Mixed-Grass Ecoregion to the Short-Grass/CRP Ecoregion (Oyler-McCance et al. 2016, p. 653).

Distinct Population Segment Evaluation

Under the Act, the term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' 16 U.S.C. 1532(16). To guide the implementation of the distinct population segment (DPS) provisions of the Act, we and the National Marine Fisheries Service (National Oceanic and Atmospheric Administration—Fisheries), published

the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under our DPS Policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS: (1) The population segment's discreteness from the remainder of the species to which it belongs, and (2) the significance of the population segment to the species to which it belongs. If we determine that a population segment being considered for listing is a DPS, then the population segment's conservation status is evaluated based on the five listing factors established by the Act to determine if listing it as either endangered or threatened is warranted.

As described in Previous Federal Actions, we were petitioned to list the lesser prairie-chicken either rangewide or in three distinct population segments. The petition suggested three DPS configurations: (1) Shinnery Oak Ecoregion, (2) the Sand Sagebrush Ecoregion, and (3) a segment including the Mixed-Grass Ecoregion and the Short-Grass/CRP Ecoregion. The petition combined the Mixed-Grass Ecoregion and the Short-Grass/CRP Ecoregion due to evidence they are linked genetically and geographically (Molver 2016, p. 18). Genetic studies indicate that lesser prairie-chicken from the Mixed-Grass Ecoregion are similar in genetic variation with the Short-Grass/CRP Ecoregion, with individuals likely dispersing from the Mixed-Grass Ecoregion to the Short-Grass/CRP Ecoregion (Oyler-McCance et al. 2016, p. 653). Other genetic data indicate that lesser prairie-chicken from the Sand Sagebrush Ecoregion and lesser prairie-chicken from the Mixed-Grass and Short-Grass/CRP Ecoregion also share genetic traits. Genetic studies of neutral markers indicate that, although lesser prairie-chicken from the Sand Sagebrush Ecoregion form a distinct genetic cluster from other ecoregions, they have also likely contributed some individuals to the Short-Grass/CRP Ecoregion through dispersal (Oyler-McCance et al. 2016, p. 653). Additionally, these three ecoregions are not geographically isolated from one another (figure 3). As a result of the shared genetic characteristics and the geographic connections, we have concluded a ''Northern'' population segment of the species that includes the Sand Sagebrush Ecoregion, the Mixed-Grass Ecoregion, and the Short-Grass/CRP Ecoregion is appropriately considered a potential DPS configuration.

Under the Act, we have the authority to consider for listing any species, subspecies, or, for vertebrates, any distinct population segment (DPS) of these taxa if there is sufficient information to indicate that such action may be warranted. We considered whether two segments meet the DPS criteria under the Act: a ''Southern'' population segment, including the southernmost ecoregion (Shinnery Oak), and a ''Northern'' population segment, including the three northernmost ecoregions (Mixed-Grass, Short-Grass/CRP, and Sand Sagebrush).

Discreteness

Under our DPS Policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

We conclude the two segments satisfy the ''markedly separate'' condition. The two segments are not separated from each other by international governmental boundaries. The southern population segment (which includes the Shinnery Oak ecoregion) is separated from the northern population segment (which includes the three northern ecoregions) by approximately 95 mi (153 km). Most of this separation between the two segments is developed or otherwise unsuitable habitat. There has been no recorded movement of lesser prairie-chickens between the Shinnery Oak Ecoregion and the three northern ecoregions over the past several decades. Because there is no connection between the two population segments, there is subsequently no gene flow between them (Oyler-McCance et al. 2016, entire).

Therefore, we have determined that both a southern segment and a northern segment of the lesser prairie-chicken range both individually meet the condition for discreteness under our DPS Policy.

Significance

Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon, (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon, (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range, or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

For the lesser prairie-chicken, we first considered evidence that the Shinnery Oak Ecoregion population segment differs markedly from the other populations of the species, *i.e.,* the ecoregions that constitute the Northern population segment (Mixed-Grass Ecoregion, Short-Grass/CRP Ecoregion, and Sand Sagebrush Ecoregion) in its genetic characteristics. The most recent rangewide genetic study examined neutral markers in the four ecoregions where the lesser prairie-chicken occurs. It concluded that there is significant genetic variation across the lesser prairie-chicken range. The study also concluded that although there is genetic exchange between the three northern ecoregions (particularly movement of birds northward from the Mixed-Grass Ecoregion to the Short-Grass/CRP Ecoregion, and, to a lesser extent, from the Sand Sagebrush Ecoregion into the Short-Grass/CRP Ecoregion), lesser prairie-chicken from the Shinnery Oak Ecoregion that make up the southern population segment) are a group that is genetically distinct from the remainder of the range, *i.e.,* the northern population segment (Oyler-McCance et al. 2016, p. 653). The Shinnery Oak Ecoregion is more distinct from all three ecoregions in the Northern population segment than those ecoregions are from each other (Oyler-McCance et al. 2016, table 4). The Shinnery Oak Ecoregion was likely historically connected to the remainder of the range, but the two parts have been separated since approximately the time of European settlement. Therefore, the two segments of the range are genetically distinct from each other and therefore significant to the taxon as a whole.

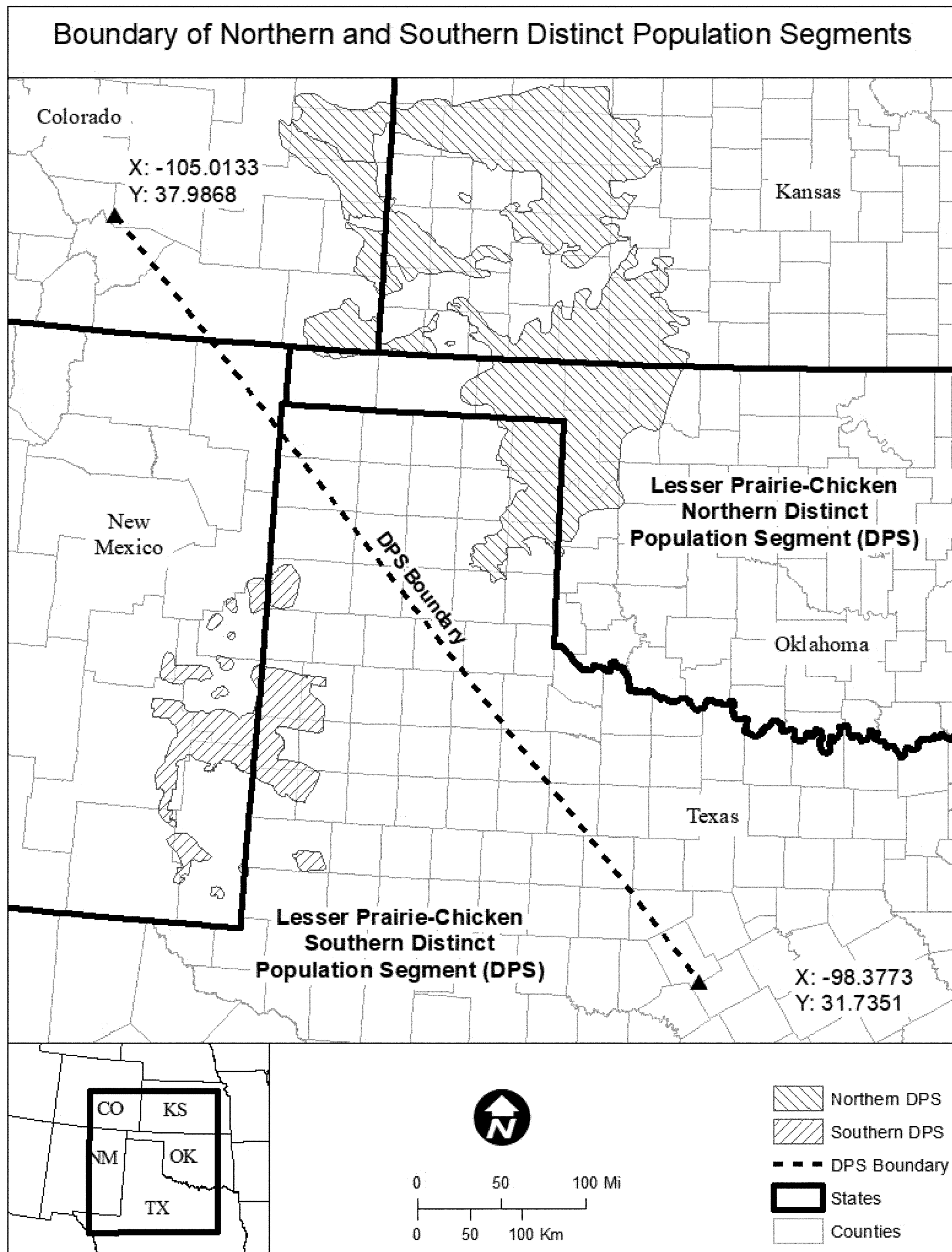
We next considered evidence that loss of the population segment would result in a significant gap in the range of the taxon. As discussed above, the southern population segment and the northern

population segment are separated by approximately 95 mi (153 km). The loss of the Shinnery Oak Ecoregion would result in the loss of the entire southern part of the species' range and decrease species redundancy and ecological and genetic representation, thus decreasing its ability to withstand demographic and environmental stochasticity. The loss of the other three ecoregions would result in the loss of 75 percent of the species' range, as well as loss of the part of the range (the Short-Grass/CRP Ecoregion) that has recently experienced an expansion of occupied habitat. This would create a large gap in the northern portion of the species' range, also reducing the species' ability to withstand demographic and environmental stochasticity. Therefore, the loss of either part of the range would result in a significant gap in the range of the lesser prairie-chicken. These genetic differences and the evidence that a significant gap in the range of the taxon would result from the loss of either discrete population segment both individually satisfy the significance criterion of the DPS Policy. Therefore, under the Service's DPS Policy, we find that both the southern and northern segments of the lesser prairie-chicken are significant to the taxon as a whole.

Distinct Population Segment Conclusion

Our DPS Policy directs us to evaluate the significance of a discrete population in the context of its biological and ecological significance to the remainder of the species to which it belongs. Based on an analysis of the best available scientific and commercial data, we conclude that the northern and southern parts of the lesser prairie-chicken range are discrete due to geographic (physical) isolation from the remainder of the taxon. Furthermore, we conclude that both parts of the lesser prairie-chicken range are significant, because loss of either part would result in a significant gap in the range of the taxon, and because the two parts of the range differ markedly from each other based on neutral genetic markers. Therefore, we conclude that both the northern and southern parts of the lesser prairie-chicken range are both discrete and significant under our DPS Policy and are, therefore, uniquely listable entities under the Act.

Based on our DPS Policy (61 FR 4722; February 7, 1996), if a population segment of a vertebrate species is both discrete and significant relative to the taxon as a whole (*i.e.,* it is a distinct population segment), its evaluation for endangered or threatened status will be based on the Act's definition of those terms and a review of the factors enumerated in section 4(a) of the Act. Having found that both parts of the lesser prairie-chicken range meet the definition of a distinct population segment, we evaluate the status of both the Southern DPS and the Northern DPS of the lesser prairie-chicken to determine whether either meets the definition of an endangered or threatened species under the Act. The line demarcating the break between the Northern and Southern DPS lies approximately halfway between the two DPSs in the unoccupied area between them (figure 4).



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, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019). At the same time the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (collectively, the 2019 regulations).

As with the proposed rule, we are applying the 2019 regulations for this final rule because the 2019 regulations are currently in effect, just as they were when we completed the proposed rule. Although there was a period in the

interim—between July 5, 2022, and September 21, 2022—when the 2019 regulations became vacated and the pre-2019 regulations therefore governed, the 2019 regulations are now in effect and govern listing and critical habitat decisions (*see Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD* v. *Haaland*) (vacating the 2019 regulations and thereby reinstating the pre-2019 regulations)) and *In re: Cattlemen's Ass'n,* No. 22–70194 (9th Cir. Sept. 21, 2022) (staying the vacatur of the 2019 regulations and thereby reinstating the 2019 regulations until a pending motion for reconsideration before the district court is resolved)).

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 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 manmade 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.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define 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' likely 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 species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be listed 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 FWS–R2–ES–2021–0015 on *https://www.regulations.gov.*

To assess lesser prairie-chicken 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 species' 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 species 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.

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.

Representation

To evaluate representation as a component of lesser prairie-chicken viability, we considered the need for multiple healthy lesser prairie-chicken populations within each of the four ecoregions to conserve the genetic and ecological diversity of the lesser prairie-chicken. Each of the four ecoregions varies in terms of vegetative communities and environmental conditions, resulting in differences in abundance and distribution and management strategies (Boal and Haukos 2016, p. 5). Despite reduced range and population size, most lesser prairie-chicken populations appear to have maintained comparatively high levels of neutral genetic variation (DeYoung and Williford 2016, p. 86). As discussed in *Significance* above, recent genetic studies also show significant genetic variation across the lesser prairie-chicken range based on neutral markers (Service 2022, figure 2.4), which supports management separation of these four ecoregions and highlights important genetic differences between them (Oyler-McCance et al. 2016, p. 653). While it is unknown how this genetic variation relates to differences in adaptive capacity between the ecoregions, maintaining healthy lesser prairie-chicken populations across this range of diversity increases the likelihood of conserving inherent ecological and genetic variation within the species to enhance its ability for adaptation to future changes in environmental conditions.

Resiliency

In the case of the lesser prairie-chicken, we considered the primary indicators of resiliency to be habitat availability, population abundance, growth rates, and quasi-extinction risk. Lesser prairie-chicken populations within ecoregions must have sufficient habitat and population growth potential to recover from natural disturbance events such as extensive wildfires, extreme hot or cold events, extreme precipitation events, or extended local periods of below-average rainfall. These events can be particularly devastating to populations when they occur during the late spring or summer when nesting and brood-rearing are occurring and individuals are more susceptible to mortality.

The lesser prairie-chicken is considered a ''boom–bust'' species based on its high reproductive potential with a high degree of annual variation in rates of successful reproduction and recruitment. These variations are largely driven by the influence of seasonal precipitation patterns (Grisham et al. 2013, pp. 6–7), which impact the population through effects on the quality of habitat. Periods of below-average precipitation and higher spring/summer temperatures result in less appropriate grassland vegetation cover and less food available, resulting in decreased reproductive output (bust periods). Periods with above-normal precipitation and cooler spring/summer temperatures will support favorable lesser prairie-chicken habitat conditions and result in high reproductive success (boom periods). In years with particularly poor weather conditions, individual female lesser prairie-chicken may forgo nesting for the year. This population characteristic highlights the need for habitat conditions to support large population growth events during favorable climatic conditions so they can withstand the declines during poor climatic conditions without a high risk of extirpation.

Historically, the lesser prairie-chicken had large expanses of grassland habitat to maintain populations. Early European settlement and development of the Southern Great Plains for agriculture initially, and for energy extraction later, substantially reduced the amount and connectivity of the grasslands of this region. Additionally, if historically some parts of the range were drastically impacted or eliminated due to a stochastic event, that area could be reestablished from other populations. Today, those characteristics of the grasslands have been degraded, resulting in the loss and fragmentation of grasslands in the Southern Great Plains. Under present conditions, the potential lesser prairie-chicken habitat is limited to small, fragmented grassland patches (relative to historical conditions) (Service 2022, pp. 64–78). The larger and more intact the remaining grassland patches are, with appropriate vegetation structure, the larger, healthier, and more resilient the lesser prairie-chicken populations will be. Exactly how large habitat patches should be to support healthy populations depends on the quality and intactness of the patches. Recommended total space needed for a single lesser prairie-chicken lek ranges from a minimum of about 12,000 ac (4,900 ha) (Davis 2005, p. 3) up to more than 50,000 ac (20,000 ha), depending on the quality and intactness of the area (Applegate and Riley 1998, p. 14; Haufler et al. 2012, pp. 7–8; Haukos and Zavaleta 2016, p. 107).

A single lesser prairie-chicken lek is not considered a population that can persist on its own. Instead, complexes of multiple leks that interact with each other are required for a lesser prairie-chicken population to persist over time. These metapopulation dynamics, in which individuals interact on the landscape to form larger populations, are dependent upon the specific biotic and abiotic landscape characteristics of the site and how those characteristics influence space use, movement, patch size, and fragmentation (DeYoung and Williford 2016, pp. 89–91). Maintaining multiple, highly resilient populations (complexes of leks) within the four ecoregions that have the ability to interact with each other will increase the probability of persistence in the face of environmental fluctuations and stochastic events. Because of this concept of metapopulations and their influence on long-term persistence, when evaluating lesser prairie-chicken populations, site-specific information can be informative. However, many of the factors affecting lesser prairie-chicken populations should be analyzed at larger spatial scales (Fuhlendorf et al. 2002, entire).

Redundancy

Redundancy describes the ability of a species to withstand catastrophic events. Catastrophes are stochastic events that are expected to lead to population collapse regardless of population health and for which adaptation is unlikely. Redundancy spreads the risk and can be measured through the duplication and distribution

of resilient populations that are connected across the range of the species. The larger the number of highly resilient populations the lesser prairie-chicken has, distributed over a large area within each ecoregion, the better the species can withstand catastrophic events. Catastrophic events for lesser prairie-chicken might include extreme drought; widespread, extended droughts; or a disease outbreak.

Measuring redundancy for lesser prairie-chicken is a difficult task due to the physiological and biological characteristics of the species, which make it difficult to survey and limit the usefulness of survey results. To estimate redundancy for the lesser prairie-chicken, we estimated the geographic distribution of predicted available habitat within each of the four ecoregions and the juxtaposition of that habitat to other habitat and non-habitat. As the amount of large grassland patches decreases and grassland patches become more isolated to reduce or preclude lesser prairie-chicken movement between them, the overall redundancy of the species is reduced. As redundancy decreases within any representative ecoregion or DPS, the likelihood of extirpation within that ecoregion or DPS increases. As large grassland patches, the connectivity of those patches, and the number of lesser prairie-chicken increase, so does the redundancy within an ecoregion or a DPS.

Current Condition

In the SSA report, we assessed the current condition of the lesser prairie-chicken through an analysis of existing habitat; a review of factors that have impacted the species in the past, including a geospatial analysis to estimate areas of land cover impacts on the current landscape condition; a summary of the current potential usable area based upon our geospatial analysis; and a summary of past and current population estimates. We also evaluated and summarized the benefits of the extensive conservation efforts that are ongoing throughout the lesser prairie-chicken range to conserve the species and its habitat.

Geospatial Analysis Summary

The primary concern for the lesser prairie-chicken is habitat loss and fragmentation. We conducted a geographic information system (GIS) analysis to analyze the extent of usable land cover changes and fragmentation within the range of the lesser prairie-chicken, characterizing landscape conditions spatially to analyze the ability of those landscapes to support the biological needs of the lesser prairie-chicken. Impacts included in this analysis were the direct and indirect effects of areas that were converted to cropland; encroached by woody vegetation such as mesquite and eastern red cedar (*Juniperus virginiana*); and developed for roads, petroleum production, wind energy, and transmission lines. We acknowledge that there are other impacts, such as power lines or incompatible grazing on the landscape that can affect lesser prairie-chicken habitat. For those impacts, either no geospatial data were available, or the available data would have added so much complexity to our geospatial model that the results would have been uninterpretable or not explanatory for our purpose.

There are several important limitations to our geospatial analysis. First, it is a landscape-level analysis, so the results only represent broad trends at the ecoregional and rangewide scales. Secondly, this analysis does not incorporate different levels of habitat quality, as the data do not exist at the spatial scale or resolution needed. Our analysis considers areas only as either potentially usable or not usable by lesser prairie-chicken based upon land cover classifications. We recognize that some habitat, if managed as high-quality grassland, may have the ability to support higher densities of lesser prairie-chicken than other habitat that exists at lower qualities. Additionally, we also recognize that some areas of land cover that we identified as suitable could be of such poor quality that it is of limited value to the lesser prairie-chicken. We recognize there are many important limitations to this landscape analysis, including variation and inherent error in the underlying data and unavailable data. We interpreted the results of this analysis with those limitations in mind.

In this final rule, we discuss effects that relate to the total potential usable unimpacted acreage for lesser prairie-chicken, as defined by our geospatial analysis (hereafter, analysis area). A complete description of the purpose, methodology, constraints, and additional details for this analysis is provided in the SSA report for the lesser prairie-chicken (Service 2022, appendix B, parts 1, 2, and 3).

Threats Influencing Current Condition

Following are summary evaluations of the threats analyzed in the SSA report for the lesser prairie-chicken: effects associated with habitat degradation, loss, and fragmentation, including conversion of grassland to cropland (Factor A), petroleum production (Factor A), wind energy development and transmission (Factor A), woody vegetation encroachment (Factor A), and roads and electrical distribution lines (Factor A); other factors, such as livestock grazing (Factor A), shrub control and eradication (Factor A), collision mortality from fences (Factor E), predation (Factor C), influence of anthropogenic noise (Factor E), fire (Factor A); and extreme weather events (Factor E). We also evaluate existing regulatory mechanisms (Factor D) and ongoing conservation measures.

In the SSA report, we also considered three additional threats: hunting and other recreational, educational, and scientific use (Factor B); parasites and diseases (Factor C); and insecticides (Factor E). We concluded that, as indicated by the best available scientific and commercial information, these threats are currently having little to no impact on lesser prairie-chickens and their habitat, and thus their overall effect now and into the future is expected to be minimal. Therefore, we will not present summary analyses of those threats in this document but will consider them in our overall conclusions of impacts to the species. For full descriptions of all threats and how they impact the species, please see the SSA report (Service 2022, pp. 24–49).

Habitat Degradation, Loss, and Fragmentation

The grasslands of the Great Plains are among the most threatened ecosystems in North America (Samson et al. 2004, p. 6) and have been impacted more than any other major ecosystem on the continent (Samson and Knopf 1994, p. 418). Temperate grasslands are also one of the least conserved ecosystems (Hoekstra et al. 2005, p. 25). Grassland loss in the Great Plains is estimated at approximately 70 percent (Samson et al. 2004, p. 7), with nearly 23 million ac (93,000 km^2; 9.3 million ha) of grasslands in the United States lost between 1982 and 1997 alone (Samson et al. 2004, p. 9). The vast majority of the lesser prairie-chicken range (more than 95 percent) occurs on private lands that have been in some form of agricultural production since at least the early 1900s. As a result, available habitat for grassland species, such as the lesser prairie-chicken, has been much reduced and fragmented compared to historical conditions across its range.

Habitat impacts occur in three general categories that often work synergistically at the landscape scale: degradation, loss, and fragmentation. Habitat degradation results in changes to a species' habitat that reduces its

suitability to the species, but without making the habitat entirely unsuitable. Degradation may result in lower carrying capacity, lower reproductive potential, higher predation rates, or other effects. Habitat loss may result from the same anthropogenic sources that cause degradation, but the habitat has been altered to the point where it has no suitability for the species at all. Habitat fragmentation occurs when habitat loss is patchy and leaves a matrix of grassland habitat behind. While habitat degradation continues to be a concern, we focus our analysis on habitat loss and fragmentation from the cumulative effects of multiple sources of activities as the long-term drivers of the species' viability.

Initially, reduction in the total area of available habitat may be more significant than fragmentation and can exert a much greater effect on populations (Fahrig 1997, pp. 607, 609). However, as habitat loss continues, the effects of fragmentation often compound effects of habitat loss and produce even greater population declines than habitat loss alone (Bender et al. 1998, pp. 517–518, 525). Spatial habitat fragmentation occurs when some form of disturbance, usually habitat degradation or loss, results in the separation or splitting apart of larger, previously contiguous, functional components of habitat into smaller, often less valuable, noncontiguous patches (Wilcove et al. 1986, p. 237; Johnson and Igl 2001, p. 25; Franklin et al. 2002, entire). Habitat loss and fragmentation influence habitat availability and quality in three primary ways: (1) total area of available habitat constrains the maximum population size for an area; (2) the size of habitat patches within a larger habitat area, including edge effects (changes in population or community structures that occur at the boundary of two habitats), influences habitat quality and size of local populations; and (3) patch isolation influences the amount of species movement between patches, which constrains demographic and genetic exchange and ability to recolonize local areas where the species might be extirpated (Johnson and Igl 2001, p. 25; Stephens et al. 2003, p. 101).

Habitat loss, fragmentation, and degradation correlate with the ecological concept of carrying capacity. Within any given block or patch of lesser prairie-chicken habitat, carrying capacity is the maximum number of birds that can be supported indefinitely by the resources available within that area, that is, sufficient food, shelter, and lekking, nesting, brood-rearing, and wintering areas. As habitat loss increases and the size of an area decreases, the maximum number of birds that can inhabit that particular habitat patch also decreases. Consequently, a reduction in the total area of available habitat can negatively influence biologically important characteristics such as the amount of space available for establishing territories and nest sites (Fahrig 1997, p. 603). Over time, the continued conversion and loss of habitat will reduce the capacity of the landscape to support historical population levels, causing a decline in population sizes.

Habitat loss not only contributes to overall declines in usable area for a species but also causes a reduction in the size of individual habitat patches and influences the proximity and connectivity of these patches to other patches of similar habitat (Stephens et al. 2003, p. 101; Fletcher 2005, p. 342), reducing rates of movement between habitat patches until, eventually, complete isolation results. Habitat quality for many species is, in part, a function of patch size and declines as the size of the patch decreases (Franklin et al. 2002, p. 23). Both the size and shape of the habitat patch have been shown to influence population persistence in many species (Fahrig and Merriam 1994, p. 53). The size of the fragment can influence reproductive success, survival, and movements. As the distances between habitat fragments increase, the rate of dispersal between the habitat patches may decrease and ultimately cease, reducing the likelihood of population persistence and potentially leading to both localized and regional extinctions (Harrison and Bruna 1999, p. 226; With et al. 2008, p. 3153). In highly fragmented landscapes, once a species becomes extirpated from an area, the probability of recolonization is greatly reduced (Fahrig and Merriam 1994, p. 52).

For the lesser prairie-chicken, habitat loss can occur due to either direct or indirect habitat impacts. Direct habitat loss is the result of the removal or alteration of grasslands, making that space no longer available for use by the lesser prairie-chicken. Indirect habitat loss and degradation is when the vegetation still exists, but the areas adjacent to a disturbance (the disturbance can be natural or manmade) are no longer used by lesser prairie-chicken or are used at reduced rates, or the disturbance negatively alters demographic rates or behavior in the affected area. In many cases, as discussed in detail below for specific disturbances, the indirect habitat loss can greatly exceed the direct habitat loss.

Primarily due to their site fidelity and the need for large, ecologically diverse landscapes, lesser prairie-chickens appear to be relatively intolerant to habitat alteration, particularly for activities that fragment habitat into smaller patches. The birds require habitat patches with large expanses of vegetative structure in different successional stages to complete different phases in their life cycle, and the loss or partial loss of even one of these structural components can significantly reduce the overall value of that habitat to lesser prairie-chickens (Elmore et al. 2013, p. 4). In addition to the impacts on the individual patches, as habitat loss and fragmentation increases on the landscape, the juxtaposition of habitat patches to each other and to non-habitat areas will change. This changing pattern on the landscape can be complex and difficult to predict, but the results, in many cases, are increased isolation of individual patches (either due to physical separation or barriers preventing or limiting movement between patches) and direct impacts to metapopulation structure, which could be important for population persistence (DeYoung and Williford 2016, pp. 88–91).

The following sections provide a discussion and quantification of the influence of habitat loss and fragmentation on the grasslands of the Great Plains within the lesser prairie-chicken analysis area and more specifically allow us to characterize the current condition of lesser prairie-chicken habitat.

Conversion of Grassland to Cropland

Historical conversion of grassland to cultivated agricultural lands in the late 19th century and throughout the 20th century has been regularly cited as an important cause in the rangewide decline in abundance and distribution of lesser prairie-chicken populations (Copelin 1963, p. 8; Jackson and DeArment 1963, p. 733; Crawford and Bolen 1976a, p. 102; Crawford 1980, p. 2; Taylor and Guthery 1980b, p. 2; Braun et al. 1994, pp. 429, 432–433; Mote et al. 1999, p. 3). Because cultivated grain crops may have provided increased or more dependable winter food supplies for lesser prairie-chickens (Braun et al. 1994, p. 429), the initial conversion of smaller patches of grassland to cultivation may have been temporarily beneficial to the short-term needs of the species as primitive and inefficient agricultural practices made grain available as a food source (Rodgers 2016, p. 18). However, as conversion increased, it became clear that landscapes having greater than 20 to 37

percent cultivated grains may not support stable lesser prairie-chicken populations (Crawford and Bolen 1976a, p. 102). More recently, abundances of lesser prairie-chicken increased with increasing cropland until a threshold of 10 percent was reached; after that, abundance of lesser prairie-chicken declined with increasing cropland cover (Ross et al. 2016b, entire). While lesser prairie-chicken may forage in agricultural croplands, croplands do not provide for the habitat requirements of the species' life cycle (cover for nesting and thermoregulation); thus, lesser prairie-chicken avoid landscapes dominated by cultivated agriculture, particularly where small grains are not the dominant crop (Crawford and Bolen 1976a, p. 102).

As part of the geospatial analysis completed for the SSA, we estimated the amount of cropland that currently exists in the four ecoregions of the lesser prairie-chicken. These percentages do not equate to the actual proportion of habitat loss in the analysis area because not all of the analysis area was necessarily suitable lesser prairie-chicken habitat; they are only the estimated portion of the total analysis area converted from the native vegetation community, *i.e.,* grassland, to cropland. About 37 percent of the total area in the Short-Grass/CRP Ecoregion; 32 percent of the total area in the Sand Sagebrush Ecoregion; 13 percent of the total area in the Mixed-Grass Ecoregion; and 14 percent of the total area in the Shinnery Oak Ecoregion have been converted to cropland in the analysis area of the lesser prairie-chicken. Rangewide, we estimate about 4,963,000 ac (2,009,000 ha) of grassland have been converted to cropland, representing about 23 percent of the total analysis area. We note that these calculations do not account for all conversion that has occurred within the historical range of the lesser prairie-chicken but are limited to the amount of cropland within our analysis area. For further information, including total acreages impacted, see the SSA report for the lesser prairie-chicken (Service 2022, appendix E and figure E.1).

The effects of grassland converted to cropland within the historical range of the lesser prairie-chicken have significantly impacted the amount of habitat available and how fragmented the remaining habitat is for the lesser prairie-chicken, leading to overall decreases in resiliency and redundancy throughout the range of the lesser prairie-chicken. The impact of cropland has shaped the historical and current condition of the grasslands and shrublands upon which the lesser prairie-chicken depends.

Petroleum and Natural Gas Production

Petroleum and natural gas production has occurred over much of the estimated historical and current range of the lesser prairie-chicken. As demand for energy has continued to increase nationwide, so has oil and gas development in the Great Plains. In Texas, for example, one study noted that from 2002–2012 active oil and gas wells in the lesser prairie-chicken occupied range increased by more than 80 percent (Timmer et al. 2014, p. 143). The impacts from oil and gas development extend beyond the immediate well sites; they involve activities such as surface exploration, exploratory drilling, field development, and facility construction, as well as access roads, well pads, and operation and maintenance. Associated facilities can include compressor stations, pumping stations, and electrical generators.

Petroleum and natural gas production result in both direct and indirect habitat effects to the lesser prairie-chicken (Hunt and Best 2004, p. 92). Well pad construction, seismic surveys, access road development, power line construction, pipeline corridors, and other activities can all result in direct habitat loss by removal of vegetation used by lesser prairie-chickens. As documented in other grouse species, indirect habitat loss also occurs from avoidance of vertical structures, noise, and human presence (Weller et al. 2002, entire), which all can influence lesser prairie-chicken behavior in the general vicinity of oil and gas development areas. These activities also disrupt lesser prairie-chicken reproductive behavior (Hunt and Best 2004, p. 41).

Anthropogenic features, such as oil and gas wells, affect the behavior of lesser prairie-chickens and alter the way in which they use the landscape (Hagen et al. 2011, pp. 69–73; Pitman et al. 2005, entire; Hagen 2010, entire; Hunt and Best 2004, pp. 99–104; Plumb et al. 2019, pp. 224–227; Sullins et al. 2019, pp. 5–8; Peterson et al. 2020, entire). Please see the SSA report for a detailed summary of the best available scientific information regarding avoidance distances and effects of oil and gas development on lesser prairie-chicken habitat use (Service 2022, pp. 27–28).

As part of the geospatial analysis discussed in the SSA report, we calculated the amount of usable land cover for the lesser prairie-chicken that has been impacted (both direct and indirect impacts) by oil and natural gas wells in the current analysis area of the lesser prairie-chicken, though this analysis did not include all associated infrastructure as those data were not available. We used an impact radius of 984 feet (ft) (300 meters (m)) for indirect effects of oil and gas wells. For details regarding the establishment of the impact radius, see appendix B, part 2C, of the SSA report (Service 2022). These calculations were limited to the current analysis area and do not include historical impacts of habitat loss that occurred outside of the current analysis area. Thus, the calculation likely underestimates the rangewide effects of historical oil and gas development on the lesser prairie-chicken. About 4 percent of the total area in the Short-Grass/CRP Ecoregion; 5 percent of the total area in the Sand Sagebrush Ecoregion; about 10 percent of the total area in the Mixed-Grass Ecoregion; and 4 percent of the total area in the Shinnery Oak Ecoregion of space that was identified as potential usable or potential restorable areas have been impacted due to oil and gas development in the current analysis area of the lesser prairie-chicken. Rangewide, we estimate about 1,433,000 ac (580,000 ha) of grassland have been lost due to oil and gas development representing about 7 percent of the total analysis area. Maps of these areas in each ecoregion are provided in the SSA report (Service 2022, appendix E, figure E.2).

Oil and gas development directly removes habitat that supports lesser prairie-chicken, and the effects of the development extend past the immediate site of the wells and their associated infrastructure, further impacting habitat and altering behavior of lesser prairie-chicken throughout both the Northern and the Southern DPS. These activities have resulted in decreases in population resiliency and species redundancy.

Wind Energy Development and Power Lines

Wind power is a form of renewable energy increasingly being used to meet current and projected future electricity demands in the United States. Much of the new wind energy development is likely to come from the Great Plains States because they have high wind resource potential, which exerts a strong, positive influence on the amount of wind energy developed within a particular State (Staid and Guikema 2013, p. 384). In 2019, three of the five States within the lesser prairie-chicken range (Colorado, New Mexico, and Kansas) were within the top 10 States nationally for fastest growing States for wind generation in the past year (AWEA 2020, p. 33). There is considerable information (Southwest Power Pool

2020) indicating interest by the wind industry in developing wind energy within the range of the lesser prairie-chicken, especially if additional transmission line capacity is constructed. As of May 2020, approximately 1,792 wind turbines were located within the lesser prairie-chicken analysis area (Hoen et al. 2020). Not all areas within the analysis area are habitat for the lesser prairie-chicken, so not all turbines located within the analysis area affect the lesser prairie-chicken and its habitat.

The average size of installed wind turbines and all other size aspects of wind energy development continues to increase (DOE 2015, p. 63; AWEA 2020, p. 87–88; AWEA 2014, entire; AWEA 2015, entire; AWEA 2016, entire; AWEA 2017, entire; AWEA 2018, entire; AWEA 2019, entire; AWEA 2020, entire). Wind energy developments range from 20 to 400 towers, each supporting a single turbine. The individual permanent footprint of a single turbine unit, about 0.75–1 ac (0.3–0.4 ha), is relatively small in comparison with the overall footprint of the entire array (DOE 2008, pp. 110–111). Roads are necessary to access the turbine sites for installation and maintenance. Depending on the size of the wind energy development, one or more electrical substations, where the generated electricity is collected and transmitted on to the power grid, may also be built. Considering the initial capital investment and that the service life of a single turbine is at least 20 years (DOE 2008, p. 16), we expect most wind energy developments to be in place for at least 30 years. Wind repowering is the combined activity of dismantling or refurbishing existing wind turbines and commissioning new ones at existing wind energy development sites at the end of their service life. Wind repowering is increasingly common, with 2,803 megawatts of operating projects partially repowering in 2019 (AWEA 2020, p. 2).

Please see the SSA report for a detailed review of the best available scientific information regarding the potential effects of wind energy development on habitat use by the lesser prairie-chicken (Service 2022, pp. 29–34).

Noise effects to prairie-chickens have been recently explored as a way to evaluate potential negative effects of wind energy development. For a site in Nebraska, wind turbine noise frequencies were documented at less than or equal to 0.73 kilohertz (kHz) (Raynor et al. 2017, p. 493), and reported to overlap the range of lek-advertisement vocalization frequencies of lesser prairie-chicken, 0.50–1.0 kHz. Female greater prairie-chickens avoided wooded areas and row crops but showed no response in space use based on wind turbine noise (Raynor et al. 2019, entire). Additionally, differences in background noise and signal-to-noise ratio of boom chorus of leks in relation to distance to turbine have been documented, but the underlying cause and response needs to be further investigated, especially since the study of wind energy development noise on grouse is almost unprecedented (Whalen et al. 2019, entire).

The effects of wind energy development on the lesser prairie-chicken must also take into consideration the influence of the transmission lines critical to distribution of the energy generated by wind turbines. Transmission lines can traverse long distances across the landscape and can be both above ground and underground, although the vast majority of transmission lines are erected above ground. Most of the impacts to lesser prairie-chicken associated with transmission lines are with the aboveground systems. Support structures vary in height depending on the size of the line. Most high-voltage power line towers are 98 to 125 ft (30 to 38 m) high but can be higher if the need arises. Local distribution lines, if erected above ground, are usually much shorter in height but still contribute to fragmentation of the landscape.

The effect of the transmission line infrastructure is typically much larger than the physical footprint of transmission line installation. Information on grouse and power lines is relatively limited with more studies needed. The available data includes a range of reported impacts (see Nonne et al. 2013, entire; Dinkins et al. 2014, entire; Hansen et al. 2016, entire; Jarnevich et al. 2016, entire; Londe et al. 2019, entire; LeBeau et al. 2019, entire; Kohl et al. 2019, entire; and England and Robert 2021, entire). Transmission lines can indirectly lead to alterations in lesser prairie-chicken behavior and space use (avoidance), decreased lek attendance, and increased predation on lesser prairie-chicken. Transmission lines, particularly due to their length, can be a significant barrier to dispersal of prairie grouse, disrupting movements to feeding, breeding, and roosting areas. Both lesser and greater prairie-chickens avoided otherwise usable habitat near transmission lines and crossed these power lines much less often than nearby roads, suggesting that power lines are a particularly strong barrier to movement (Pruett et al. 2009, pp. 1255–1257). Because lesser prairie-chicken avoid tall vertical structures like transmission lines and because transmission lines can increase predation rates, leks located in the vicinity of these structures may see reduced attendance by new males to the lek, as has been reported for sage-grouse (Braun et al. 2002, pp. 11–13).

Decreased probabilities of use by lesser prairie-chicken were shown with the occurrence of more than 0.09 mi (0.15 km) of major roads, or transmission lines within a 1.2-mi (2-km) radius (Sullins et al. 2019, unpaged). Additionally, a recent study corroborated numerous authors' (Pitman et al. 2005; Pruett et al. 2009; Hagen et al. 2011; Grisham et al. 2014; Hovick et al. 2014a) findings of negative effects of power lines on prairie grouse and reported a minimum avoidance distance of 1,925.8 ft (587 m), which is similar to other studies of lesser prairie-chickens (Plumb et al. 2019, entire). LeBeau et al. (2020, p. 24) largely aggregated their findings of wind turbines and a transmission line on lesser prairie-chicken into effects of ''wind energy infrastructure,'' but specifically noted evidence that females selected home ranges farther from transmission lines. Using a definition for transmission powerlines that included powerlines transmitting >69 kilovolts, indicated that taller anthropogenic structures (*i.e.,* transmission powerlines and towers) generally had larger estimated avoidance response distances of all the studied features, but also large regional variation (Peterson et al. 2020, p. 9). They found largest estimated avoidance response of 5.6 mi (9 km) in Northwest Kansas, and the smallest in Oklahoma at approximately 1.8 mi (3 km). Effects from anthropogenic features, including power lines, varied by region, and the degree of effect often depended on the presence of other anthropogenic features (Patten et al. 2021, entire).

As part of our geospatial analysis, we calculated the amount of otherwise usable land cover for the lesser prairie-chicken that has been impacted (both direct and indirect impacts) by wind energy development in the current analysis area of the lesser prairie-chicken. We used an impact radius of 5,906 ft (1,800 m) for indirect effects of wind turbines and 2,297 ft (700 m) for indirect effects of transmission lines. For details regarding the establishment of the impact radius, see appendix B, part 2C, of the SSA report (Service 2022). Within our analysis area, the following acreages have been identified as impacted due to wind energy development: about 2 percent of the total area in the Short-Grass/CRP, Mixed-Grass, and Shinnery Oak Ecoregions; and no impacts of wind

energy development documented currently within the Sand Sagebrush Ecoregion. Rangewide, we estimate about 428,000 ac (173,000 ha) of grassland have been impacted by wind energy development, representing about 2 percent of the total analysis area (Service 2022, appendix E, figure E.3). These percentages do not account for overlap that may exist with other features that may have already impacted the landscape.

Additionally, according to our geospatial analysis, the following acreages within the analysis area have been directly or indirectly impacted due to the construction of transmission lines: about 7 percent of the total area in the Short-Grass/CRP Ecoregion; 5 percent of the total area in the Sand Sagebrush Ecoregion; 7 percent of the total area in the Mixed-Grass Ecoregion; and 10 percent of the total area in the Shinnery Oak Ecoregion. Rangewide, we estimate about 1,553,000 ac (629,000 ha) of grassland have been impacted by transmission lines representing about 7 percent of the total analysis area (Service 2022, appendix E, figure E.4).

Wind energy development and transmission lines remove habitat that supports lesser prairie-chicken. The effects of the development extend past the immediate site of the turbines and their associated infrastructure, further impacting habitat and altering behavior of lesser prairie-chicken throughout both the Northern and the Southern DPSs. These activities have resulted in decreases in population resiliency and species redundancy.

Woody Vegetation Encroachment

As discussed in Background, habitat selected by lesser prairie-chicken is characterized by expansive regions of treeless grasslands interspersed with patches of small shrubs (Giesen 1998, pp. 3–4); lesser prairie-chicken avoid areas with trees and other vertical structures. Prior to extensive Euro-American settlement, frequent fires and grazing by large, native ungulates helped confine trees like eastern red cedar to river and stream drainages and rocky outcroppings. The frequency and intensity of these disturbances directly influenced the ecological processes, biological diversity, and patchiness typical of Great Plains grassland ecosystems (Collins 1992, pp. 2003–2005; Fuhlendorf and Smeins 1999, pp. 732, 737).

Following Euro-American settlement, increasing fire suppression combined with government programs promoting eastern red cedar for windbreaks, erosion control, and wildlife cover facilitated the expansion of eastern red cedar distribution in grassland areas (Owensby et al. 1973, p. 256; DeSantis et al. 2011, p. 1838). Once a grassland area has been colonized by eastern red cedar, the trees are mature within 6 to 7 years and provide a plentiful source of seed so that adjacent areas can readily become infested with eastern red cedar. Despite the relatively short viability of the seeds (typically only one growing season), the large cone crop, potentially large seed dispersal ability, and the physiological adaptations of eastern red cedar to open, relatively dry sites help make the species a successful invader of grassland landscapes (Holthuijzen et al. 1987, p. 1094). Most trees are relatively long-lived and, once they become established in grassland areas, require intensive management to remove to return areas to a grassland state.

Within the southern- and westernmost portions of the estimated historical and occupied ranges of lesser prairie-chicken in Eastern New Mexico, Western Oklahoma, and the South Plains and Panhandle of Texas, honey mesquite is another common woody invader within these grasslands (Riley 1978, p. vii; Boggie et al. 2017, entire). Mesquite is a particularly effective invader in grassland habitat due to its ability to produce abundant, long-lived seeds that can germinate and establish in a variety of soil types and moisture and light regimes (Lautenbach et al. 2017, p. 84). Though not as widespread as mesquite or eastern red cedar, other tall, woody plants, such as redberry or Pinchot juniper (*Juniperus pinchotii*), black locust *(Robinia pseudoacacia*), Russian olive (*Elaeagnus angustifolia*), and Siberian elm (*Ulmus pumila*) can also be found in grassland habitat historically and currently used by lesser prairie-chicken and may become invasive in these areas.

Invasion of grasslands by opportunistic woody species causes otherwise usable grassland habitat no longer to be used by lesser prairie-chicken and contributes to the loss and fragmentation of grassland habitat (Lautenbach 2017, p. 84; Boggie et al. 2017, p. 74). In Kansas, lesser prairie-chicken are 40 times more likely to use areas that had no trees than areas with 1.6 trees per ac (5 trees per ha), and no nests occur in areas with a tree density greater than 0.8 trees per ac (2 trees per ha), at a scale of 89 ac (36 ha) (Lautenbach 2017, pp. 104–142). Similarly, within the Shinnery Oak Ecoregion, lesser prairie-chicken habitat use in all seasons is altered in the presence of mesquite, even at densities of less than 5 percent canopy cover (Boggie et al. 2017, entire). Woody vegetation encroachment also contributes to indirect habitat loss and increases habitat fragmentation because lesser prairie-chicken are less likely to use areas adjacent to trees (Boggie et al. 2017, pp. 72–74; Lautenbach 2017, pp. 104–142).

Fire is often the best method to control or preclude tree invasion of grassland. However, to some landowners and land managers, burning of grassland can be perceived as a high-risk activity because of the potential liability of escaped fire impacting nontarget lands and property. Additionally, it is undesirable for optimizing cattle production and is likely to create wind erosion or ''blowouts'' in sandy soils. Consequently, wildfire suppression is common, and relatively little prescribed burning occurs on private land. Often, prescribed fire is employed only after significant tree invasion has already occurred and landowners consider forage production for cattle to have diminished. Preclusion of woody vegetation encroachment on grasslands of the southern Great Plains using fire requires implementing fire at a frequency that mimics historical fire frequencies of 2–14 years (Guyette et al. 2012, p. 330), further limiting the number of landowners able to implement fire in a manner that would truly preclude future encroachment. Additionally, in areas where grazing pressure is heavy and fuel loads are reduced, a typical grassland fire may not be intense enough to eradicate eastern red cedar (Briggs et al. 2002a, p. 585; Briggs et al. 2002b, p. 293; Bragg and Hulbert 1976, p. 19) and will not eradicate mesquite.

As part of our geospatial analysis, we calculated the amount of woody vegetation encroachment in the current analysis area of the lesser prairie-chicken. These calculations of the current analysis area do not include historical impacts of habitat loss that occurred outside of the current analysis area; thus, it likely underestimates the effects of historical woody vegetation encroachment rangewide on the lesser prairie-chicken. An additional limitation associated with this calculation is that available remote sensing data lack the ability to detect areas with low densities of encroachment, as well as areas with shorter trees; thus, this calculation likely underestimates lesser prairie-chicken habitat loss due to woody vegetation encroachment. The identified areas of habitat impacted by woody vegetation are: about 5 percent of the total area in the Short-Grass/CRP Ecoregion; about 2 percent of the total area in the Sand Sagebrush Ecoregion;

about 24 percent of the total area in the Mixed-Grass Ecoregion; and about 17 percent of the total area in the Shinnery Oak Ecoregion. Rangewide, we estimate about 3,071,000 ac (1,243,000 ha) of grassland have been directly or indirectly impacted by the encroachment of woody vegetation, or about 18 percent of the total area. These percentages do not account for overlap that may exist with other features that may have already impacted the landscape. Further information, including total acres impacted, is available in the SSA report (Service 2022, appendix B; appendix E, figure E.5).

Woody vegetation encroachment is contributing to ongoing habitat loss as well as contributing to fragmentation and degradation of remaining habitat patches. The effects of woody vegetation encroachment are particularly widespread in the Shinnery Oak Ecoregion that makes up the Southern DPS as well as the Mixed-Grass Ecoregion of the Northern DPS. While there are ongoing efforts to control woody vegetation encroachment, the current level of woody vegetation on the landscape is evidence that removal efforts are being outpaced by rates of encroachment; thus, we expect that this threat will continue to contribute to habitat loss and fragmentation, which has reduced population resiliency across the range of the lesser prairie-chicken.

Roads and Electrical Distribution Lines

Roads and distribution power lines are linear features on the landscape that contribute to loss and fragmentation of lesser prairie-chicken habitat and fragment populations as a result of behavioral avoidance. Lesser prairie-chickens are less likely to use areas close to roads (Plumb et al. 2019, entire; Sullins et al. 2019, entire). Additionally, roads contribute to lek abandonment when they disrupt important habitat features (such as affecting auditory or visual communication) associated with lek sites (Crawford and Bolen 1976b, p. 239). Some mammal species that prey on lesser prairie-chicken, such as red fox (*Vulpes vulpes*), raccoons (*Procyon lotor*), and striped skunks (*Mephitis mephitis*), have greatly increased their distribution by dispersing along roads (Forman and Alexander 1998, p. 212; Forman 2000, p. 33; Frey and Conover 2006, pp. 1114–1115).

Traffic noise from roads may indirectly impact lesser prairie-chicken. Because lesser prairie-chicken depend on acoustical signals to attract females to leks, noise from roads, oil and gas development, wind turbines, and similar human activity may interfere with mating displays, influencing female attendance at lek sites and causing young males not to be drawn to the leks. Within a relatively short period, leks can become inactive due to a lack of recruitment of new males to the display grounds. For further discussion on noise, please see *Influence of Anthropogenic Noise.*

Depending on the traffic volume and associated disturbances, roads also may limit lesser prairie-chicken dispersal abilities. Lesser prairie-chickens avoid areas of usable habitat near roads (Pruett et al. 2009, pp. 1256, 1258; Plumb et al. 2019, entire) and in areas where road densities are high (Sullins et al. 2019, p. 8). Lesser prairie-chickens are thought to avoid major roads due to disturbance caused by traffic volume and perhaps to avoid exposure to predators that may use roads as travel corridors. However, the extent to which roads constitute a significant obstacle to lesser prairie-chicken movement and space use is largely dependent upon the local landscape composition and characteristics of the road itself.

Local electrical distribution lines are usually much shorter in height than transmission lines but can still contribute to habitat fragmentation through similar mechanisms as other vertical features when erected above ground. In addition to habitat loss and fragmentation, electrical power lines can directly affect prairie grouse by posing a collision hazard (Leopold 1933, p. 353; Connelly et al. 2000, p. 974). There were no datasets available to quantify the total impact of distribution lines on the landscape for the lesser prairie-chicken. Although distribution lines are a significant landscape feature throughout the Great Plains with potential to affect lesser prairie-chicken habitat, after reviewing all available information, we were unable to develop a method to quantitatively incorporate the occurrence of distribution lines into our geospatial analysis.

As part of our geospatial analysis, we estimated the area impacted by direct and indirect habitat loss due to roads (Service 2022, appendix B, part 2). These calculations of the current analysis area do not include historical impacts of loss; thus, the calculations likely underestimate the historical effect of roads on rangewide habitat loss for the lesser prairie-chicken. The results indicate that the total areas of grassland that have been directly and indirectly impacted by roads within the analysis area for the lesser prairie-chicken are: about 17 percent of the total area in the Short-Grass/CRP Ecoregion; about 14 percent of the total area in the Sand Sagebrush Ecoregion; about 20 percent of the total area in the Mixed-Grass Ecoregion; and about 19 percent of the total area in the Shinnery Oak Ecoregion. Rangewide, we estimate about 3,996,000 ac (1,617,000 ha) of grassland have been impacted by roads, representing about 18 percent of the total analysis area (Service 2022, appendix E, figure E.6). We did not have adequate spatial data to evaluate habitat loss caused solely by electrical distribution lines, but much of the existing impacts of power lines occur within the impacts caused by roads. Electrical distribution lines that fall outside the existing impacts of roads would represent additional impacts for the lesser prairie-chicken that are not quantified in our geospatial analysis.

Development of roads and electrical distribution lines directly removes habitat that supports lesser prairie-chicken, and the effects of the development extend past the immediate footprint of the development, further impacting habitat and altering behavior of lesser prairie-chicken throughout both the Northern and the Southern DPSs. These activities have resulted in decreases in population resiliency and species redundancy.

Other Factors

Livestock Grazing

Grazing has long been an ecological driving force throughout the ecosystems of the Great Plains (Stebbins 1981, p. 84), and much of the untilled grasslands within the range of the lesser prairie-chicken is currently grazed by livestock and other animals. Historically, the interaction of fire, drought, prairie dogs (*Cynomys ludovicianus*), and large ungulate grazers created and maintained distinctive plant communities in the Western Great Plains, resulting in a mosaic of vegetation structure and composition that sustained lesser prairie-chicken and other grassland bird populations (Derner et al. 2009, p. 112). As such, grazing by domestic livestock is not inherently detrimental to lesser prairie-chicken management and, in many cases, is needed to maintain appropriate vegetative structure.

However, grazing practices that tend to result in overutilization of forage and decreasing vegetation heterogeneity can produce habitat conditions that differ in significant ways from the historical grassland mosaic; these incompatible practices alter the vegetation structure and composition and degrade the quality of habitat for the lesser prairie-chicken. The more heavily altered conditions are the least valuable for the lesser prairie-chicken (Jackson and

DeArment 1963 p. 733; Davis et al. 1979, pp. 56, 116; Taylor and Guthery 1980a, p. 2; Bidwell and Peoples 1991, pp. 1–2). In some cases, these alterations can result in areas that do not contain the biological components necessary to support the lesser prairie-chicken.

Where grazing regimes leave limited residual cover in the spring, protection of lesser prairie-chicken nests may be inadequate, and desirable food resources can be scarce (Bent 1932, p. 280; Cannon and Knopf 1980, pp. 73–74; Crawford 1980, p. 3; Kraft 2016, pp. 19–21). Because lesser prairie-chicken depend on medium- and tall-grass species for nesting, concealment, and thermal cover that are also preferentially grazed by cattle, these plant species needed by lesser prairie-chicken can easily be reduced or eliminated by cattle grazing, particularly in regions of low rainfall (Hamerstrom and Hamerstrom 1961, p. 290). In addition, when grasslands are in a deteriorated condition due to incompatible grazing and overutilization, the soils have less water-holding capacity (Blanco and Lal 2010, p. 9), and the availability of succulent vegetation and insects used by lesser prairie-chicken chicks is reduced. However, grazing can be beneficial to the lesser prairie-chicken when management practices produce or enhance the vegetative characteristics required by the lesser prairie-chicken.

The interaction of fire and grazing and its effect on vegetation components and structure is likely important to prairie-chickens (Starns et al. 2020, entire). On properties managed with patch-burn grazing regimes, female greater prairie-chickens selected areas with low cattle stocking rates and patches that were frequently burned, though they avoided areas that were recently burned (Winder et al. 2017, p. 171). Patch-burn grazing created preferred habitats for female greater prairie-chickens if the regime included a relatively frequent fire-return interval, a mosaic of burned and unburned patches, and a reduced stocking rate in unburned areas avoided by grazers. When managed compatibly, widespread implementation of patch-burn grazing could result in significant improvements in habitat quality for wildlife in the tall-grass prairie ecosystem (Winder et al. 2017, p. 165). In the eastern portion of the lesser prairie-chicken range, patch-burn grazing resulted in patchy landscapes with variation in vegetation composition and structure (Lautenbach 2017, p. 20). Female lesser prairie-chickens' use of the diversity of patches in the landscape varied throughout their life cycle. They selected patches with the greatest time-since-fire and subsequently the most visual obstruction for nesting, and they selected sites with less time-since-fire and greater bare ground and forbs for summer brooding.

Livestock also inadvertently flush lesser prairie-chicken and trample lesser prairie-chicken nests (Toole 2005, p. 27; Pitman et al. 2006, pp. 27–29). Brief flushing of adults from nests can expose eggs and chicks to predation and extreme temperatures. Trampling nests can cause direct mortality to lesser prairie-chicken eggs or chicks or may cause adults to permanently abandon their nests, ultimately resulting in loss of young. Although these effects have been documented, the significance of direct livestock effects on the lesser prairie-chicken is largely unknown and is presumed not to be significant at a population scale.

In summary, domestic livestock grazing (including management practices commonly used to benefit livestock production) has altered the composition and structure of grassland habitat, both currently and historically, used by the lesser prairie-chicken. Much of the remaining remnants of mixed-grass grasslands, while still important to the lesser prairie-chicken, exhibit conditions quite different from those prior to Euro-American settlement. These changes have reduced the suitability of remnant grassland areas as habitat for lesser prairie-chicken. Grazing management that has altered the vegetation community to a point where the composition and structure are no longer suitable for lesser prairie-chicken can contribute to fragmentation within the landscape, even though these areas may remain as prairie or grassland. Livestock grazing, however, is not inherently detrimental to lesser prairie-chicken provided that grazing management results in a plant community diversity and structure that is suitable for lesser prairie-chicken.

While domestic livestock grazing is a dominant land use on untilled range land within the lesser prairie-chicken analysis area, geospatial data do not exist at a scale and resolution necessary to calculate the total amount of livestock grazing that is being managed in a way that results in habitat conditions that are not compatible with the needs of the lesser prairie-chicken. Therefore, we did not attempt to spatially quantify the scope of grazing effects across the lesser prairie-chicken range.

Shrub Control and Eradication

Shrub control and eradication are additional forms of habitat alteration that can influence the availability and suitability of habitat for lesser prairie-chicken (Jackson and DeArment 1963, pp. 736–737). Most shrub control and eradication efforts in lesser prairie-chicken habitat are primarily focused on sand shinnery oak for the purpose of increasing forage for livestock grazing. Sand shinnery oak is toxic if eaten by cattle when it first produces leaves in the spring and competes with more palatable grasses and forbs for water and nutrients (Peterson and Boyd 1998, p. 8), which is why it is a common target for control and eradication efforts by rangeland managers. Prior to the late 1990s, approximately 100,000 ac (40,000 ha) of sand shinnery oak in New Mexico and approximately 1,000,000 ac (405,000 ha) of sand shinnery oak in Texas were lost due to the application of tebuthiuron and other herbicides for agriculture and range improvement (Peterson and Boyd 1998, p. 2).

Shrub cover is an important component of lesser prairie-chicken habitat in certain portions of the range, and sand shinnery oak is a key shrub in the Shinnery Oak and portions of the Mixed-Grass Ecoregions. The importance of sand shinnery oak as a component of lesser prairie-chicken habitat in the Shinnery Oak Ecoregion has been demonstrated by several studies (Fuhlendorf et al. 2002, pp. 624–626; Bell 2005, pp. 15, 19–25). In West Texas and New Mexico, lesser prairie-chicken avoid nesting where sand shinnery oak has been controlled with tebuthiuron, indicating their preference for habitat with a sand shinnery oak component (Grisham et al. 2014, p. 18; Haukos and Smith 1989, p. 625; Johnson et al. 2004, pp. 338–342; Patten and Kelly 2010, p. 2151). Where sand shinnery oak occurs, lesser prairie-chicken use it both for food and cover. Sand shinnery oak may be particularly important in drier portions of the range that experience more severe and frequent droughts and extreme heat events, as sand shinnery oak is more resistant to drought and heat conditions than are most grass species. And because sand shinnery oak is toxic to cattle and thus not targeted by grazing, it can provide available cover for lesser prairie-chicken nesting and brood rearing during these extreme weather events. Loss of this component of the vegetative community likely contributed to observed population declines in lesser prairie-chicken in these areas.

While relatively wide-scale shrub eradication has occurred in the past, geospatial data do not exist to evaluate the extent to which shrub eradication has contributed to the habitat loss and fragmentation for the lesser prairie-chicken and, therefore, was not included in our quantitative analysis.

While current efforts of shrub eradication are not likely occurring at rates equivalent to those witnessed in the past, any additional efforts to eradicate shrubs that are essential to lesser prairie-chicken habitat will result in additional habitat degradation and thus reduce redundancy and resiliency.

Influence of Anthropogenic Noise

Anthropogenic noise can be associated with almost any form of human activity, and lesser prairie-chicken may exhibit behavioral and physiological responses to the presence of noise. In prairie-chickens, the ''boom'' call vocalization transmits information about sex, territorial status, mating condition, location, and individual identity of the signaler and thus is important to courtship activity and long-range advertisement of the display ground (Sparling 1981, p. 484). The timing of displays and frequency of vocalizations are critical reproductive behaviors in prairie grouse and appear to have developed in response to unobstructed conditions prevalent in prairie habitat and indicate that effective communication, particularly during the lekking season, operates within a fairly narrow set of acoustic conditions. Prairie grouse usually initiate displays on the lekking grounds around sunrise, and occasionally near sunset, corresponding with times of decreased wind turbulence and thermal variation (Sparling 1983, p. 41). Considering the narrow set of acoustic conditions in which communication appears most effective for breeding lesser prairie-chicken and the importance of communication to successful reproduction, human activities that result in noises that disrupt or alter these conditions could result in lek abandonment (Crawford and Bolen 1976b, p. 239). Anthropogenic features and related activities that occur on the landscape can create noise that exceeds the natural background or ambient level. When the behavioral response to noise is avoidance, as it often is for lesser prairie-chicken, noise can be a source of habitat loss or degradation leading to increased habitat fragmentation.

Anthropogenic noise may be a possible factor in the population declines of other species of lekking grouse in North America, particularly for populations that are exposed to human developments (Blickley et al. 2012a, p. 470; Lipp and Gregory 2018, pp. 369–370). Male greater prairie-chicken adjust aspects of their vocalizations in response to wind turbine noise, and wind turbine noise may have the potential to mask the greater prairie-chicken chorus at 296 hertz (Hz) under certain scenarios, but the extent and degree of masking is uncertain (Whalen 2015, entire). Noise produced by typical oil and gas infrastructure can mask grouse vocalizations, compromise the ability of female sage-grouse to find active leks when such noise is present, and affect nest site selection (Blickley and Patricelli 2012, p. 32; Lipp 2016, p. 40). Chronic noise associated with human activity leads to reduced male and female attendance at noisy leks. Breeding, reproductive success, and ultimately recruitment in areas with human developments could be impaired by such developments, impacting survival (Blickley et al. 2012b, entire). Because opportunities for effective communication on the display ground occur under fairly narrow conditions, disturbance during this period may have negative consequences for reproductive success. Other communications used by grouse off the lek, such as parent-offspring communication, may continue to be susceptible to masking by noise from human infrastructure (Blickley and Patricelli 2012, p. 33).

No data are available to quantify the areas of lesser prairie-chicken habitat rangewide that have been affected by noise, but noise is a threat that is almost entirely associated with anthropogenic features such as roads or energy development. Therefore, through our accounting for anthropogenic features we may have inherently accounted for all or some of the response of the lesser prairie-chicken to noise produced by those features.

Overall, persistent anthropogenic noise could cause lek attendance to decline, disrupt courtship and breeding activity, and reduce reproductive success. Noise can also cause abandonment of otherwise usable habitat and, as a result, contribute to habitat loss and degradation.

Fire

Fire, or its absence, is understood to be a major ecological driver of grasslands in the Southern Great Plains (Anderson 2006, entire; Koerner and Collins 2014, entire; Wright and Bailey 1982, pp. 80–137). Fire is an ecological process important to maintaining grasslands by itself and in coupled interaction with grazing and climate. The interaction of these ecological processes results in increasing grassland heterogeneity through the creation of temporal and spatial diversity in plant community composition and structure and associated response of wildlife (Fuhlendorf and Engle 2001, entire; Fuhlendorf and Engle 2004, entire; Fuhlendorf et al. 2017a, pp. 169–196).

Following settlement of the Great Plains, fire management generally emphasized prevention and suppression, often coupled with grazing pressures that significantly reduced and removed fine fuels (Sayre 2017, pp. 61–70). This approach, occurring in concert with settlement and ownership patterns that occurred in most of the Southern Great Plains, meant that the scale of management was relegated to smaller parcels than historically were affected. This increase in smaller parcels with both intensive grazing and fire suppression resulted in the transformation of landscapes from dynamic heterogeneous to largely static and homogenous plant communities. This simplification of vegetative pattern due to decoupling fire and grazing (Starns et al. 2019, pp. 1–3) changed the number and size of wildfires and ultimately led to declines in biodiversity in the affected systems (Fuhlendorf and Engle 2001, entire).

Changes in patterns of wildfire in the Great Plains have been noted in recent years (Donovan et al. 2017, entire). While these landscapes have a long history of wildfire, large wildfires (greater than 1,000 ac (400 ha)) typically did not occur in recent past decades, and include an increase in the Southern Great Plains of megafires (greater than 100,000 ac (404 km^2; 40,468 ha)) since the mid-1990s (Lindley et al. 2019, p. 164). Changes have occurred throughout all or portions of the Great Plains in number of large wildfires and season of fire occurrence, as well as increased area burned by wildfire or increasing probability of large wildfires (Donovan et al. 2017, p. 5990). Furthermore, Great Plains land cover dominated by woody or woody/grassland combined vegetation is disproportionately more likely to experience large wildfires, with the greatest increase in both number of fires and of area burned (Donovan et al. 2020a, p. 11). Fire behavior has also been affected such that these increasingly large wildfires are burning under weather conditions (Lindley et al. 2019, entire) that result in greater burned extent and intensity. These shifts in fire parameters and their outcomes have potential consequences for lesser prairie-chicken, including: (1) larger areas of complete loss of nesting habitat as compared to formerly patchy mosaicked burns; and (2) large-scale reduction in the spatial and temporal variation in vegetation structure and composition affecting nesting and brood-rearing habitat, thermoregulatory cover, and predator escape cover.

Effects from fire are expected to be relatively short term (Donovan et al. 2020b, entire, Starns et al. 2020, entire), with plant community recovery time largely predictable and influenced by pre-fire condition, post-fire weather, and types of management. Some effects from fire, however, such as the response to changing plant communities in the range of the lesser prairie-chicken, will vary based on location within the range and available precipitation. In the eastern extent of the distribution of sand shinnery oak that occurs in the Mixed-Grass Ecoregion, fire has potential negative effects on some aspects of the lesser prairie-chicken habitat for 2 years after the area burns, but these effects could be longer in duration dependent upon precipitation patterns (Boyd and Bidwell 2001, pp. 945–946). Effects from fire on lesser prairie-chicken varied based on fire break preparation, season of burn, and type of habitat; positive effects included improved brood habitat through increased forb and grasshopper abundance, but these can be countered by short-term (2-year) negative effects to quality and availability of nesting habitat and a reduction in food sources (Boyd and Bidwell 2001, pp. 945–946). Birds moved into recently burned landscapes of western Oklahoma for lek courtship displays because of the reduction in structure from formerly dense vegetation (Cannon and Knopf 1979, entire).

More recently, research evaluating indirect effects concluded that prescribed fire and managed grazing following the patch-burn or pyric herbivory (grazing practices shaped fire) approach will benefit lesser prairie-chicken through increases in forbs; invertebrates; and the quality, amount, and juxtaposition of brood habitat to available nesting habitat (Elmore et al. 2017, entire). The importance of temporal and spatial heterogeneity derived from pyric herbivory is apparent in the female lesser prairie-chicken use of all patch types in the patch-burn grazing mosaic, including greater than 2 years post fire for nesting, 2-year post fire during spring lekking, 1- and 2-year post fire during summer brooding, and 1-year post fire during nonbreeding season (Lautenbach 2017, pp. 20–22). While the use of prescribed fire as a tool for managing grasslands throughout the lesser prairie-chicken range is encouraged, current use is at a temporal frequency and spatial extent insufficient to support large amounts of lesser prairie-chicken habitat. These fire management efforts are limited to a small number of fire-minded landowners, resulting in effects to a small percentage of the lesser prairie-chicken range.

While lesser prairie-chicken evolved in a fire-adapted landscape, little research (Thacker and Twidwell 2014, entire) has been conducted on response of lesser prairie-chicken to altered fire regimes. Research to date has focused on site-specific responses and consequences. Human suppression of wildfire and the limited extent of fire use (prescribed fire) for management over the past century has altered the frequency, scale, and intensity of fire occurrence in lesser prairie-chicken habitat. These changes in fire parameters have happened simultaneously with habitat loss and fragmentation, resulting in patchy distribution of lesser prairie-chicken throughout their range. An increase in size, intensity, or severity of wildfires as compared to historical occurrences results in increased vulnerability of isolated, smaller lesser prairie-chicken populations. Both woody plant encroachment and drought are additive factors that increase risk of negative consequences of wildfire ignition, as well as extended post-fire lesser prairie-chicken habitat effects. The extent of these negative impacts can be significantly altered by precipitation patterns following the occurrence of the fire; dry periods will inhibit or extend plant community response.

Historically, fire served an important role in maintenance and quality of habitat for the lesser prairie-chicken. Currently, due to a significant shift in fire regimes in the lesser prairie-chicken range, fire use for management of grasslands plays a locally important but overall limited role in most lesser prairie-chicken habitat. This current lack of prescribed fire use in the range of the lesser prairie-chicken is contributing to woody plant encroachment and degradation of grassland quality due to its decoupling from the grazing and fire interaction that is the foundation for plant community diversity in structure and composition, which in turn supports the diverse habitat needs of lesser prairie-chicken. These cascading effects contribute to greater wildfire risk, and concerns exist regarding the changing patterns of wildfires (scale, intensity, and frequency) and their consequences for remaining lesser prairie-chicken populations and habitat that are increasingly fragmented. Concurrently, wildfire has increased as a threat rangewide due to compounding influences of increased size and severity of wildfires and the potential consequences to remaining isolated and fragmented lesser prairie-chicken populations.

Extreme Weather Events

Weather-related events such as drought, snow, and hailstorms can influence habitat quality or result in direct mortality of lesser prairie-chickens. Although hailstorms typically have only a localized effect, the effects of snowstorms and drought can often be more widespread and can affect considerable portions of the lesser prairie-chicken range. Drought is considered a universal ecological driver across the Great Plains (Knopf 1996, p. 147). Annual precipitation within the Great Plains is highly variable (Wiens 1974, p. 391), with prolonged drought capable of causing local extinctions of annual forbs and grasses within stands of perennial species; recolonization is often slow (Tilman and El Haddi 1992, p. 263). Grassland bird species in particular are impacted by climate extremes such as extended drought, which acts as a bottleneck that allows only a limited number of individuals to survive through the relatively harsh conditions (Wiens 1974, pp. 388, 397; Zimmerman 1992, p. 92). Drought also interacts with many of the other threats impacting the lesser prairie-chicken and its habitat, such as amplifying the effects of incompatible grazing and predation.

Although the lesser prairie-chicken has adapted to drought as a component of its environment, drought and the accompanying harsh, fluctuating conditions (high temperatures and low food and cover availability) have influenced lesser prairie-chicken populations. Widespread periods of drought commonly result in ''bust years'' of recruitment. Following extreme droughts of the 1930s, 1950s, 1970s, and 1990s, lesser prairie-chicken population levels declined and a decrease in their overall range was observed (Lee 1950, p. 475; Ligon 1953, p. 1; Schwilling 1955, pp. 5–6; Hamerstrom and Hamerstrom 1961, p. 289; Copelin 1963, p. 49; Crawford 1980, pp. 2–5; Massey 2001, pp. 5, 12; Hagen and Giesen 2005, unpaginated). Additionally, lesser prairie-chicken populations reached near record lows during and after the more recent drought of 2011 to 2013 (McDonald et al. 2017, p. 12; Fritts et al. 2018, entire).

Drought impacts prairie grouse, such as lesser prairie-chicken, through several mechanisms. Drought affects seasonal growth of vegetation necessary to provide suitable nesting and roosting cover, food, and opportunity for escape from predators (Copelin 1963, pp. 37, 42; Merchant 1982, pp. 19, 25, 51;

Applegate and Riley 1998, p. 15; Peterson and Silvy 1994, p. 228; Morrow et al. 1996, pp. 596–597; Ross et al. 2016a, entire). Lesser prairie-chicken home ranges will temporarily expand during drought years (Copelin 1963, p. 37; Merchant 1982, p. 39) to compensate for scarcity in available resources. During these periods, the adult birds expend more energy searching for food and tend to move into areas with limited cover in order to forage, leaving them more vulnerable to predation and heat stress (Merchant 1982, pp. 34–35; Flanders-Wanner et al. 2004, p. 31). Chick survival and recruitment may also be depressed by drought (Merchant 1982, pp. 43–48; Morrow et al. 1996, p. 597; Giesen 1998, p. 11; Massey 2001, p. 12), which likely affects population trends more than annual changes in adult survival (Hagen 2003, pp. 176–177). Drought-induced mechanisms affecting recruitment include decreased physiological condition of breeding females (Merchant 1982, p. 45); heat stress and water loss of chicks (Merchant 1982, p. 46); and effects to hatch success and juvenile survival due to changes in microclimate, temperature, and humidity (Patten et al. 2005, pp. 1274–1275; Bell 2005, pp. 20–21; Boal et al. 2010, p. 11). Precipitation, or lack thereof, appears to affect lesser prairie-chicken adult population trends with a potential lag effect (Giesen 2000, p. 145; Ross et al. 2016a, pp. 6–8). That is, rain levels in one year promote more vegetative cover for eggs and chicks in the following year, which influences survival and reproduction.

Although lesser prairie-chicken have persisted through droughts in the past, the effects of such droughts are exacerbated by human land use practices such as incompatible grazing and land cultivation (Merchant 1982, p. 51; Hamerstrom and Hamerstrom 1961, pp. 288–289; Davis et al. 1979, p. 122; Taylor and Guthery 1980a, p. 2; Ross et al. 2016b, pp. 183–186) as well as the other threats that have affected the current condition and have altered and fragmented the landscape and decreased population abundances (Fuhlendorf et al. 2002, p. 617; Rodgers 2016, pp. 15–19). In past decades, fragmentation of lesser prairie-chicken habitat was less extensive than it is today, connectivity between occupied areas was more prevalent, and populations were larger, allowing populations to recover more quickly. In other words, lesser prairie-chicken populations were more resilient to the effects of stochastic events such as drought. As lesser prairie-chicken population abundances decline and usable habitat declines and becomes more fragmented, their ability to rebound from prolonged drought is diminished.

Hailstorms can cause mortality of prairie grouse, particularly during the spring nesting season. An excerpt from the May 1879 Stockton News describes a large hailstorm near Kirwin, Kansas, as responsible for killing prairie-chickens (likely greater prairie-chicken) and other birds by the hundreds (Fleharty 1995, p. 241). Although such phenomena are likely rare, the effects can be significant, particularly if they occur during the nesting period and result in significant loss of eggs or chicks. Severe winter storms can also result in localized impacts to lesser prairie-chicken populations. For example, a severe winter storm in 2006 was reported to reduce lesser prairie-chicken numbers in Colorado by 75 percent from 2006 to 2007, from 296 birds observed to only 74. Active leks also declined from 34 leks in 2006 to 18 leks in 2007 (Verquer 2007, p. 2). While populations commonly rebound to some degree following severe weather events such as drought and winter storms, a population with decreased resiliency becomes susceptible to extirpation from stochastic events.

We are not able to quantify the impact that severe weather has had on the lesser prairie-chicken populations, but, as discussed above, these events have shaped recent history and influenced the current condition for the lesser prairie-chicken.

Regulatory Mechanisms

In appendix D of the SSA report (Service 2022), we review in more detail all of the existing regulatory mechanisms (such as local, State, and Federal land use regulations or laws) that may impact lesser prairie-chicken conservation. Here, we present a summary of some of those regulatory mechanisms. All existing regulatory mechanisms listed in appendix D of the SSA report were fully considered in our conclusion about the status of the two DPSs.

All five States in the estimated occupied range (EOR) (Van Pelt et al. 2013, p. 3) have incorporated the lesser prairie-chicken as a species of conservation concern and management priority in their respective State Wildlife Action Plans. While identification of the lesser prairie-chicken as a species of conservation concern helps heighten public awareness, this designation provides no protection from direct take or habitat destruction or alteration. The lesser prairie-chicken is listed as threatened in Colorado; this listing protects the lesser prairie-chicken from direct purposeful mortality by humans but does not provide protections for destruction or alteration of habitat.

Primary land ownership (approximately 5 percent of total range) at the Federal level is on USFS and BLM lands. The lesser prairie-chicken is present on the Cimarron National Grassland in Kansas and the Comanche National Grassland in Colorado; a total of approximately 3 percent of the total acres estimated in the SSA analysis area is on USFS land. The 2014 Lesser Prairie-Chicken Management Plan for these grasslands provides a framework to manage lesser prairie-chicken habitat. The plan provides separate population and habitat recovery goals for each grassland, as well as vegetation surveys to inform ongoing and future monitoring efforts of suitable habitat and lek activities. Because National Grasslands are managed for multiple uses, the plan includes guidelines for prescribed fire and grazing.

In New Mexico, roughly 41 percent of the known historical and most of the estimated occupied lesser prairie-chicken range occurs on BLM land, for a total of 3 percent of the total acres estimated in the analysis area of the SSA report. The BLM established the 57,522-ac (23,278-ha) Lesser Prairie-Chicken Habitat Preservation Area of Critical Environmental Concern (ACEC) upon completion of the Resource Management Plan Amendment (RMPA) in 2008. The management goal for the ACEC is to protect the biological qualities of the area, with emphasis on the preservation of the shinnery oak-dune community to enhance the biodiversity of the ecosystem, particularly habitats for the lesser prairie-chicken and the dunes sagebrush lizard. Upon designation, the ACEC was closed to future oil and gas leasing, and existing leases would be developed in accordance with prescriptions applicable to the Core Management Area as described below (BLM 2008, p. 30). Additional management prescriptions for the ACEC include designation as a right-of-way exclusion area, vegetation management to meet the stated management goal of the area, and limiting the area to existing roads and trails for off-highway vehicle use (BLM 2008, p. 31). All acres of the ACEC have been closed to grazing through relinquishment of the permits except for one 3,442-ac (1,393-ha) allotment.

The BLM's approved RMPA (BLM 2008, pp. 5–31) provides some limited protections for the lesser prairie-chicken in New Mexico by reducing the number of drilling locations, decreasing the size of well pads, reducing the number and

length of roads, reducing the number of power lines and pipelines, and implementing best management practices for development and reclamation. The effect of these best management practices on the status of the lesser prairie-chicken is unknown, particularly considering about 82,000 ac (33,184 ha) have already been leased in those areas (BLM 2008, p. 8). Although the BLM RMPA is an important tool for identifying conservation actions that would benefit lesser prairie-chicken, this program does not alleviate all threats acting on the species in this area.

No new mineral leases will be issued on approximately 32 percent of Federal mineral acreage within the RMPA planning area (BLM 2008, p. 8), although some exceptions are allowed on a case-by-case basis (BLM 2008, pp. 9–11). Within the Core Management Area and Primary Population Area, as delineated in the RMPA, new leases will be restricted in occupied and suitable habitat; however, if there is an overall increase in reclaimed to disturbed acres over a 5-year period, new leases in these areas will be allowed (BLM 2008, p. 11). In the southernmost habitat management units outlined in the RMPA, where lesser prairie-chickens are now far less common than in previous decades (Hunt and Best 2004), new leases will not be allowed within 1.5 mi (2.4 km) of a lek (BLM 2008, p. 11).

We conclude that existing regulatory mechanisms have minimal influence on the rangewide trends of lesser prairie-chicken habitat loss and fragmentation because 97 percent of the lesser prairie-chicken analysis area occurs on private lands, which are largely unregulated for the protection of the species and its habitat. The activities affecting lesser prairie-chicken habitat are largely land use practices and land development without regulations ameliorating the primary threats to the lesser prairie-chicken.

Conservation Efforts

Below we include a summary of conservation efforts; for a complete description of these conservation efforts please see the SSA report (Service 2022, pp. 49–62). All of the conservation measures discussed in the SSA report were incorporated into the analysis of the species' current and future condition. Some programs are implemented across the species' range, and others are implemented at the State or local level. Because the vast majority of lesser prairie-chicken and their habitat occurs on private lands, most of these programs are targeted toward voluntary, incentive-based actions in cooperation with private landowners.

At the rangewide scale, plans include the Lesser Prairie-Chicken Rangewide Conservation Plan, the Lesser Prairie-Chicken Initiative, and the Conservation Reserve Program. Below is a summary of the primary rangewide conservation efforts. For detailed descriptions of each program, please see the SSA report. All existing ongoing conservation efforts were fully considered in our determination on the status of the two DPSs.

In 2013, the State fish and wildlife agencies within the range of the lesser prairie-chicken and the Western Association of Fish and Wildlife Agencies (WAFWA) finalized the Lesser Prairie-Chicken Range-wide Conservation Plan (RWP) in response to concerns about threats to lesser prairie-chicken habitat and resulting effects to lesser prairie-chicken populations (Van Pelt et al. 2013, entire). The RWP established biological goals and objectives as well as a conservation targeting strategy that aims to unify conservation efforts towards common goals. Additionally, the RWP established a mitigation framework administered by WAFWA that allows industry participants the opportunity to mitigate unavoidable impacts of a particular activity on the lesser prairie-chicken. After approval of the RWP, WAFWA developed a companion oil and gas candidate conservation agreement with assurances (CCAA), which adopted the mitigation framework contained within the RWP that was approved in 2014.

As of August 1, 2020, WAFWA had used incoming funds from industry participants to place 22 sites totaling 128,230 unimpacted ac (51,893 ha) under conservation contracts to provide offset for industry impacts that have occurred through the RWP and CCAA (Moore 2020, p. 9). Of those sites, 35,635 unimpacted ac (14,421 ha) are permanently protected and 92,595 unimpacted ac (37,472 ha) are being managed under 10-year term agreements. Landowners who enroll agree to implement actions to restore or enhance their lands for the lesser prairie-chicken. These actions may include restoration actions (such as removal of woody vegetation) or enhancement actions (such as implementation of a grazing management plan designed for their property). These areas are enrolled under RWP conservation contracts that will provide mitigation for 1,538 projects, which impacted 48,743 ac (19,726 ha) (WAFWA 2020, table 32, unpaginated). When enrolling a property, industry participants agree to minimize impacts from projects to lesser prairie-chicken habitat and mitigate for all remaining impacts on the enrolled property.

At the end of 2021 in the CCAA, there were 111 active contracts (Certificates of Inclusion) with 6,226,140 ac (2,519,629 ha) enrolled (WAFWA 2022, p. 4), and in the WAFWA Conservation Agreement there were 52 active WAFWA Conservation Agreement contracts (Certificates of Participation) with 599,626 ac (242,660 ha) enrolled (WAFWA 2020, table 5 unpaginated) by industry participants. These acres of industry enrollment are areas where industry participants have agreed to implement minimization measures and to pay mitigation fees to offset the remaining impacts. A recent audit of the mitigation program associated with the RWP and CCAA identified several key issues to be resolved within the program to ensure financial stability and effective conservation outcomes (Moore 2020, appendix E). WAFWA has hired a consultant who is currently working with stakeholders, including the Service, to consider available options to address the identified issues to ensure long-term durability of the strategy.

In 2010, the USDA's Natural Resources Conservation Service (NRCS) began implementation of the Lesser Prairie-Chicken Initiative (LPCI). The LPCI provides conservation assistance, both technical and financial, to landowners throughout the LPCI's administrative boundary (NRCS 2017, p. 1). The LPCI focuses on maintenance and enhancement of lesser prairie-chicken habitat while benefiting agricultural producers by maintaining the farming and ranching operations throughout the region. In 2019, after annual declines in landowner interest in LPCI, the NRCS made changes in how LPCI will be implemented moving forward and initiated conferencing under section 7 of the Act with the Service. Prior to 2019, participating landowners had to address all threats to the lesser prairie-chicken present on their property. In the future, each conservation plan developed under LPCI will only need to include one or more of the core management practices that include prescribed grazing, prescribed burning, brush management, and upland wildlife habitat management. Additional management practices may be incorporated into each conservation plan, as needed, to facilitate meeting the desired objectives. These practices are applied or maintained annually for the life of the practice, typically 1 to 15 years, to treat or manage habitat for lesser prairie-chicken. From 2010 through 2019, NRCS worked with 883 private

agricultural producers to implement conservation practices on 1.6 million ac (647,497 ha) of working lands within the historical range of the lesser prairie-chicken (NRCS 2020, p. 2). During that time, through LPCI, NRCS implemented prescribed grazing plans on 680,800 ac (275,500 ha) across the range (Griffiths 2020, pers. comm.). Through LPCI, NRCS has also removed over 41,000 ac (16,600 ha) of eastern red cedar in the Mixed-Grass Ecoregion and chemically treated approximately 106,000 ac (43,000 ha) of mesquite in the Shinnery Oak Ecoregion. Lastly, NRCS has conducted prescribed burns on approximately 15,000 ac (6,000 ha) during this time.

The Conservation Reserve Program (CRP) is administered by the USDA's Farm Service Agency and provides short-term protection and conservation benefits on millions of acres within the range of the lesser prairie-chicken. The CRP is a voluntary program that allows eligible landowners to receive annual rental payments and cost-share assistance in exchange for removing cropland and certain marginal pastureland from agricultural production. CRP contract terms are for 10 to 15 years. The total amount of land that can be enrolled in the CRP is capped nationally by the Food Security Act of 1985, as amended (the 2018 Farm Bill) at 27 million ac (10.93 million ha). All five States within the range of the lesser prairie-chicken have lands enrolled in the CRP. The 2018 Farm Bill maintains the acreage limitation that not more than 25 percent of the cropland in any county can be enrolled in CRP, with specific conditions under which a waiver to this restriction can be provided for lands enrolled under the Conservation Reserve Enhancement Program (84 FR 66813, December 6, 2019). Over time, CRP enrollment fluctuates both nationally and locally. Within the counties that intersect the Estimated Occupied Range plus a 10-mile buffer (EOR+10), acres enrolled in CRP have declined annually since 2007 (with the exception of one minor increase from 2010 to 2011) from nearly 6 million ac (2.4 million ha) enrolled to current enrollment levels of approximately 4.25 million ac (1.7 million ha) (FSA 2020a, unpublished data). The EOR+10 is a 10-mile buffer of the EOR often referenced in lesser prairie-chicken planning efforts but also contains significant areas that do not support the biotic and abiotic characteristics required by the lesser prairie-chicken. More specific to our analysis area, current acreage of CRP enrollment is approximately 1,822,000 ac (737,000 ha) within our analysis area. Of those currently enrolled acres there are approximately 120,000 ac (49,000 ha) of introduced grasses and legumes dispersed primarily within the Mixed-Grass and Shinnery Oak Ecoregions (FSA 2020b, unpublished data).

At the State level, programs provide direct technical and financial cost-share assistance to private landowners interested in voluntarily implementing conservation management practices to benefit species of greatest conservation need—including the lesser prairie-chicken. Additionally, a variety of State-level conservation efforts acquire and manage lands or incentivize management by private landowners for the benefit of the lesser prairie-chicken. Below is a summary for each State within the range of the lesser prairie-chicken. For a complete description of each, see the SSA report. All conservation measures discussed in the SSA report were fully considered in this final rule.

Within the State of Kansas, conservation efforts are administered by the Kansas Department of Wildlife and Parks (KDWP), The Nature Conservancy, and the Service's Partners for Fish and Wildlife Program (PFW). KDWP has targeted lesser prairie-chicken habitat improvements on private lands by leveraging landowner cost-share contributions, industry and nongovernmental organizations' cash contributions, and agency funds toward several federally funded grant programs. The KDWP has implemented conservation measures over 22,000 ac (8,900 ha) through the Landowner Incentive Program, over 18,000 ac (7,285 ha) through the State Wildlife Grant Private Landowner Program, 30,000 ac (12,140 ha) through the Wildlife Habitat Incentives Program, and 12,000 ac (4,855 ha) through the Habitat First Program within the range of the lesser prairie-chicken. Additionally, KDWP was provided an opportunity through contributions from the Comanche Pool Prairie Resource Foundation to leverage additional Wildlife and Sport Fish Restoration funds in 2016 to direct implementation of 19,655 ac (7,954 ha). The Nature Conservancy in Kansas manages the 18,060-ac (7,309-ha) Smoky Valley Ranch. The Nature Conservancy also serves as the easement holder for nearly 34,000 ac (13,760 ha) of properties that are enrolled under the RWP. The Nature Conservancy is also working to use funds from an NRCS Regional Conservation Partnership Program that have resulted in nearly 50,000 ac (20,235 ha) on three ranches either with secured or in-process conservation easements. These easements would restrict future development and would ensure management is compatible for the conservation of the lesser prairie-chicken. Our PFW program has executed 95 private lands agreements with improvements on about 173,000 ac (70,011 ha) of private lands benefitting conservation of the lesser prairie-chicken in Kansas. The primary activities being implemented on these acres include: efforts to control and eradicate invasive, woody plant species such as eastern red cedar; grazing management; and enhanced use of prescribed fire to improve habitat conditions in native grasslands.

In 2009, Colorado Parks and Wildlife (CPW) initiated its Lesser Prairie-Chicken Habitat Improvement Program that provides cost-sharing to private landowners who participate in practices such as deferred grazing around active leks, enhancement of fields enrolled in CRP and cropland-to-grassland habitat conversion. Since program inception, CPW has completed 37,051 ac (14,994 ha) of habitat treatments. The Nature Conservancy holds permanent conservation easements on multiple ranches that make up the Big Sandy complex. Totaling approximately 48,940 ac (19,805 ha), this complex is managed with lesser prairie-chicken as a conservation objective and perpetually protects intact sand sagebrush and short-grass prairie communities. The USFS currently manages the Comanche Lesser Prairie-Chicken Habitat Zoological Area, as part of the Comanche and Cimarron National Grasslands, which encompass an area of 10,177 ac (4,118 ha) in Colorado that is managed to benefit the lesser prairie-chicken (USFS 2014, p. 9). In 2016, CPW and KDWP partnered with Kansas State University and USFS to initiate a 3-year translocation project to restore lesser prairie-chicken to the Comanche National Grasslands (Colorado) and Cimarron National Grasslands (Kansas). Beginning in the fall of 2016 and concluding with the 2019 spring lekking season, the partnership trapped and translocated 411 lesser prairie-chickens from the Short-Grass/CRP Ecoregion in Kansas to the Sand Sagebrush Ecoregion. During April and May 2020 lek counts, Colorado and Kansas biologists and technicians found 115 male birds on 20 active leks in the landscape around the Comanche and Cimarron National Grasslands (Rossi 2020, pers. comm.). During lek counts in 2021, 65 males on 15 leks were documented in the release area (CPW 2021).

In 2013, the FWS issued the Oklahoma Department of Wildlife

Conservation (ODWC) a 25-year enhancement of survival permit pursuant to section 10(a)(1)(A) of the Act that included an umbrella CCAA between the Service and ODWC for the lesser prairie-chicken in 14 Oklahoma counties (78 FR 14111, March 4, 2013). As of 2019, there were 84 participants with a total of 399,225 ac (161,561 ha) enrolled in the ODWC CCAA, with 357,654 ac (144,737) enrolled as conservation acres (ODWC 2020). The difference between total acres enrolled and conservation acres enrolled is because, while a landowner may enroll their entire property, not all of those acres provide habitat for the lesser prairie-chicken. Landowners who agree to enroll in the CCAA agree to implement measures, primarily prescribed grazing, to enhance or restore habitat for the lesser prairie-chicken. The ODWC owns six wildlife management areas totaling approximately 75,000 ac (30,351 ha) in the range of the lesser prairie-chicken, though only a portion of each wildlife management area can be considered as conservation acres for lesser prairie-chicken because not all acres of the wildlife management areas are habitat for the species. Our PFW program has funded a shared position with ODWC for 6 years to conduct CCAA monitoring and, in addition, has provided funding for on-the-ground work in the lesser prairie-chicken range. Since 2017, the Oklahoma PFW program has implemented 51 private lands agreements on about 10,603 ac (4,291 ha) for the benefit of the lesser prairie-chicken in Oklahoma. On these acres conservation measures may include control of eastern red cedar, native grass planting, and fence marking and removal to minimize collision mortality. The Nature Conservancy of Oklahoma manages the 4,050-ac (1,640-ha) Four Canyon Preserve in Ellis County for ecological health to benefit numerous short-grass prairie species, including the lesser prairie-chicken. In 2017, The Nature Conservancy acquired a conservation easement on 1,784 ac (722 ha) in Woods County which restricts future development and ensures sustainable management is occurring. The Conservancy is seeking to permanently protect additional acreage in the region through the acquisition of additional conservation easements.

Texas Parks and Wildlife Department (TPWD) worked with the Service and landowners to develop the first State-wide umbrella CCAA for the lesser prairie-chicken in Texas, which was finalized in 2006. The Texas CCAA covers 50 counties, largely encompassing the Texas Panhandle and South Plains. Total landowner participation by the close of January 2020 was 91 properties totaling approximately 657,038 ac (265,894 ha) enrolled in 15 counties (TPWD 2020, entire). On these acres conservation measures would generally consist of prescribed grazing; prescribed burning; brush management; cropland and residue management; range seeding and enrollment in various other Federal or State programs to provide financial assistance to implement these measures. Our PFW program and the TPWD have actively collaborated on range management programs designed to provide cost-sharing for implementation of habitat improvements for lesser prairie-chicken. In the past the Service provided funding to TPWD to support a Landscape Conservation Coordinator position for the Panhandle and Southern High Plains region, as well as funding to support Landowner Incentive Program projects targeting lesser prairie-chicken habitat improvements (brush control and grazing management) in this region. More than $200,000 of Service funds were committed in 2010, and an additional $100,000 was committed in 2011.

Since 2008, Texas has used these and other funds to address lesser prairie-chicken conservation on 14,068 ac (5,693 ha) under the Landowner Incentive Program. Typical conservation measures include native plant restoration, control of exotic or invasive vegetation, prescribed burning, selective brush management, and prescribed grazing. The PFW program in Texas has executed 66 private lands agreements on about 131,190 ac (53,091 ha) of privately owned lands for the benefit of the lesser prairie-chicken in Texas. The Nature Conservancy of Texas acquired approximately 10,635 ac (4,303 ha) in Cochran, Terry, and Yoakum Counties. In 2014, The Nature Conservancy donated this land to TPWD. The TPWD acquired an additional 3,402 ac (1,377 ha) contiguous to the Yoakum Dunes Preserve creating the 14,037-ac (5,681-ha) Yoakum Dunes Wildlife Management Area. In 2015, through the RWP process, WAFWA acquired an additional 1,604 ac (649 ha) in Cochran County, nearly 3 mi (5 km) west of the Yoakum Dunes Wildlife Management Area. The land was deeded to TPWD soon after acquisition. In 2016, an additional 320 ac (129 ha) was purchased by TPWD bordering the WAFWA-acquired tract creating an additional 1,924-ac (779-ha) property that is being managed (including prescribed grazing and invasive species control) as part of the Yoakum Dunes Wildlife Management Area, now at 15,961 ac (6,459 ha).

The BLM's Special Status Species RMPA, which was approved in April 2008, addressed the concerns and future management of lesser prairie-chicken and dunes sagebrush lizard habitats on BLM lands and established the Lesser Prairie-Chicken Habitat Preservation Area of Critical Environmental Concern (BLM 2008, entire). Since the RMPA was approved in 2008, BLM has closed approximately 300,000 ac (121,000 ha) to future oil and gas leasing and closed approximately 850,000 ac (344,000 ha) to wind and solar development (BLM 2008, p. 3). From 2008 to 2020, they have reclaimed 3,500 ac (1,416 ha) of abandoned well pads and associated roads and required burial of power lines within 2 mi (3.2 km) of lesser prairie-chicken leks. Additionally, BLM has implemented control efforts for mesquite on 832,104 ac (336,740 ha) and has plans to do so on an additional 30,000 ac (12,141 ha) annually. In 2010, BLM acquired 7,440 ac (3,010 ha) of land east of Roswell, New Mexico, to complete the 54,000-ac (21,853-ha) ACEC for lesser prairie-chicken, which is managed to protect key habitat.

Following approval of the RMPA, a candidate conservation agreement (CCA) and CCAA was drafted by a team including the Service, BLM, Center of Excellence for Hazardous Material Management (CEHMM), and participating cooperators to address the conservation needs of the lesser prairie-chicken and the dunes sagebrush lizard. Since the CCA and CCAA were finalized in 2008, 43 oil and gas companies have enrolled a total of 1,964,163 ac (794,868 ha) in the historical range of the lesser prairie-chicken. By enrolling these lands, industry participants have agreed to implement conservation measures aimed to minimize impacts of their development activities to the lesser prairie-chicken and pay fees to offset the remaining impacts. In addition, 72 ranchers in New Mexico and the New Mexico Department of Game and Fish have enrolled a total of 2,055,461 ac (831,815 ha). The New Mexico State Land Office has enrolled a total of 406,673 ac (164,575 ha) in the historical range of the lesser prairie-chicken. By enrolling, the Department of Game and Fish, State Land Office, and landowners agree to follow grazing management standards established in the agreement, limiting development actions where the landowner has discretion, limit herbicide use, and other actions as identified in the agreement. The CCA and CCAA have treated 79,297 ac (32,090 ha) of mesquite and reclaimed

154 abandoned well pads and associated roads. CEHMM has also removed 7,564 ac (3,061 ha) of dead, standing mesquite, and has another 12,000 ac (5,000 ha) scheduled in the upcoming 2 years.

The Nature Conservancy owns and manages the 28,000-ac (11,331-ha) Milnesand Prairie Preserve near Milnesand, New Mexico. Additionally, the New Mexico Department of Game and Fish (NMDGF) has designated 30 Prairie Chicken Areas (PCAs) specifically for management of the lesser prairie-chicken ranging in size from 28 to 7,189 ac (11 to 2,909 ha) and totaling more than 27,262 ac (11,033 ha). More recently, NMDGF purchased an additional 7,417-ac (3,000-ha) property that connects two of the previously owned PCAs that will create a 9,817-ac (4,000-ha) contiguous property. In 2007, the State Game Commission used New Mexico State Land Conservation Appropriation funding to acquire 5,285 ac (2,137 ha) of private ranchland in Roosevelt County. Our PFW program in New Mexico has contributed financial and technical assistance for restoration and enhancement activities benefitting the lesser prairie-chicken in New Mexico. In 2016, the PFW program executed a private land agreement on 630 ac (255 ha) for treating invasive species with a prescribed burn. In 2020 the PFW program executed a private land agreement for a prescribed burn on 155 ac (63 ha).

Conditions and Trends

Rangewide Trends

The lesser prairie-chicken estimated historical range encompasses an area of approximately 115 million ac (47 million ha). As discussed in Background, not all of the area within this historical range was evenly occupied by lesser prairie-chicken, and some of the area may not have been suitable to regularly support lesser prairie-chicken populations (Boal and Haukos 2016, p. 6). However, the current range of the lesser prairie-chicken has been significantly reduced from the historical range, and estimates of the reduction vary from greater than 90 percent (Hagen and Giesen 2005, unpaginated) to approximately 83 percent (Van Pelt et al. 2013, p. 3).

We estimated the current amount and configuration of potential lesser prairie-chicken usable area within the analysis area using the geospatial analysis described in the SSA report (Service 2022, section 3.2; appendix B, parts 1, 2, and 3) and considering existing impacts as described above. The total area of all potential usable (land cover that may be consistent with lesser prairie-chicken areas that have the potential to support lesser prairie-chicken use) and potential usable, unimpacted land cover (that is, not impacted by landscape features) categories in each ecoregion and rangewide is shown below in table 1.

To assess lesser prairie-chicken habitat at a larger scale and incorporate some measure of connectivity and fragmentation, we then grouped the areas of potential usable, unimpacted land cover based on the proximity of other areas with potential usable, unimpacted lesser prairie-chicken land cover. To do this, we used a ''nearest neighbor'' geospatial process to determine how much potential usable land cover is within 1 mi (1.6 km) of any area of potential usable land cover. This nearest neighbor analysis gives an estimate of how closely potential usable, unimpacted land cover is clustered together, versus spread apart, from other potential usable, unimpacted land cover. Areas with at least 60 percent potential usable, unimpacted land cover within 1 mi (1.6 km) were grouped. The 60 percent threshold was chosen because maintaining grassland in large blocks is vital to conservation of the species (Ross et al. 2016a, entire; Hagen and Elmore 2016, entire; Spencer et al. 2017, entire; Sullins et al. 2019, entire), and these studies indicate that landscapes consisting of greater than 60 percent grassland are required to support lesser prairie-chicken populations. This approach eliminates small, isolated, and fragmented patches of otherwise potential usable land cover that are not likely to support persistent populations of the lesser prairie-chicken. A separate analysis found that the areas with 60 percent or greater unimpacted potential usable land cover within 1 mi (1.6 km) captured approximately 90 percent of known leks (Service 2022, appendix B, part 3).

TABLE 1—RESULTS OF LESSER PRAIRIE-CHICKEN GEOSPATIAL ANALYSIS BY ECOREGION AND RANGEWIDE, ESTIMATING TOTAL AREA IN ACRES, POTENTIAL USABLE AREA, AND AREA CALCULATED BY OUR NEAREST NEIGHBOR ANALYSIS

[All numbers are in acres. Numbers may not sum due to rounding.]

Ecoregion	Ecoregion total area	Potential usable area	Nearest neighbor analysis	% of total area
Short-Grass/CRP	6,298,014	2,961,318	1,023,894	16.3
Mixed-Grass	8,527,718	6,335,451	994,483	11.7
Sand Sagebrush	3,153,420	1,815,435	1,028,523	32.6
Northern DPS total	17,979,152	11,112,204	3,046,900	16.9
Shinnery Oak (Southern DPS total)	3,850,209	2,626,305	1,023,572	26.6
Rangewide Totals	21,829,361	13,738,509	4,070,472	18.6

The results of the nearest neighbor analysis indicate that about 19 percent of the entire analysis area and from 12 percent to 33 percent within each of the four ecoregions is available for use by the lesser prairie-chicken. Due to limitations in data availability and accuracy as well as numerous limitations with the methodology and assumptions made for this analysis, this estimate should not be viewed as a precise measure of the lesser prairie-chicken habitat; instead, it provides a generalized baseline to characterize the current condition and by which we can then forecast the effect of future changes.

In the SSA report, we also considered trends in populations. Estimates of population abundance prior to the 1960s are indeterminable and rely almost entirely on anecdotal information (Boal and Haukos 2016, p. 6). While little is known about precise historical population sizes, the lesser prairie-chicken was reported to be quite common throughout its range in the early 20th century (Bent 1932, pp. 280–281, 283; Baker 1953, p. 8; Bailey and Niedrach 1965, p. 51; Sands 1968, p. 454; Fleharty 1995, pp. 38–44; Robb and Schroeder 2005, p. 13). In the 1960s, State fish and wildlife agencies began routine lesser prairie-chicken monitoring efforts that have largely continued to today.

In the SSA report and this final rule, we discuss lesser prairie-chicken population estimates from two studies. The first study calculated historical trends in lesser prairie-chicken abundances from 1965 through 2016 based on population reconstruction methods and historical lek surveys (Hagen et al. 2017, pp. 6–9). The results of these estimates indicate that lesser prairie-chicken rangewide abundance (based on a minimum estimated number of male lesser prairie-chicken) peaked from 1965–1970 at a mean estimate of about 175,000 males. The mean population estimates maintained levels of greater than 100,000 males until 1989, after which they steadily declined to a low of 25,000 males in 1997 (Garton et al. 2016, p. 68). The mean population estimates following 1997 peaked again at about 92,000 males in 2006 but subsequently declined to 34,440 males in 2012. This 2006 peak was far below the 1965–1970 estimated peak, demonstrating that the species did not achieve its prior peak population level. We identified concerns in the past with some of the methodologies and assumptions made in this analysis, and the challenges of these data are noted in other studies (for example, Zavaleta and Haukos 2013, p. 545; Cummings et al. 2017, pp. 29–30). While these concerns remain, including the very low sample sizes particularly in the 1960s, this work represents the only attempt to compile the extensive historical ground lek count data collected by State agencies to estimate rangewide population sizes. Approximate distribution of lek locations as reported by WAFWA for the entire range that were observed occupied by lesser prairie-chicken at least once between 2015 and 2019 are shown in the SSA report (Service 2022, appendix E, figure E.7).

Following development of aerial survey methods (McRoberts et al. 2011, entire), more statistically rigorous estimates of lesser prairie-chicken abundance (both males and females) have been conducted by flying aerial line-transect surveys throughout the range of the lesser prairie-chicken and extrapolating densities from the surveyed area to the rest of the range beginning in 2012 (Nasman et al. 2022, entire). The aerial survey results from 2012 through 2022 estimated the lesser prairie-chicken population abundance, averaged over the most recent 5 years of surveys (2017–2022, no surveys in 2019), at 32,210 (90 percent CI: 11,489, 64,303) (Nasman et al. 2022, p. 16; table 10). The results of these survey efforts should not be taken as precise estimates of the annual lesser prairie-chicken population abundance, as indicated by the large confidence intervals. Thus, the best use of this data is for long-term trend analysis rather than for conclusions based on annual fluctuations. As such, we report the population estimate for the current condition as the average of the past 5 years of surveys.

TABLE 2—RANGEWIDE AND ECOREGIONAL ESTIMATED LESSER PRAIRIE-CHICKEN TOTAL POPULATION SIZES AVERAGED FROM 2017 TO 2022, LOWER AND UPPER 90 PERCENT CONFIDENCE INTERVALS (CI) OVER THE 5 YEARS OF ESTIMATES, AND PERCENT OF RANGEWIDE TOTALS FOR EACH ECOREGION (FROM NASMAN ET AL. 2022, P. 16). NO SURVEYS WERE CONDUCTED IN 2019.

Ecoregion	5-Year average estimate	5-Year minimum lower CI	5-Year maximum upper CI	Percent of total
Short-Grass/CRP	23,083	9,653	39,934	72
Mixed-Grass	5,024	1,601	10,481	15
Sand Sagebrush	1,297	56	4,881	4
Shinnery Oak	2,806	179	9,007	9
Rangewide Totals	32,210	11,489	64,303	100

We now discuss habitat impacts and population trends in each ecoregion and DPS throughout the range of the lesser prairie-chicken.

Southern DPS

Using our geospatial analysis, we were able to explicitly account for habitat loss and fragmentation and quantify the current condition of the Shinnery Oak Ecoregion. Of the sources of habitat loss and fragmentation that have occurred, cropland conversion, roads, and encroachment of woody vegetation had the largest impacts on land cover in the Southern DPS (Table 3). Based on our nearest neighbor analysis, we estimated there are approximately 1,023,572 ac (414,225 ha) or 27 percent of the ecoregion and the Southern DPS potentially available for use by lesser prairie-chicken (table 1).

TABLE 3—ESTIMATED AREAS OF CURRENT DIRECT AND INDIRECT IMPACTS, BY IMPACT SOURCE, AND THE PROPORTION OF THE TOTAL AREA OF THE SHINNERY OAK ECOREGION ESTIMATED TO BE IMPACTED (SEE TABLE 1 FOR TOTALS)

[Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source.]

Impact Sources	Acres	Percent of ecoregion
Shinnery Oak Ecoregion (Southern DPS)		
Cropland Conversion	540,120	14
Petroleum Production	161,652	4
Wind Energy Development	90,869	2
Transmission Lines	372,577	10
Woody Vegetation Encroachment	617,885	16
Roads	742,060	19
Total Ecoregion/Southern DPS Area	3,850,209	

Based on population reconstruction methods, the mean population estimate ranged between about 5,000 to 12,000 males through 1980, increased to 20,000 males in the mid-1980s and declined to ~1,000 males in 1997 (Hagen et al. 2017, pp. 6–9). The mean population estimate peaked again to ~15,000 males in 2006 and then declined again to fewer than 3,000 males in the mid-2010s.

Aerial surveys have been conducted to estimate lesser prairie-chicken population abundance since 2012, and results in the Shinnery Oak Ecoregion from 2012 through 2022 indicate that this ecoregion has the third highest population size (Nasman et al. 2022, p. 16) of the four ecoregions. Average estimates from 2017 to 2022 are 2,806 birds (90 percent CI: 179, 9,007), representing about 9 percent of the rangewide total (table 2). Recent estimates have varied between fewer than 1,000 birds in 2015 to more than 5,000 birds in 2020 and decreasing to fewer than 1,000 birds again in 2022 (see also Service 2022, appendix E, figure E.7).

Northern DPS

Prairies of the Short-Grass/CRP Ecoregion have been significantly altered since European settlement of the Great Plains. Much of these prairies has been converted to other land uses such as cultivated agriculture, roads, power lines, petroleum production, wind energy, and transmission lines. Some areas have also been altered due to woody vegetation encroachment. Within this ecoregion, it has been estimated that about 73 percent of the landscape has been converted to cropland with 7 percent of the area in CRP (Dahlgren et al. 2016, p. 262). According to our GIS analysis, of the sources of habitat loss and fragmentation that have occurred, conversion to cropland has had the single largest impact on land cover in this ecoregion (table 4). Based on our nearest neighbor analysis, we estimated approximately 1,023,894 ac (414,355 ha), or 16 percent of the ecoregion, is potentially available for use by lesser prairie-chicken (table 1).

TABLE 4—ESTIMATED AREAS OF CURRENT DIRECT AND INDIRECT IMPACTS, BY IMPACT SOURCE, AND THE PROPORTION OF THE TOTAL AREA OF THE SHORT-GRASS/CRP ECOREGION ESTIMATED TO BE IMPACTED (SEE TABLE 1 FOR TOTALS)

[Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source.]

Impact sources	Acres	Percent of ecoregion
Short-Grass/CRP Ecoregion		
Cropland Conversion	2,333,660	37
Petroleum Production	248,146	4
Wind Energy Development	145,963	2
Transmission Lines	436,650	7
Woody Vegetation Encroachment	284,175	5
Roads	1,075,931	17
Total Ecoregion Area	6,298,014	

Based on population reconstruction methods, the mean population estimate for this ecoregion increased from a minimum of about 14,000 males in 2001 and peaked at about 21,000 males in 2011 (Hagen et al. 2017, pp. 8–10; see also Service 2022, figure 3.3).

Aerial surveys since 2012 indicate that the Short-Grass/CRP Ecoregion (figure 3.4) has the largest population size (Nasman et al. 2022, p. 16) of the four ecoregions. Average estimates from 2017 to 2022 are 23,083 birds (90 percent CI: 9,653, 39,934), making up about 72 percent of the rangewide lesser prairie-chicken total (table 2).

Much of the Mixed-Grass Ecoregion was originally fragmented by homesteading, which subdivided tracts of land into small parcels of 160–320 ac (65–130 ha) in size (Rodgers 2016, p. 17). As a result of these small parcels, road and fence densities are higher compared to other ecoregions and, therefore, increase habitat fragmentation and pose higher risk for collision mortalities than in other ecoregions (Wolfe et al. 2016, p. 302). Fragmentation has also occurred due to oil and gas development, wind energy development, transmission lines, highways, and expansion of invasive woody plants such as eastern red cedar. A major concern for lesser prairie-chicken populations in this ecoregion is the loss of grassland due to the rapid westward expansion of the eastern red-cedar (NRCS 2016, p. 16). Oklahoma Forestry Services estimated the average rate of expansion of eastern red-cedar in 2002 to be 762 ac (308 ha) per day (Wolfe et al. 2016, p. 302).

TABLE 5—ESTIMATED AREAS OF CURRENT DIRECT AND INDIRECT IMPACTS, BY IMPACT SOURCE, AND THE PROPORTION (PERCENT) OF THE TOTAL AREA OF THE MIXED-GRASS ECOREGION ESTIMATED TO BE IMPACTED (SEE TABLE 1 FOR TOTALS)

[Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source.]

Impact Sources	Acres	Percent of Ecoregion
Mixed-Grass Ecoregion		
Cropland Conversion	1,094,688	13
Petroleum Production	859,929	10
Wind Energy Development	191,571	2
Transmission Lines	576,713	7
Woody Vegetation Encroachment	2,047,510	24
Roads	1,732,050	20

TABLE 5—ESTIMATED AREAS OF CURRENT DIRECT AND INDIRECT IMPACTS, BY IMPACT SOURCE, AND THE PROPORTION (PERCENT) OF THE TOTAL AREA OF THE MIXED-GRASS ECOREGION ESTIMATED TO BE IMPACTED (SEE TABLE 1 FOR TOTALS)—Continued

[Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source.]

Impact Sources	Acres	Percent of Ecoregion
Total Ecoregion Area	8,527,718	

Using our geospatial analysis, we were able to explicitly account for habitat loss and fragmentation and quantify the current condition of this ecoregion for the lesser prairie-chicken. Of the sources of habitat loss and fragmentation that have occurred, encroachment of woody vegetation had the largest impact, with conversion to cropland, roads, and petroleum production also having significant impacts on land cover in this ecoregion (table 5). Based on our nearest neighbor analysis, we estimated there are approximately 994,483 ac (402,453 ha) or 12 percent of the ecoregion, that is potentially available for use by lesser prairie-chicken (table 1).

The Mixed-Grass Ecoregion historically contained the highest lesser prairie-chicken densities (Wolfe et al. 2016, p. 299). Based on population reconstruction methods, the mean population estimate for this ecoregion in the 1970s and 1980s was around 30,000 males (Hagen et al. 2017, pp. 6–7). Population estimates declined in the 1990s and peaked again in the early 2000s at around 25,000 males, before declining and remaining at its lowest levels, fewer than 10,000 males in 2012, since the late 2000s (Hagen et al. 2017, pp. 6–7).

Aerial surveys from 2012 through 2022 indicate this ecoregion has the second highest population size of the four ecoregions (Nasman et al. 2022, p. 16). Average estimates from 2017 to 2022 are 5,024 birds (90 percent CI: 1,601, 10,481), representing about 15 percent of the rangewide total (table 2). Results show minimal variation in recent years.

Prairies of the Sand Sagebrush Ecoregion have been influenced by a variety of activities since European settlement of the Great Plains. Much of these grasslands have been converted to other land uses such as cultivated agriculture, roads, power lines, petroleum production, wind energy, and transmission lines. Some areas have also been altered due to woody vegetation encroachment. Only 26 percent of historical sand sagebrush prairie is available as potential nesting habitat for lesser prairie-chicken (Haukos et al. 2016, p. 285). Using our geospatial analysis, we were able to explicitly account for habitat loss and fragmentation and quantify the current condition of this ecoregion for the lesser prairie-chicken. Of the sources of habitat loss and fragmentation that have occurred, conversion to cropland has had the single largest impact on land cover in this ecoregion (table 6). Based on our nearest neighbor analysis, we estimated there are approximately 1,028,523 ac (416,228 ha) or 33 percent of the ecoregion, potentially available for use by lesser prairie-chicken (table 1). In addition, habitat loss due to the degradation of the rangeland within this ecoregion continues to be a limiting factor for lesser prairie-chicken, and most of the existing birds within this ecoregion persist primarily on and near CRP lands. Drought conditions in the period 2011–2014 have expedited population decline (Haukos et al. 2016, p. 285).

TABLE 6—ESTIMATED AREAS OF CURRENT DIRECT AND INDIRECT IMPACTS, BY IMPACT SOURCE, AND THE PROPORTION (PERCENT) OF THE TOTAL AREA OF THE SAND SAGEBRUSH ECOREGION ESTIMATED TO BE IMPACTED (SEE TABLE 1 FOR TOTALS).

[Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source.]

Impact sources	Acres	Percent of ecoregion
Sand Sagebrush Ecoregion		
Cropland Conversion	994,733	32
Petroleum Production	163,704	5
Wind Energy Development	0	0
Transmission Lines	167,240	5
Woody Vegetation Encroachment	68,147	2
Roads	446,316	14
Total Ecoregion Area	3,153,420	

Based on population reconstruction methods, the mean population estimate for this ecoregion peaked at greater than 90,000 males from 1970 to 1975 and declined to its lowest level of fewer than 1,000 males in recent years.

Aerial surveys from 2012 through 2022 indicate that this ecoregion has the lowest population size (Nasman et al. 2022, p. 16) of the four ecoregions. Average estimates from 2017 to 2022 are 1,297 birds (90 percent CI: 56, 4,881) representing about 4 percent of the rangewide lesser prairie-chicken total (table 2). Recent results have been highly variable, with 2020 being the lowest estimate reported. Although the aerial survey results show 171 birds in this ecoregion in 2020 (with no confidence intervals because the number of detections were too low for statistical analysis), ground surveys in this ecoregion in Colorado and Kansas detected 406 birds, so we know the current population is actually larger than indicated by the aerial survey results (Rossi and Fricke, pers. comm.

2020, entire). Aerial surveys for 2021 estimated 440 birds (90 percent CI: 55, 963) for this ecoregion (Nasman et al. 2022, p. 16).

Table 7 combines the estimated area impacted presented above for each of the three ecoregions into one estimate for each impact source for the Northern DPS.

TABLE 7—ESTIMATED AREAS OF CURRENT DIRECT AND INDIRECT IMPACTS, BY IMPACT SOURCE, AND THE PROPORTION (PERCENT) OF THE TOTAL AREA OF THE NORTHERN DPS ESTIMATED TO BE IMPACTED (SEE TABLE 1 FOR TOTALS)

[Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source.]

Impact Sources	Acres	Percent of DPS
Northern DPS		
Cropland Conversion	4,423,081	25
Petroleum Production	1,271,779	7
Wind Energy Development	337,534	2
Transmission Lines	1,180,603	7
Woody Vegetation Encroachment	2,399,832	13
Roads	3,254,297	18
Total Northern DPS Area	17,979,152	

Future Condition

As discussed above, we conducted a geospatial analysis to characterize the current condition of the landscape for the lesser prairie-chicken by categorizing land cover data (into potential usable, potential restoration, or nonusable categories), taking into account exclusion areas and impacts to remove nonusable areas. We further refined the analysis to account for connectivity by use of our nearest neighbor analysis as described in *Rangewide Trends.* We then used this geospatial framework to analyze the future condition for each ecoregion. To analyze future habitat changes, we accounted for the effects of both future loss of usable areas and restoration efforts by estimating the rate of change based on future projections (Service 2022, figure 4.1).

Due to uncertainties associated with both future conservation efforts and impacts, it is not possible to precisely quantify the effect of these future actions on the landscape. Instead, we established five future scenarios to represent a range of plausible outcomes based upon three plausible levels of conservation (restoration efforts) and three plausible levels of impacts. To account for some of the uncertainty in these projections, we combined the levels of impacts into five different scenarios labeled 1 through 5 (table 8). Scenario 1 represents the scenario with low levels of future impacts and high levels of future restoration, and Scenario 5 represents the scenario with high impacts and low restoration. Scenarios 1 and 5 were used to frame the range of projected outcomes used in our model as they represent the low and high of likely projected outcomes. Scenarios 2, 3, and 4 are model iterations that fall within the range bounded by scenarios 1 and 5 and have continuation of the current level of restoration efforts and vary impacts at low, mid, and high levels, respectively. These scenarios provide a wide range of potential future outcomes to consider in assessing lesser prairie-chicken habitat conditions.

TABLE 8—SCHEMATIC OF FUTURE SCENARIOS FOR LESSER PRAIRIE-CHICKEN CONSERVATION CONSIDERING A RANGE OF FUTURE IMPACTS AND RESTORATION EFFORTS

Scenario	Levels of future change in usable area	
	Restoration	Impacts
1	High	Low.
2	Continuation	Low.
3	Continuation	Mid.
4	Continuation	High.
5	Low	High.

To project the likely future effects of impacts and conservation efforts to the landscape as described through our land cover model, we quantified the three levels of future habitat restoration and three levels of future impacts within the analysis area by ecoregion on an annual basis. In addition to restoration efforts, we also quantified those efforts that enhance existing habitat. While these enhancement efforts do not increase the amount of available area and thus are not included in the spatial analysis, they are summarized in the SSA report and considered as part of the overall analysis of the biological status of the species. We then extrapolated those results over the next 25 years. We chose 25 years as a period for which we had reasonable confidence in reliably projecting these future changes, and the timeframe corresponds with some of the long-term planning for the lesser prairie-chicken. A complete description of methodology used to quantify projections of impacts and future conservation efforts is provided in the SSA report (Service 2022, appendix C).

Quantifying future conservation efforts in terms of habitat restoration allows us to account for the positive impact of those efforts within our analysis by converting areas of land cover that were identified as potential habitat in our current condition model to usable land cover for the lesser prairie-chicken in the future projections. Explicitly quantifying three levels of impacts in the future allows us to account for the effect of these impacts on the lesser prairie-chicken by converting areas identified as usable land cover in our current condition model to nonusable area that will not be available for use by the lesser prairie-chicken in the future.

As we did for the current condition to assess habitat connectivity, after we characterized the projected effects of conservation and impacts on potential future usable areas, we grouped the areas of potential usable, unimpacted land cover on these new future landscape projections using our nearest neighbor analysis (Service 2022, pp. 21–23; appendix B, parts 1, 2, and 3). Also, as done for the current condition, we evaluated the frequency of usable area blocks by size in order to evaluate habitat fragmentation and connectivity in the future scenarios (Service 2022, figure 4.2).

Threats Influencing Future Condition

Following are summary evaluations of the expected future condition of threats analyzed in the SSA for the lesser prairie-chicken: effects associated with habitat degradation, loss, and fragmentation, including conversion of grassland to cropland (Factor A), petroleum production (Factor A), wind energy development and transmission (Factor A), woody vegetation encroachment (Factor A), and roads and electrical distribution lines (Factor A); and other factors, such as livestock grazing (Factor A), shrub control and eradication (Factor A), fire (Factor A); and climate change (Factor E).

In this final rule, we do not present summary evaluations of the following threats as we have no information to project future trends, though we do expect them to have some effect on the species in the future: predation (Factor C), collision mortality from fences (Factor E), and influence of anthropogenic noise (Factor E). We also do not discuss the following threats, as they are having little to no impact on the species and its habitat currently, nor do we expect them to into the foreseeable future: hunting and other recreational, educational, and scientific use (Factor B); parasites and diseases (Factor C); and insecticides (Factor E).

For the purposes of this assessment, we consider the foreseeable future to be the amount of time on which we can reasonably determine a likely threat's anticipated trajectory and the anticipated response of the species to that threat. For climate change, the time for which we can reliably project threats and the anticipated response is approximately 60 years. For many other threats impacting the lesser prairie-chicken throughout its range, we consider the time for which we can reliably project threats and the anticipated response to be 25 years. This time period represents our best professional judgment of the foreseeable future conditions related to conversion of grassland to cropland, petroleum production, wind energy, and woody vegetation encroachment, and, as discussed above, is the time period used to project these threats in our geospatial analysis. For this period, we had reasonable confidence in projecting these future changes, and the timeframe corresponds with some of the long-term planning for the lesser prairie-chicken. For other threats and the anticipated species response, we can reliably project impacts and the species response for less than 25 years, such as livestock grazing, roads and electrical distribution lines, shrub control and eradication, and fire.

Habitat Loss and Fragmentation

As discussed in ''Threats Influencing Current Condition,'' habitat loss and fragmentation is the primary concern for lesser prairie-chicken viability. We discuss how each of these activities may contribute to future habitat loss and fragmentation for the lesser prairie-chicken and present the outcomes of the projections.

Conversion of Grassland to Cropland

Because much of the lands capable of being used for row crops has already been converted to cultivated agriculture, we do not expect future rates of conversion to reach those witnessed historically; however, conversion has continued to occur (Lark 2020, entire). Rates of future conversion of grasslands to cultivated agriculture in the analysis area will be affected by multiple variables including site-specific biotic and abiotic conditions as well as socioeconomic influences such as governmental agriculture programs, commodity prices, and the economic benefits of alternative land use practices.

For the purposes of the SSA, we conducted an analysis to project the future rates of conversion of grassland to cropland at three different levels. We used information from aggregated remote sensing data from the USDA Cropland Data layer (Lark 2020, entire; Service 2022, p. 83). Table 9 outlines the resulting three levels of projected habitat loss of future conversion of grassland to cultivated agriculture per ecoregion over the next 25 years. See the SSA report (Service 2022, appendix C) for further details and methodologies for these projections. While we do not expect future rates of conversion (from grassland to cropland) to be equivalent to those we have historically witnessed, the limited amount of large intact grasslands due to the historical extent of conversion means all future impacts are expected to have a disproportionate scale of impact.

TABLE 9—FUTURE PROJECTION OF THREE LEVELS OF IMPACTED ACRES OF POTENTIAL USABLE AREA FOR THE LESSER PRAIRIE-CHICKEN FROM CONVERSION OF GRASSLAND TO CROPLAND OVER THE NEXT 25 YEARS IN EACH ECOREGION.

[Numbers may not sum due to rounding]

Ecoregion	Projected impacts (acres)		
	Low	Intermediate	High
Short-Grass/CRP	89,675	145,940	185,418
Mixed-Grass	4,220	33,761	50,910
Sand Sagebrush	42,573	95,678	142,438
Northern DPS totals	136,468	275,379	378,766
Shinnery Oak (Southern DPS)	21,985	51,410	93,946
Rangewide Total	158,454	326,789	472,712

Petroleum Production

In the SSA report, we conducted an analysis to project the future rates of petroleum production at low, intermediate, and high levels. We compiled State well permitting spatial data from each State within each of the ecoregions to inform assumptions around future rates of development (Service 2022, p. 84). We converted the projected number of new wells at the three levels to acres of usable area impacted. Our analysis accounts for indirect impacts as well as potential overlap with other existing impacts to include colocation efforts by developers. Table 10 represents the extent of potential usable area impacted at the three levels of development per ecoregion over the next 25 years. See the SSA report (Service 2022, appendix C) for further details and methodologies regarding these projections.

Given current trends in energy production, we anticipate that oil and gas production across the lesser prairie-

chicken range will continue to occur and that rates will vary both temporally and spatially. The rates of development will be dependent upon new exploration, advancements in technology, and socioeconomic dynamics that will influence energy markets in the future.

TABLE 10—FUTURE PROJECTION OF THREE LEVELS OF IMPACTED ACRES (INCLUDING BOTH DIRECT AND INDIRECT EFFECTS) OF POTENTIAL USABLE AREA FOR THE LESSER PRAIRIE-CHICKEN FROM OIL AND GAS DEVELOPMENT OVER THE NEXT 25 YEARS IN EACH ECOREGION

[Numbers may not sum due to rounding.]

Ecoregion	Projected impacts (acres)		
	Low	Intermediate	High
Short-Grass/CRP	26,848	54,618	82,388
Mixed-Grass	82,716	170,989	259,262
Sand Sagebrush	3,166	9,054	14,942
Northern DPS totals	112,730	234,661	356,592
Shinnery Oak (Southern DPS)	136,539	190,144	243,749
Rangewide Total	249,269	424,805	600,342

Wind Energy Development and Transmission Lines

As discussed in ''Threats Influencing Current Condition,'' the States in the lesser prairie-chicken analysis area have experienced some of the largest growth in wind energy development in the nation. Identification of the actual number of proposed wind energy projects that will be built within the range of the lesser prairie-chicken in any future timeframe is difficult to accurately discern. We conducted an analysis of current and potential future wind energy development for the SSA for the Lesser Prairie-Chicken, and the future development was estimated at three different levels within the analysis area of the lesser prairie-chicken at low, intermediate, and high levels (Service 2022, appendix C). Table 11 represents the wind development projects projected at three levels of development per ecoregion.

TABLE 11—PROJECTIONS OF FUTURE WIND ENERGY DEVELOPMENT PROJECTS FOR THE NEXT 25 YEARS AT THREE LEVELS IN EACH LESSER PRAIRIE-CHICKEN ECOREGION AND RANGEWIDE

Ecoregion	Projected wind developments		
	Low	Intermediate	High
Short-Grass/CRP	7	11	16
Mixed-Grass	10	18	25
Sand Sagebrush	1	2	3
Northern DPS totals	18	31	44
Shinnery Oak (Southern DPS)	4	7	10
Rangewide Total	22	38	54

As outlined within ''Threats Influencing Current Condition,'' wind energy development also has indirect impacts on the lesser prairie-chicken. To determine the number of acres impacted by wind energy development in the current condition, we analyzed wind energy facilities recently constructed within and near our analysis area. We applied a 5,900-ft (1,800-m) impact radius to individual turbines to account for indirect impacts and found that the last 5 years show a substantial increase in the relative density of wind energy projects (see Service 2022, appendix C, for further details). This analysis does not mean that all of the impacts occur to otherwise usable lesser prairie-chicken land cover. In fact, it is highly unlikely due to viable wind development potential outside lesser prairie-chicken usable areas that all projected impacts will occur in areas that are otherwise usable for the lesser prairie-chicken. Because we cannot predict the precise location of future developments and to simplify and facilitate modeling the locations for future projections for wind development, we created a potential wind energy development grid that was laid over the analysis area and which allowed the random placement for each development for each iteration (Service 2022, p. 86). The resulting projected impacts in 25 years using the median iteration for each of the range of future scenarios are shown in table 12. Scenarios 1 and 5 were used to frame the scenarios used in our model as they represent the low and high of likely projected outcomes. The rangewide projections range from 164,100 ac (66,400 ha) to 328,000 ac (133,000 ha).

TABLE 12—RANGE OF PROJECTIONS OF FUTURE WIND ENERGY DEVELOPMENT IMPACTS (INCLUDING BOTH DIRECT AND INDIRECT EFFECTS) IN ACRES FOR THE NEXT 25 YEARS FOR SCENARIOS 1 AND 5 OF EACH LESSER PRAIRIE-CHICKEN ECOREGION AND RANGEWIDE

Ecoregion	Projected wind development impacts (acres)	
	Scenario 1	Scenario 5
Short-Grass/CRP	68,300	134,200
Mixed-Grass	50,200	106,000
Sand Sagebrush	3,900	21,300
Northern DPS totals	122,400	261,500
Shinnery Oak (Southern DPS)	41,700	66,500
Rangewide Total	164,100	328,000

Electrical transmission capacity represents a major limitation on wind energy development in the Great Plains. Additional transmission lines will be required to transport future electricity production to markets; thus, we expect an expansion of the current transmission capacity in the Great Plains. As this expansion occurs, these transmission lines will, depending on their location, result in habitat loss as well as further fragmentation and could also be the catalyst for additional wind development affecting the lesser prairie-chicken. While we were able to analyze the current impacts of transmission lines on the lesser prairie-chicken, due to the lack of information available to project the location (and thus effects to lesser prairie-chicken habitat), we could not quantify the future potential effect of habitat loss and fragmentation on the lesser prairie-chicken that could be caused by transmission line development. However, we do acknowledge potential habitat loss and fragmentation from transmission lines is likely to continue depending upon their location.

Woody Vegetation Encroachment

Due to the past encroachment trends and continued suppression of fire across the range of the lesser prairie-chicken, we expect this encroachment of woody vegetation into grasslands to continue, which will result in further loss of lesser prairie-chicken habitat into the foreseeable future. The degree of future habitat impacts will depend on land management practices and the level of conservation efforts for woody vegetation removal.

To describe the potential future effects of encroachment of woody vegetation, we used available information regarding rates of increases in eastern red cedar and mesquite encroachment and applied this rate of change (over the next 25 years) to the amount of existing woody vegetation per ecoregion within the analysis area (appendix C). The estimated current condition analysis described in ''Threats Influencing Current Condition'' provides the baseline of woody vegetation encroachment, and rates derived from the literature were applied to this baseline to project new acres of encroachment. We then adjusted the projected number of new acres of encroachment using relative density calculations specific to each ecoregion to account for indirect effects. Additionally, due to assumed differences in encroachment rates and tree densities we provide two projections for each of the Short-Grass/CRP and Mixed-Grass Ecoregions (East and West portions) in the Northern DPS, largely based on current tree distribution and precipitation gradient. We projected the extent of expected habitat loss due to encroachment of woody vegetation at low, intermediate, and high levels of encroachment (see the SSA report (Service 2022, appendix C) for rationale behind assumed rates of change). Table 13 outlines the three levels of this projected habitat loss by ecoregion caused by future encroachment of woody vegetation over the next 25 years for the purpose of the SSA report.

TABLE 13—PROJECTION OF IMPACTS FROM WOODY VEGETATION ENCROACHMENT (INCLUDING BOTH DIRECT AND INDIRECT EFFECTS) AT THREE LEVELS AT YEAR 25 IN THE LESSER PRAIRIE-CHICKEN ECOREGIONS

[Numbers may not sum due to rounding]

Ecoregion	Projected impacts (acres)		
	Low	Intermediate	High
Short-Grass/CRP—East	38,830	64,489	93,877
Short-Grass/CRP—West	1,390	3,598	5,963
Mixed-Grass—East	311,768	517,784	753,739
Mixed-Grass—West	874	2,261	3,748
Sand Sagebrush	7,650	12,706	18,496
Northern DPS totals	360,512	600,838	875,823
Shinnery Oak (Southern DPS)	11,548	81,660	170,653
Rangewide Total	372,060	682,498	1,046,476

Roads and Electrical Distribution Lines

Roads and electrical distribution lines are another important source of habitat loss and fragmentation. In our geospatial analysis for the current condition of the lesser prairie-chicken, we were able to quantify the area affected by roads, but no data were available to quantify the potential independent impacts of distribution lines on habitat loss and fragmentation. We acknowledge that some additional habitat loss and fragmentation will occur in the future due to construction of new roads and power lines, but we do not have data available to inform projections on how much and where any potential new development would occur.

Climate Change

Future climate projections for this region of the United States indicate general trends of increasing temperatures and increasing precipitation extremes over the 21st century (Karl et al. 2009, pp. 123–128; Kunkel et al. 2013, pp. 73–75; Shafer et al. 2014, pp. 442–445; Easterling et al. 2017, pp. 216–222; Vose et al. 2017, pp. 194–199). Average temperature has already increased between the first half of the last century (1901–1960) and present day (1986–2016), with observed regional average temperatures within the Southern Great Plains (including Kansas, Oklahoma, and Texas) increasing by 0.8 °F (0.4 °C) and within the Southwest (including Colorado and New Mexico) increasing by 1.6 °F (0.9 °C) (Vose et al. 2017, p. 187). By mid-century (2036–2065), regional average temperatures compared to near-present times (1976–2005) are projected to increase by 3.6–4.6 °F (2.0–2.6 °C) in the Southern Great Plains, and by 3.7–4.8 °F (2.1–2.7 °C) in the Southwest, depending on future emissions. By late-century (2071–2100), regional average temperatures are projected to rise in the Southern Great Plains by 4.8–8.4 °F (2.7–4.7 °C), and by 4.9–8.7 °F (2.7–4.8 °C) in the Southwest (Vose et al. 2017, p. 197). Annual extreme temperatures are also consistently projected to rise faster than annual averages with future changes in very rare extremes increasing; by late century, current 1-in-20-year maximums are projected to occur every year, while current 1-in-20-year minimums are not expected to occur at all (Vose et al. 2017, pp. 197–198).

Projecting patterns of changes in average precipitation across these regions of the United States results in a range of increasing and decreasing precipitation with high uncertainty in overall averages, although parts of the Southwest are projected to receive less precipitation in the winter and spring (Easterling et al. 2017, pp. 216–218; Wuebbles et al. 2017, p. 12). However, extreme precipitation events are projected to increase in frequency in both the Southern Great Plains and the Southwest (Easterling et al. 2017, pp. 218–221). Other extreme weather events such as heat waves and long-duration droughts (Cook et al. 2016, entire), as well as heavy precipitation, are expected to become more frequent (Karl et al. 2009, pp. 124–125; Shafer et al. 2014, p. 445; Walsh et al. 2014, pp. 28–40). The devastating ''dust bowl'' conditions of the 1930s could become more common in the American Southwest, with future droughts being much more extreme than most droughts on record (Seager et al. 2007, pp. 1181, 1183–1184). Other modeling also projects changes in precipitation in North America through the end of this century, including an increase in dry conditions throughout the Central Great Plains (Swain and Hayhoe 2015, entire). Furthermore, the combination of increasing temperature and drought results in greater impacts on various ecological conditions (water availability, soil moisture) than increases in temperature or drought alone (Luo et al. 2017, entire). Additionally, future decreases in surface (top 4 inches (10 centimeters)) soil moisture over most of the United States are likely as the climate warms under higher scenarios (Wehner et al. 2017, p. 231).

Grasslands are critically endangered globally and an irreplaceable ecoregion in North America, and climate change is an emerging threat to grassland birds (Wilsey et al. 2019). In a review of potential effects of ongoing climate change on the Southern Great Plains and on the lesser prairie-chicken, results suggest increases in temperatures throughout the lesser prairie-chicken range and possible increases in average precipitation in the northern part of the range but decreasing precipitation in the southern portion of its range (Grisham et al. 2016b, pp. 222–227). Weather changes associated with climate change can have direct effects on the lesser prairie-chicken, leading to reduced survival of eggs, chicks, or adults, and indirect effects on lesser prairie-chicken are likely to occur through a variety of means including long-term (by mid and late twenty-first century) changes in grassland habitat. Other indirect effects may include more secondary causes such as increases in predation pressure or susceptibility to parasites or diseases. We have little information to describe future grassland conditions as a result of long-term climate changes, although warmer and drier conditions would most likely reduce overall habitat quality for lesser prairie-chicken in much of its range. In general, the vulnerability of lesser prairie-chicken to the effects of climate change depends on the degree to which it is susceptible to, and unable to cope with, adverse environmental changes due to long-term weather trends and more extreme weather events. Based on an analysis of future climate projections, the lesser prairie-chicken could have a net loss of more than 35 percent to 50 percent of its range due to unsuitable climate variables (Salas et al. 2017, p. 370).

One area of particular vulnerability for the lesser prairie-chicken is the need for specific thermal profiles in the microhabitats they use for nesting and rearing of broods. Warmer air and surface soil temperatures and the related decreased soil moisture near nest sites have been correlated with lower survival and recruitment in the lesser prairie-chicken (Bell 2005, pp. 16, 21). On average, lesser prairie-chicken avoid sites for nesting that are hotter, drier, and more exposed to the wind (Patten et al. 2005, p. 1275). Nest survival probability decreased by 10 percent every half-hour when temperature was greater than 93.2 °F (34 °C) and vapor pressure deficit was less than −23 mmHg (millimeters of mercury) during the day (Grisham et al. 2016c, p. 737). Thermal profiles from nests in some cases exceeded 130 °F (54.4 °C) with humidity below 10 percent at nests in Texas and New Mexico in 2011, which are beyond the threshold for nest survival (Grisham et al. 2013, p. 8). Increased temperatures in the late spring as projected by climate models may lead to egg death or nest abandonment of lesser prairie-chicken (Boal et al. 2010, p. 4). Furthermore, if lesser prairie-chicken shift timing of reproduction (to later in the year) to compensate for lower precipitation, then impacts from higher summer temperatures could be exacerbated. In a study of greater prairie-chickens, heterogeneous grasslands have high thermal variability with a range of measured operative temperatures spanning 41 °F (23 °C) with air temperatures >86 °F (30 °C) (Hovick et al. 2014b, pp. 1–5). In this setting, females selected nest sites that were as much as 14.4 °F (8 °C) cooler than the surrounding landscape.

Although the entire lesser prairie-chicken range is likely to experience effects from ongoing climate change, the southern part of the Southern DPS (the Shinnery Oak Ecoregion) may be particularly vulnerable to warming and

drying weather trends, as this portion of the range is already warmer and drier than northern portions and is projected to continue that trend (Grisham et al. 2013, entire; Grisham et al. 2016c, p. 742). Research in the Shinnery Oak Ecoregion relating projections in weather parameters in 2050 and 2080 to nest survival found with high certainty that the negative effects on future nest survival estimates will be significant, and the resulting survival rates are too low for population sustainability in the Southern Great Plains in the absence of other offsetting influences (Grisham et al. 2013, pp. 6–7). As late spring and summer daily high temperatures rise, the ability for lesser prairie-chicken to find appropriate nest sites and successfully rear broods is expected to decline. Lower rates of successful reproduction and recruitment lead to further overall declines in population abundance and resiliency to withstand stochastic events such as extreme weather events.

Extreme weather effects such as drought, heat waves, and storms can also directly affect lesser prairie-chicken survival and reproduction and can result in population crashes due to species responses including direct mortality from thermal stress, increased predation due to larger foraging areas, or decreased fitness when food resources are scarce. Like other wildlife species in arid and semiarid grasslands, lesser prairie-chicken on the Southern High Plains have adaptations that increase resilience to extreme environments and fluctuating weather patterns; however, environmental conditions expected from climate change may be outside of their adaptive potential, particularly in the timeframe weather changes are expected to occur (Fritts et al. 2018, p. 9556). Extreme weather events and periods of drying of soil surface moisture are projected to increase across the lesser prairie-chicken range (Easterling et al. 2017, pp. 218–222; Wehner et al. 2017, pp. 237–239). In Kansas, extreme drought events in the summers from 1981 through 2014 had a significant impact on lesser prairie-chicken abundance recorded at leks; thus, increases in drought frequency and intensity could have negative consequences for the lesser prairie-chicken (Ross et al. 2016a, pp. 6–7). Even mild increases in drought had significant impacts on the likelihood of population extirpation for lesser prairie-chicken (De Angelis 2017, p. 15).

Drought is a particularly important factor in considering lesser prairie-chicken population changes. The lesser prairie-chicken is considered a ''boom–bust'' species, meaning that there is a high degree of annual variation in population size due to variation in rates of successful reproduction and recruitment. These variations are largely driven by seasonal precipitation patterns (Grisham et al. 2013, pp. 6–7). Periods of below-normal precipitation and higher spring/summer temperatures result in less appropriate grassland vegetation cover and fewer food sources, resulting in decreased reproductive output (bust periods). Periods with favorable climatic conditions (above-normal precipitation and cooler spring/summer temperatures) will support favorable lesser prairie-chicken habitat conditions and result in high reproductive success (boom periods). The lesser prairie-chicken population failed to rebound for at least 4 years following the 2011 drought (Fritts et al. 2018, pp. 9556–9557). This information indicates either that the extreme environmental conditions during 2011 may have been beyond what the lesser prairie-chicken is adapted to or that the return period following the 2008–2009 dry period and ensuing low population numbers in 2010 was too short for the population to recover enough to be resilient to the 2011 drought.

The resilience and resistance of species and ecosystems to changing environmental conditions depend on many circumstances (Fritts et al. 2018, entire). As climatic conditions shift to more frequent and intense drought cycles, this shift is expected to result in more frequent and extreme bust years for the lesser prairie-chicken and fewer boom years. As the frequency and intensity of droughts increase in the Southern Great Plains region, there will be diminishing opportunity for boom years with above-average precipitation. Overall, more frequent and intense droughts may lessen the intensity of boom years of the lesser prairie-chicken population cycle in the future, which would limit the ability of the species to rebound following years of drought (Ross et al. 2018, entire). These changes will reduce the overall resiliency of lesser prairie-chicken populations and exacerbate the effects of habitat loss and fragmentation. Because lesser prairie-chicken carrying capacities have already been much reduced, if isolated populations are extirpated due to seasonal weather conditions, they cannot be repopulated due to the lack of nearby populations.

Although climate change is expected to alter the vegetation community across the lesser prairie-chicken range (Grisham et al. 2016b, pp. 228–231), we did not account for the future effects of climate change in our geospatial habitat model, as we did not have information to inform specific land cover changes predicted to result from future climate change (Service 2022, p. 91).

The best available information supports that climate change projections of increased temperatures, increased precipitation extremes, increased soil drying, and an increase of severe events such as drought and storms within the Southern Great Plains are likely to have significant influences on the future resiliency of lesser prairie-chicken populations by mid to late 21st century. These trends are expected to exacerbate the challenges related to past and ongoing habitat loss and fragmentation, making it less likely for populations to withstand extreme weather events that are likely to increase in frequency and severity.

Other Factors

Livestock Grazing

We expect that grazing will continue to be a primary land use on the remaining areas of grassland within the range of the lesser prairie-chicken in the future, and grazing influences habitat suitability for the lesser prairie-chicken (Diffendorfer et al. 2015, p. 1). When managed to produce habitat conditions that are beneficial for the lesser prairie-chicken, grazing is an invaluable tool for maintaining healthy prairie ecosystems. However, if grazing is managed in a way that is focused on maximizing short-term cattle production, resulting in rangeland that is overused, this could have significant negative effects on the lesser prairie-chicken. Grazing management varies both spatially and temporally across the landscape. Additionally, grazing management could become more difficult in the face of a changing climate with more frequent and intense droughts.

Our geospatial model does not account for impacts to habitat quality as data needed to characterize habitat quality for the lesser prairie-chicken at the scale and resolution needed for our analysis do not exist. While data do not exist to quantify rangewide extent of grazing practices and their effects on habitat, incompatible livestock grazing will continue to influence lesser prairie-chicken populations in the foreseeable future.

Shrub Control and Eradication

The removal of native shrubs such as sand shinnery oak is an ongoing concern to lesser prairie-chicken habitat availability throughout large portions of its range, particularly in New Mexico, Oklahoma, and Texas. While relatively wide-scale shrub eradication has occurred in the past, we do not have

geospatial data to evaluate the extent to which shrub eradication has contributed to habitat loss and fragmentation for the lesser prairie-chicken. While some Federal agencies such as BLM limit this practice in lesser prairie-chicken habitat, shrub control and eradication still occur through some Federal programs and on private lands, which make up the majority of the lesser prairie-chicken range. Though we expect this threat to continue to impact the species into the foreseeable future, we do not have data available to project the potential scale of habitat loss likely to occur in the future due to shrub eradication.

Fire

As discussed in ''Threats Influencing Current Condition,'' the current lack of prescribed fire use in the range of the lesser prairie-chicken is contributing to woody plant encroachment and degradation of grassland quality.

As the effects of fire suppression continue to manifest throughout the Great Plains, the future impacts of wildfires on the lesser prairie-chicken are difficult to predict. If recent patterns continue with wildfires occurring at increasingly larger scales with less frequency and higher intensities than historical fire occurrence, there is an increasing potential of greater negative impacts on lesser prairie-chicken. Additionally, as climate change projections are indicating the possibility of longer and more severe droughts across the range of the lesser prairie-chicken, this could alter the vegetation response to fire both temporally and spatially. An expansive adoption of prescribed fire in management of remaining grasslands would be expected to have a moderating effect on risk of wildfires and concurrently would reduce woody plant encroachment and increase habitat quality and diversity. We are not able to quantify these impacts on the future condition of the landscape in our geospatial analysis due to lack of data and added complexity, but we acknowledge that fire (both prescribed fires and wildfire), or its absence, will continue to be an ecological driver across the range of the lesser prairie-chicken in the future with potentially positive and negative effects across both short-term and long-term timelines in the foreseeable future.

Projected Future Habitat Conditions and Trends

To forecast the potential changes in future lesser prairie-chicken habitat, we used the projected levels of potential future impacts from conversion to cropland, petroleum production, wind energy development, and woody vegetation encroachment. We also worked with the primary conservation entities delivering ongoing, established lesser prairie-chicken conservation programs to develop estimated reasonable projections for rates of future conservation efforts (this included both restoration and enhancement efforts). We asked the entities to provide us with information to project three levels of conservation: low, continuation, and high. We asked the conservation entities not to provide aspirational goals for a given program but instead to solely use past performance, funding expectations, and expert opinion to provide plausible future rates for given conservation practices. We then used this information to estimate future conservation efforts over the next 25 years for the lesser prairie-chicken and incorporated the effects of restoration efforts on habitat availability into our spatial analysis.

The results of this future geospatial model (Service 2022, section 4.2 and appendices B and C) are provided in table 14; further details and maps are available in appendix E of the SSA report. The median results show a very modest increase in areas available for use by lesser prairie-chicken in our nearest neighbor analysis under Scenario 1 (assuming high levels of restoration and low levels of impacts) (with an increase for the Shinnery Oak Ecoregion and a decrease for the other three ecoregions) and decreasing amounts of projected declines in areas available for use by lesser prairie-chicken under Scenarios 2–5 (table 14). Rangewide changes in areas available for use by lesser prairie-chicken in our nearest neighbor analysis range from a 0.5 percent increase under Scenario 1 to a 26 percent decrease in Scenario 5. This analysis indicated additional future habitat loss and fragmentation across the range of the lesser prairie-chicken is likely to occur, and conservation actions will not be enough to offset those habitat losses. Our analysis finds that the expected conservation efforts are inadequate to prevent continued declines in total habitat availability, much less restore some of what has been lost, and overall viability for this species will continue to decline.

TABLE 14—PROJECTED FUTURE MEDIAN ACREAGE OF LESSER PRAIRIE-CHICKEN AREAS AVAILABLE FOR USE AS A RESULT OF OUR NEIGHBORHOOD ANALYSIS IN ACRES, AND SHOWING PERCENT CHANGE IN ACREAGE FROM ESTIMATED CURRENT AREAS AVAILABLE FOR USE AS A RESULT OF OUR NEIGHBORHOOD ANALYSIS, IN 25 YEARS

Ecoregion	Total area	Current condition	Scenario 1 low impacts, high restoration		Scenario 2 low impacts, continuation restoration		Scenario 3 moderate impacts, continuation restoration		Scenario 4 high impacts, continuation restoration		Scenario 5 high impacts, low restoration	
			Median	Percent change	Median	Percent change	Median	Percent change	Median	Percent change	Median	Percent change
Short-Grass/CRP	6,298,014	1,023,894	975,047	−4.8	956,190	−6.6	877,663	−14.3	808,152	−21.1	776,111	−24.2
Mixed-Grass	8,527,718	994,483	974,200	−2.0	864,780	−13.0	742,855	−25.3	649,227	−34.7	630,633	−36.6
Sand Sagebrush	3,153,420	1,028,523	992,632	−3.5	980,302	−4.7	932,477	−9.3	887,224	−13.7	884,851	−14.0
Shinnery Oak	3,850,209	1,023,572	1,149,759	12.3	988,072	−3.5	868,761	−15.1	771,923	−24.6	711,933	−30.4
Rangewide Totals	21,829,361	4,070,473	4,091,638	0.5	3,789,343	−6.9	3,421,756	−15.9	3,116,525	−23.4	3,003,529	−26.2

It is important to note that these acreages presented above in Table 14 consist of patches of fragmented habitat among developed areas and other unsuitable habitat. Based on our geospatial analysis, the vast majority of blocks of usable habitat and the total area within those blocks, both in the current condition and in future scenarios, are less than 12,000 ac (4,856 ha), and very few blocks were greater than 50,000 ac (20,234 ha) (Service 2022, figure 4.2). As discussed above, the space required by lesser prairie-chicken to support individuals from a single lek is approximately 12,000–50,000 ac (4,856–20,234 ha). The dominance of smaller blocks on the

landscape further exhibits that those spaces are highly fragmented, even with the remaining potential usable area for the lesser prairie-chicken totaling approximately 4,000,000 ac (1,600,000 ha) in the current condition, and potentially declining to as low as 3,000,000 ac (1,200,000 ha) under scenario 5 for our future condition projections. High levels of fragmentation, as discussed in ''Threats Influencing Current Condition,'' do not provide the landscape composition needed for long-term stability of populations. Additionally, in spaces that are highly fragmented, relatively small amounts of additional impacts may have great consequences as landscape composition thresholds for the lesser prairie-chicken are surpassed.

Several habitat enhancement actions for the lesser prairie-chicken are being implemented across the analysis area. These enhancement actions are implemented on existing habitat to enhance the quality of that given area. As discussed above, we asked our conservation partners to provide us with a range of plausible rates for conservation efforts, including enhancement actions, occurring within the lesser prairie-chicken analysis area by ecoregion. We also requested information regarding effectiveness, project lifespan, and spatial targeting of these efforts (Service 2022, appendix C, section C.3.4). Next, we converted those rates for each program and conservation effort to the total effort at year 25. Table 15 summarizes the three projected levels of future habitat enhancement over the next 25 years for each ecoregion. These efforts represent those above and beyond what is already accounted for within the current condition analysis. Acreage enrolled in CCAAs are assumed to continue to be enrolled in the future, and CCAA projections within this table represent enrollments in addition to existing enrollments. This table also does not include continued management actions on permanently protected properties (such as State-owned wildlife management areas or conservation banks), as it is assumed this management will continue. Additionally, the numbers reported for NRCS grazing plans are acres in addition to the number of acres reported above in ''Conservation Efforts'' that are being managed under prescribed grazing for the lesser prairie-chicken by NRCS, as we assume that as contract acres expire from the program additional acres will be enrolled.

TABLE 15—PROJECTED AMOUNT OF HABITAT ENHANCEMENT (IN ACRES) OVER THE NEXT 25 YEARS WITHIN THE FOUR LESSER PRAIRIE-CHICKEN ECOREGIONS

Enhancement efforts	Total level of future effort (acres) at year 25		
	Low	Continuation	High
Short-Grass/CRP Ecoregion			
KDWP Enhancement Contract	0	6,740	17,500
NRCS LPCI Grazing Plan	0	0	4,000
USFWS PFW Contract	14,000	14,000	20,000
Mixed-Grass Ecoregion			
WAFWA Management Plan	0	0	118,245
KDWP Enhancement Contract	0	120	3,100
ODWC Management	1,400	3,300	6,400
ODWC Additional CCAA Enrollment	0	50,000	100,000
NRCS LPCI Grazing Plan	0	0	58,000
USFWS PFW Contract	50,000	50,000	70,000
TPWD Additional CCAA Enrollment	0	0	50,000
Sand Sagebrush Ecoregion			
KDWP Enhancement Contract	0	720	4,400
CPW Enhancement Contract	0	12,200	37,900
NRCS LPCI Grazing Plan	0	0	13,000
USFWS PFW Contract	0	6,000	18,000
Shinnery Oak Ecoregion			
WAFWA Management Plan	0	0	8,129
NRCS LPCI Grazing Plan	0	0	39,000
BLM Prescribed Fire	0	25,000	100,000
NM CCAA Prescribed Fire	50,000	100,000	150,000
USFWS PFW Contract	5,000	15,000	50,000
TPWD Additional CCAA Enrollment	0	0	60,000

The actual conservation benefit provided to the lesser prairie-chicken by these programs varies greatly and is difficult to summarize because it depends on the location and the specific actions being carried out for each individual agreement. In addition, the level of future voluntary participation in these programs can be highly variable depending on available funding, opportunities for other revenue sources, and many other circumstances.

Future Population Trends

Several estimates of lesser prairie-chicken population growth rates have been based on current conditions for the lesser prairie-chicken, with most derived from demographic matrix models (Fields 2004, pp. 76–83; Hagen et al. 2009, entire; Sullins 2017, entire; Cummings et al. 2017, entire). Most studies project declining lesser prairie-chicken populations; however, the

magnitude of actual future declines is unlikely to be as low as some modeling tools indicate (Service 2022, table 4.10). Most positive population growth calculations were derived from 2014–2016 (Hagen et al. 2017, Supplemental Information; Service 2022, table 4.10), where estimates indicated populations have increased. However, we caution that any analysis using growth rates based upon short-term data sets can be problematic as they are very sensitive to the starting and ending points in the estimates. Additionally, these growth rates are accompanied by relatively large margins of error.

Estimates based on aerial surveys over the past 10 years have indicated a rangewide fluctuating population beginning with an estimated 30,682 (90 percent CI: 20,938–39,385) individuals in 2012 to an estimated 26,591 (90 percent CI: 16,321–38,259) individuals in 2022. Included within this timeframe was a population low of 16,724 (90 percent CI: 10,420–23,538) individuals in 2013. We caution against drawing inferences from point estimates based upon these data due to low detection probabilities of the species leading to large confidence intervals. We also caution that trend analyses from short-term data sets are highly sensitive to starting and ending population sizes. For example, if you use 2012, the first year of available rangewide survey data, as the starting point for a trend analysis, it may appear that populations are relatively stable, but during the years of 2010–2013, the range of the lesser prairie-chicken experienced a severe drought and thus lesser prairie-chicken populations were at historic lows. If the data existed to perform the same analysis using the starting point as 2009, then the results would likely show a decreasing population trend.

The future risk of extinction of the lesser prairie-chicken has been evaluated using historical ground surveys (Garton et al. 2016, pp. 60–73). This analysis used the results of those surveys to project the risk of lesser prairie-chicken quasi-extinction in each of the four ecoregions and rangewide over two timeframes, 30 and 100 years into the future. For this analysis, quasi-extinction was set at effective population sizes (demographic N_e) of 50 (populations at short-term extinction risk) and 500 (populations at long-term extinction risk) adult breeding birds, corresponding to an index based on minimum males counted at leks of ≤85 and ≤852, respectively (Garton et al. 2016, pp. 59–60). The initial analysis using data collected through 2012 was reported in Garton et al. (2016, pp. 60–73), but it has since been updated to include data collected through 2016 (Hagen et al. 2017, entire). We have identified concerns in the past with some of the methodologies and assumptions made in this analysis, and the challenges of these data are noted in Zavaleta and Haukos (2013, p. 545) and Cummings et al. (2017, pp. 29–30). While these concerns remain, this work represents one of the few attempts to project risk to the species across its range, and we considered it as part of our overall analysis and recognize any limitations associated with the analysis.

Results were reported for each analysis assuming each ecoregion is functioning as an independent population and also assuming there is movement of individuals between populations (Service 2022, table 4.11; table 4.12). The results suggest a wide range of risks among the ecoregions, but the Sand Sagebrush Ecoregion consistently had the highest risks of quasi-extinction and the Short-Grass/CRP Ecoregion had the lowest. This analysis was based only on simulating demographic variability of populations and did not incorporate changing environmental conditions related to habitat or climate.

Summary of Comments and Recommendations

In the proposed rule published on June 1, 2021 (86 FR 29432), we requested that all interested parties submit written comments on the proposal by August 2, 2021. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We published newspaper notices inviting general public comment in the USA Today. We held virtual public hearings on July 8, 2021, and July 14, 2021. On June 11, 2021, we received a request to extend the public comment period. On July 30, 2021, we published a notice extending the comment period for an additional 30 days to September 1, 2021 (86 FR 41000). During the public comment period, we received 32,126 comments, including 3 bulk comments with a total of 31,710 form letters.

State agencies, industry groups, and other commenters submitted additional information and data during the public comment period. We received information on conservation efforts, renewable energy projects, new survey data, threats, suggestions related to recovery planning, monitoring efforts, general information related to mitigation efforts, and more. All substantive information received during the comment periods has either been incorporated into our SSA, directly into this final determination, or is addressed below.

Peer Reviewer Comments

As discussed in Supporting Documents above, we received comments from four peer reviewers. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers generally concurred with our methods and conclusions and provided support for thorough and descriptive narratives of assessed issues, additional information, clarifications, and suggestions to improve the final SSA report. Peer reviewer comments are addressed in the following summary and were incorporated into the final SSA report as appropriate.

Comment 1: One peer reviewer suggested that we consider adding to the SSA report a statement that the percent reduction of habitat and the percent reduction in population more or less parallel (or pace) each other. They stated that pointing this out might emphasize that improvements in actions that restore habitat should result in more birds.

Our response: While we agree that there is a direct relationship between habitat availability and population trends, the location of additional habitat losses or gains will dictate the magnitude of population response to those changes. Thus, while we can conclude there is a direct relationship between population trends and habitat availability, we cannot conclude that a given percent reduction of habitat will result in a given percent reduction in population abundance.

Comment 2: One peer reviewer suggested that we were too optimistic regarding the persistence of lesser prairie-chicken in the Short-Grass Prairie/CRP Ecoregion. The reviewer points out the lesser prairie-chicken in that ecoregion are wholly dependent on CRP and minor landscape changes can affect lesser prairie-chicken persistence.

Our response: Our SSA is based on the best available science. In our SSA report, we state that the Short-Grass Prairie/CRP Ecoregion represents the most resilient ecoregion of the four evaluated based upon the large number of birds present. The existing populations of lesser prairie-chicken in this ecoregion are largely dependent upon CRP, a point which we acknowledge in the SSA report, and in the SSA report we project additional habitat loss to occur within the future. All of these points were included in our SSA analysis.

Comment 3: One peer reviewer suggested that juniper twig blight, one of several possible species of fungi, has been decimating eastern red cedar in some areas and could potentially reverse some of the woody encroachment.

Our response: We reviewed the available information in our files and found no documentation of extensive areas of eastern red cedar decimated by any fungi or other diseases. Two locations where this fungus exists are significantly east of lesser prairie-chicken range. Additionally, as an example, one of the fungi, Kabatina (*Kabatina juniperi*), requires specific weather conditions, limiting the expectation of extensive spread of this fungus. This context makes widespread and sustained removal of eastern red cedar by fungi infection from invaded grasslands or prairies unlikely within the range of the lesser prairie-chicken.

Comment 4: One peer reviewer suggested there is no evidence to support available lesser prairie-chicken habitat has been reduced by 80–90 percent, citing Spencer et al. 2017.

Our response: The SSA report summarizes the best available scientific information related to this point. The lesser prairie-chicken was once distributed widely across the Southern Great Plains, and currently occupies a substantially reduced portion of its presumed historical range (Rodgers 2016, p. 15). There have been several estimates of the potential maximum historical range of the lesser prairie-chicken (*e.g.,* Taylor and Guthery 1980a, p. 1, based on Aldrich 1963, p. 537; Johnsgard 2002, p. 32; Playa Lakes Joint Venture 2007, p. 1) with a wide range of estimates on the order of about 64 to 115 million ac (26 to 47 million ha). The more recent estimate of the lesser prairie-chicken encompasses an area of approximately 115 million ac (47 million ha). Presumably, not all of the area within this historical range was evenly occupied by lesser prairie-chicken, and some of the area may not have been suitable to regularly support lesser prairie-chicken populations (Boal and Haukos 2016, p. 6). However, experts agree that the current range of the lesser prairie-chicken has been significantly reduced from the historical range at the time of European settlement, although there is no consensus on the exact extent of that reduction as estimates vary from greater than 90% reduction (Hagen and Giesen 2005, unpaginated) to approximately 83% reduction (Van Pelt et al. 2013, p. 3). We refer to the context of the entire estimated historical range, while Spencer et al. 2017 only addresses areas present in the recent delineation of the EOR in Kansas from the 1950s to 2013.

Comment 5: One reviewer suggested we used inappropriate representation of lesser prairie-chicken historical range and suggested that there are areas included within the historical range included in the SSA report that were never occupied by the lesser prairie-chicken.

Our response: We used the best available information to characterize the historical range of the lesser prairie-chicken, including peer-reviewed publications and the map produced and used by the State fish and wildlife agencies and cited in nearly all scientific publications discussing the historical range (Service 2022, figure 2.2). Additionally, we acknowledge caveats associated with the historical ranges including statements such as ''Presumably, not all of the area within this historical range was evenly occupied by [lesser prairie-chicken], and some of the area may not have been suitable to regularly support [lesser prairie-chicken] populations.'' The reviewer did not suggest a source that would better represent the historical range of the lesser prairie-chicken.

Comment 6: One reviewer suggested we inappropriately assumed that once land is converted to cropland those acres are no longer habitat.

Our response: Lesser prairie-chickens are a grassland obligate species. We do not assume that cropland is not habitat, but rather apply the information available in the scientific literature that indicates that cropland does not provide for the full life-history needs of the species. Additionally, once cropland exceeds 10 percent of the landscape, lesser prairie-chicken populations begin to decline, in large part due to the loss of nesting habitat. As discussed within the SSA report, we considered that cropland may have some limited value for opportunistic foraging but does not support vegetative structure and composition necessary to fulfill all the life-history needs of the species.

Federal Agency Comments and Comments From Tribes

We did not receive any comments from Federal agencies or from Tribes.

Comments From States

Comment 7: Several State agencies and one commenter argued that rare and endangered species are better managed at the State level than the Federal level, and that the Service lacks the resources and relationships to properly manage the species.

Our response: The Act requires the Service to make a determination using the best available scientific and commercial data after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation to protect such species. We appreciate the interest in lesser prairie-chicken conservation and look forward to continuing our coordination with State agencies as we begin recovery planning and implementation for the lesser prairie-chicken.

Comment 8: One State and one commenter stated the Service did not account for habitat quality improvements through enhancements in the characterization of past and ongoing conservation actions in the SSA.

Our response: Throughout the SSA process, the Service worked with the States and other partners to compile and evaluate the best available data to inform our decision with regard to the status of the lesser prairie-chicken. This included working with our conservation partners to ensure we accurately characterized existing conservation efforts for the species and projecting the benefits of these efforts into the future. Within chapter 3 of the SSA report, we detail past and current conservation efforts, including enhancement efforts. While projecting the benefits of conservation efforts into the future, we include projections that account for those efforts to enhance existing habitat for the lesser prairie-chicken, which are summarized in chapter 4, table 4.8 of the SSA report (Service 2022).

Comment 9: As a followup to Comment 8, a commenter asked for clarification on the implications of not being able to assess habitat quality (and inclusion of degraded areas) in the spatial analysis and how those implications might have affected our decision.

Our response: Spatial data do not exist at the scale and resolution needed to adequately evaluate the condition of the vegetative structure and composition of the landscape. This impacted our spatial analysis because to accurately evaluate habitat availability for the lesser prairie-chicken, one would need to identify areas that are in grassland or shrubland that could support the species and then evaluate the vegetative composition and structure of those areas to determine if the area has been degraded and to what degree. Many areas that remain grassland do not have either the vegetative composition or structure to provide for habitat for the lesser prairie-chicken; unfortunately, no spatial data exist that would allow for a

characterization of vegetative structure and composition at the scope or scale needed to inform the evaluation of the lesser prairie-chicken. Thus, within our spatial analysis, we could not directly estimate available habitat. Instead, we estimate the amount of grassland and shrubland within the analysis area that could potentially serve as lesser prairie-chicken habitat if the correct vegetative structure and composition on the given site are present. The implications of this limitation, as outlined in the SSA report, is that the actual amount of available habitat is likely overestimated in the analysis. This limitation was fully considered while making our determination.

Comment 10: One State commented that USDA did not provide data to the Service regarding habitat restoration and enhancement efforts that are conducted outside of the Lesser Prairie-Chicken Initiative, and that means the SSA is lacking some of the best available information.

Our response: We worked directly with USDA to describe the conservation benefits being provided by their programs for consideration in this decision. We acknowledge that there are programs available outside of the Lesser Prairie-Chicken Initiative, as outlined in chapter 3 of the SSA report. These programs, the Environmental Quality Incentives Program, the Conservation Stewardship Program, and the Agricultural Conservation Easement Program, all provide funding for the Lesser Prairie-Chicken Initiative, which in turn provides technical and financial assistance to landowners. While these programs do not include all programs implemented by USDA, it does include the primary programs and benefits being provided to the lesser prairie-chicken. We are not aware of and the commenter did not provide any additional data regarding conservation benefits that we could include in our analysis.

Comment 11: One State agency asserted that there were no threats in the Kansas portion of the Northern DPS under any of the five factors. They also stated that lesser prairie-chicken populations and habitat are either stable or growing.

Our response: We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Northern DPS of the lesser prairie-chicken and its habitat. We analyzed effects associated with habitat loss, fragmentation, and fragmentation including conversion of grassland to cropland (Factor A), petroleum production (Factor A), wind energy development and transmission (Factor A), woody vegetation encroachment (Factor A), and roads and electrical distribution lines (Factor A); other factors, such as livestock grazing (Factor A), shrub control and eradication (Factor A), collision mortality from fences (Factor E), predation (Factor C), influence of anthropogenic noise (Factor E), and fire (Factor A); and extreme weather events (Factor E). We also analyzed existing regulatory mechanisms (Factor D) and ongoing conservation measures.

Habitat loss, fragmentation, and degradation is the primary threat to the lesser prairie-chicken in this DPS, with other threats such as fire, incompatible livestock grazing, and extreme weather events further decreasing population resiliency and species redundancy. We do not assess the species on a State-by-State basis, but rather based on the Act's definition of species. The State of Kansas is included in the Northern DPS and consists of portions of three ecoregions for the species. The largest impacts in this DPS are conversion of grassland to cropland and woody vegetation encroachment. The Sand Sagebrush Ecoregion, which includes the species within Kansas, is also experiencing habitat degradation due to incompatible grazing management.

Our future scenario analysis demonstrates that the current threats acting on the landscape are expected to either continue at the same levels or increase in severity in the foreseeable future. Habitat loss is projected to outpace conservation efforts to restore habitat. Though we do not expect rates of habitat conversion to cropland to be equivalent to the rates that we historically witnessed, we expect any additional conversion that does occur will have a disproportionately large effect on resiliency and redundancy due to the limited amount of remaining large intact grasslands. Conversion of habitat due to oil, gas, and wind energy will continue to occur. Woody vegetation encroachment is also expected to continue, particularly in the Mixed-Grass Ecoregion. Increased drought and severe weather events associated with climate change are expected to decrease population resiliency and redundancy into the foreseeable future, and as habitat availability continues to decline, and available habitat blocks decrease in size, populations may decline to below quasi-extinction levels.

Conservation measures and regulatory mechanisms are acting to reduce the magnitude of threats impacting the lesser prairie-chicken and its habitat. However, our analysis demonstrates that future restoration efforts will not be enough to offset the impacts of habitat loss and fragmentation and conservation efforts focused on localized management to affect habitat quality, while not addressing the overarching limiting factor of habitat loss and fragmentation, is not addressing the long-term population needs for the lesser prairie-chicken. Thus, these measures are having only minimal impacts on threats acting throughout the DPS.

Comment 12: One State asked the Service to detail how the listing of the lesser prairie-chicken and potential incidental take would affect the hunting season in Kansas for the greater prairie-chicken and any other species.

Our response: The listing will have no direct effect on hunting seasons established by a State fish and wildlife agency for any other species. However, because Kansas falls within the Northern DPS, the 4(d) rule prohibits take, as defined in 50 CFR 17.21(c)(1), or possession, as defined in 50 CFR 17.21(d)(1), of lesser prairie-chicken. We do not expect this to be of significant effect as hunting regulations already in place by KDWP were intended to minimize impacts to the lesser prairie-chicken.

Comment 13: One State asked if seeding nonnative plant species within the range of the lesser prairie-chicken would be considered take and noted that they strongly recommend only planting of native species.

Our response: While we strongly recommend planting of native species as well, the Act only prohibits actions that would result in a violation of the prohibitions outlined in section 9 of the statute or specifically prohibited by the 4(d) rule. Not all seeding of nonnative plant species would result in take of the lesser prairie-chicken, and each scenario would have to be evaluated. There are potential scenarios in which seeding of nonnative plant species could result in a section 9 violation if such seeding occurred in existing habitat for the lesser prairie-chicken and results in a long-term alteration of the vegetative structure and composition necessary to support the lesser prairie-chicken. While the seeding of nonnative species, such as converting a row crop agriculture field to a nonnative stand of grass, may not provide any conservation value to the lesser prairie-chicken, it would also not result in a section 9 violation.

Comment 14: One State asked if suppressing (as opposed to eradicating) shinnery oak and sand sagebrush would be prohibited.

Our response: Alterations to vegetation resulting from appropriate herbicide application in order to better

meet the habitat requirements of the lesser prairie-chicken, such as suppression of sand shinnery oak and sand sagebrush, would not be considered a violation of section 9. Herbicide applications that would result in a violation of section 9 would be those in which the application on existing lesser prairie-chicken habitat results in sustained alteration of preferred vegetative characteristics of lesser prairie-chicken habitat.

Comment 15: One State asked about residents that may have lesser prairie-chicken specimens in their possession that were legally harvested less than 100 years ago. They noted that under section 10(h)(1) of the Act, possession of such specimens or import or export of them is prohibited.

Our response: Simple possession of specimens of a listed species does not constitute a violation of either the Act or the 4(d) rule. The statute and 4(d) rule prohibit possession (and other acts) of specimens taken in violation of the Act. If the specimen was taken lawfully, there would be no violation for possession of the specimen. The Act does prohibit certain interstate and foreign commerce activities, such as shipping, transporting, selling, or offering to sell, listed species, regardless of when the specimen was taken.

Comment 16: Multiple commenters, including five State wildlife agencies, provided comments outlining existing conservation efforts and participation in and accomplishments of those efforts. Many of those commenters stated that the lesser prairie-chicken should not be listed due to all of those efforts.

Our response: We fully evaluated and considered all of these efforts while making our determination. The past, current, and likely future benefits of these efforts were evaluated through the SSA process and are summarized in the SSA report. The mere existence of conservation efforts does not necessarily result in a species not meriting the protections of the Act. Instead, we must evaluate the effects of the efforts on the status of the species and on the threats affecting the species. To ensure that we accurately characterized the benefits being provided by existing efforts, we worked directly with the entities responsible for implementing those efforts. We first asked them to assist us in describing the program and the program accomplishments that are included in chapter 3 of the SSA report. To help us project the likely future benefits of their efforts, we worked directly with those entities to estimate the rate of future practices likely to be implemented based upon accomplishments from past years and expectations for the program. A summary of these likely future efforts are included in chapter 4 of the SSA report and a detailed summary of how the conservation projections were calculated is included in appendix C of the SSA report. By working with these entities through the SSA process, we have ensured that we fully and accurately evaluated the benefits of these existing efforts to the lesser prairie-chicken and its habitat. Based on our analysis and the full consideration of all efforts, we still conclude that listing is warranted for both the Northern and Southern DPSs of the lesser prairie-chicken as detailed in this rule.

Comment 17: Multiple commenters, including three State wildlife agencies, submitted comments related to population trends. Some commenters stated that the results of aerial surveys demonstrate that, rangewide and/or for each DPS, populations of lesser prairie-chicken are stable or increasing. Some attributed this increase to success of conservation efforts. Other commenters stated that while there may be short-term increases in populations due to precipitation patterns, the long-term trends indicated declines in lesser prairie-chicken populations.

Our response: We acknowledge that aerial surveys can demonstrate stable, increasing, or declining population trends, depending on the range of dates reviewed and the range of the confidence intervals in the population estimates. We conclude it is critical therefore to focus on long-term trends to measure population viability for lesser prairie-chickens. Annual fluctuations and short-term trends can be misleading. The lesser prairie-chicken is considered a ''boom-bust'' species with a high degree of annual variation in rates of successful reproduction and recruitment. These annual and short-term fluctuations are almost entirely driven by seasonal precipitation patterns. Periods of below-average precipitation and higher spring/summer temperatures result in less appropriate vegetative cover and less food available, resulting in decreased reproductive output (bust periods). Periods with above-normal precipitation and cooler spring/summer temperatures will support favorable habitat conditions and result in high reproductive success (boom periods). Based upon this life history strategy, when evaluating lesser prairie-chicken populations one should not draw conclusions based upon annual fluctuations or short-term trends. Instead, the best use of population data is for long-term trend analysis, which covers a timeframe that spans multiple boom and bust periods.

We find the most likely scientific conclusion to explain the 2013–2021 observed increase in the lesser prairie-chicken populations is precipitation patterns. We acknowledge that voluntary conservation efforts were also acting on the species during this time. In 2013, there were historically low population estimates. We conclude this was due to the severe drought that the southern Great Plains experienced in the period 2009–2012. Following the drought, precipitation had been largely at or above average within the lesser prairie-chicken range through 2020. The predicted population response is increases in lesser prairie-chicken populations. This conclusion is consistent with the population data from 2013 through 2021. Within the SSA report, we provide a detailed summary of the best available science with regard to population trends including a summary of all results from the aerial surveys and the best available science with regard to historical population estimates. As presented in this rule and the SSA report, the best available scientific information indicates that the lesser prairie-chicken populations have experienced long-term population declines. Additionally, most efforts to project future lesser prairie-chicken population abundance and our analysis of future habitat conditions indicate likely continued declines in lesser prairie-chicken abundance and habitat.

Comment 18: Multiple commenters, including one State wildlife agency, submitted comments related to the relationship between population trends, habitat loss, and precipitation. Some comments asked for clarification around these relationships while others stated that habitat loss is not the driver of population trends because the SSA estimated habitat losses but populations have increased since 2013.

Our response: As detailed in the response to Comment 17, due to the life history strategy of the lesser prairie-chicken, annual and short-term variations in lesser prairie-chicken populations are directly tied to localized precipitation patterns. Long-term population trends for the lesser prairie-chicken that span multiple precipitation cycles, are a better measure of population health as they will better reflect the true trajectory of the population. Analyzing long-term trends will minimize the influence of short-term precipitation cycles and the associated fluctuations that are associated with a species with this life history strategy. Long-term population

trends for the lesser prairie-chicken are associated with habitat availability and connectivity.

Comment 19: Multiple commenters, including one State, stated that ground-based surveys in New Mexico for 2021 show higher populations than the aerial survey estimates and thus conclude we should base our 2021 population estimate for the Shinnery Oak Ecoregion on the ground-based survey work from New Mexico. Two commenters also stated that, in general, aerial survey estimates are less accurate and that ground-based surveys would possibly reveal higher numbers.

Our response: The aerial survey methodology was designed to provide a statistically valid sampling framework to allow a more accurate evaluation of long-term population trends. It is clear, based on the best available science, that the aerial survey framework is the most rigorous sampling design to provide population estimates and trends. Ground-based surveys are not designed to allow for an accurate extrapolation to a population estimate. Ground-based surveys can be used to detect species presence and at best provide an index. More specifically, the best use of this information is to indicate presence of the species when there is a positive detection and at most to monitor a specific lek or group of leks through time to give an estimate of documented attendance for that lek. Beyond that, these surveys have limited utility for analyzing population abundance due to: variation in sampling methodologies within and between States; selective sampling; variance in lek attendance and detection rates; and lack of ability to account for what proportion of the population is being sampled in any given year (Applegate 2000; Cummings et al. 2017; Ross et al. 2019). The aerial surveys were designed to address these shortcomings with the design and statistical limitations associated with the ground-based surveys and thus allow for evaluation of long-term population trends with a calculation of the level of certainty associated with those estimates.

Comment 20: One State agency stated that based upon population estimates resulting from ground-based surveys in New Mexico that populations have remained relatively stable since 1998 despite a significant range contraction in the northern and the southern portion of the lesser prairie-chicken range in New Mexico. They attributed the stability to conservation efforts in the core areas.

Our response: As discussed in our response to Comment 19, ground-based survey efforts are not designed to produce population estimates. Even if the ground-based survey estimates provided precise annual population estimates and the population was relatively stable, the extent of the total range decline leads us to conclude that the lesser prairie-chicken in the Shinnery Oak Ecoregion faces an elevated extirpation risk due to the negative effects of reduction in potentially usable area, which has negatively affected redundancy.

Comment 21: Multiple commenters, including two State wildlife agencies, stated that listing of the lesser prairie-chicken would undermine existing conservation efforts and create a disincentive for participation in conservation efforts. Some commenters suggested that rather than listing the Service should continue to work with partners and landowners to develop conservation agreements. One commenter stated that conservation efforts are more likely to increase and improve without a listing as these voluntary programs provide flexibility in determining how best to conserve the species.

Our response: In compliance with the requirements of the Act and its implementing regulations, we determined that the Northern and Southern DPSs of the lesser prairie-chicken warrant listing based on our assessment of the best available scientific and commercial data. We recognize that the lesser prairie-chicken remains primarily on lands where habitat management has supported survival, due in large part to voluntary actions incorporating good land stewardship, and we want to continue to encourage land management practices that support the species. We recognize the need to work collaboratively with private landowners to conserve and recover the lesser prairie-chicken.

Comment 22: Multiple commenters, including one State wildlife agency, submitted comments related to the effectiveness of conservation efforts. Some commenters stated that existing efforts were not effective at addressing the conservation needs of the species while others stated that existing efforts are effective at addressing the conservation needs of the lesser prairie-chicken. Additionally, some commenters stated that while we acknowledged existing efforts, we then disregarded them and did not fully factor in their effectiveness.

Our response: We included all existing conservation efforts within our analysis in the SSA report. We described each conservation effort individually and then analyzed how effective those efforts were at addressing the threats to the lesser prairie-chicken. This analysis showed that the overarching limiting factor to the lesser prairie-chicken is habitat availability and that the primary threat is habitat loss and fragmentation. Our analysis indicates that, despite conservation efforts, habitat loss and fragmentation continues to negatively impact viability for the species. Additionally, our analysis indicated that despite the projected level of conservation efforts moving forward, habitat loss and fragmentation is expected to outpace habitat restoration efforts, resulting in further decreases in viability in the future. As discussed in the SSA report, there are additional threats to the lesser prairie-chicken that will continue to impact the species, which are not addressed or ameliorated by existing conservation efforts to the extent that the species does not warrant listing.

Comment 23: One State wildlife agency stated that decreasing groundwater aquifer levels are likely to lead to restoration of cropland acres to native grasses in the Sand Sagebrush Ecoregion in the future, which will increase habitat availability and populations in the future but the extent will be hard to quantify.

Our response: While we agree that decreasing aquifer levels may impact the agricultural practices within the Sand Sagebrush Ecoregion, there is no information to indicate that landowners will convert those areas back to vegetative composition that will support the lesser prairie-chicken or that they will manage it in a way that is compatible with the habitat needs of the lesser prairie-chicken.

Comment 24: One State commented that there must be more and improved coordination among Federal agencies because the Service failed to acquire CRP data from USDA for use in the SSA.

Our response: We used the best available information in our analyses. Access to geospatial conservation practices information is available to entities such as other Federal agencies only through a signed agreement with USDA (Rissman et al. 2017). As stated in Appendix B, Part 5. Supplemental Analysis: Evaluation of CRP, due to privacy concerns associated with sharing these data, we were not able to establish an agreement with FSA to provide the CRP data for our use. Because we were not able to acquire the spatially explicit data for CRP enrollment, we worked with FSA to complete an analysis to understand the implications of not having CRP data included in our spatial model. The results of this analysis indicated up to a 1.33 percent increase in potentially

usable space if we had CRP data for our model. We found this minor difference in potentially usable space to be negligible in the scope of the SSA analysis.

Comment 25: Multiple commenters, including four State wildlife agencies, submitted comments requesting that the 4(d) rule for the Northern DPS of the lesser prairie-chicken include an exception for take resulting from grazing activities. Some commenters requested a 4(d) exception for all grazing activities, some requested a 4(d) exception for grazing that was being managed in ways that were compatible with the conservation of the species, and other commenters requested clarity on what would be considered compatible grazing management.

Our response: After evaluating all comments from States and from public commenters, we have included in the 4(d) rule an exception for take that would be associated with routine grazing activities when the landowner or land manager is following a site-specific grazing plan that was developed by an entity that has been approved by the Service. Please see Provisions of the 4(d) Rule for more details.

Comment 26: Four State agencies and multiple public commenters requested that activities conducted pursuant to the WAFWA Range-wide Plan be excepted from take prohibitions under the 4(d) rule for the Northern DPS. They stated that we had approved a 4(d) provision for the plan previously and that including such a provision would provide an overall benefit to the conservation of the species. Several commenters, however, stated it was inappropriate to include an exception from take prohibitions for activities conducted pursuant to the WAFWA Range-wide Plan, given issues revealed in the recent audit and the lack of clarity on how these issues will be resolved.

Our response: We did not find that a provision excepting activities conducted under the mitigation framework within the RWP implemented by WAFWA is necessary and advisable for the conservation of the species at this time. We acknowledge that our previous 4(d) rule had excepted these activities from take. However, we have reevaluated that decision based on the updated status of the species and recent information regarding the mitigation program. A July 2019 audit of the mitigation program found a variety of deficiencies with the program. These deficiencies include concerns regarding the financial management, accounting, compliance, and conservation delivery. After the audit was completed, WAFWA hired a consultant to assist them with evaluating options to address any deficiencies with the oil and gas CCAA. The consultant focused on the oil and gas CCAA, which has the same mitigation framework as the RWP. This consultant led a focused conversation with the WAFWA, the State fish and wildlife agencies, the Service, and representatives of the oil and gas industry enrolled in the program. This process culminated with a report titled ''Range-wide Oil and Gas Candidate Conservation Agreement with Assurances Realignment Phase 1 Findings and Recommendations'' finalized in December 2020. This report reaffirms the deficiencies identified in the 2019 program audit and identifies steps to address those concerns.

While this realignment process was directly related to the CCAA, because the same mitigation framework is included in both the RWP and the CCAA, the concerns outlined in the Findings and Recommendations Report are directly applicable to the mitigation program within the RWP. The WAFWA has made some changes, but most of the noted deficiencies with relation to the mitigation framework and other aspects directly related to the RWP have not been remedied. Specifically, due to the identified deficiencies, we are concerned that the implementation of the mitigation framework is not offsetting impacts to the species.

Comment 27: One State noted that the 4(d) rule excepted prescribed fire from take prohibitions. They asked that, given the importance of prescribed fire, that it be added to the list of actions unlikely to result in a violation of section 9 for the Southern DPS.

Our response: While fire plays an important role, potential exists for some short-term negative impacts to the lesser prairie-chicken while implementing prescribed fire. The potential impacts depend upon what time of the year the fire occurs; extent of habitat burned; and burn severity including, but not limited to, disturbance of individuals, destruction of nests, and impacts to available cover for nesting and concealment from predators. Section 9(a)(1) of the Act, codified at 50 CFR 17.21, sets out the prohibitions related to endangered species. While section 4(d) of the Act allows alteration of prohibitions for actions likely to result in take of threatened species, neither the Act nor its implementing regulations have such a mechanism for endangered species. For parties interested in implementing any action that may result in take of a listed species, the Service has multiple mechanisms under the Act to permit those actions and interested parties can reach out to their local Service office for further assistance.

Comment 28: Two State agencies and several commenters asked for additional vegetation removal, treatment, and management actions to be added to the 4(d) rule. For example, commenters asked that all removal of nonnative and invasive native vegetation be included as an exception from take in the 4(d) rule (for example, Eastern red cedar, honey mesquite, Russian olive, black locust, Siberian elm). Additionally, multiple commenters (including both State agencies) asked that herbicide application for control of these species be included in the 4(d) rule.

Our response: As outlined in the Available Conservation Measures section of the rule, actions that could result in a section 9 violation would be those that would result in sustained alteration of preferred vegetative characteristics of lesser prairie-chicken habitat. Application of herbicides for removal of invasive brush species identified would not fall into this category. Areas dominated by those species are not considered lesser prairie-chicken habitat; thus, applying herbicides would not alter preferred vegetative characteristics of lesser prairie-chicken habitat. It is not necessary to create an exemption to the take prohibition for removal of nonnative or invasive vegetation identified in the comments because these activities will not be occurring in occupied habitat.

Comment 29: One State agency requested clarification on restrictions on farming in the Southern DPS. The commenter asked if farming activities would be prohibited in the Southern DPS, and noted that because those areas do not support lesser prairie-chickens, that take would likely not occur.

Our response: Any action that would result in ''take,'' as defined in the Act, of a listed species would be prohibited under section 9 of the Act. Farming activities in areas where lesser prairie-chickens are not present would not be prohibited because they would not result in take. However, in other (likely limited) situations where lesser prairie-chickens are using cultivated lands during certain times, farming activities could result in take of the species. We suggest that interested parties discuss reach out to their local Service office to discuss specific situations and get further details.

Public Comments

Comments on Endangered Species Act and Service Policies

Comment 30: Multiple commenters stated that we had not used the best available information in the SSA report and/or the proposed rule. They pointed to our conclusions on drought, climate change, and population trends, and estimates of impact distances for various energy projects or the impacts of grazing. One commenter thought the rule used too many estimates and assumptions overall. They stated that the data we used are uncertain and inconclusive.

Our response: Section 4(b)(1)(A) of the Act requires that we make our determinations solely on the basis of the best scientific and commercial data available. Additionally, our Policy on Information Standards under the 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 (*https://www.fws.gov/program/information-quality*), provide criteria and guidance, and establish procedures 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 list a species as an endangered or threatened species. In preparing our SSA report and this final rule, we used information from many different sources, including articles in peer-reviewed journals, scientific status surveys and studies completed by qualified individuals, Master's thesis research that has been reviewed but not published in a journal, other unpublished governmental and nongovernmental reports, reports prepared by industry, personal communication about management or other relevant topics, conservation plans developed by States and counties, biological assessments, other unpublished materials, experts' opinions or personal knowledge, and other sources. We have relied on published articles, unpublished research, habitat modeling reports, digital data publicly available on the internet, and the expert opinion of subject biologists to aid in our determination.

Also, in accordance with our peer review policy published on July 1, 1994 (59 FR 34270) and our 2016 memo on peer review, we solicited peer review of the lesser prairie-chicken SSA report from knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles; their feedback was incorporated into the SSA report (Service 2022, entire), which remains the foundation of our research along with our 2021 proposed rule and this final rule. Additionally, we requested comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties during the comment period for the proposed rule. Comments and information we received helped inform this final rule. We found that the best available science indicates that the two DPSs of the lesser prairie-chicken warrant listing under the Act.

Comment 31: Multiple commenters argued that we should have come to a variety of different conclusions on the DPSs: that the Northern DPS should have been endangered rather than threatened, that the Southern DPS should have been threatened rather than endangered, or that the whole range should have been either endangered or not warranted for listing.

Our response: Sections 3(6) and 3(20) of the Act, respectively, define an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. We have thoroughly assessed the best available scientific and commercial data for the species, as laid out in our SSA report and this final rule. We have determined that the primary threat impacting both DPSs is the ongoing loss of large, connected blocks of grassland and shrubland habitat. The Southern DPS has low resiliency, redundancy, and representation and is particularly vulnerable to severe droughts due to its location in the dryer and hotter southwestern portion of the range. Because the Southern DPS is currently at risk of extinction, we are listing it as endangered.

In the Northern DPS, as a result of habitat loss and fragmentation, resiliency has been reduced across two of the ecoregions when compared to historical conditions. However, this DPS still has redundancy across the three ecoregions and genetic and environmental representation. We expect habitat loss and fragmentation across the Northern DPS to continue into the foreseeable future, resulting in even further reduced resiliency. Because the Northern DPS is at risk of extinction in the foreseeable future, we are listing it as threatened.

Comment 32: Multiple commenters requested additional time to provide public comments on the proposed rule, requesting between 90 days and 6 months of additional time. The commenters pointed to the large amount of data available on the species and the difficulty of the issues. One commenter noted that the Service has the obligation to consider the best available data at any time, and others noted that multiple new studies would be published in the months following the closing of the public comment period.

Our response: We acknowledge the public/stakeholder interest surrounding this species and thus we extended the public comment period by an additional 30 days to give a total of 90 days for public review and comments. We consider the comment period described in the ''Summary of Comments and Recommendations'' of this final rule to have provided the public a sufficient opportunity for submitting both written and oral public comments. We followed Service practice and policy in managing the public comment process. We provided multiple opportunities and avenues for public involvement. Notifications of the comment period, meetings, and hearings were provided in the proposed rule, which was published in the **Federal Register**, posted on our website, and publicized in newspapers. The public comment period on the proposed rule was open for a total of 90 days, during which time we received more than 32,000 comments. We offered a variety of options for submitting comments; the public could submit their comments electronically, using a specified website, via U.S. mail, or orally at our two online public hearings. In addition, the Act requires the Service to publish a final rule within 1 year from the date we propose to list a species, unless there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination. During development of this final rule, we did not receive any substantial new data that would necessitate us reopening the public comment period or necessitate us taking a 6-month extension due to substantial disagreement.

Comment 33: Several commenters asked why there was no NEPA analysis of the proposed listing rule. Some added that even if the Service holds the position that NEPA is not needed for a

listing rule that it is needed for a 4(d) rule.

Our response: The courts have ruled that NEPA does not apply to listing decisions under section 4(a) of the Act, nor to 4(d) rules issued concurrent with listing (see *Pacific Legal Foundation* v. *Andrus,* 657 F.2d 829 (6th Cir. 1981); and *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* No. 04–4324, 2005 WL 2000928, at *12 (N.D. Cal. Aug. 19, 2005).

Comment 34: Several comments asked why there was no regulatory flexibility analysis prepared for the listing and 4(d) rule; some stated that the Service was required to complete those analyses.

Our response: In 1982, Congress added to the Act the requirement that classification decisions be made solely on the basis of the best scientific and commercial data available. In addition, the Conference Report accompanying those amendments made clear that one purpose of adding that language was to ensure that requirements like those in E.O. 12866 do not apply to classification decisions. Specifically, it states that ''[E]conomic considerations have no relevance to determinations regarding the status of species and the economic analysis requirements of Executive Order 12291 [the predecessor of E.O. 12866], and such statutes as the Regulatory Flexibility Act and the Paperwork Reduction Act, will not apply to any phase of the listing process'' (H.R. Conf. Rep. No. 97–835, at 20). We consider the 4(d) rule a necessary phase of the listing process to put in place protections for threatened species.

Comment 35: One commenter asked why the peer review comments were not made available at the time of the proposed rule, and requested that we make them available now.

Our response: In our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we state that we will summarize the opinions of all peer reviewers in the final decision document, and that our general practice will be to also post the peer review letters on *https://www.regulations.gov.* We have provided those reviews in the supplemental materials for this final rule that we have uploaded at this final rule's docket on *https://www.regulations.gov.*

Comment 36: Multiple commenters stated that we should assess the economic costs of listing. Some also stated that we should not list the lesser prairie-chicken because of the harm it would cause to local economies, including ranchers, farmers, and other small businesses.

Our response: Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, the Secretary may determine whether any species is an endangered or threatened species because of any of the following 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 manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. The Act does not provide any language allowing the consideration of economic impacts when making listing decisions for species; listing decisions must be made solely on the basis of the best scientific and commercial data available (16 U.S.C. 1533(b)(1)(A)) pertaining to the biological status of and threats to the persistence of the species in question.

Comment 37: Three commenters stated that the 4(d) rule cannot be ''necessary and advisable'' because it does not discuss the effects on private landowners. Two of those commenters stated that the necessary and advisable standard of the Act requires economic analysis of the costs of 4(d) rules on landowners, assessment of previous conservation provided by landowners and other groups, and calculation of what incentives for conservation 4(d) rules provide.

Our response: As discussed in our response to the previous comment, the Act clearly prohibits us from considering economic or similar information when making listing, delisting, or reclassification decisions. Congress added this prohibition in the 1982 amendments to the Act when it introduced into section 4(b)(1) an explicit requirement that all decisions under section 4(a)(1) of the Act be based ''solely on the basis of the best scientific and commercial data available.'' Congress further explained this prohibition in the Conference Report accompanying the 1982 Amendments: ''The principal purpose of these amendments is to ensure that decisions in every phase of the process pertaining to the listing or delisting of species are based solely upon biological criteria and to prevent non-biological considerations from affecting such decisions. These amendments are intended to expedite the decision-making process and to ensure prompt action in determining the status of the many species which may require the protections of the Act.'' (H.R. Conf. Rep. No. 97–835, at 19 (1982).)

Therefore, following statutory framework and congressional intent, we do not conduct or develop economic impact analyses for classification decisions. Additionally, 4(d) rules concurrently issued with a revised classification rule are inherently a part of a classification decision for a threatened species and are similarly exempt from any consideration of economic impacts.

Comment 38: One commenter stated that the Service did not attempt to reproduce all scientific information and data on the lesser prairie-chicken, in accordance with the Data Quality Act, and did not state which data were reproduced, and that this lack of explanation raises uncertainty in the SSA and listing process for the species, particularly where proxy species were used.

Our response: We strove to summarize the key findings of past research and publications, as they relate to the future viability of the lesser prairie-chicken and our decisions under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) (Service 2022, pp. 2–3). The response to Comment 30 lays out our policies and procedures for assessing information in our scientific documents. We affirm that we have complied with the policies laid out in that comment, and that we have provided a full and complete accounting of the data we used and the areas where we relied upon proxy species.

Comment 39: One commenter stated that the Service should provide statements from each peer reviewer regarding what data were reproduced, and on the degree of imprecision used in the SSA.

Our response: Our peer review policy published on July 1, 1994 (59 FR 34270), states that, for listing actions, we must solicit peer review regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing. We have solicited complete and thorough peer review of our SSA in accordance with these policies.

Comment 40: One commenter asserted that we did not consider the appropriate factors in making our listing determination. They stated that we (1) inappropriately focused on the population trends of the species rather than determining whether the species met the definition of endangered or

threatened, that we inappropriately focused on a decline in habitat, and that we inappropriately focused on whether conservation measures offset habitat loss. They added that courts have found that declines in habitat alone are not sufficient to make a threatened or endangered finding, and that a failure to offset habitat loss is not a required finding.

Our response: As discussed in our response to Comment 36, we must make listing determinations solely on the basis of the five factors and on the basis of the best scientific and commercial data available pertaining to the biological status of and threats to the persistence of the species in question. Data such as population trends and declines in habitat can help us understand the current status of the species and whether or not it meets the definition of an endangered or threatened species under the Act. However, as we describe in our response to Comment 31 and the Final Listing Determination sections for both species, we are not listing simply due to declines in habitat or declines in populations, but on the combined effect of threats associated with the five factors and our conclusion that the Northern DPS is at risk of extinction in the foreseeable future and that the Southern DPS is currently at risk of extinction.

Comment 41: One commenter noted that the proposed rule did not set forth any procedures for its implementation. The commenter suggested that a group of interested parties and stakeholders be assembled to discuss procedures for implementation and their effects on landowners, and that separate groups be formed for the Northern and Southern DPSs.

Our response: The proposed rule and this final rule describe ways in which the provisions of the Act will be implemented. In Available Conservation Measures, we set out requirements under section 7 of the Act for Federal Agencies, describe issuance of permits, and list activities that would or would not constitute a violation of section 9 for the Southern DPS. For the Northern DPS, under Final Rule Issued Under Section 4(d) of the Act, we describe prohibitions and exceptions to those prohibitions that affect that DPS. Any additional questions regarding implementation of this final rule should be directed to the Southwest Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Throughout its work on the species, the Service has placed an emphasis on working with stakeholders to develop conservation options that are beneficial to both the species and stakeholders. We will continue to work with all stakeholders and realize that conservation of the lesser prairie-chicken cannot happen without this approach. 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 recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination; see Available Conservation Measures for more details. The Act encourages cooperation with the States; we will continue to work with our partners, stakeholders, and the public throughout the recovery planning process.

Comment 42: Two commenters noted that the Service's definition of foreseeable future extended to only those effects we can reasonably forecast. They noted that one population trend analysis (Hagen et al. 2011) stated it could only be forecast 5 years into the future. The commenters concluded that the Service should thus only consider the foreseeable future to be the next 5 years. Another commenter stated that if we were to list any species with any chance at all to someday become extirpated, we would list nearly all species.

Our response: The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

As discussed in ''Threats Influencing Future Condition,'' we consider the foreseeable future to be the amount of time on which we can reasonably determine a likely threat's anticipated trajectory and the anticipated response of the species to those threats. We used all of the available data in creating our determination of the length of the foreseeable future. While the study quoted by the commenters only projects 5 years into the future, we used multiple other reliable data sources to project conditions of the species further into the future. Our judgment of foreseeable future was based on available data related to habitat conditions, threats, and our geospatial analysis; we have a reasonable degree of confidence in projecting the future condition of the species beyond a 5-year timeframe.

Comment 43: One commenter asserted that the Service must not simply err on the side of caution when listing a species. They stated that if we were to list any species with any chance at all to someday become extirpated, we would list all nearly species.

Our response: As discussed in our response to Comment 30, we have made our determination solely on the basis of the best available information. As discussed in our response to Comment 42, for impacts in the foreseeable future, a prediction is reliable if it is reasonable to depend on it when making decisions. Therefore, we list any species where we reach the conclusion that it meets the definition of threatened or endangered, not any species that may have a chance to be extirpated at some unknown point in the future.

Comment 44: Multiple commenters provided input on future threats and the Southern DPS. Two commenters stated that future forecast climate trends in the Southern DPS did not support an endangered finding. Three commenters stated that our future projection analysis does not support endangered status for the Southern DPS, and that Scenario 5 is too pessimistic in regard to the Southern DPS.

Our response: As discussed in our response to Comment 31, the Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. Under the Act, the statutory definition of ''endangered species'' as a species that ''is in danger of extinction'' clearly connotes an established, present condition. In contrast, the definition of a ''threatened species'' as one that is ''likely to become an endangered species within the foreseeable future'' equally clearly connotes a predicted or expected future condition. Thus, in the context of the Act, an ''endangered species'' may be viewed as a species that is presently at risk of extinction. A ''threatened species,'' on the other hand, is not currently at risk of extinction, but is likely to become so. In other words, a key statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either now (endangered) or in the foreseeable future (threatened). Given that we concluded that the Southern DPS is in danger of extinction now, in the current condition, this determination is not

based on future scenarios or future projections of climate trends or other threats.

Comment 45: One commenter asserted that if we considered the future effects of climate change, which were not included in our geospatial model, we would definitely conclude that the Northern DPS was endangered.

Our response: As discussed in our SSA report, the implications of climate change were not incorporated into the geospatial analysis related to habitat availability as there is no available data to inform specific land cover changes predicted to result from future climate change. However, our analysis of the status of the Northern DPS was not limited to the geospatial model. We fully considered all potential future effects of climate change in making our determination regarding the Northern DPS. Additionally, as noted in Comment 44, we consider only the current condition of a species when making an endangered finding.

Comment 46: Two commenters asserted that the Service had inappropriately identified actions that may result in a violation of section 9; specifically, actions that might alter lesser prairie-chicken habitat such as shrub removal and energy infrastructure/power lines that could cause seasonal avoidance. The commenters state that neither of these actions meet the statutory definition of take under the Act.

Our response: While identifying actions that may result in a violation of the prohibitions outlined in section 9 of the Act, we understand that the prohibitions on take apply to the individual and not necessarily its habitat. However, there are instances where impacts to habitat would result in negative effects to individuals that rise to the level of take. Specifically, impacts that result in modifications to habitat would constitute a taking of a listed species under the definition of ''harm'' if the action results in significant modification of habitat that significantly impairs an essential behavioral pattern that would likely result in killing or injuring that species. This approach is consistent with judicial interpretations of the Act, as explained in *Babbitt* v. *Sweet Home Chapter of Communities for a Greater Oregon,* 515 U.S. 687 (1995) and *Arizona Cattle Growers' Association* v. *Fish and Wildlife Service,* 273 F.3d 1229 (9th Cir. 2001).

After reviewing the best available science and reviewing the statutory definitions within the Act, we have determined that actions that would result in sustained alteration of preferred habitat for the lesser prairie-chicken, such as conversion of native vegetation to other land uses or the construction of anthropogenic features that result in direct removal of habitat and avoidance of otherwise suitable areas, could significantly modify habitat to the point where essential behavioral patterns could be disrupted resulting in harm of individual lesser prairie-chickens.

Comment 47: One commenter requested that, given the wide range of the lesser prairie-chicken and the number of land uses affected by this final rule, the Service provide a much more precise description of the activities that would be prohibited by the final listing.

Our response: The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife: The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21. We list some examples of activities in Available Conservation Measures that are and are not likely to result in a violation of section 9. However, it is impossible to create an exhaustive list of activities that would result in take because it is highly site-specific for each action as to whether take would occur. For those activities not covered in this final rule, we will assist the public in determining whether they would constitute a prohibited act under section 9 of the Act. Interested parties may contact their local U.S. Fish and Wildlife Service Ecological Services Field Office for any assistance.

Comment 48: One commenter was surprised that we listed the Southern DPS as endangered given that we listed the entire species as threatened in 2014. They argued that, since that time, populations have increased and many more conservation measures have been implemented.

Our response: This listing determination is a stand-alone determination, based on the most recent analysis of the status of the species. This determination benefitted from the SSA and the in-depth analysis, peer review, and partner review that went into that analysis. We acknowledge that significant habitat protection and restoration has been underway for the past 8 years. These efforts were fully evaluated within the SSA report and thus were fully considered when making our listing determination. As detailed in the response to Comment 17, conclusions cannot be drawn regarding lesser prairie-chicken populations based upon short-term trends.

Comment 49: Several commenters stated that, if listing was warranted, we should ''follow precedent'' and find that it was warranted but precluded. One stated it was inappropriate for the Service to have withdrawn that option in litigation. One commenter stated that the Service should have used the warranted but precluded option given that we have discretion to prioritize critically impaired species, while giving lower priority to those species for which conservation efforts are in place. They noted because there are already extensive conservation efforts by States, landowners, and stakeholders underway or being developed that benefit the lesser prairie-chicken, it should be a low priority species for the Service.

Our response: The Act requires that we make a determination that listing is warranted, warranted but work to complete the determination is precluded by other listing proposals, or not warranted. The stipulated settlement agreement for lesser prairie-chicken only established a date by which we were to make 12-month petition finding, it did not remove the option of ''warranted but precluded.'' While making a finding, we may consider using the ''warranted but precluded'' option where appropriate. We recognize the extensive conservation efforts in place by States, landowners, and other stakeholders. However, in this instance, we conclude that listing is warranted for both the Northern and Southern DPSs of the lesser prairie-chicken, and that completing this determination is not precluded by work on other pending proposals.

Comment 50: Two commenters asserted that the listing rule should apply only to areas that meet the definition of habitat as stated in the SSA report. They also stated that project managers should not have to undergo section 7 consultation in areas that did not meet the definition of habitat for the lesser prairie-chicken. One example commenters provided was that companies should not have to consult on existing infrastructure, roads, or similar structures, as they do not provide habitat for the lesser prairie-chicken.

Our response: This rule would apply the prohibitions established under section 9 of the Act and outlined in the section 4(d) rule for the Northern DPS wherever take of the species may occur. Consultation under section 7 of the Act is required if a Federal agency has a discretionary Federal action that may affect a listed species. Actions that do not result in effects to a listed species would not require consultation under section 7 of the Act. This may include activities taking place in areas that are not habitat for the species, where there

will be no direct or indirect effects to the species.

Comment 51: One commenter asked if additional data would be used to supplement the habitat quality analysis between the proposed and final rule. They also asked if field data collected as part of the mitigation framework could be used to provide more information on habitat quality conditions.

Our response: No additional data has become available at the scale or resolution necessary to evaluate habitat quality for the lesser prairie-chicken for incorporation into our spatial analysis. While there are some data available on properties enrolled in conservation programs (including the mitigation framework associated with the Rangewide plan), the monitoring and data collection is not standardized across programs, making it not possible to compare across programs. Additionally, this data is not collected at a scale that would be informative for an evaluation at the ecoregion or DPS scale. Because these data are selectively collected on properties being managed for the lesser prairie-chicken, they would not be representative of habitat quality across the larger landscape. While spatial data were not available to include habitat quality in our spatial analysis, this does not mean that we ignored or did not incorporate efforts by conservation programs to increase habitat quality. Within chapters 3 and 4 of the SSA report, we include past and current benefits of conservation programs. We also project the likely future benefits of these efforts to improve habitat quality.

Comment 52: One commenter asked how we will regulate land use within the designated occupied range of the lesser prairie-chicken, given that it only occupies patchy areas within the larger occupied range.

Our response: The Act does not allow the FWS to regulate land use. Instead, the Act establishes prohibited actions in order to promote the conservation of listed species. In furtherance of this objective, we maintain a map depicting the current range of the species on publicly accessible websites. We suggest that project proponents contact U.S. Fish and Wildlife Service Ecological Services Field Offices within their State for specific information for their locality and assistance in evaluating potential impacts of their projects. As discussed within the SSA report, many acres included in the EOR are not lesser prairie-chicken habitat because either they are impacted by anthropogenic features, or they do not possess the vegetative composition and structure necessary to support the species.

Comment 53: Two commenters asked us to describe what recovery would look like for the lesser prairie-chicken; one of them noted that we had not described preferred conservation areas, goals, or objectives.

Our response: Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species; however, this planning process begins after we make final the listing of a species. The recovery planning process then begins with development of a recovery outline made available to the public soon after a final listing determination; see Available Conservation Measures for more details. The Act encourages cooperation with the States and other countries. We will continue to work with our partners and the public throughout the recovery planning process.

Comment 54: Two commenters asked about how E.O. 13985 (Advancing Racial Equity and Support for Underserved Communities) would affect implementation of the proposed rule and small electric cooperatives or individual landowners. One of those commenters asked us to make sure we distinguish between large-scale energy transmission projects and smaller transmission lines that support rural land and homeowners. The other commenter was concerned that the listing proposal would cause too much cost to those landowners and not provide enough benefit to landowners.

Our response: We acknowledge that some economic impacts are a possible consequence of listing a species under the Act; for example, there may be costs to a landowner to avoid potential impacts to the species or associated with the development of a habitat conservation plan. In other cases, if the landowner does not acquire a permit for incidental take, the landowner may choose to forego certain activities on their property to avoid violating the Act, resulting in potential lost income. However, as noted in our response to Comment 36 above, the statute does not provide for the consideration of such impacts when making a listing decision, nor would it be affected by E.O. 13985. Section 4(b)(1)(A) of the Act specifies that listing determinations be made solely on the basis of the best scientific and commercial data available. Such costs are therefore precluded from consideration in association with a listing determination.

Comment 55: One commenter stated that, because the lesser prairie-chicken is hybridizing with the greater prairie-chicken, the distinctness of both species is questionable, and the listing should be reconsidered.

Our response: We have included a review of the best available scientific information around the taxonomy of the lesser prairie-chicken in chapter 2 of the SSA report. For the SSA report and our listing determination, we followed the American Ornithologist's Union taxonomic classification for the lesser prairie-chicken, which is based on observed differences in appearance, morphology, behavior, social interaction, and habitat affinities. The simple fact that hybridization can or does occur is not an indication that the lesser and greater prairie-chicken are not distinct species. The best available science clearly indicates they are separate species.

Comments on Population Trends and Analysis

Comment 56: Multiple commenters submitted statements asserting that the lesser prairie-chicken had survived many threats over the past two thousand years. They made reference to the species surviving the Dust Bowl and the severe drought of the 1950s. The commenters concluded that because the species has survived these threats before, it will be able to continue to survive them into the future.

Our response: As discussed in response to Comment 17, the lesser prairie-chicken is a boom–bust species. This population characteristic highlights the need for habitat conditions to support large population growth events during favorable climatic conditions so they can withstand the declines during poor climatic conditions without a high risk of extirpation. Since the 1930s and 1950s, the lesser prairie-chicken has seen a significant amount of habitat loss and fragmentation resulting in population declines. This reduction in redundancy and representation has resulted in a decrease in population resiliency. In past decades, fragmentation of lesser prairie-chicken habitat was less extensive than it is today, connectivity between occupied areas was more prevalent, and populations were larger, allowing populations to recover more quickly. In other words, lesser prairie-chicken populations were more resilient to the effects of stochastic events such as drought. As lesser prairie-chicken population abundances decline and usable habitat declines and becomes more fragmented, their ability to rebound from prolonged drought is diminished. Because lesser prairie-chicken carrying capacities have already been much reduced, if isolated populations are extirpated due to

seasonal weather conditions, they cannot be repopulated due to the lack of nearby populations. An evaluation of the resiliency of populations (ability to withstand stochastic events) within these four ecoregions takes into account the already reduced species' range and associated reduction in redundancy and representation compared to historical conditions. Population resiliency has been reduced in the remaining areas making the species more susceptible to extirpation.

Comment 57: One comment stated that because the proposed rule did not include figures showing raw data from all survey efforts, including maps, GPS locations, and flight paths, the proposed rule could not be fully or accurately evaluated by the public.

Our response: The Service does not have access to some raw data that is considered confidential; therefore, we made our determination based on the best available scientific information as required by the statute. The commenters did not explain how access to the raw data associated with surveys would have led to different conclusions relative to population trends within either DPS.

Comment 58: One commenter stated that the lesser prairie-chicken is a boom–bust species, but the proposed listing focused only on the population decreases and disregarded the population increases.

Our response: In our response to Comment 17, we outlined the boom–bust cycle of the lesser prairie-chicken. Within the analysis presented in the SSA report we present the best available scientific information regarding population abundance and trends. Population declines are an important metric because risk of extirpation and extinction increase as population abundance decreases. While populations will increase during years with increased precipitation, long-term population trends indicate continual declines in abundance, to the point that the species warrants listing.

Comment 59: One commenter noted that the proposed listing stated that loss of the Shinnery Oak Ecoregion would result in loss of the entire southwestern portion of the species' range; that commenter stated that there is no threat of loss of the entire Shinnery Oak Ecoregion.

Our response: As outlined in the SSA report, the Shinnery Oak Ecoregion has experienced a significant amount of habitat loss and fragmentation, which has resulted in depleted lesser prairie-chicken populations. With the existing level of habitat loss and fragmentation resulting in such low population numbers, under current climactic conditions, another wide-scale severe drought could occur in this ecoregion at any time, and the species may not be able to recover due to the reduced and fragmented nature of the remaining habitat. Therefore, we determined that the species in danger of extinction in the Shinnery Oak Ecoregion.

Comment 60: One commenter stated that the listing should be delayed until further unbiased analysis could be completed by both State agencies and outside parties with regard to populations.

Our response: The SSA report includes the best available scientific information regarding past, current, and likely future population trends for the lesser prairie-chicken. While we compiled this information as part of our SSA report, it is important to note that all of these data were collected and analyzed by the State fish and wildlife agencies, including contractors working on their behalf, and outside experts. Additionally, after compiling this information into the SSA report, with which the State fish and wildlife agencies contributed, the State fish and wildlife agencies and independent experts reviewed the report prior to finalization of the report and our proposed listing. The SSA report includes an unbiased view of the best available science with regard to past, current, and likely future population trends.

Comment 61: Two commenters stated that the validity of the population data presented in the SSA report and the proposed rule, including the aerial survey results and population reconstruction data from Hagen et al. (2017), are questionable. They also stated that we made arbitrary decisions about which part of the data to use and that we manipulated data to support our position.

Our response: The SSA report contains the best available scientific information regarding past, current, and future populations for the lesser prairie-chicken. The SSA report is explicit about the limitations associated with the information. The data for past and current lesser prairie-chicken populations largely fall into three categories.

First, the most robust and statistically sound abundance estimates for the species are the result of the aerial surveys that have been conducted annually since 2012 (with the exception of 2019). These surveys were designed to provide a statistically valid method to evaluate long-term population trends for the species. Again, there are limitations associated with this data as the survey was designed to track long-term trends and has been conducted for only 10 years. Since the aerial surveys were not conducted prior to 2012, we also provide the best available scientific information for the species prior to 2012.

Prior to 2012 the only surveys conducted for lesser prairie-chickens were ground-based surveys conducted by each State wildlife agency. Hagen et al. (2017) compiled and analyzed the ground-based survey data in the period 1965–2016 using population reconstruction techniques. Again, these data have limitations, as discussed in the SSA report, but represent the best available scientific information for populations from 1965 through 2012. Lastly, the only information on populations prior to 1965 consists of anecdotal observations, which we also provided within the SSA report. All of these data have limitations, and we make any interpretations of that information with those limitations in mind. We used the best available scientific information for each time period to describe population trends. However, we did not ''manipulate'' any data, or make arbitrary decisions about what data to use. The SSA report contains an accurate representation of the best available science and acknowledges the limitations associated with those data. Our characterization of the population data (and the larger SSA report) has undergone peer review and review by the State wildlife agencies to ensure we have accurately characterized the best available scientific information. All interpretations and conclusions drawn by the Service were done so with the assumptions and limitations of all data regarding population abundance estimates fully considered.

Comment 62: One commenter noted that the SSA report says that currently the population in the Shinnery Oak Ecoregion makes up approximately 11 percent of the rangewide population estimate then goes on to state that the rangewide population estimate in 1960 was 50,000 birds. The commenter then asserted that, assuming that the Shinnery Oak Ecoregion made up 11 percent of the population in 1960, that would mean that the Shinnery Oak population would have been 5,500 individuals, which is not much different than the population estimate in 2020 from the aerial surveys.

Our response: The assumption that an ecoregion's current percentage of the rangewide population would be representative of the percentage from 1960 is not supported by the science. For example, historically lesser prairie-chicken populations in the Sand

Sagebrush Ecoregion were among the highest in the range and currently the Sand Sagebrush has the lowest population estimates for any ecoregion. Additionally, historically the Short-Grass/CRP Ecoregion contained few if any lesser prairie-chickens. Today it has the largest population of any ecoregion. Similarly, there is no scientific evidence to support the assumption that the Shinnery Oak ecoregions current percent of the rangewide population would represent the same percentage that it did in the 1960s.

Second, the comment places too great an emphasis on the population estimate for 1960. As noted previously, the survey effort used to estimate population abundance in 1960 was very limited. This led to population reconstruction data that is imprecise for specific years. It is crucial that these limitations be considered in any analysis of the data. Third, even assuming that the population estimates from 1960 were accurate, those are estimated numbers of males only, while the 2020 survey was a total population estimate. Thus, if one were to assume a 1:1 sex ratio, the total population estimate would be 100,000 birds in 1960 (not 50,000). As discussed in our responses to Comments 17 and 18, the best use of the population data is not to focus on any given year but instead to focus on long-term trends.

Comment 63: Two commenters stated that, according to the aerial survey results from 2020, lesser prairie-chicken populations are increasing in the Shinnery Oak Ecoregion.

Our response: As discussed in our responses to Comments 17 and 18, evaluating population health of the lesser prairie-chicken based upon short-term trends is not an appropriate use of the data to analyze long-term viability. When viewed in context of precipitation patterns as discussed in the response to Comment 17, from 2013–2020 we would expect populations to increase. The results of the aerial surveys show a significant decline in the Shinnery Oak Ecoregion in both 2021 and 2022 from an estimated 4,881 birds in 2020 to an estimated 1,569 birds in 2021 and an estimated 519 birds in 2022. This decline occurred due to a drought in the southern portion of the species' range, which negatively impacted populations. These new data from the 2021 and 2022 aerial surveys illustrate the influence of precipitation on annual abundance estimates and demonstrate the importance of analyzing long-term population trends. According to the most recent aerial survey results, lesser prairie-chicken populations in the Shinnery Oak Ecoregion have declined from an estimated 2,967 birds in 2012 to an estimated 519 birds in 2022 but more telling is the evaluation included in the SSA report of long-term population declines.

Comment 64: One commenter stated that, because the Short-Grass/CRP Ecoregion supports the largest population of lesser prairie-chickens and the USGS modeling efforts projected the highest level of risk for that ecoregion, the Northern DPS should be listed as endangered.

Our response: Although the demographic model from Cummings et al. 2017, which the commenter refers to as the USGS modeling efforts, projected the Short-Grass Ecoregion had the lowest median growth rate among the ecoregions, it also has the greatest uncertainty in projected abundance. This uncertainty is likely due to the fewer years of demographic observations available in this ecoregion, making it difficult to infer a clear trend. We considered these modeling results, including the associated uncertainties and limitations, as part of our larger analysis and as one source of information. We evaluated all available science regarding modeling of future populations and conclude that while the declines may not be as drastic as predicted in the Cummings et al. (2017) report, multiple lines of evidence support likely declines in lesser prairie-chicken abundance in the future. While we considered the results of Cummings et al. (2017), we also incorporated all of the best available information to inform our decision. After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that the lesser prairie-chicken maintains populations in all three ecoregions in the Northern DPS, and has genetic and ecological representation in those ecoregions, as well as population redundancy across the entirety of the DPS. Thus, lesser prairie-chickens in the Northern DPS are not currently in danger of extinction, and thus the Northern DPS does not meet the definition of endangered. Our future projections do indicate that habitat will become increasingly fragmented and less able to support lesser prairie-chickens. Overall, after assessing the best available information, we conclude that the Northern DPS of the lesser prairie-chicken 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.

Comment 65: One commenter noted that populations in the Shinnery Oak and Sand Sagebrush Ecoregions have shown limited ability to increase in numbers recently following drought periods.

Our response: As discussed in our response to Comment 17, the lesser prairie-chicken is a boom–bust species. As outlined in the SSA report, habitat loss and fragmentation has resulted in boom years that have lower overall population abundance over time, and during the bust years population abundance is continually getting lower. In some ecoregions, like the Shinnery Oak Ecoregion in particular, the population abundance in bust years is dangerously close to zero. As relevant to the Sand Sagebrush Ecoregion, we project the increased impacts of threats on the species will continue to drive the population abundance in bust years closer to zero.

Comment 66: One commenter cited an interim assessment of lesser prairie-chicken population trends from 1997 through 2011 that was completed in 2012 for the Lesser Prairie-Chicken Interstate Working Group and noted that this assessment concluded largely increasing numbers with low extinction risks.

Our response: We considered the 2012 interim report in the SSA report (see the citation to Garton et al. 2016). This report has been updated and refined since that time. The updated information was included in chapter 4 of the SSA report (see the citation to Hagen et al. 2017). It is important to note that this analysis does have some limitations in that it was based only on simulating demographic variability of populations and did not incorporate changing environmental conditions related to habitat or climate. This information, including its limitations, was included in the overall analysis and considered as part of the decision.

Comment 67: One commenter stated that, due to northward expansion, stable rangewide populations, and extraordinary conservation efforts, the lesser prairie should not be listed.

Our response: As detailed in responses to Comments 17, 18, and 61, the Service fully considered the best available scientific information regarding past, current, and future population trends for the lesser prairie-chicken. We also fully detailed and considered the expansion of the lesser prairie-chicken in the Short-Grass/CRP Ecoregion in the SSA report. Lastly, we worked directly with conservation entities delivering the conservation efforts for the species to ensure we accurately characterized those efforts within our SSA report. In summary, the Service fully considered population trends, the northern expansion in the

Short-Grass/CRP Ecoregion, and the benefits of conservation efforts in our analysis and decision.

Comment 68: One commenter stated that, due to changes in survey protocols over time, direct comparison across time is not possible and the proposed listing is based upon assumptions, opinions, and speculation as opposed to the best available science.

Our response: As detailed in response to Comment 61, the Service included and fully considered the best available scientific information on past, current, and future population trends. In recognition of the fact that there have been advancements in survey methodology and increased survey efforts since the 1960s, we used the best available science for each time period to characterize population trends for the species.

Comment 69: Multiple commenters provided statements relating rangewide and ecoregional precipitation patterns to annual and short-term population fluctuations. Specifically, the comments stated that the Service did not give enough consideration to the effects of drought related to population trends.

Our response: As discussed in our responses to Comments 17 and 18, precipitation patterns play a significant role in annual fluctuations in the estimated abundance of lesser prairie-chickens at both the rangewide and ecoregional scales. The analysis included in the SSA report accounts for this relationship and bases our conclusions regarding population status on long-term trends.

Comment 70: One commenter stated that populations of the lesser prairie-chicken have been stable to increasing over the past 60 years.

Our response: The SSA report provides a detailed summary of the best available scientific information with regard to historical and current population estimates and a summary of long-term population trends. This information was reviewed by independent peer reviewers as well as State and Federal partners. This information clearly indicates that the lesser prairie-chicken has experienced population declines over the last 60 years. While Hagen et al. (2017) estimated the minimum number of male lesser prairie-chicken annually based upon ground-based survey estimates as far back as 1960, those estimates for the years of 1960–1961 were based upon very limited survey efforts and thus not reliable. It was not until approximately 1970 that survey efforts had increased. In 1970 it was estimated that there was a total of approximately 350,000 (assuming a 1:1 sex ratio) total lesser prairie-chickens and the most recent aerial surveys indicate total abundance in 2022, across all four ecoregions, of approximately 26,600 birds.

Comment 71: One commenter noted evidence that populations are declining and stated that populations are well short of the 10-year average population size established as part of the Range-wide Lesser Prairie-Chicken Conservation Plan.

Our response: We acknowledge that the current population levels are less than the 10-year average population goal established for each Ecoregion in the RWP. However, we evaluated the best available science regarding past, current, and likely future population trends for the lesser prairie-chicken. The determination of whether the species warrants listing under the Act was informed by an evaluation of the species' viability as presented in the SSA report, which does not establish defined population targets. We have not made any determination as to whether achieving the population goals established in the Range-wide Lesser Prairie-Chicken Conservation Plan would mean that the species would not warrant listing under the Act.

Comment 72: One commenter stated that, due to uncertainties associated with population estimates, the data are insufficient to determine that the populations have declined.

Our response: As discussed in response to Comment 61, the SSA and our determination used the best available scientific information regarding past, current, and likely future population trends for the lesser prairie-chicken. As with any science, there are limitations associated with these data and the Service has been explicit about these limitations for transparency and to ensure that these limitations were fully considered while making our decision regarding the status of the species under the Act. We did not only consider population trends but also used our analysis of threats, conservation efforts, and habitat to inform our listing determination.

Comment 73: One commenter stated that the Service ignored the 2020 aerial survey results and relied too heavily upon the Hagen et al. 2017 study of quasi-extinction risks and pointed out limitations associated with that analysis.

Our response: We included the results of the aerial surveys, including the 2020 aerial survey, within our SSA report, and those survey results were fully considered in making our determination. While the Service considered the results of the Hagen et al. 2017 study in our analysis, we explicitly acknowledged the limitations associated with that study. One key limitation is that the analyses were based only on simulating demographic variability of populations and did not incorporate changing environmental conditions related to habitat or climate. Other limitations include the challenges of these data resulting from ground-based survey efforts as noted in Zavaleta and Haukos (2013, p. 545) and Cummings et al. (2017, pp. 29–30). While summarizing the information on the likely future population trends of the lesser prairie-chicken, we provide a summary of all available studies that project future trends. Each of these studies has specific limitations associated with them, and those limitations were fully considered while making our determination with regard to the status of the species.

Comment 74: Multiple commenters stated that using the 5-year average to report the current population estimate is misleading and that by doing so the Service precluded the aerial survey results from prior to 2015.

Our response: As stated in the SSA report, the results of the aerial survey efforts should not be taken as precise estimates of the annual lesser prairie-chicken population abundance, as indicated by the large confidence intervals. The best use of this data is for long-term trend analysis, and conclusions should not be drawn based upon annual fluctuations. This is why we report the population estimate for the current condition as the average of the past 5 years of surveys. The decision on how to best present the aerial survey data was made in close coordination with the State wildlife agencies who recommended this approach to the Service. While we use the 5-year average to estimate current population abundance for each ecoregion, this does not mean that we precluded the inclusion of aerial survey results prior to 2015 from our analysis. The figures in chapter 3 of the SSA report include the annual results from aerial survey efforts since 2012 when the surveys began, and this information was fully considered as part of our decision.

Comment 75: One commenter stated that Garton et al. (2016) concluded that populations are unlikely to fall below critical thresholds in the next 30 years, and that Hagen et al. 2017 concluded that the lesser prairie-chicken now occupies areas in northern Kansas that previously did not support the lesser prairie-chicken. The commenter concluded that these studies indicate that the species is healthy and that the Service must therefore revise the SSA.

Our response: Garton et al. (2016) used data collected through 2012, but Hagen et al. 2017 has since been updated to include data collected through 2016 and is included in the SSA report. The documented occupancy of areas that previously supported very limited numbers of lesser prairie-chicken in the Short-Grass/CRP Ecoregion was fully discussed in the SSA report, included in our analysis, and fully considered as part of our determination. We have concluded that the best available science does not support the commenter's assertion that the species is healthy, and we are finalizing the proposal to list the species under the Act.

Comment 76: Multiple commenters noted that since 2013 the number of estimated leks included as part of the aerial survey report has nearly doubled. The commenters stated that the Service must revise the SSA report to include this information.

Our response: The abundance estimates included in the aerial survey report are a function of the estimated number of leks and the average number of birds per lek. The number of estimated leks will fluctuate annually depending upon precipitation. The inclusion of this metric in the SSA would not be a metric that would further inform our decision with regard to the status of the species under the Act because it does not accurately reflect the population health of the species.

Comment 77: One commenter stated that the Shinnery Oak Ecoregion historically had lower populations as compared to other ecoregions because it contained less preferable habitat, and when analyzing population trends the Service should use the 2012 aerial survey results as our baseline for this ecoregion to determine if populations have declines.

Our response: The best available science indicates that the Shinnery Oak Ecoregion did not historically have lower population estimates as compared to other ecoregions. Estimates for the Shinnery Oak Ecoregion included in the SSA report show that in the mid-1980s there were an estimated 20,000 males (40,000 total birds if one assumes a 1:1 sex ratio) in this ecoregion. For comparison purposes, the Short-Grass/CRP Ecoregion, which now supports the largest population of lesser prairie-chickens, historically supported few, if any, lesser prairie-chickens. The SSA report provides a detailed summary of the best available scientific information with regard to habitat preferences by the lesser prairie-chicken in each ecoregion and provides a summary of the best available information related to population abundance per ecoregion. As discussed in response to Comments 17 and 18, the best available science does not support evaluating population status based upon annual fluctuations or short-term trends.

Comment 78: One commenter discussed the 50/500 rule introduced by Franklin (1980) and noted that the effective population sizes of the lesser prairie-chicken both rangewide and in each specific ecoregion are unlikely to fall below 50 or 500 individuals and thus the data indicate that current populations of lesser prairie-chicken are more than sufficient to perpetuate the species.

Our response: We note that the 50/500 rule is a general rule and should not be conflated with meeting the definition of a threatened or endangered species under the Act. The 50/500 rule is a theory that states that any population with an effective breeding size of less than 50 is at immediate risk of extinction purely due to demographic fluctuations, which occur in all populations. The theory also outlines that populations of less than 500 are at long-term risk of extinction due to loss of genetic variation resulting in loss of ability to respond to environmental variation. It is also important to note that many authors have questioned whether 500 individuals is adequate to prevent loss of genetic variation. For example, Lande (1995, entire), suggested that populations of less than 5,000 individuals would be subject to loss of genetic variation and increased risk of extinction. There is no single minimum population size number for all taxa, and extinction risk depends on a complex interaction between life-history strategies, environmental context, and threat (Flather et al. 2011, entire). As referenced in the SSA report, the data and methodology used Hagen et al. (2017) to both calculate population abundance estimates in the past as well as to project future populations and extinction risks has limitations. A key limitation associated with this study is that the analysis was based only on simulating demographic variability of populations and did not incorporate changing environmental conditions related to habitat or climate. We consider all of the context presented with each study, and we make our listing determination based on all factors evaluated.

Comment 79: One comment stated that the Service should not be considering the lesser prairie-chicken for listing as the Service has analyzed listing for nearly two decades and found the species to be not warranted for listing in the past despite previous populations being lower than current numbers.

Our response: Beginning in 1998, we annually determined that the species warranted listing but was precluded by higher priority actions until 2012, when we proposed the lesser prairie-chicken for listing. On April 10, 2014, we published a final rule listing the lesser prairie-chicken as a threatened species under the Act (79 FR 19974) and concurrently published a final 4(d) rule for the lesser prairie-chicken (79 FR 20073). However, on September 1, 2015, the final listing rule for the lesser prairie-chicken was vacated by the United States District Court for the Western District of Texas, which also mooted the final 4(d) rule. We received a new petition to list in 2016 and on November 30, 2016, we published a substantial 90-day finding (81 FR 86315) and have been evaluating the status of the species since that time. Please see the Previous Federal Actions section of the proposed listing rule for more details on the listing history of the lesser prairie-chicken (86 FR 29432, June 1, 2021). Regardless, any past decisions regarding the status of the species do not have any impact on the current decision. This listing determination is made based on the best available information.

Comment 80: One commenter stated that based upon current estimates from the aerial survey efforts, population abundance is similar to levels observed in 2003 and the 1960s.

Our response: As discussed in our response to Comment 62, the SSA report and our determination used the best available scientific information regarding past, current, and likely future population trends for the lesser prairie-chicken. As with any science, there are limitations with this information and any interpretations of those data must be made with those limitations in mind. One specific limitation associated with the population reconstruction data is that survey effort used to estimate population abundance in 1960 was very limited, and it was not until approximately 1970 that survey effort increased. In 1964 those data estimated approximately 50,000 males (100,000 total birds if a 1:1 sex ratio), by 1967 estimates were greater than 100,000 males (200,000 total birds if assume 1:1 sex ratio is assumed), and in the early 2000s there were greater than 50,000 males (100,000 total birds if a 1:1 sex ration is assumed). Current aerial survey estimates indicate the 5-year average range-wide population of 32,210 total birds. The best available scientific information does not support the statement that lesser prairie-chicken

population abundance is similar today to what was estimated for the 1960s and 2003.

Comment 81: Multiple commenters discussed the methodology used in the Garton et al. (2016) and Hagen et al. (2017) population reconstruction effort. They stated that this information is incomplete and misleading due to concerns with the methodology and lack of availability of underlying data. Additionally, multiple commenters noted that the population reconstruction estimates provided by Hagen et al. 2017 for the years of 1963–1969 indicate a rapid population increase and that precipitation patterns for those same periods show drought conditions. The commenters concluded that this estimate would indicate that the population data in that data set are not reliable.

Our response: As discussed in our response to Comment 30, we must make listing determinations based upon the best available scientific data. Additionally, as discussed in response to Comment 61, the SSA and this final rule used the best available scientific information regarding past, current, and likely future population trends for the lesser prairie-chicken. As with any scientific analysis, there are limitations with this information and any interpretations of those data must be made with those limitations in mind. While the data and methodology used to produce the population reconstruction estimates provided by Garton et al. (2016) and Hagen et al. (2017) certainly have limitations, they still represent the best available scientific information regarding past population estimates. Within the SSA report, we explicitly identify these limitations by noting, ''The Service has identified concerns in the past with some of the methodologies and assumptions made in this analysis which largely still remain,'' and the challenges of these data are noted in Cummings et al. (2017, pp. 29–30) and Zavaleta and Haukos (2013, p. 545). While these concerns remain, including the very low sample sizes particularly in the 1960s, Garton et al. (2016) and Hagen et al. (2017) represent the only attempts to compile the extensive historical ground lek count data collected by State agencies to estimate rangewide population sizes. We fully considered these limitations within our evaluation and this final rule.

Comment 82: Two commenters suggested that the Service should combine survey data from the various methodologies and data sets used to estimate population abundances in the period 1995–2020 to analyze trends for the Shinnery Oak Ecoregion.

Our response: As discussed in response to Comment 61, the SSA report and our determination used the best available scientific information regarding past, current, and likely future population trends for the lesser prairie-chicken. As with any scientific analysis, there are limitations associated with these data. While these studies represent the best available data for those timeframes, each methodology contains assumptions and limitations specific to that specific study and thus it is not appropriate to combine estimates from across methodologies into one graphic or table. When evaluating populations, we use these data only to compare trends. These trends consistently reveal declining populations.

Comment 83: Three commenters provided their own population projections based upon their assumption that a percentage of habitat loss would result in an equivalent decrease in populations. They both concluded that the lesser prairie-chicken would fall below the critical thresholds of 50 or 500.

Our response: As discussed in our response to Comment 1, there is not scientific support to indicate that a loss of a certain percentage of habitat would result in an equivalent loss of that same percentage of the population. While we agree that there is a direct relationship between habitat availability and population trends, the location of additional habitat losses or gains will dictate the magnitude of population response to those changes. Thus, while we can conclude there is a direct relationship between population trends and habitat availability, we cannot conclude that a given percent reduction of habitat will result in a given percent reduction in population abundance. Additionally, as discussed in our response to Comment 78, it is important to note that the 50/500 rule is a general rule that was intended to project future risk of populations falling below a certain level. This concept should not be conflated with meeting the definition of a threatened or endangered species under the Act.

Comments on Conservation Efforts

Comment 84: One commenter stated that, instead of listing, the Service should work with USDA to get wildlife food plots included as a part of CRP, as this effort would benefit the lesser prairie-chicken.

Our response: The CRP already provides substantial benefits to the lesser prairie-chicken as outlined throughout the SSA report. We are not aware of any evidence that inclusion of wildlife food plots as part of CRP would result in additional conservation benefits for the lesser prairie-chicken, nor did the commenter provide any data to support this suggestion.

Comment 85: Multiple commenters stated that the Service did not consider conservation efforts as required by PECE (our policy for evaluation of conservation efforts when making listing decisions). They stated that we did not conduct a rigorous analysis of conservation efforts as required by PECE of each conservation effort and thus that we had not given adequate consideration or weight to those existing efforts. Commenters also noted that we did perform a PECE analysis for the existing conservation banks.

Our response: PECE is inapplicable in this situation because the purpose of PECE (68 FR 15100, March 28, 2003) is to ensure consistent and adequate evaluation of recently formalized conservation efforts when making listing decisions. The policy provides guidance on how to evaluate conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness. The evaluation focuses on the certainty that the conservation efforts will be implemented and the certainty of effectiveness of the conservation efforts. The policy presents nine criteria for evaluating the certainty of implementation and six criteria for evaluating the certainty of effectiveness for conservation efforts. The result of a PECE analysis is that either there is adequate certainty that the new effort can be considered in the listing determination or there is not adequate certainty that the effort will be implemented and effective and thus it should not be considered.

The conservation efforts cited are ongoing (not new) and have a track record of implementation and effectiveness. Because these have already been in place and have a track record regarding effectiveness, we did not conduct a PECE analysis. Rather, the current and projected future effects of these conservation measures are fully included in our SSA. Because these conservation measures were fully considered within the SSA, they are also fully incorporated into the resulting listing determination. Therefore, separate analyses for these efforts are not needed under PECE.

Comment 86: One commenter stated that, in addition to the existing conservation efforts currently in place, other programs that have not been given an opportunity to operate can further encourage and enhance lesser prairie-chicken conservation efforts. Programs

such as the Stakeholder Conservation Plan that was developed by a coalition of oil and gas, agriculture, and environmental groups have not been given the opportunity to be introduced to landowners.

Our response: We are not aware of any other conservation efforts that are reasonably certain to occur and have beneficial impacts to the species. Specifically, the Stakeholder Conservation Plan is not a formalized plan or effort. This strategy was being developed for the purposes of seeking a section 10(a)(1)(B) permit under the Act. The strategy has not yet been finalized and thus is not considered in our analysis.

Comment 87: Multiple commenters noted deficiencies and corrections that are needed to the Range-Wide Conservation Plan for the Lesser Prairie-Chicken administered by the Western Association of Fish and Wildlife Agencies. Some commenters simply noted their concerns while others noted that the Service should not rely upon the plan while making determinations around the status or 4(d) rule.

Our response: While we fully incorporated the current and likely future conservation benefits being provided by the Range-Wide Conservation Plan for the Lesser Prairie-Chicken, we acknowledge the uncertainties associated with the plan and the potential effects of those uncertainties on the current and likely future benefits within the SSA report. These uncertainties were considered as part of the listing determination.

Comment 88: Two commenters stated that listing the lesser prairie-chicken would not provide any additional conservation for the species beyond what already exists.

Our response: The Act requires the Service to make a listing determination using the best available scientific and commercial data after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation to protect such species. Listing of the lesser prairie-chicken will result in significant new conservation for the species. The prohibitions outlined in this listing rule will now provide additional protections for the lesser prairie-chicken and its habitat beyond what is already outlined within the existing regulatory mechanisms section of the SSA report and this rule. Additionally, 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, in the Available Conservation Measures section of this document.

Voluntary programs, such as the Service's Partners for Fish and Wildlife program and the Natural Resources Conservation Service's Farm Bill programs offer opportunities for private landowners to enroll their lands and receive cost-sharing and planning assistance to reach their management goals while providing take coverage. The recovery of endangered and threatened species to the point that they are no longer in danger of extinction now or in the future is the ultimate objective of the Act, and the Service recognizes the vital importance of voluntary, nonregulatory conservation measures that provide incentives for landowners in achieving that objective. We are committed to working with landowners to conserve this species and develop workable solutions.

Comment 89: One commenter cited a report generated by Defenders of Wildlife, which estimated the amount of habitat lost since the 2015 court decision that removed the protections of the Act for the lesser prairie-chicken, and stated that this is evidence that conservation efforts have not adequately protected the species.

Our response: We are aware of the report and cited it in our SSA report. Pursuant to the requirements of the Act, we used the best available information to complete a thorough analysis of existing impacts and existing conservation efforts, and we considered the likely future implications of impacts and conservation efforts on the lesser prairie-chicken. The Defenders report includes some limitations; for example, much of their analysis areas falls outside of the lesser prairie-chicken estimated range (Defenders of Wildlife 2020, entire). Thus, it is not directly comparable to our analysis of habitat loss.

Comment 90: One commenter stated that NRCS and FSA did not provide formal comments on the SSA report and noted that NRCS and FSA could have provided input to inform the conservation projections included in the SSA.

Our response: We provided the opportunity for Federal partners delivering conservation programs benefiting the lesser prairie-chicken and the State wildlife agencies an opportunity to review the draft SSA report. While neither NRCS nor FSA provided comments related to the SSA report during the public comment period, the agencies did previously provide input that was used to inform the conservation projections in the SSA analysis. Specifically, while characterizing the past, current, and likely future benefits of the programs administered by NRCS and FSA, we worked directly with staff from both agencies. Employees from both agencies first assisted us by providing the detailed information presented in chapter 3 of the SSA report regarding past and current benefits of their programs. Next, they assisted the Service in detailing the assumptions around the likely future benefits of the programs by providing the Service with program-specific information and discussing the likely future expected benefits of those programs.

Comment 91: One commenter asked how much long-term conservation has been achieved, how effective that conservation has been, and how much more is needed to achieve recovery.

Our response: We detail all conservation efforts within chapter 3 of the SSA report, including long-term conservation, for the lesser prairie-chicken. After a final listing determination, the Service will begin the recovery planning process where we identify conservation goals that could lead to either downlisting or delisting.

Comment 92: One commenter stated that our assumption around no net change in acreage under CRP fails to take into account the number of new acres of CRP that will likely convert cropland to grassland as a result of increased CRP payments under E.O. 14008 section 216.

Our response: From discussions with conservation partners within the range of the lesser prairie-chicken, the increase in rental payment included under E.O. 14008 will simply prevent declines in program participation, not result in increased acreage within the range of the lesser prairie-chicken. We do not expect that E.O. 14008 would result in increased participation over the next 25 years to a level that would impact our assumptions around no net change in future CRP acreage within the range of the lesser prairie-chicken.

Comment 93: Multiple commenters stated that the Service did not fully

consider conservation efforts designed for industry enrollment. Specifically, comments noted that one of the key principles of agreements such as the Range-Wide Conservation Plan for the Lesser Prairie-Chicken and the associated oil and gas CCAA is to create financial incentives to minimize impacts to the species by minimizing new acreage impacted through co-location of development.

Our response: We fully considered efforts to co-locate impacts from conservation efforts designed for industry enrollment and specifically the industry enrollment in the efforts administered by WAFWA. We accomplished this by including assumptions, detailed below, which were informed by analyses conducted by WAFWA, within our analysis projecting the future effects of oil and gas development within the SSA report. For details on this, please see appendix C of the SSA report (Service 2022). After projecting the number of new wells that will be drilled per ecoregion that would impact potentially usable space for the lesser prairie-chicken, we then converted the number of wells to the number of acres that will be impacted by those wells. To calculate the actual estimated impacts, we begin with 69.9 ac (28.3 ha) per well, which is the area of a circle with a 984-ft (300-m) radius, which we concluded for this analysis is the impact of an individual well on the lesser prairie-chicken. We then estimated how much of the area for each well is likely to be already impacted by existing features. WAFWA estimated that, on average, new wells mitigated through their mitigation strategy overlapped existing features by 56.7 percent. Additionally, WAFWA had previously estimated that, prior to the range-wide conservation plan implementation, wells overlapped existing features by 42 percent. In February 2019, WAFWA also estimated that approximately 25 percent of wells drilled within the range of the lesser prairie-chicken were being mitigated for under their mitigation strategy in 2017. Based on that information, we concluded that 25 percent of new wells would have an overlap of 56.7 percent with existing infrastructure, and 75 percent of new wells would have an overlap of 42 percent. Using the weighted average, we estimated that, when overlap is considered, each new well would impact 38 acres. We fully incorporated the efforts to co-locate infrastructure while projecting the likely future impacts of oil and gas development within the SSA report and thus we fully considered those efforts in our decision.

Comment 94: Multiple commenters stated that we did not fully consider that the CHAT (crucial habitat assessment tool) categories that were included under the Range-Wide Plan implemented as part of the oil and gas CCAA administered by WAFWA have created avoidance of those priority conservation areas and that industry is avoiding high-quality habitat.

Our response: The best available information that we have does not indicate that the Range-Wide Plan and the associated oil and gas CCAA have resulted in industry avoiding higher quality lesser prairie-chicken habitat and placing wells in spaces of less value to the lesser prairie-chicken. To evaluate this assertion, a comprehensive analysis is needed of wells being processed under the mitigation framework and also those wells for which companies are choosing not to mitigate. WAFWA provided a snapshot of this scenario when they analyzed all the wells drilled in the range of the lesser prairie-chicken in 2017 and provided a summary of their findings to the Advisory Committee of the RWP in February of 2019. This analysis indicated that a total of 656 wells were drilled across the lesser prairie-chicken range in 2017. Of those, 308 were drilled by companies enrolled in the rangewide plan or CCAA, and the remaining 348 wells were drilled by companies not participating in those agreements. Of those 308 wells drilled by participating companies, only 161, or less than 25 percent of the total number of drilled wells, were enrolled in the mitigation program. This information, while limited in its scope, represents the best available information regarding this issue, and we fully considered it in making our determination.

WAFWA also produced a habitat quality index, which combined the habitat quality and the CHAT category, and found that wells that were drilled by participating companies that were not mitigated for had a higher habitat quality index, which would have resulted in increased mitigation costs as compared to wells that the same enrolled companies did mitigate. Based upon this finding, WAFWA concludes, ''Oil and gas companies appear to be making a conscious choice to avoid mitigating for wells in higher quality habitat,'' and ''Wells drilled by participants that were not mitigated under the plan had the highest habitat quality and per well mitigation costs'' (WAFWA 2019, unpaginated). While there are financial incentives to minimize impacts on wells mitigated for going through the mitigation framework, there is no evidence to support the assertions that the industry is completely avoiding high-priority CHAT areas or areas with higher habitat quality.

Comment 95: One comment stated that having two DPSs will reverse the gains that have been made by the WAFWA CCAA to work on increased dispersal between and amongst ecoregions using focal areas and connectivity zones.

Our response: The CCAA covering oil and gas development administered by WAFWA adopted a mitigation framework outlined in the Range-wide Conservation Plan for the Lesser Prairie-Chicken, which was also developed by WAFWA. While this mitigation strategy incorporates focal areas and connectivity zones, it is important to note that there are no focal areas or connectivity zones connecting the Southern DPS (Shinnery Oak Ecoregion) to the Northern DPS (Mixed-Grass, Sand Sagebrush, and Short-Grass/CRP Ecoregions). Through this effort, there has been no attempt at reestablishing dispersal between the Shinnery Oak Ecoregion and the rest of the range and thus there have been no gains that would be reversed.

Comment 96: One comment stated we ignored conservation efforts by private entities. In regard to the removal of infrastructure by private entities, the commenter notes that we stated we do not have data but points out that we did project future well drilling based upon past rates.

Our response: We only project restoration efforts for the removal of energy infrastructure occurring through the identified entities delivering conservation. We acknowledge that some removal of infrastructure likely occurs outside of the entities identified, but no data exist to provide an estimate specific to the likely future efforts on lesser prairie-chicken usable area within our analysis area. As accurately noted in the comment, we were able to project future drilling of oil and gas wells but we did not project future removal of infrastructure. Data are available to evaluate past trends and rates with regard to drilling of new oil and gas wells, and thus we were able to evaluate those data and project future development. However, no data are available to evaluate past trends and rates with regard to voluntary removal of infrastructure across our analysis area, and the commenter provides no data or source of information that could further inform our analysis, so we have no basis to project future rates of removal. This situation was explicitly

acknowledged in our SSA report and was fully considered while making our listing determination.

Comment 97: One comment stated that the Service failed to quantify or estimate the positive effect the cessation of hunting had on the population.

Our response: As described in the SSA report, the lesser prairie-chicken has not been hunted since 1973 in Colorado, 1996 in New Mexico, 1998 in Oklahoma, 2009 in Texas, and 2014 in Kansas. The positive benefits of the cessation of hunting restrictions are already reflected in the current condition status of the species, and we do not expect any additional benefits to arise.

Comment 98: One comment stated that the Service dismissed existing efforts and the proposed rule provides insight that conservation efforts are not worthwhile because they are ''targeted toward voluntary, incentive-based actions in cooperation with private landowners'' and that the ''level of future voluntary participation in these programs can be highly variable depending on available funding opportunities for other revenue sources, and many other circumstances.''

Our response: The quoted statements were included in the SSA report and the proposed rule to acknowledge the uncertainty associated with projecting the likely future benefit of conservation actions. It is because of this uncertainty that we project a range of plausible outcomes (low, medium, and high projections for each conservation effort). This uncertainty is important for the Service to consider while evaluating the status of the species as well as making a listing determination. These statements in the SSA do not imply that these efforts are not worthwhile or beneficial.

Comment 99: One comment stated that the Service failed to consider the Service's Land-Based Wind Energy Guidelines (LWEG) as a conservation effort and its effects on how wind energy development impacts the lesser prairie-chicken.

Our response: Our analysis of current condition accounts for all existing wind energy developments in and adjacent to the lesser prairie-chicken range. These include wind developments that were constructed before and after the creation of the LWEG. The extent of avoidance of impacts to lesser prairie-chickens from proactive conservation and subsequent use of the LWEG by wind energy developers is reflected in the degree of impacts identified in the current condition. The SSA fully analyzed and considered these efforts within our analysis of the current condition in chapter 3 of the SSA report as we evaluated the actual effects of constructed projects. For future impacts, we projected acres of future development based upon past rates and realized impacts of past development and thus we have incorporated any realized minimization resulting from voluntary siting considerations (including the LWEG) on the lesser prairie-chicken.

Comment 100: One commenter stated that the renewable energy industry has addressed lesser prairie-chicken conservation through voluntary research and mitigation. The commenter stated that these efforts support reducing ongoing and future threats to the species, thereby obviating the need for listing.

Our response: A variety of conservation efforts have considered impacts to the lesser prairie-chicken. We note that while funding for research can advance the understanding of impacts to the species, it does not necessarily result in conserving the species. Within the SSA report, our analysis indicates that, despite conservation efforts, the lesser prairie-chicken has experienced habitat loss and fragmentation that has negatively impacted viability of the species. Additionally, our analysis indicated that despite the level of conservation efforts in the future, habitat loss and fragmentation is expected to outpace habitat restoration efforts, resulting in further decreases in viability. As discussed in the SSA report, additional threats to the lesser prairie-chicken will further impact the species' status.

Comment 101: One commenter stated that, to allow for independent evaluation of program effectiveness to inform the conservation status of the species, spatial data for mitigation areas for programs like the RWP needs to be publicly available.

Our response: The spatial data associated with mitigation areas within programs like the RWP and the associated Oil and Gas CCAA are not publicly available due to privacy concerns of both surface landowners and mineral development companies. Each agreement establishes how data will be managed. The relevant data is summarized, without information identifying specific parcels or mineral interests, to both provide privacy for private landowners and allow an evaluation of the effectiveness of the program. We determined that the data that are publicly available for these programs provide both the public and the Service enough detail to evaluate the program while still protecting privacy concerns of landowners and development companies.

Comment 102: One commenter quoted from the proposed rule that the actual conservation benefit provided to the lesser prairie-chicken by voluntary conservation programs varies greatly and is difficult to summarize because it depends on the location and the specific actions being carried out for each individual agreement. The commenter went on to say that this statement means that voluntary conservation agreements, while possibly helpful for conservation, provide no certainty of success due to their very nature. They stated that there is no secured funding and no guarantee that participants will enroll in programs, and programs may need to be severely modified in order to attract participants.

Our response: We have found voluntary conservation agreements, based upon their track record, are providing conservation benefits for the lesser prairie-chicken, and we have no information to indicate those included in our analysis will not continue to provide benefits. Within the SSA report we state, ''the actual conservation benefit provided to the lesser prairie-chicken by programs varies greatly and is difficult to summarize because it depends on the location and the specific actions being carried out for each individual agreement'' (Service 2022, p. 96). This statement acknowledges that simply a total number of acres where conservation efforts are implemented would not be informative for a biological evaluation of the species. For that reason, we did not provide the total acres of conservation within chapter 4 of the SSA report or this final rule. We believe that the voluntary conservation efforts we discuss in the SSA report and this rule have demonstrated a history of effectiveness and a certainty to remain in place. That is why we incorporated the beneficial results of these efforts into the analysis for the listing determination.

Comment 103: One commenter stated that habitat avoidance by companies enrolled in the New Mexico CCA/CCAA should be considered. The comment also stated that because of the New Mexico CCA/CCAA there has been no loss of habitat to cropland or wind energy development because private landowners have agreed not to implement these land uses.

Our response: The conservation benefits of the New Mexico CCA/CCAA were fully considered within the SSA report and the listing determination. The New Mexico CCA/CCAA does not require avoidance of lesser prairie-chicken habitat by industry participants

but does charge a fee to participants for impacts in areas that may impact the lesser prairie-chicken. These fees are then used to implement conservation actions to benefit the species. We worked with the administrator of the New Mexico CCAA to ensure that we accurately characterized the conservation benefits arising from the program. While landowners enrolled in the CCAA are prohibited from converting lesser prairie-chicken habitat to cropland or wind energy development, this does not mean there has been no additional habitat loss in New Mexico as not all acres of lesser prairie-chicken habitat in New Mexico are enrolled. We are aware of multiple impacts, such as energy development from both wind development and petroleum extraction, which have resulted in additional habitat loss and fragmentation. Additionally, impacts to the lesser prairie-chicken beyond cropland and wind energy development, such as mesquite encroachment, have resulted and will continue to result in habitat loss for the species as discussed in the SSA report.

Comment 104: Two commenters stated that the Service incorrectly discounted the restoration efforts completed by WAFWA within the Sand Shinnery Oak Ecoregion by not counting efforts to chemically suppress sand shinnery oak as restoration efforts.

Our response: We define restoration efforts as activities that convert nonusable area to usable area for the lesser prairie-chicken. We define enhancement efforts as those activities that enhance area that is already habitat for the lesser prairie-chicken; these efforts serve to maintain or increase habitat quality for the lesser prairie-chicken. While evaluating the benefits being provided by WAFWA through the RWP and the associated Oil and Gas CCAA, we did not include efforts to chemically suppress sand shinnery oak as restoration efforts, even though within their annual reports WAFWA terms these actions as restoration. We did not include those acres as restoration because these actions are occurring on acres that are already lesser prairie-chicken habitat and because the purpose of these efforts is to enhance or optimize the quality of existing habitat by manipulating the vegetative composition to reduce the percentage of sand shinnery oak and increase the percentage of grasses and forbs. As a result, we considered these actions as enhancement efforts in the SSA analysis.

Comment 105: One commenter stated that the Oil and Gas CCAA administered by WAFWA has been successful. The comment stated that the July 2019 audit found no conservation deficiencies and that the Service provided no indication that steps should be taken to reduce or eliminate the possibility of listing the lesser prairie-chicken.

Our response: The audit completed in July 2019 found a variety of deficiencies with the program. These deficiencies included concerns regarding financial management, accounting, compliance, and conservation delivery. Since the audit was completed, WAFWA hired a consultant to assist them with evaluating options to address any deficiencies with the CCAA. This process culminated with a report titled ''Range-wide Oil and Gas Candidate Conservation Agreement with Assurances Realignment Phase 1 Findings and Recommendations'' finalized in December 2020. This report reaffirms the deficiencies identified in the 2019 program audit and identifies steps that address those concerns. This report contains a summary of the financial concerns and CCAA compliance concerns associated with the CCAA. Additionally, the Findings and Recommendations report also provides a summary of concerns that the Service identified regarding the effectiveness of the mitigation program and the Service' recommended solutions in section 2.5.2. These concerns are related to the lack of emphasis on restoration efforts, needed increase in the proportion of permanent mitigation required by the program, adjustments needed to the metrics used to quantify impacts and offsets, and adjustments needed to the impact radii assigned to various anthropogenic features. Additionally, within section 3.3 the Findings and Recommendation report states, ''After extensive review, ICF concurs with the four defensibility concerns identified by USFWS staff'' and recommends that WAFWA amend the mitigation framework and adopt the changes recommended by the Service.

Comment 106: One commenter stated that the grazing analysis is incomplete. The comment stated that, within the proposed rule, the Service recognizes that grazing is a dominant land use within the lesser prairie-chicken range; however, the proposed rule states there are no data. The comment points out that the Service has annual reports resulting from two agriculture CCAAs and states that it is wrong for the Service to make the statement that data do not exist to quantify rangewide extent of grazing practices and their effects on habitat.

Our response: Within the SSA report we state, ''while domestic livestock grazing is a dominant land use on untilled range land within the lesser prairie-chicken analysis area, geospatial data do not exist at a scale and resolution necessary to calculate the total amount of livestock grazing that is being managed in a way that results in habitat conditions that are not compatible with the needs of the lesser prairie-chicken'' (Service 2022, p. 39). We have annual reports summarizing the enrollment and actions implemented on enrolled acres for the agricultural CCAAs to assist us in summarizing the conservation benefits provide by these programs, which were included within the SSA report and our determination. We do not have spatially explicit data at the scale and resolution needed to determine which grazed areas possess the vegetative composition and structure necessary to support the lesser prairie-chicken.

Comment 107: One commenter detailed the excess mitigation credits which are currently enrolled through the mitigation framework being administered by the Western Association of Fish and Wildlife Agencies as evidence that the oil and gas industry is committed to the conservation of the lesser prairie-chicken and thus listing is not warranted.

Our response: We are aware that in the past the WAFWA has had excess mitigation credits enrolled through their mitigation framework. Specifically, WAWFA had more conservation acres enrolled than what was needed to offset the impacts realized through their mitigation framework. The conservation benefit provided by these acres providing the excess mitigation were fully evaluated and considered in chapter 3 of the SSA report. The WAFWA recently completed a process to ''right-size'' the mitigation program to ensure that program is financially stable. The end result of this process was a reduction in the amount of excess mitigation enrolled and thus a decrease in the number of enrolled conservation acres reported in the ''Conservation Efforts'' section and section 3.4.1.1 of the SSA report (Service 2022). The unimpacted acres enrolled to provide mitigation decreased from 128,230 acres to a total of 49,717 acres across all five states. This includes 17,000 acres in the mixed grass ecoregion (with 2,708 of those acres under permanent conservation), 17,708 acres in the sand sagebrush ecoregion (with 15,810 of those acres under permanent conservation), 6,036 acres in the short grass ecoregion (with 2,915 of those acres under permanent conservation), and 8,973 acres in the shinnery oak ecoregion (with 1,208 of those acres

under permanent conservation). After fully evaluating and considering the benefits of the conservation programs (this includes the benefits of the excess mitigation as referenced in the comment) we have concluded that the best available science does not support the commenter's assertion that listing is not warranted, and we are finalizing the proposal to list the species under the Act.

Comment 108: One commenter asserted that, due to success of the RWP, the species is now more resilient to drought as evidenced by the relative rates of population decrease during two recent drought periods. Specifically, the comment stated during the drought period from 2012 to 2013 (*i.e.,* before the RWP was in effect), there was a substantial population decline of approximately 47 percent. More recently, in 2019 to 2020, there was another drought period over some of the lesser prairie-chicken range; however, there was much less of a decrease in lesser prairie-chicken populations at approximately 14 percent. The commenter believes this data validates that the conservation strategy is working and the species is now more resilient to stochastic events.

Our response: Within the SSA report, we fully evaluated the benefits being provided by existing conservation efforts, including the Range-Wide Conservation Plan and associated Oil and Gas CCAA, and thus those benefits were fully considered within our decision. The drought occurring from 2019 to 2020 was not as severe or as widespread as the drought from 2012 to 2013, so we do not expect the effect on abundance of lesser prairie-chickens to be as extensive. There is no evidence to support the conclusion that population response to the recent drought was less severe due to the success of the rangewide conservation plan.

Comment 109: One commenter noted a new conservation program that could potentially benefit the lesser prairie-chicken. The Southern Plains Grassland Program through the National Fish and Wildlife Foundation seeks to work closely with nonprofit and government partners and the ranching community to bring important financial and technical resources to address the health and resilience of the grasslands of the Southern Great Plains with plans to make more than $10 million in grants available over the next 5 years.

Our response: We added information about this effort to chapter 3 of the SSA report, but we did not make changes to future projections because no data is available on what actions will be implemented and where those actions will occur. The actual benefits of this program will depend upon what applications are submitted and chosen for funding. This program is a grassland conservation program and not focused solely on the lesser prairie-chicken, and thus projects will focus on all grasslands in the Southern Great Plains (not restricted to lesser prairie-chicken habitat). We acknowledge that the program will likely result in some future benefits to the lesser prairie-chicken and considered this idea while making our listing determination but were not able to quantify the future benefits to the lesser prairie-chicken.

Comment 110: One commenter stated that the Service failed to consider the benefits of the Dunes Sagebrush Lizard Conservation Agreements in Texas and the Nationwide Monarch Butterfly CCAA for Energy and Transportation Lands within our analysis.

Our response: While these conservation programs are being implemented, we do not believe they are providing or will provide conservation for the lesser prairie-chicken such that they will impact the overall viability of the species. While the Dunes Sagebrush Lizard Conservation Agreements in Texas are being implemented in areas that overlap with portions of the historical range of the lesser prairie-chicken, there is no overlap with areas that are currently or have recently been known to be occupied by the lesser prairie-chicken. The Nationwide Monarch Butterfly CCAA for Energy and Transportation Lands largely implements conservation measures to benefit monarch butterflies within the rights-of-way of existing anthropogenic features. As discussed in the SSA report, the lesser prairie-chicken largely avoids areas adjacent to anthropogenic disturbances and these areas are not considered lesser prairie-chicken habitat. Thus, any conservation within these areas would not provide conservation benefits for the lesser prairie-chicken that would affect our analysis related to species viability.

Comments on Lesser Prairie-Chicken Biology and Threats

Comment 111: Multiple commenters noted the increased populations and expanded range of the species in the Short-Grass/CRP Ecoregion and concluded that resilience and adaptability of the species was reflected by the success of this ecoregion.

Our response: We fully evaluated and considered the increase in lesser prairie-chicken populations in the Kansas portion of the Short-Grass/CRP Ecoregion. As discussed in the SSA report, extensive planting of native mixed- and tall-grass plant species starting in the mid-1980s resulted in an increase of suitable habitat for the species and an increase in population abundance. The continued existence of these newly expanded populations is almost exclusively reliant upon continued implementation of voluntary, short-term conservation efforts, primarily CRP. Within our analysis included in the SSA report, we project that habitat in the Short-Grass/CRP Ecoregion and in the Northern DPS will decrease. A review of the best available scientific information indicates that, despite the recent population increases in this one ecoregion, habitat will continue to decrease across the Northern DPS and viability of the lesser prairie-chicken in this area will continue to decrease.

Comment 112: One commenter stated we should have executed more searches for the species in southwest Nebraska.

Our response: We recognize that lesser prairie-chickens have been documented in Nebraska based on specimens collected during the 1920s. Sharpe (1968, pp. 51, 174) considered the occurrence of lesser prairie-chickens in Nebraska to be the result of a short-lived range expansion facilitated by settlement and cultivation of grain crops. We coordinated with the State fish and wildlife agencies related to our analysis area and determined that there is not enough evidence to indicate that areas within Nebraska are occupied by the lesser prairie-chicken; thus, we did not include those areas within our analysis.

Comment 113: One commenter disagreed with our decision to define usable habitat as areas with at least 60 percent potential usable, unimpacted land cover within 1 mile. The commenter asserted that lesser prairie-chickens can carry out their life cycle in areas with a lower percentage of suitable habitat. They quoted several studies (Hagen and Elmore 2016; Ross 2016a; Spencer et al. 2017; Sullins et al. 2018) and concluded that these studies showed that lesser prairie-chickens use areas with less suitable habitat. The commenter also noted that many leks currently containing lesser prairie-chickens fall outside the analysis area defined by these parameters. The commenter concluded that it was inappropriate for the Service to use the 60 percent number to define habitat.

Our response: As identified by many authors (Ross et al. 2016a, entire; Hagen and Elmore 2016, entire; Spencer et al. 2017, entire; Sullins et al. 2019, entire), maintaining grassland in large blocks is vital to conservation of the lesser prairie-chicken. Multiple analyses

support our conclusion that landscapes consisting of greater than 60 percent grassland are required to support lesser prairie-chicken populations.

Appendix B, part 3 of the SSA report provides a comparison of publicly available lek data and the areas that met the 60 percent threshold. This analysis indicates that 90 percent of current leks detected over the previous 5 years occurred on areas that met the 60 percent potential usable habitat within 1 mile. This analysis is not used for specific determinations of habitat suitability. We used this information only as a rough guide to determine if our model captured the majority of known leks. We interpret this information with caution as the lek data have limitations, specifically the fact that the presence of a known lek does not indicate anything about the current condition of the landscape as all leks from the past 5 years are considered active. Additionally, the presence of a lek within the past 5 years does not indicate anything about local population health. For example, lesser prairie-chicken may still be attending a lek site in a highly fragmented landscape, but those populations may be in the midst of long-term declines and no longer be capable of maintaining themselves. This is because lesser prairie-chicken populations will not disappear immediately but instead would see declines over an extended period of time before eventually becoming extirpated.

Comment 114: One commenter asked how the lesser prairie-chicken could be endangered when the Service had stated that only 25,000 ac (10,120 ha) were needed for conservation of the species, and yet we have stated that over a million acres are present across the range of the species.

Our response: Neither the SSA report nor the listing determination state that only 25,000 ac are needed for the conservation of the species. The commenter may be referring to a 2012 white paper that references the need for a minimum of one stronghold per ecoregion that is a minimum of 25,000 ac, has an easement that addresses both surface and subsurface management, and is connected to other strongholds (Service 2012). However, this white paper does not state that only 25,000 ac are needed for the species as a whole, nor does the paper state that conserving this amount would prevent the need to list the species as endangered or threatened. We simply recommended that conservation partners incorporate these concepts into their conservation planning and delivery efforts for the species. We have not established a minimum number of acres needed to conserve the species.

Comment 115: One commenter stated that listing was not warranted because habitat loss has decreased in recent years.

Our response: The comment does not provide any support for this statement, and we are not aware of any analysis that indicates habitat loss has decreased in recent years. Our analysis presented in the SSA report indicates the lesser prairie-chicken has experienced significant habitat loss and fragmentation and the remaining habitat is highly fragmented, which has resulted in decreased species viability. Additionally, we evaluated likely future impacts of habitat loss and conservation efforts on lesser prairie-chicken habitat and concluded that habitat loss is likely to outpace efforts to restore habitat and that we expect the landscape to become more fragmented in the future.

Comment 116: Two commenters asked that we describe what has changed between the 2013 listing decision and the current listing decision, including trends in habitat loss.

Our response: We have conducted a comprehensive analysis of the status of the species that includes new data and new projects on the impact of conservation efforts. This new analysis, captured in the SSA report, includes a comprehensive discussion of trends in habitat loss.

Comment 117: One commenter noted that we had stated that (1) areas containing 20–37 percent cropland negatively affects lesser prairie-chickens, and (2) per our numbers in the proposed listing rule, we reported that 2 percent of the total area in the Sand Sagebrush Ecoregion, 13 percent of the total area in the Mixed-Grass Ecoregion, and 14 percent of the total area in the Shinnery Oak Ecoregion of grassland had been converted to cropland in the analysis area of the lesser prairie-chicken. The commenter concluded that, because all regions had below 20 percent cropland, agriculture should not be a risk in these areas.

Our response: The SSA report summarizes recent studies that have found a response to the gradient of cropland-to-grassland land cover. Specifically, the studies found that abundances of lesser prairie-chicken increased with increasing cropland until a threshold of 10 percent cropland was reached and then abundance declined with increasing cropland cover (Service 2022, pp. 26–27). Also, it is important to note that we did not conclude that conversion of grassland to agriculture on its own is the primary concern for the lesser prairie-chicken but instead we indicate that conversion of grassland to cropland is one of several activities that contribute to habitat loss and fragmentation, which has and will continue to result in decreased viability for populations of lesser prairie-chicken.

Comment 118: Several commenters noted that 2021 was a good rain year, and they expected that the lesser prairie-chicken populations would recover as a result of that rain, and thus the two DPSs should not be listed. Some suggested we needed an additional year of data post-rain, and another requested we conduct a count to monitor population trends post-rain.

Our response: As discussed in previous comments, the Act requires that we use the best available scientific and commercial data when we make decisions to list a species. Although additional years of data will be useful in monitoring the status of the species, the Act does not require us to meet a certain threshold of data before we can list, and it does not require that we produce new science to fill knowledge gaps. We affirm that we have used the best available data to make our listing determination. In addition, as discussed in our response to Comment 17, we should not evaluate the status of the lesser prairie-chicken based upon short-term population trends but instead we focus on long-term population trends tied to habitat availability. One additional year of survey data would not immediately change our overall analysis related to the long-term viability of the species.

Comment 119: One commenter stated that the proposed rule had not provided any information that conversion of lands to agriculture continues to occur, nor did it assess the impact of increased food sources from agricultural crops.

Our response: Within section 4.3.1.1 of the SSA report, we include an extended discussion regarding the future impacts of conversion of grassland to cropland and we explicitly project the likely future impacts of this action to the lesser prairie-chicken.

Comment 120: One commenter asserted that our decision to list both DPSs was based solely on future projections related to habitat loss and that the Service assumed that population trends would decline to historical lows.

Our response: As we detail in the SSA report, long-term population trends for the lesser prairie-chicken that span multiple precipitation cycles are the best measure of population health as they will better reflect the true trajectory of the population. While we do analyze and consider all future impacts and

conservation efforts within the SSA report, we detail that long-term population trends for this species are largely tied to habitat availability and thus analyzing habitat availability is the best index for species viability based upon the best available scientific information. Additionally, as noted in Comment 44 in regard to the Southern DPS, we found that this DPS meets the definition of an endangered species based on our review of its current condition.

Comment 121: Multiple commenters felt the assessment of predation in the proposed rule and the effect on lesser prairie-chicken was understated and inadequate, and research needs to be done into the effect of predation on lesser prairie-chicken or how to ameliorate the threat of predation.

Our response: We reviewed the best available scientific information with regard to predation in the SSA report (Service 2022, p. 43). We conclude that the potential influence of predation on lesser prairie-chicken, beyond natural levels, is primarily tied to habitat quantity and quality; thus, the habitat quantity and quality factors discussed in the SSA report are likely to influence future predation risk for the lesser prairie-chicken. Further discussion is in the Predation section of the SSA report. While additional research could be conducted on all of the threats to the lesser prairie-chicken, as discussed in our response to Comments 30 and 118, we must make listing decisions based solely upon the information available to us at the time of the decision. We cannot wait for additional science to become available.

Comment 122: One commenter disputed the fact that predation from raptors is a threat and mentioned a study stating that only one percent of lesser prairie-chicken mortality was due to raptors; however, they did not specify which study they were referring to. The commenter stated that our conclusion on avian predators as a threat was contrary to that study and to another by Behney et al (2012).

Our response: In the SSA report, we review the best available science, including the Behney et al. (2012) study related to predation and the lesser prairie-chicken, and note that raptor predation is likely not a large influence on the species. It is important to note that 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. As discussed in Regulatory and Analytical Framework, 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). A negative impact on an animal does not need to meet a certain threshold of harm to a species or its habitat in order to be considered a threat, and the mere identification of any threat(s) necessarily mean that the species meets the statutory definition of an endangered species or a threatened species.

The potential influence of predation on lesser prairie-chicken, beyond natural levels, is primarily tied to habitat quality; thus, the factors that we discussed in the SSA report that are likely to influence habitat quality or influence predators in a way that increases predation risk for the lesser prairie-chicken could have an influence on the lesser prairie-chicken in the future. As more thoroughly discussed in section 3.3.2.6 of the SSA report, some level of predation, including by raptors, is natural and would not affect the lesser prairie-chicken at a population level (Service 2022, pp. 43–44). For the lesser prairie-chicken the primary concerns related to predation are associated with increases in raptors associated with anthropogenic disturbances and habitat degradation resulting increased exposure of individual to predators. Within the SSA report, we do not quantify any of the potential future effects associated with predation and simply acknowledge that they could influence the lesser prairie-chicken in the future.

Comment 123: One commenter stated that, because lesser prairie-chicken populations are small and isolated, disease could not be a threat as it could not spread easily.

Our response: Within the SSA report we reviewed the best available science related to disease and concluded that, currently, no information exists to suggest that parasites or diseases play a significant role in the population trends for the lesser prairie-chicken (Service 2022, p. 44).

Comment 124: One commenter asked about a statement in the SSA report that impacts from collision could not be quantified, then mentioned a study that provides some quantification of fence mortality; however, they did not specify which study they meant. The commenter then noted that the impact from collisions was very small.

Our response: The commenter did not provide a specific page number, but they may have been quoting the general statement in the SSA report that there were several factors that could not be quantified as a part of our geospatial model (Service 2022, p. 21). This does not mean that quantitative data do not exist on collision, but that they do not exist on the scale that would allow us to include them in our geospatial model. We concur with the commenter that the impact from fences is likely small and will continue to be small into the future, except for localized effects in areas with high densities of fences (Service 2022, p. 43, 92).

Comment 125: Several commenters stated that cultivated grain seems important for lesser prairie-chicken, and asked if the decline of the species may be related to less available sorghum, milo, and other cultivated grains.

Our response: The role of cultivated grains is considered within chapter 3 of the SSA report. Specifically, grain crops are used by lesser prairie-chickens, but the best available information does not indicate that they are necessary for the species. We found that food is likely rarely limiting for lesser prairie-chickens, and grains are likely used opportunistically and are not necessary for survival. Because cultivated grain crops may have provided increased or more dependable winter food supplies for lesser prairie-chicken (Braun et al. 1994, p. 429), the initial conversion of smaller patches of grassland to cultivation may have been temporarily beneficial to the short-term needs of the species as agricultural practices made grain available as a food source (Rodgers 2016, p. 18). However, as agricultural conversion of native prairie to cropland increased, more recent information suggests that landscapes having greater than 20 to 37 percent cultivated grains may not support stable lesser prairie-chicken populations (Crawford and Bolen 1976a, p. 102). More recently, Ross et al. (2016b, entire) found a response to the gradient of cropland-to-grassland land cover. Specifically, they found abundances of lesser prairie-chicken increased with increasing cropland until a threshold of 10 percent cropland was reached and then abundance declined with increasing cropland cover. While lesser prairie-chicken may forage in agricultural croplands, croplands do not provide for the habitat requirements of the species' life cycle (cover for nesting and thermoregulation), and thus lesser prairie-chickens avoid landscapes dominated by cultivated agriculture, particularly where small grains are not the dominant crop (Crawford and Bolen 1976a, p. 102).

Comment 126: One commenter stated the impact of farming has been overstated in the proposed rule, that little conversion has occurred in recent decades, and in fact, woody vegetation

has much greater projected future impacts.

Our response: Within chapter 3 of the SSA report, we quantify how many acres have been converted from grassland to cropland. We acknowledge in the SSA report that conversion associated with farming was mostly historical in nature and that is no longer occurring at the same rates. While projecting future impacts related to the conversion of grassland to cropland, we conclude that, based upon the best available science, we do not expect conversion to occur at the same rates that were historically witnessed. We project future rates based upon the best available data regarding recent rates of conversion. We also analyzed the impacts of woody vegetation encroachment in our SSA report. Our analysis indicates that while historically impacts from conversion to cropland has outpaced woody vegetation encroachment, overall, the future impacts from woody vegetation encroachment are likely to be greater than future conversion of grassland to cropland.

Comment 127: Multiple commenters asserted that drought and/or climate change are the primary threats impacting the lesser prairie-chicken, and, because there is no way for humans to affect the magnitude and severity of drought, listing the species would not change drought, and therefore the species should not be listed. Additional commenters argued that the Service should focus on various natural threats overall rather than human-caused threats. For example, some stated that the Service should address predation or drought first rather than limiting human activities like oil and gas.

Our response: Within the SSA report and the listing rule, we provide information regarding the implications of both drought and climate change to the lesser prairie-chicken, and we identified habitat loss and fragmentation as the primary threat to the lesser prairie-chicken. As discussed in our responses to Comments 30 and 36, we must make listing determinations solely on the five factors identified in the Act, and on the best scientific and commercial data available. We cannot consider other factors such as whether a species can easily be recovered or the source of threats.

Once the DPSs are listed as endangered or threatened, we then begin the recovery planning process where we fully evaluate what conservation actions are needed to address the threats to each DPS. 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 recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination; see Available Conservation Measures for more details. We will continue to work with our partners and the public throughout the recovery planning process.

Comment 128: Two commenters stated that the Service did not consider the positive effects of climate change on lesser prairie-chickens. They asserted that one of the main food items for lesser prairie-chickens, grasshoppers, do much better in hot, dry weather, and continued that this increase in grasshoppers during drought periods would increase chick survival. They concluded that the Service needs to consider positive effects of climate change with the same rigor as negative ones.

Our response: Chapter 4.3.2 of the SSA report contains a summary of the best available science related to the implications of climate change on the lesser prairie-chicken. The best available scientific information related to drought and lesser prairie-chicken is included throughout the SSA report, and we discuss prolonged and extreme drought in section 3.3.3 of the SSA report. One of the primary points outlined in the SSA report is that in past decades, fragmentation of lesser prairie-chicken habitat was less extensive than it is today, connectivity between occupied areas was more prevalent, and populations were larger, allowing populations to recover more quickly. In other words, lesser prairie-chicken populations were more resilient to the effects of stochastic events such as drought. As lesser prairie-chicken population abundances decline and usable habitat declines and becomes more fragmented, their ability to rebound from prolonged drought is diminished.

Our SSA report further acknowledges that periods with favorable climatic conditions will support times of high reproductive success (Service 2022, p. 91); we fully considered increased incidence of these favorable boom years and other potential favorable effects of climate change (such as increases in grasshopper populations) in examining the status of the species. However, a shift in climatic conditions to more frequent and intense drought cycles is expected to result in more frequent and extreme bust years for the lesser prairie-chicken and fewer boom years. As the frequency and intensity of droughts increase in the Southern Great Plains region, there will be diminishing opportunity for boom years with above-average precipitation. Overall, this may lessen the intensity of boom-and-bust lesser prairie-chicken population cycles in the future (Ross et al. 2018, entire). These changes will reduce the overall resiliency of lesser prairie-chicken populations and exacerbate the effects of habitat loss and fragmentation.

Comment 129: One commenter asked if protections of the Act would extend to parasites and viruses of the lesser prairie-chicken, as they affect the breeding behavior of the species.

Our response: No. This final rule relates solely to the Northern and Southern DPSs of the lesser prairie-chicken, and not to any other species.

Comment 130: One commenter asked if the listing would require sources of collisions, such as fences and power lines, to be removed.

Our response: The prohibitions set forth in section 9 of the Act, and included under our section 4(d) rule for the Northern DPS, would prohibit any individual implementing an action after the effective date of this listing that results in ''take'' of lesser prairie-chickens, as defined in the Act. The installation of features such as fences or powerlines has the potential to impact the species and, in some cases, result in take. Continued operations and maintenance of existing features that the lesser prairie-chicken are known to avoid is unlikely to result in take as the impacts to species primarily occur upon construction. For those features that the lesser prairie-chicken do not avoid, collisions with those features which cause death or injury would meet the definition of ''take.'' In the case where infrastructure is causing take, we will work with operators to reduce such take through section 7 or 10 of the Act.

Comment 131: One commenter noted that the research on noise impacts from wind energy on lesser prairie-chickens is not settled, and that the effects are poorly understood. They urged us not to base the listing of the lesser prairie-chicken on noise impacts.

Our response: We agree that further research on the specific impacts of noise, from wind energy development and other sources, to lesser prairie-chickens would be beneficial. Our discussion of noise as a threat to the lesser prairie-chicken uses information to the extent it is available to acknowledge our consideration of possible impacts. While we analyzed the potential effects of noise on the lesser prairie-chicken, we are not listing based effects of noise on the lesser prairie-chicken.

Comment 132: One commenter referenced a study which stated that, in

past times of changing climate, species had shifted their ranges as a result of changing temperatures. They stated it was likely that the lesser prairie-chicken would continue to move north as climate conditions became unsuitable in their current range and as habitat is destroyed by other factors.

Our response: The commenter did not provide a reference to the specific study quoted; however, it appears to be, ''Glaciation as a migratory switch'' published in Science Advances in 2017 (Zink and Gardner 2017). That study examines the shifting ranges of migratory tropical birds. However, the lesser prairie-chicken is not a migratory or tropical species. Regardless, such shifts in range usually occur over a scale of tens of thousands of years as a species adapts to new habitat types and conditions. Our estimates on the extinction risk of the species indicates that extinction of the species will occur well before the time necessary for a nonmigratory species to adapt to changing conditions. Additionally, were the lesser prairie-chicken to shift north, it would encounter additional land converted for agriculture, which is not suitable habitat for the species.

Comment 133: One commenter argued that the Service overstated the effects of climate change. They provided a graph of forecast rain in the United States that demonstrates that average rain across the country had increased in the period 1901–2020. They then asserted that it was inappropriate to examine climate effects at the ecoregion level.

Our response: In conducting our analysis of the effects of climate change on the lesser prairie-chicken and its habitat, we used data that have been ''downscaled'' to an appropriate regional or local level, as these techniques yield higher resolution projections at a scale typically more appropriate for species analysis than nationwide forecasts. We consider downscaled data, where available, to constitute the best available information concerning a changing climate. Our downscaled analysis using Multimodel systems projects complicated forecasts of future precipitation patterns that we find are more accurate and useful to our assessment than nationwide yearly annual precipitation. We conclude that our approach satisfies the requirement to use the best available scientific data. For our complete analysis of downscaled climate models for the range of the lesser prairie-chicken, please see chapter 4.3.2 of our SSA report (Service 2022).

Comment 134: Two commenters stated that our forecasted climate/drought impacts were speculative and that our findings were speculative, arbitrary, and capricious. They stated that scientific studies could not accurately predict how forecast impacts from climate change (drought, fire, storms) could adversely affect the lesser prairie-chicken such that it would meet the definition of threatened or endangered. They also argued that the Service had based forecasted drought on assumptions rather than evidence, and that we had not defined what the length of an extended drought or its geographical extent would be.

Our response: As discussed in our responses to previous comments, the Act requires that we use the best scientific data available when we make decisions to list a species, and we followed all Service policies and standards on data and information quality in our SSA report and this final rule. In regard to defining the length or extent of a drought, those numbers are indeed uncertain; however, we have presented a thorough assessment of likely future impacts of climate change and likely characteristics of future droughts in chapter 4.3.2 of our SSA report and in our response to Comment 128 above. We acknowledge that there is uncertainty inherent in any future predictions. In light of that uncertainty, we made certain assumptions and provided justification for these assumptions. We conclude that our approach satisfies the requirement to use the best available scientific data. Additionally, climate change is one of many threats currently impacting the lesser prairie-chicken and its habitat causing the DPSs to meet the definition of threatened (Northern DPS) and endangered (Southern DPS).

Comment 135: One commenter argued that the lesser prairie-chicken life cycle is closely tied to drought; they provided information that they state demonstrates that drought is linked to population fluctuations in other grassland bird species. They provided graphs demonstrating the changes in rainfall over time in the contiguous United States alongside graphs showing trends from 1995 through 2015 in grassland bird species, including the lesser prairie-chicken. They concluded that these graphs showed that the lesser prairie-chicken could survive future droughts.

Our response: The best available scientific information related to drought and lesser prairie-chicken is included throughout the SSA report, and we discuss prolonged and extreme drought in section 3.3.3 of the SSA report. One of the primary points outlined in the SSA report is that, in past decades, fragmentation of lesser prairie-chicken habitat was less extensive than it is today, connectivity between occupied areas was more prevalent, and populations were larger, allowing populations to recover more quickly. In other words, lesser prairie-chicken populations were more resilient to the effects of stochastic events such as drought. As lesser prairie-chicken population abundances decline and usable habitat declines and becomes more fragmented, the species' ability to rebound from prolonged drought is diminished.

Comment 136: As further support for their rationale as described in Comments 132, 133, 134, and 135 above that climate change is the primary threat impacting the lesser prairie-chicken, a commenter submitted a graph depicting a regression analysis of the lesser prairie-chicken and January–June rainfall in the Mixed-Grass Ecoregion. They interpret the results of their analysis to be that rainfall explains 25 percent of lesser prairie-chicken population trends. The commenter concluded that this graph shows that there is a definitive link between rain and lesser prairie-chicken population growth.

Our response: As discussed in our responses to Comments 16 and 17 as well as in our SSA report, there is a strong relationship between precipitation patterns and lesser prairie-chicken population trends (Service 2022, p. 48). The model provided by the commenter looks at only one possible driver for lesser prairie-chicken population trends and does not consider the multiple other potential explanatory variables that have been documented in the best available science as impacting the species, and does not provide a full documentation or list of assumptions used in the creation of their analysis. They also do not provide any supporting information for us or others to assess whether the scale of population and weather stations are geographically aligned. Finally, a regression analysis does not show cause and effect relationships. Instead, the regression analysis indicates a correlation between the two variables without any information on causation. Finally, the commenter's conclusion that rainfall explains 25 percent of the response variable (lesser prairie-chicken population fluctuations) is not statistically significant.

Comments Related to the Geospatial Analysis in the SSA Report

Comment 137: Multiple commenters disagreed with impact radii that we applied to anthropogenic features, such as wind turbines and oil wells, within

our spatial analysis to account for the indirect effects of those features. Some comments stated that the lesser prairie-chicken still uses those spaces and so it is not accurate to characterize the areas as habitat loss. Others simply stated we should have used the impact radii used within WAFWA's Range-Wide Plan.

Our response: We analyzed the best available scientific information, which is summarized in chapter 3.3 of the SSA report, to determine the direct and indirect impacts associated with anthropogenic features. For the lesser prairie-chicken, the primary concern is related to avoidance of features. Thus, our determination of impact radii is based upon an evaluation of impacts that result in avoidance of otherwise suitable habitat by the species during all or portions of the life cycle of the species. Many of these features do not result in complete avoidance. Instead, the best available scientific information suggests that the lesser prairie-chicken avoids these features during certain critical periods of their life cycle. While some limited use of portions of areas occurring within these impact radii may occur, these areas no longer have the ability to provide for all the life history needs of the species. As a result, we do not consider these areas to support the full needs of the species in their current state for the purposes of our SSA analysis and listing determination. While multiple commenters stated that they do not agree with the impact radii assigned, they did not provide additional data or studies that were not included in our analysis or did not provide any evidence that we misrepresented those studies. No single study can be used to determine what the appropriate impact radii is; therefore, we analyzed all of the available literature, which is summarized in the SSA report, and determined the impact radii within the context of all of these studies and considering all information and limitations.

Comment 138: Multiple commenters stated the Service did not account for overlap of impact features when calculating the area of habitat affected by impact radii.

Our response: In chapter 3 of the SSA report, when summarizing the acres of impact by individual source we state, "Impacts are not necessarily cumulative because of overlap of some impacted areas by more than one impact source." This method of reporting impacts by individual source is accurate and does not result in double counting. The areas of overlap mean that there are places where multiple features occur on the landscape. Because of the areas of overlap, readers should not add up the acres impacted across all of the sources to get a total area impacted, which is why we do not report total acres impacted from all sources within the current condition impact tables of the SSA report (*e.g.,* table 3.4). In our estimates of total potential usable area, we do not double-count acres of impact. For future condition projections, we documented our methods for estimating rates and amounts of impacts from past data and their application across the low, continuation, and high scenarios in section 4.3 and Appendix C. Within our projections we account for overlap with existing infrastructure and project future impacts only to unimpacted usable space, so these were new non-overlapping impacts. Our estimates for rates and amounts accounted for the overlap from existing data.

Comment 139: Several commenters stated that the Service's geospatial model is flawed and not capable of modeling current lesser prairie-chicken population and habitat status or potential future scenarios on a scale relevant to the Service's listing analysis. Comments specifically noted resolution issues with land cover data sets and questioned our analysis area which defined the spatial extent of our geospatial analysis.

Our response: We used the best available information in our analyses. The geospatial model portion of the SSA report is a transparent application of concepts of conservation biology with the best available commercial and scientific information and a robust discussion of limitations and constraints of the data and model. Commenters did not provide alternative analytical approaches. The LandFire land cover data that was the foundation for the analysis is a 30-meter spatial resolution dataset (*i.e.,* the data comprised cells that measured 30 meters by 30 meters). We used the spatial extent of the EOR as defined by the States and WAFWA's Interstate Working Group as the maximum spatial extent of the analysis. Both of these elements of scale were considered and implemented in a manner that informs the statutory decision by the Service. All information was processed and aggregated as described in appendix B and appendix C of the SSA report, which allowed us to summarize the results by ecoregion and rangewide.

Comment 140: One commenter stated the change from 40 percent to 60 percent potential usable unimpacted land cover within 1 mile as cited between the 2021 SSA report and the 2017 USGS report is not explained and has an outsized effect on the results.

Our response: We discuss the basis for our use of a 60 percent threshold used for our geospatial analysis in the SSA report (3.2 Geospatial Analysis Summary, p. 22, and Appendix B, Part 4. Supplemental Analysis: Frequency Analysis of Usable Area Blocks) to understand the importance of the size of habitat areas and their connectivity to conservation of lesser prairie-chicken. One critical factor requiring us to change from 40 percent potential usable unimpacted land cover within 1 mile to 60 percent is the inclusion of new scientific information (*e.g.,* Ross et al. 2019, entire; Hagen and Elmore 2016, entire; Spencer et al. 2017, entire; Sullins et al. 2019, entire), further emphasizing that larger blocks of habitat are important for conservation of the species. The 40 percent threshold was part of an early analysis for the SSA initiated in 2015. This approach allowed for large landscapes with 40 percent nonusable area due to habitat loss and fragmentation to be considered potentially usable area. The change in threshold was suggested during the review of the SSA report by one of our independent peer reviewers of the earlier version of the SSA report. As a result of our review of the new information, we determined that 60 percent potential usable unimpacted land cover within 1 mile was supported by the best available science and incorporated it into our SSA report.

Comment 141: One commenter stated the unexplained use of the EOR instead of the EOR+10 affects the amount of habitat that could be listed as potentially available for the species by the SSA analysis.

Our response: The EOR+10 for the lesser prairie-chicken originated in WAFWA's Lesser Prairie-Chicken Range-wide Conservation Plan in 2013 (see Covered Area, Van Pelt et al. 2013, p. 26). This was implemented by WAFWA because the exact occupancy of the lesser prairie-chicken is not known. The EOR encompasses approximately 21.8 million acres. The addition of the 10-mile buffer increases the area by approximately 20.5 million acres. Since 2012, WAFWA has been implementing rangewide aerial surveys, in addition to other surveys by participants in the RWP, agency biologists, and conservation partners. The most recent analysis indicates that there are only 13 known leks in the 10-mile buffer area. In contrast, the EOR (without the 10-mile buffer) contains 734 leks in the same time period. The EOR is the primary occupied range of the species, as is shown by WAFWA's survey data. We can no longer support, based on the available survey and

occupancy data, adding an additional 20.5 million acres to the analysis area since there is very little supporting information that the larger extent of the EOR+10 is potential usable area based on a decade of additional survey and conservation work for the species. Our model extent included greater than 98 percent of current known leks for the species. After considering the information above and consulting the State fish and wildlife agencies, we determined that we should use the EOR as our analysis area as it much more accurately represents the area in which lesser prairie chickens are currently found.

Comment 142: One commenter stated the Service's use of one-word descriptors (low, continuation, high) as categorization of future conservation efforts does not meet the best scientific and commercial data available standard.

Our response: In the SSA report, we used categorical descriptors (low, continuation, high) for the modeled range of projected future scenarios. These one-word descriptions were simply used as shorthand to create categories for summarizing the information. The input data that were used to establish the conservation efforts were extensive and developed in close coordination with the entities implementing those conservation efforts. Additionally, the SSA report, which contains the characterization of the future conservation efforts was reviewed by independent peer reviewers as well as our State and Federal conservation partners to ensure accuracy. We provide the full explanation of what each term means (low, continuation, high) within the SSA report (Service 20222, Appendix C). We used the best available data regarding conservation efforts to inform our projections that were included in each category. For a detailed description regarding the data and processed used to project these efforts please see Appendix C of the SSA report.

Comment 143: Several commenters indicated the Service should have used USDA land use data called Cropland Data Layer (CDL) instead of other sources, and the Service's use of data from FSA (2012) was inappropriate to use instead of CDL.

Our response: We used the best available information in our analyses, including within the spatial analysis of the SSA. Multiple land use and land cover datasets were considered for our work, including National Land Cover Database, CDL, and LandFire. While we did not use Cropland Data Layer CDL for our base land cover data, we did use CDL as processed by Lark (2020) to support projections of a range of scenarios of rates and amount of grassland conversion to cropland (see 4.3.1.1 and appendix C). We did not use CDL for the base landcover because of the known error rates associated with the unprocessed non-cropland portions of the classification (see Reitsma et al. 2016) and the CDL accuracy assessment information available from USDA (USDA 2020, entire). The date of the product is not the sole determinant of best available information.

Comments Related to Oil and Gas Development

Comment 144: Multiple commenters stated that the Service overestimated the impacts of oil and gas development because we failed to consider advancements in technology, such as directional drilling, which has resulted in reduced impacts to the lesser prairie-chicken. Specifically, some commenters stated that the Service should have used only data from the years of 2016–2019 to inform assumptions around rates of development because of technological advancements that are currently in place and that reduced surface disturbance but were not being used prior to 2016.

Our response: We agree that there have been technological advancements in oil and gas exploration, development, and extraction. However, we determined that projecting the future oil and gas development based only upon impacts occurring from 2016 through 2019 (as opposed to including the years from 2004 through 2019 as the Service did) would not provide a representative view of likely future development, as the number of new wells drilled annually is not tied only to technology but also to many other variables such as oil prices. During the period of 2016–2019, fewer wells were drilled within the analysis area. However, that fact cannot be attributed only to technological advancements because the price of oil was low during that period. To this point, within our analysis area in the Sand Shinnery Oak Ecoregion in 2016, 2017, and 2018 (after technological advancements) more wells were drilled annually than in 2004 and 2005 (prior to technological advancements) indicating that a variety of factors drive the number of wells drilled each year beyond the technology being employed. While we do not agree that we should have based the projections of the number of new wells drilled each year from past development rates limited to the 2016–2019 timeframe, we did incorporate aspects of development patterns that have resulted in reduced surface disturbance when assuming how many acres per well would be impacted as discussed in appendix C of the SSA report (Service 2022).

Comment 145: One commenter stated that the Service overestimated the impacts from oil and gas development because of the participation from the oil and gas industry in existing conservation plans that require implementation of conservation measures to minimize impacts to the lesser prairie-chicken.

Our response: We did consider the fact that a portion of the wells drilled within the range of the species, are participating in existing conservation agreements and we fully considered the benefits of that participation. Existing conservation efforts primarily implement two types of measures to minimize impacts to the lesser prairie-chicken. First, they implement measures such as noise and timing stipulations meant to reduce disruption to breeding activities. These types of measures were considered in our determination. However, these types of measures, while beneficial to the species, were not shown to decrease habitat loss and fragmentation, the primary threats driving the risk of extinction. Second, some conservation efforts avoid or minimize surface disturbance by co-locating anthropogenic features, which results in fewer acres of habitat loss. We directly incorporated those efforts to reduce surface disturbance into our projections of the future impacts of oil and gas development. Specifically, we reduced the number of new wells being drilled to account for the fact that the majority of these wells are drilled in areas that are not impacting the lesser prairie-chicken. We also factored in that when a well is drilled in an area that may impact the species there are efforts to minimize impacts by co-locating these disturbances with existing impacts, which resulted in an assumption that fewer acres of habitat will be impacted per well. These assumptions are further detailed in appendix C of the SSA report. Thus, we have fully incorporated efforts of industry to minimize impacts of development through participation in existing conservation efforts.

Comment 146: One commenter stated that the Service ignored the benefits of oil and gas development to the lesser prairie-chicken. Specifically, the commenter stated that oil and gas development can create an alternative financial opportunity for landowners, which could reduce the possibility that the landowner would seek other financial interests such as residential or commercial development.

Our response: In this final rule, we fully considered all impacts of threats to the lesser prairie-chicken. Though their impacts on habitat would be different, both oil and gas development and residential development occurring within habitat would cause negative impacts to the species and population declines, and they would both result in incidental take of the species. In regard to the commenter's point about financial opportunities, as discussed in our response to Comment 36, we cannot consider economic impacts when determining whether to list a species. We recognize that the lesser prairie-chicken is found primarily on private lands, and that listing may result in impacts to landowners. We want to continue to encourage land management practices that support the species. Many existing conservation programs provide landowners the opportunity to receive financial assistance to implement conservation measures and provide additional revenue streams. As discussed throughout this comment section and particularly in response to Comment 21, we recognize the need to work collaboratively with private landowners to conserve and recover the lesser prairie-chicken. The recovery of endangered and threatened species to the point that they are no longer in danger of extinction now or in the future is the ultimate objective of the Act, and the Service recognizes the vital importance of voluntary, nonregulatory conservation measures that provide incentives for landowners in achieving that objective. We are committed to working with landowners to conserve this species and develop workable solutions.

Comment 147: One commenter stated that the Service was silent on the conservation efforts employed by BLM in concert with the oil and gas industry.

Our response: We fully considered the impacts of all efforts implemented by BLM, both individually and in concert with the oil and gas industry, within the SSA report and they were fully carried forward to the final listing decision. Within chapter 3 of the SSA report, we discuss the conservation efforts on lands managed by BLM, and we provide even further detail in appendix D to section D.2.2.

Comment 148: Multiple commenters stated that the Service overestimated the impacts of oil and gas development because we failed to account for the temporary nature of the impacts. Specifically, the commenters stated that the impacts were only temporary because the human disturbance associated with oil and gas development largely occurs only during the drilling phase and after that there is very little human presence for the remainder of the life of the well.

Our response: Within chapter 3 of the SSA report we summarize the best available science regarding the impacts of oil and gas development on the lesser prairie-chicken. That science indicates that the primary concern related to oil and gas development is not human presence but instead the direct and indirect impacts that result in habitat loss and fragmentation. The studies that were conducted on lesser prairie-chicken and oil and gas development and documented avoidance were not conducted during the drilling phase but occurred after completion when there was limited human presence (Hunt and Best 2004, pp. 99–104; Pitman et al. 2005, entire; Hagen 2010, entire; Hagen et al. 2011, pp. 69–73; Plumb et al. 2019, pp. 224–227; Sullins et al. 2019, pp. 5–8; Peterson et al. 2020, entire).

Comments Regarding Wind Energy

Comment 149: Several commenters stated that the impact radius applied by the Service to commercial wind energy turbines is unreasonable, overstates impacts to the species, and is unsupported by best available and cited data. In using 1.12 mi (1.8 km), the Service did not use the impact radius recommendation of State wildlife agency biologists of 0.41 mi (667 m). Commenters asserted that the treatment of impacts from wind energy turbines was an unsubstantiated hypothesis based on impacts from other structures (*e.g.,* oil and gas), and the species does not show the degree of avoidance applied in the proposed rule and SSA report. In contrast, several other commenters indicated support for applying a 1.12-mi (1.8-km) impact radii to commercial wind energy turbines, and suggested occupancy by the species be assumed for all areas within 2.98 mi (4.8 km) of current active leks (*i.e.,* within the last 5 years).

Our response: We have reviewed all available information related to prairie grouse and wind energy development. Because there are a limited number of original research projects and associated information on the topic specific to lesser prairie-chickens (Coppes et al. 2020, entire), we have relied on information for other similar prairie grouse species. The results of these studies indicate a range of effects to different aspects of the species (Marques et al. 2021, p. 469). These results range from demonstrating no statistically significant response related to survival to significant indirect effects extending 5 miles (8.05 km), as discussed in the SSA report and this final rule. The findings of relevant studies are not always directly comparable due to different research designs and reported metrics. As discussed in our response to Comment 30, we have made this determination on the basis of the best scientific and commercial data, and in accordance with our information quality standards. As discussed in our response to Comment 137, construction of anthropogenic features results in avoidance of otherwise suitable habitat during all or a portion of the species' life cycle. While some limited use may occur, these areas can no longer support the needs for the species and thus are not considered habitat.

Comment 150: One commenter indicated the Service did not hold all information evaluating grouse and wind energy to the same standards and incorrectly dismissed one paper, while not doing the same thing with other topics and associated citations (*e.g.,* population reconstruction).

Our response: This rule and our SSA report extensively discuss the available information on the topic of the likely impacts of wind energy. All information was evaluated and considered within the context of the cited publication and the Service's ability to evaluate the quality and rigor of the provided data and the corresponding assertions against all available information on the topic. In regard to the paper to which the comment refers (LeBeau et al. 2020), we did not dismiss the paper but presented the results that there is no evidence of: (1) lesser prairie-chicken displacement during multiple seasons and at multiple scales; (2) negative effects on nest survival; and (3) barrier effects to local-scale movements. Survival of lesser prairie-chicken was reported at higher rates closer to the wind turbines. We then discussed the limitations associated with the study, including that significant fragmentation already existed on the landscape prior to wind turbine construction, the study was of short duration (3 years), and there were no pre-construction lesser prairie-chicken data for comparison (Service 2022, p. 32). This example is one of many treatments of similar papers in chapter 3.3.1.3, where we outline results from available scientific information and limitations associated with each study. Overall, this rule and our SSA report acknowledge the limited amount of information directly addressing prairie grouse and wind energy development, and we reviewed all available material in the manner laid out in comment 30.

Comment 151: One commenter stated support for the application of an impact radius for wind turbines and asserted

that this impact should be considered in context of lesser prairie-chicken leks, while asking for prohibition of future developments within 2.98 mi (4.8 km) of current leks.

Our response: To meet the complete habitat needs of the full life cycle of the species, habitat that provides for breeding, feeding, sheltering, and connectivity for movement between these areas is necessary. Areas within 2.98 mi (4.8 km) of leks have been shown to provide the majority of use by the species, but individuals also move between leks across areas of habitat and non-habitat outside of 2.98 mi (4.8 km) from leks (*e.g.,* Peterson et al. 2020, entire). The potential impacts of development in these movement areas requires understanding the site's context and juxtaposition relative to known leks, and other potentially suitable habitat with no documented leks. The prohibitions under the Act will prohibit any take of the lesser prairie-chicken by wind energy development. Regardless, we cannot assume that any wind energy development with 2.98 mi (4.8 km) of current leks would necessarily result in take. We will need to evaluate the site-specific information of the landscape and evaluate the effects of all activities associated with the development for each project to determine if take would occur for a potential wind development activity.

Comments Regarding Overhead Power Lines

Comment 152: Two commenters identified the Service's statements in the preamble to the proposed rule, ''no data were available to quantify the potential independent impacts of distribution lines on habitat loss and fragmentation'' and ''distribution lines are another important source of habitat loss and fragmentation,'' as contradictory and a reason to remove distribution lines as a cause of habitat loss and fragmentation from the assessment of the status of the species.

Our response: Distribution lines have been identified as impacting lesser prairie-chickens and their habitat (resulting in habitat loss and fragmentation) in the scientific literature (see Service 2022, pp. 36–38 for a review of the subject). However, we were unable to incorporate an analysis of this threat within the SSA geospatial model because representative datasets for distribution level power lines do not exist rangewide or are not available to us.

Comment 153: Several commenters stated that the variation in size, classes, and types of power line structures should be assessed differently than the two classes, distribution and transmission, used by the Service and assigned different impact radii.

Our response: The available literature on power lines and prairie grouse and the wide variety in size and structure types used in different classes of power lines on the landscape does not provide sufficient data to create different classes of impact radii. The commenters did not provide new scientific information on power line structures or impact radii for us to consider. In the future, if additional new information becomes available with sufficient distinction in the classes of power lines, we could reevaluate our current impact radii recommendations if appropriate.

Comments on the Significant Portion of the Range Analysis

Comment 154: One commenter stated that the Service should have concluded that the Sand Sagebrush Ecoregion is a significant portion of the range because, without that portion, the rest of the DPS would lose redundancy and representation and would be endangered.

Our response: 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), the courts invalidated the definition of significant that the commenter uses here; that is, making a conclusion about the overall status of the remainder of the range without the portion in question. Therefore, the commenter's suggested method of analyzing the significance of the Sand Sagebrush Ecoregion is not allowed by the courts.

Comment 155: One commenter stated that, in our analysis of significant portion of the range of the Northern DPS, we wrote that the Sand Sagebrush Ecoregion ''may meet the definition of endangered'' and did not come to a conclusion as to whether or not it actually does. The commenter also argued that the Service should have concluded that the Sand Sagebrush Ecoregion met the definition of endangered as a significant portion of the Northern DPS's range. They stated that the ecoregion has a higher concentration of threat from drought, severe storms, incompatible grazing, and effects associated with small population size. They concluded that the Service should conclude that region is endangered, and thus list the entire Northern DPS as endangered.

Our response: Based on this and other public comments, we have expanded our discussion in *Status of the Northern DPS of the Lesser Prairie-Chicken Throughout a Significant Portion of Its Range* to analyze the significance of the Sand Sagebrush Ecoregion. Based on our expanded analysis, we affirm that we did not identify any threats that were concentrated in the Sand Sagebrush Ecoregion that were not at similar levels in the remainder of the range at a biologically meaningful scale, and also that the Sand Sagebrush Ecoregion is not significant to the remainder of the range. We conclude that no portion of the species' range provides a basis for determining that the Northern DPS is in danger of extinction in a significant portion of its range, and we determine that the DPS is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Comments on the Distinct Population Segment Analysis

Comment 156: Multiple commenters stated that, if the same fact pattern was followed for discreteness and significance as for listing of the lesser prairie-chicken, more species would be listed as DPSs. They presented an example of a common species with unique alleles in one population to support their argument.

Our response: As discussed in our response to Comment 30, each listing decision we make must be in accordance with the factors in section 4(a)(1) of the Act, but is also informed by the species' life history and response of the species to the identified threats. Additionally, each DPS analysis must be made based on the elements set out in our 1996 DPS policy. In this instance, as discussed under Distinct Population Segment Evaluation above, we found that both parts of the range are discrete due to being markedly separated from each other based on geographical distance. We also found that they are significant due to differing markedly from each other in their genetic characteristics, and because the loss of either would result in a significant gap in the range. We then determined that the Northern DPS meets the definition of a threatened species, and that the Southern DPS meets the definition of an endangered species. Accordingly, we are finalizing the listing of both DPSs.

Comment 157: Multiple commenters asked why the Service was just now separating the range into DPSs, when previously it had never done so, particularly not in the 2014 rule. One stated that the Service had never before indicated that the species could be divided into DPSs. Another commenter said that there had always been historical population separation and differences in environment. Another

noted that when we received comments in 2012 indicating we should divide the range into DPSs, we rejected that option. They also noted that the 90-day finding did not discuss the DPSs, and only indicated the rangewide entity as the subject of the petition finding.

Our response: In making a 90-day finding, we consider only the information in the petition and information that is readily available, and we evaluate whether that information constitutes substantial information such that a reasonable person conducting an impartial scientific review would conclude that the petitioned action may be warranted. In a 12-month finding, we must complete a thorough status review of the species and evaluate the best scientific and commercial data available to determine whether a petitioned action is warranted. We were petitioned to evaluate whether any DPSs might also warrant listing; we conducted that evaluation and found that the Northern DPS of the lesser prairie-chicken meets the definition of a threatened species and the Southern DPS of the lesser prairie-chicken meets the definition of an endangered species. We have the discretion to propose listing of species and DPS configurations that we find to be the most appropriate application of the Act. These determinations were based on our review of the best available information, updated survey results, and additional genetics information since the 2014 final listing rule.

Comment 158: One commenter asked why the SSA report did not discuss the DPS finding.

Our response: The objective of the SSA is to evaluate the viability of the lesser prairie-chicken based on the best scientific and commercial information available. In conducting this analysis, we took into consideration the likely changes that are happening in the environment—past, current, and future—to help us understand what factors drive the viability of the species. Through the SSA report, we described what the species needs to support viable populations, its current condition in terms of those needs, and its forecasted future condition under plausible future scenarios. The SSA does not make any analysis or conclusions with regard to policy decisions, such as DPS findings. Instead, the SSA report provides the biological information that our decisionmakers can then use to inform those policy decisions. Thus, all of the policy decisions and the rationale for those decisions are contained within the **Federal Register** documents and are not included within the SSA report.

Comment 159: One commenter stated that the Service had not provided enough documentation (additional technical support or record materials) regarding the decision to designate DPSs. The commenter also said they had provided materials (genetic data and legal analyses) regarding the potential for DPS designations in response to the Services 2016 90-day petition finding and they say the Service did not respond to this in our proposed listing rule. The commenter concluded it was inappropriate for the Service to designate DPSs without more documentation. Finally, they stated that the Service did not ask for information related to potential DPSs after our 2016 90-day finding, and that we should have.

Our response: We fully considered all material submitted by commenters from 2014 to the present. In our 90-day finding, we requested information on a number of topics related to the ecology of the species and the threats impacting it. In our DPS finding, we presented only information relevant to the finding itself; that is, we did not analyze legal arguments, as those are outside the scope of the three criteria for determining if a part of a species meets the definition of a Distinct Population Segment.

Comment 160: Several commenters stated that the Service had not properly determined that the two DPSs were discrete. Other commenters asked how a bird species could ever be considered discrete, given their ability to fly, and the recorded movement of lesser prairie-chickens flying long distances. They cited a single report of a bird nesting 35 miles away from a lek, and a study by Berigan (2019) showing long-distance movement of translocated birds. Another noted that Earl et al. (2016) had recorded movements up to 44 mi (71 km). Those commenters concluded that it strains credulity that birds could not and have not crossed the distance between the DPSs. Another commenter asked us to state the information we considered to conclude that there had been no movement; another stated that we had not proven there was no barrier to movement between ecoregions. Another said that we had ignored evidence of gene flow as demonstrated in Oyler-McCance et al. (2016) and others.

Our response: Our DPS policy states that a population may be considered discrete if it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. The policy additionally notes that we do not consider it appropriate to require absolute reproductive isolation as a prerequisite to recognizing a distinct population segment. As the policy states, this would be an impracticably stringent standard, and one that would not be satisfied even by some recognized species that are known to sustain a low frequency of interbreeding with related species.

We acknowledge that movement between ecoregions is possible, and that gene flow does occur between some ecoregions. However, that movement is not frequent or common. For example, though one study did record movements up to 41 mi (71 km), the average net displacement was 9.9 mi (16 km), and more study is needed to understand what landscape features might act as barriers to movement (Earl et al. 2016, p. 10). Additionally, the most recent genetic study found no movement between the ecoregions in the Northern DPS and the Shinnery Oak Ecoregion that makes up the Southern DPS (Oyler-McCance et al. 2016, p. 653). Therefore, based on the best available information, we affirm that the Northern DPS and the Southern DPS are markedly separated from each other, and are therefore discrete under the DPS policy.

Comment 161: One commenter noted that the National Marine Fisheries Service defines significant gap in the range as the loss of a populations between two other populations. The commenter pointed to a 90-day finding for the Iliamna Lake harbor seal (*Phoca vitulina richardii*) that concluded that the petition did not present substantial information that a DPS finding may be warranted because it was not an interstitial population of harbor seals whose loss would isolate another population from the main group. The commenter concluded that, using that logic, the loss of the Shinnery Oak Ecoregion that makes up the Southern DPS would be a range contraction, not a gap in the range.

Another commenter disputed the importance of the statement that the loss of one half of the population would result in a loss in a gap in the range because they believe that could apply to any species. The commenter quoted a response to a public comment in the 1996 DPS policy that used an example of an interstitial population and the importance of gene flow, and concluded from that response that the gap in the range was meant to apply to interstitial populations only. Additionally, one commenter interpreted the DPS policy to state that a population could not be both entirely separate from the remainder of the range and significant to the rangewide entity because there would be no significant gap in its range.

Our response: In regard to the Iliamna Lake harbor seal, the petition finding states that the harbor seal taxon is broadly distributed, ranging from Alaska to the Baja Peninsula, and that the estimated number of seals in Iliamna Lake accounts for roughly 0.1 percent of the total population (Boveng et al. 2016, p. 40; 81 FR 81074, November 17, 2016). The petition finding further quotes Boveng et al. (2016, p. 40): ''Because Iliamna Lake is not a part of the continuous coastal range of the marine population of harbor seals, the loss of the Iliamna Lake segment could not produce a gap in that range, and therefore would not reduce or preclude dispersal between segments of the marine population.'' Thus, the finding regarding the Iliamna Lake harbor seal is not relevant to this DPS finding, as the loss of a small percentage of the harbor seal population also does not amount to a range contraction.

Furthermore, the DPS policy can apply to populations at the edge of a species' range. For example, the northern bog turtle and the western yellow-billed cuckoo were listed as DPSs that were not interstitial populations. Courts have affirmed that it is appropriate for DPS findings to apply to populations on the edge of a species' range, as long as it is a geographic area that amounts to a substantial reduction of a taxon's range (*National Association of Homebuilders* v. *Norton,* 340 F.3d 835, 852 (9th Cir. 2003). Given that the Shinnery Oak Ecoregion makes up 25 percent of the species' range, we consider that its loss would result in a significant gap in the range of the lesser prairie-chicken.

Comment 162: Several commenters stated that the Service had not appropriately used the DPS authority as designated by Congress and the 1996 policy, and stated that the Service had manipulated the policy in order to find that listing the lesser prairie-chicken was warranted. Another commenter stated that using a single study to support a DPS determination was contrary to the instruction to use the DPS policy sparingly.

Our response: Our 1996 DPS policy stated that the application of the policy framework would lead to consistent and sparing exercise of the authority to address DPSs, in accord with congressional instruction. Further, because we are to use the best available information to make all findings, including the finding on the marked genetic differences between the Shinnery Oak Ecoregion and other three ecoregions, at times we may have only one study to inform our decision. In this instance, we used the best available scientific information regarding genetic differences. Specifically, for our DPS determinations within this rule we cite the genetic information provided by Oyler-McCance et al. (2016), which represents the most up to date and complete information on the genetics of the lesser prairie-chicken. While we believe this study represents the best available science, we also considered all other available genetic information for the lesser prairie-chicken (Service 2022, pp. 14–15).

Comment 163: Several commenters argued that the Service has not shown that genetic differences between lesser prairie-chicken DPSs equal differences in physical or behavioral characteristics, or that they result in any adaptive capacity for the birds; one commenter stated that a lesser prairie-chicken in one ecoregion was indistinguishable from a lesser prairie-chicken in another part of the range, and that a lesser prairie-chicken could survive equally well in any ecoregion. These commenters concluded that the Service had not proven the genetic differences were significant.

Our response: The DPS policy states that, for any population segment found to be discrete, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. This consideration may include, but is not limited to, evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. The policy does not require that those genetic characteristics must result in physical or biological differences or any other adaptive capacity. The stated purpose of the DPS policy is to support the Act's goals of conserving genetic resources and maintaining natural systems and biodiversity over a representative portion of their historical occurrence. Our DPS findings for the lesser prairie-chicken are in line with that stated purpose.

Comment 164: Multiple commenters submitted questions about the 2016 Oyler-McCance et al. study on lesser prairie-chicken genetics, which we reference in our DPS determination. Supposed flaws stated by the commenters included that the study: was not intended for use in a DPS analysis; was not meant to be a landscape genetic analysis, had not taken samples from lesser prairie-chickens in Eddy, Chaves, or Lea Counties in New Mexico, had not accounted for long-range dispersals, and was meant only to inform efforts to increase connectivity. One commenter said that one genetic study (Pruett et al. 2011) had shown that genetic variation in the lesser prairie-chicken was mostly explained by geography. Some commenters stated that the study does not prove more genetic variation besides that typically found in metapopulations, and that we had ignored evidence of gene flow and that we did not have information on the timing of when the populations diverged. One commenter noted that the study stated that more data were needed to understand the genetic structure of the lesser prairie-chicken. Commenters noted that any wide-ranging species with isolated populations would have ''marked genetic differences.''

Our response: As discussed in our response to Comment 30, we must use the best available scientific and commercial data to make our findings. Additionally, the DPS policy does not require that a finding be based on a landscape genetic analysis or on time since separation, only that significance can include evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. The Pruett et al. (2011) study did note that lesser prairie-chicken in Oklahoma and New Mexico were genetically differentiated but did not make any conclusions about geography being the cause of the distinctiveness. The 2016 Oyler-McCance et al. study represents the most up-to-date and complete information on the genetics of the lesser prairie-chicken, and found that there was genetic structuring within ecoregions, and that there was limited gene flow between them (Oyler-McCance et al. 2016, p. 657). The study also found that the Shinnery Oak Ecoregion was a genetically distinct population with ''large and significant F_{ST} values'' (Oyler-McCance et al. 2016, p. 653) (F_{ST} values are the proportion of total genetic variance in a population relative to the total genetic variance). Overall, in considering whether a population meets the discreteness criteria in the DPS policy, we consider solely whether it is markedly separate from other populations of the same species, not whether it is genetically distinct in comparison to other species' populations.

Comment 165: Two commenters considered the location of the bounding line between DPSs to be arbitrary. One stated that the location of the line cutting through Texas would make statewide management and private landowner conservation efforts difficult. Another stated that there is not even scientific consensus as to the number of ecoregions supporting the lesser prairie-chicken, or on their boundaries; that

commenter concluded that we should not use ecoregions for DPSs because of that uncertainty. Another commenter said that the ecoregions were designed for conservation and management purposes and should not be used for DPS determinations.

Our response: The ecoregions are used regularly by State management agencies and scientists for management, and we are not aware of any of any alternative ecoregion boundaries being used by experts or management agencies. The designations of these ecoregions were made for the purposes of lesser prairie-chicken management based upon the scientific information. Our placement of the line between the Northern DPS and Southern DPS of the lesser prairie-chicken was not an arbitrary decision. Using the analysis area identified in the SSA report, which represents the best estimate of the species range, we placed the line between the Northern DPS and the Southern DPS at approximately the geographic mid-way point between the southernmost part of the Northern DPS and northeastern most part of the Southern DPS. Within the State of Texas, the areas occupied by the lesser prairie-chicken are already being managed as two different ecoregions as outlined by the Western Association of Fish and Wildlife Agencies. While evaluating the lesser prairie-chicken under our DPS policy, we did not rely solely on the ecoregion boundaries to determine that there were two DPSs. Overall, we used the best available science regarding the lesser prairie-chicken ecoregions and lesser prairie-chicken populations in identifying the boundary between the two DPSs.

Comment 166: Two commenters believed the Service conflated the discussions of significance and discreteness by using the same genetics study for both determinations. One stated we had not fully explained how the genetic evidence translated to them both being significant due to evidence that the population segments differed markedly due to genetic characteristics. They concluded that there was no evidence to prove any genetic differences translated to adaptive capacity.

Our response: We use the best available scientific data for all analysis under the Act, even if that requires use of the same study for multiple determinations related to a species. There is no requirement that separate genetic data be used for discreteness and significance criteria in the DPS policy. As discussed in our response to Comment 164, Oyler-McCance et al. (2016, p. 653) found significant F_{ST} values between the Shinnery Oak Ecoregion and the Northern DPS. This and other genetic evidence demonstrate that the population segments do indeed differ markedly due to genetic characteristics and that they are markedly separate based on genetics; that is, that genetic evidence provides support that the DPSs are both discrete and significant.

Comment 167: Several commenters stated that the methodology used in Oyler-McCance et al. (2016) was not appropriate for determining marked separation. One commenter noted that microsatellite loci have a low likelihood of uncovering recent genetic structure, and that microsatellites often show high variation, particularly in populations that are close to each other. They also said that the loci in the study had not been selected randomly. They concluded that although the study says that the populations are genetically distinct, this does not necessarily translate to them differing markedly due to genetic characteristics in accordance with the DPS policy.

Our response: Microsatellites are commonly used by researchers to examine genetic characteristics of species and populations; in fact, the detection of variation is often suitable for detecting population structure. It is also common in genetic studies for loci not to be selected at random. Additional genetic information would be useful; however, as discussed in our response to Comment 118, we must use the best available science, and we cannot wait for additional studies to be completed. We have evaluated this study and all of the other best available information on genetic data to support our conclusion that the Southern DPS has marked genetic separation from the Northern DPS.

Comment 168: Three commenters stated that the genetic diversity found in Oyler-McCance et al. (2016) is too small, and that the methods are otherwise inappropriate. They say the study found that only 3.4 of total genetic variance is explained by geographic area. The commenters considered that too small of a difference. One of the commenters added that the information could also not be used to support discreteness, as they said that the DPS policy interprets discreteness to mean genetic variation that is identifiable to a certain geographic area. One commenter provided a study that they said showed that the methods used in Oyler-McCance et al. (2016) are too sensitive or too good at finding diversity. The commenter said these differences were contrary to Congress's instruction to use the policy sparingly. The commenters concluded that there was not sufficient evidence that the genetic characteristics were important to the taxon or that the Southern DPS met the criteria for significance.

Our response: It appears that the commenters have misunderstood the F_{ST} value mentioned in Oyler-McCance et al. (2016). F_{ST} values are not percentages and do not simply explain genetic variance by geographic area. Instead they are the proportion of total genetic variance in a population relative to the total genetic variance. High F_{ST} values demonstrate a significant degree of differentiation among populations. It is also important to note that the F_{ST} value is only one of several analyses presented in Oyler-McCance et al. (2016), and that all of the analyses support the Shinnery Oak Ecoregion as being genetically distinct from the remainder of the lesser prairie-chicken range and that genetic evidence provides support that the DPSs are both discrete and significant. Additionally, as discussed in our response to Comment 164, we look solely at whether the population is markedly separate from other populations of the same species, not whether it is genetically distinct in comparison to other species.

Comment 169: One commenter argued that the Sand Sagebrush Ecoregion was discrete from the remainder of the Northern DPS. They stated that the ecoregion is discrete because the Oyler-McCance study shows that the Sand Sagebrush population is distinct from other populations, and because the movement of the birds between the Sand Sagebrush and the Short-Grass/CRP Ecoregions appears to go in only one direction; that is, birds move only out of the Sand Sagebrush Ecoregion. The commenter added that lesser prairie-chickens rarely move far in their lifetime and often stay near their leks and that habitat fragmentation is increasing the isolation of the lesser prairie-chicken in the Sand Sagebrush Ecoregion. Based on those lines of evidence, they concluded that we should consider the Sand Sagebrush Ecoregion to be discrete from other populations of the lesser prairie-chicken.

The commenter further argued that the Sand Sagebrush Ecoregion met the definition of significant under the DPS policy, and that it met the definition of endangered. They concluded that we should list the Sand Sagebrush Ecoregion as a DPS separate from the remainder of the Northern DPS.

Our response: Our 1996 DPS policy states that a population segment of a vertebrate species may be considered discrete if it satisfies either one of the

following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation, or (2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. There are no international boundaries separating any of the ecoregions, so we then consider if the Sand Sagebrush Ecoregion meets the first criterion.

According to the most recent genetic data, studies of neutral markers indicate that, although lesser prairie-chicken from the Sand Sagebrush Ecoregion form a distinct genetic cluster from other ecoregions, they have also likely contributed some individuals to the Short-Grass/CRP Ecoregion through dispersal, and some low levels of ongoing gene flow occurs from the Sand Sagebrush Ecoregion into the Short-Grass/CRP Ecoregion (Oyler-McCance et al. 2016, p. 653). This finding demonstrates that the Sand Sagebrush Ecoregion is not discrete from the Short-Grass/CRP Ecoregion. Therefore, we conclude that the Sand Sagebrush Ecoregion is not discrete as it is not markedly separated due to physical or genetic factors from other lesser prairie-chicken populations as a consequence of physical, physiological, ecological, or behavioral factors.

In regard to the commenter's point about the significance of the Sand Sagebrush Ecoregion, our DPS policy states that we consider significance of a population segment only if it is considered discrete. Because we do not have evidence that the Sand Sagebrush Ecoregion is discrete from the remainder of the Northern DPS, we do not consider if it meets the definition of significance under the policy.

Comment 170: One commenter expressed confusion on how the separation of the species into two DPSs would help improve connectivity between the two areas and added that separating them taxonomically would not improve connectivity either. That commenter and another noted that many conservation efforts had gone toward increasing connectivity between those areas, and that designating separated DPSs would be a barrier toward encouraging connectivity in the future. The commenter concluded that the Service should not divide the lesser prairie-chicken into two taxa.

Our response: Regarding existing effects to connectivity, please see the response to Comment 95. The creation of DPSs is solely a policy consideration, not a biological division. Designating DPSs does not alter or modify existing species taxonomy. Rather, it identifies one or more segments of a population that are discrete from and significant to the taxon as a whole, and that may or may not require protection under the Act. Thus, designation of the species as two DPSs would also not hinder future conservation efforts that could be aimed at encouraging connectivity.

Comment 171: One commenter claimed that the Service was designating DPSs solely because it had detected genetic diversity in the species, which they said was contrary to the stated purpose of the DPS policy to ''concentrate conservation efforts undertaken under the Act on avoiding important losses of genetic diversity.''

Our response: We affirm that our designation of the two DPSs is in alignment with the goals of the DPS policy and the Act to conserving genetic resources and maintaining natural systems and biodiversity over a representative portion of their historic occurrence, and with the Congressional intent to use the policy sparingly. Additionally, we are listing the Northern DPS because it meets the definition of a threatened species and the Southern DPS because it meets the definition of an endangered species.

Comments on the 4(d) Rule

Comment 172: Multiple commenters stated that the 4(d) rule should include provisions allowing incidental take of lesser prairie-chickens as a result of development and operation of oil and gas production, renewable energy facilities, and transmission lines. They argued that, without those provisions, those industries would have no incentive to participate in conservation of the species.

Our response: We do not find that provisions under a 4(d) rule for these sectors would be necessary and advisable for the conservation of the lesser prairie-chicken. These activities have been identified as sources contributing to the primary threat of habitat loss and fragmentation to the lesser prairie-chicken currently and into the future (see the SSA report for further details), and continued unmitigated impacts are likely to result in an additional decline in the status of the species. As a result, these sectors are better addressed through other compliance mechanisms under the Act, such as sections 7 and 10 as appropriate.

Comment 173: Multiple commenters asserted that a provision should be developed in the 4(d) rule that would serve to exempt or ''grandfather'' projects that are pending or otherwise in progress.

Our response: While we recognize that the period following the listing of a species can be challenging with regard to incidental take coverage, we do not find that such a provision would meet the definition of a 4(d) rule that is necessary and advisable for the conservation of the lesser prairie-chicken. The Service is committed to reviewing section 10 permit applications as quickly as possible in conjunction with project proponents.

Comment 174: Two commenters asserted that 5 years was too short for the agricultural provision, and that agricultural practices change more frequently than that. They concluded that the timeframe was too burdensome for farmers, particularly as some lands may not be maintained for more than 5 years for a variety of reasons, including drought or market factors. One commenter asked that we increase the timeframe to 10 years.

Our response: While developing the exception for routine agricultural practices on existing cultivated lands, we recognized the need to define ''existed cultivated lands.'' The intent is to be clear that areas currently in cropland do not possess the vegetative structure and composition necessary to support most life history functions for the lesser prairie-chicken, and, while there may be some very limited use for activities such as opportunistic feeding and lekking, prohibiting take on these areas is not necessary for the conservation of the species. We first looked to the definition of cropland as defined in the CFR but then realized that just because an area was cultivated in the past does not mean that it currently is not lesser prairie-chicken habitat. Thus, we then added a second requirement, that not only does the area meet the definition of cropland but also that it has been tilled within the previous 5 years. For cropland that has gone fallow, we would not expect those areas to reach a successional state that would support the lesser prairie-chicken prior to 5 years. We do not find that a longer period of time, such as 10 years, would be necessary and advisable for the conservation of the lesser prairie-chicken because, after 5 years, fallow lands may have reached a successional state that could support lesser prairie-chickens.

Comment 175: Multiple commenters requested that activities such as new construction in areas that are already

impacted, be excluded from take prohibitions. Other commenters requested that general operations and maintenance as well as emergency operations occurring on existing infrastructure be excluded from take prohibitions.

Our response: We do not find that provisions under a 4(d) rule for activities in areas that are already impacted (this includes the direct and indirect impacts) are necessary and advisable for the species. These activities are taking place in areas that are not suitable habitat for lesser prairie-chicken because the species avoids existing development. As a result, it is unlikely that take of the species would be occurring from these activities. Therefore, no exception from the prohibitions is needed.

Comment 176: Multiple commenters requested that the existing CCAAs be included in the 4(d) rule.

Our response: A provision under a 4(d) rule for an existing CCAA is not necessary as any take associated with activities covered within those agreements would be covered by the associated section 10(a)(1)(A) permit.

Comment 177: Several commenters stated that any projects or project proponents following voluntary conservation measures be covered by the 4(d) rule. Several commenters asked that projects contributing to certain conservation banks and other conservation actions be included in the 4(d) rule. One commenter stated that mitigation measures and proactive conservation be used in place of a 4(d) rule.

Our response: The fact that a project proponent has voluntarily implemented conservation measures or has contributed to a conservation bank is not an indication the voluntary measures implemented will provide benefits that are commensurate with realized impacts to the species. We cannot conclude that project proponents implementing an unknown amount of future impacts and applying undefined conservation measures would be adequate to conserve the lesser prairie-chicken without a structured mechanism in place to allow for an accurate assessment of those impacts and a structured way to determine how to adequately offset those impacts. Thus, we do not find that blanket provisions for these actions under a 4(d) rule are necessary and advisable for the conservation of the species.

Comment 178: Multiple commenters stated that, if surveys do not detect lesser prairie-chicken in an area, then that project should be excepted from take under section 4(d) of the Act.

Our response: Due to the cryptic nature of the lesser prairie-chicken, existing survey efforts have relatively poor detection probabilities and thus negative survey results for the species may not necessarily indicate the absence of the species. We do not advise that project proponents make evaluations of the effects of a project on the lesser prairie-chicken based on survey results. For project proponents needing assistance in evaluating the impacts of their projects, please contact your local Service Field Office. Because of these issues, we do not find that blanket provisions for a project area with a negative survey result under a 4(d) rule are necessary and advisable for the conservation of the species.

Comment 179: Several commenters stated that renewable energy projects should be excepted from take in the 4(d) rule because renewable energy reduces climate change, a major threat to the lesser prairie-chicken, or because renewable energy has lower impacts on the lesser prairie-chicken than other threats. One commenter stated that renewable energy also provides grassland preservation. They concluded that renewable energy was thus necessary and advisable to the conservation of the species.

Our response: We do not find that provisions under a 4(d) rule for these sectors would be necessary and advisable for the conservation of the lesser prairie-chicken. These activities have been identified as sources contributing to the primary threat of habitat loss and fragmentation to the lesser prairie-chicken currently and into the future (see the SSA report for further details), and continued unmitigated impacts are likely to result in an additional decline in the status of the species. As a result, these sectors are better addressed through other ESA compliance mechanisms such as sections 7 and 10, as appropriate.

Comment 180: One commenter asked the Service to clarify the regulatory 4(d) text to include the statement from the preamble that the provision does not include take coverage for any new conversion of grasslands into agriculture. The commenter stated that including that text would improve clarity and avoid confusion.

Our response: We reviewed the 4(d) and regulatory text to ensure clarity around this point and we do not find that adding language to the regulatory text would provide any additional clarity. Along with this final listing determination, we developed answers to frequently asked questions that address conversion of grasslands into agriculture; this document is available on our website at *https://www.fws.gov/lpc* and posted to *https://www.regulations.gov.* This document reemphasizes the fact that the provision of the section 4(d) rule for the Northern DPS does not except from take any new conversion of grassland to cropland.

Comment 181: One commenter stated that the 4(d) rule impermissibly amends the definition of cropland in 7 CFR 718.2 by adding the 5-year requirement. The commenter stated that a rulemaking must take place to amend the definition of cropland.

Our response: We are not amending the definition of cropland in 7 CFR 718.2. The 4(d) rule simply outlines that, to qualify for the exception for routine agricultural practices on existing cultivated lands, the land must not only meet the definition of cropland as defined in 7 CFR 718.2, but the land must also have been tilled within the previous 5 years.

Comment 182: One commenter asked that the 4(d) rule clarify if addition of windmills to the landscape would be excepted from take prohibitions, given that removal of windmills is covered.

Our response: We do not find that a blanket provision allowing an exception of take resulting from the construction of windmills under the 4(d) rule is necessary and advisable for the conservation of the lesser prairie-chicken. Construction of vertical features has been identified as a threat for the lesser prairie-chicken as outlined in the SSA report as they can serve as potential predator perches. Additionally, we note that the removal of windmills is not an excepted activity but rather we determined that no exception in the Northern DPS 4(d) rule is needed because the removal of a windmill would not result in take of the species.

Comment 183: One commenter requested that the Service provide a 4(d) exception for renewable energy facilities that implement the Land-Based Wind Energy Guidelines developed by the Service in 2012.

Our response: The Land-Based Wind Energy Guidelines were not developed to fully mitigate the impacts of wind energy development on the lesser prairie-chicken. Implementation of these guidelines may assist developers to minimize impacts to wildlife while siting projects, but implementation of the guidelines does not indicate that the developer has fully evaluated the extent of their impacts on the lesser prairie-chicken or mitigated for those impacts (habitat loss and fragmentation). The LWEG does not provide species-specific assessment of effects from wind energy developments and therefore does not

provide sufficient information to inform adequacy of mitigation for the lesser prairie-chicken. Thus, we do not find that a blanket provision allowing renewable energy facilities that implement the Land-Based Wind Energy Guidelines under the 4(d) rule is necessary and advisable for the conservation of the lesser prairie-chicken.

Comment 184: One commenter asserted that the proposed 4(d) regulations meant that the Northern DPS and Southern DPS would have the same protections and prohibitions, and that this was inappropriate.

Our response: The two DPSs do not have the same prohibitions. The Available Conservation Measures section below lays out examples of activities that may potentially result in violations of section 9 that are covered under our section 4(d) rule, such as removal of native shrub or herbaceous vegetation. As outlined under our section 4(d) rule, we have crafted three exceptions from the general take prohibitions that were adopted for the Northern DPS. More details on exceptions from prohibitions only applicable to the Northern DPS are laid out in our Provisions of the 4(d) Rule section, below.

Determination of Lesser Prairie-Chicken 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 endangered species or 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 manmade factors affecting its continued existence.

Status of the Southern DPS of the Lesser Prairie-Chicken Throughout All of Its Range

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Southern DPS of the lesser prairie-chicken and its habitat. We analyzed effects associated with habitat degradation, loss, and fragmentation, including conversion of grassland to cropland (Factor A), petroleum production (Factor A), wind energy development and transmission (Factor A), woody vegetation encroachment (Factor A), and roads and electrical distribution lines (Factor A); other factors, such as livestock grazing (Factor A), shrub control and eradication (Factor A), collision mortality from fences (Factor E), predation (Factor C), influence of anthropogenic noise (Factor E), and fire (Factor A); and extreme weather events (Factor E). We also analyzed the effects of existing regulatory mechanisms (Factor D) and ongoing conservation measures. In the SSA report, we also considered three additional threats: hunting and other recreational, educational, and scientific use (Factor B); parasites and diseases (Factor C); and insecticides (Factor E). We consider all of these impacts now in analyzing the status of the Southern DPS.

Over the past several decades, habitat loss, fragmentation, and degradation have resulted in the loss of large areas of the habitat that supports the lesser prairie-chicken in the Southern DPS. Suitable habitat has been lost as grasslands are converted to cropland, and as petroleum and natural gas production and wind energy development have resulted in further loss of habitat. The lesser prairie-chicken is particularly vulnerable to changes on the landscape, as it requires large blocks of suitable habitat to complete its life-history needs. This includes its lek breeding system, which requires males and females to be able to hear and see each other over relatively wide distances, the need for large patches of habitat that include several types of microhabitats, and the behavioral avoidance of vertical structures. In the case of petroleum and wind energy production, the extent of the impact from the threat is not just the original site, but also all roads, power lines, and other infrastructure associated with the sites, and noise associated with those areas that may interfere with communication between male and female birds.

In the Southern DPS, woody vegetation encroachment by honey mesquite has played a significant role in limiting available space for the lesser prairie-chicken and is one of the primary threats to the species in this DPS. Fire, incompatible grazing management, and drought associated with climate change also continue to degrade habitat. The size of fires, especially in areas dominated by woody vegetation, is increasing. When managed compatibly, fire and grazing can improve habitat quality. However, fire management efforts are currently occurring on only a limited portion of the lesser prairie-chicken range.

The Southern DPS is particularly vulnerable to effects associated with climate change and drought, as it is already warmer and drier than it was historically. That warmer and drier trend is expected to continue (Grisham et al. 2013, entire; Grisham et al. 2016c, p. 742). Given the needs of lesser prairie-chicken for cool microclimates to find appropriate nest sites and rear broods, droughts like those that have recently occurred on the landscape could further impact already declining population growth rates in this DPS.

Conservation measures and regulatory mechanisms are acting to reduce the magnitude of threats impacting the lesser prairie-chicken and its habitat. However, our analysis demonstrates that the restoration efforts have not been enough to offset the impacts of habitat loss and fragmentation and conservation efforts focused on localized management to affect habitat quality, are not addressing the overarching limiting factor of habitat loss and fragmentation, and are not addressing the long-term population needs for the lesser prairie-chicken. Thus, these measures are only minimally ameliorating the threats acting throughout the DPS.

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we conclude that the Southern DPS is continuing to experience ongoing habitat loss and fragmentation, and additional threats from influence of anthropogenic noise and extreme weather events, particularly droughts. We have estimated that currently, only 27 percent of this ecoregion is potentially usable habitat for the lesser prairie-chicken. Based on mean population estimates, the Southern DPS has very low resiliency to stochastic events. It may have as few as 5,000 birds remaining. The population counts have dropped to fewer than 1,000 birds in 2015 and 2022 following drought conditions. Under current climactic conditions, another wide-scale severe drought could occur in this ecoregion at any time, and the species may not be able to recover. Overall, the lesser prairie-chickens in the Southern DPS are likely to continue to experience declines in resiliency, redundancy, and genetic representation. Thus, after assessing the best available information,

we determine that the Southern DPS of the lesser prairie-chicken is in danger of extinction throughout all of its range. We find that a threatened species status is not appropriate for the Southern DPS because the magnitude and imminence of the threats acting on the DPS now result in the species meeting the definition of an endangered species.

Status of the Southern DPS of the Lesser Prairie-Chicken 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. We have determined that the Southern DPS of the lesser prairie-chicken is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portions of its range. Because the Southern DPS of the lesser prairie-chicken warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Determination of Status of the Southern DPS of the Lesser Prairie-Chicken

Our review of the best available scientific and commercial information indicates that the Southern DPS of the lesser prairie-chicken meets the definition of an endangered species. Therefore, we are listing the Southern DPS of the lesser prairie-chicken as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Status of the Northern DPS of the Lesser Prairie-Chicken Throughout All of Its Range

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Northern DPS of the lesser prairie-chicken and its habitat. We analyzed effects associated with habitat degradation, loss, and fragmentation, including conversion of grassland to cropland (Factor A), petroleum production (Factor A), wind energy development and transmission (Factor A), woody vegetation encroachment (Factor A), and roads and electrical distribution lines (Factor A); other factors, such as livestock grazing (Factor A), shrub control and eradication (Factor A), collision mortality from fences (Factor E), predation (Factor C), influence of anthropogenic noise (Factor E), and fire (Factor A); and extreme weather events (Factor E). We also analyzed existing regulatory mechanisms (Factor D) and ongoing conservation measures. In the SSA report, we also considered three additional threats: hunting and other recreational, educational, and scientific use (Factor B); parasites and diseases (Factor C); and insecticides (Factor E). As with the Southern DPS, we consider all of these impacts now in analyzing the status of the Northern DPS.

As is the case in the Southern DPS, habitat degradation, loss, and fragmentation is the primary threat to the lesser prairie-chicken in this DPS, with other threats such as fire, incompatible livestock grazing, and extreme weather events further decreasing population resiliency and species redundancy. The largest impacts in this DPS are cropland conversion and woody vegetation encroachment. The Sand Sagebrush Ecoregion is also experiencing habitat degradation due to incompatible grazing management. The Short-Grass/CRP region has the highest number of birds, with a 5-year estimate of approximately 23,000 birds. Other portions of the range have lower population resiliency. In particular, the Sand Sagebrush Ecoregion has approximately 1,000 birds remaining (table 2).

Resiliency of populations throughout the Northern DPS has decreased from historical levels, although the DPS still has redundancy across the three ecoregions and genetic and environmental representation. However, our future scenario analysis demonstrates that the current threats acting on the landscape are expected either to continue at the same levels or increase in severity in the foreseeable future. Habitat loss is projected to outpace conservation efforts to restore habitat. Although we do not expect rates of habitat conversion to cropland to be equivalent to historical rates, we expect any additional conversion that does occur will have a disproportionately large effect on resiliency and redundancy due to the limited amount of remaining large intact grasslands. Conversion of habitat due to oil, gas, and wind energy will continue to occur, although the rates of development are uncertain. Woody vegetation encroachment is also expected to continue, particularly in the Mixed-Grass Ecoregion. Increased drought and severe weather events associated with climate change are expected to decrease population resiliency and redundancy into the foreseeable future, and as habitat availability continues to decline, and available habitat blocks decrease in size, populations may decline to below quasi-extinction levels. Our future scenarios project that over the next 25 years usable habitat will decrease from between 3 to 25 percent within the Northern DPS (5–24 percent in the Short-Grass/CRP Ecoregion, 2–37 percent in the Mixed-Grass Ecoregion, and 3–14 percent in the Sand Sagebrush Ecoregion) due to projected impacts from conversion to cropland, energy development, and woody vegetation encroachment.

Conservation measures and regulatory mechanisms are acting to reduce the magnitude of threats impacting the lesser prairie-chicken and its habitat. However, our analysis demonstrates that future restoration efforts will not be enough to offset the impacts of habitat loss and fragmentation, and conservation efforts focused on localized management to affect habitat quality are not addressing the overarching limiting factor of habitat loss and fragmentation, and are not addressing the long-term population needs for the lesser prairie-chicken. Thus, these measures are having only minimal impacts on threats acting throughout the DPS.

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that the lesser prairie-chicken maintains populations in all three ecoregions in the Northern DPS, and has genetic and ecological representation in those ecoregions, as well as population redundancy across the entirety of the DPS. Thus, lesser prairie-chickens in the Northern DPS are not currently in danger of extinction, and thus the Northern DPS does not meet the definition of endangered. However, our future projections indicate that habitat will become increasingly fragmented and less able to support lesser prairie-chickens. Thus, after assessing the best available information, we conclude that the Northern DPS of the lesser prairie-chicken 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.

Status of the Northern DPS of the Lesser Prairie-Chicken 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,* 2020

WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), 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 that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all 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 *Center for Biological Diversity,* 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 Northern DPS of the lesser prairie-chicken, we choose to address the status question first—we consider information pertaining to the geographic distribution of (a) individuals of the species, (b) the threats that the species faces, and (c) the resiliency condition of populations. We evaluated all parts of the Northern DPS, including the Sand Sagebrush Ecoregion, the Mixed-Grass Ecoregion, and the Short-Grass/CRP Ecoregion. We identified one portion, the Sand Sagebrush Ecoregion, that may meet the definition of endangered, as population estimates have shown the greatest declines in that portion of the range.

For the Northern DPS, 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 or likely to become so in the foreseeable future in that portion. In this final rule, we examined threats associated with habitat degradation, loss, and fragmentation, including conversion of grassland to cropland; petroleum production; wind energy development and transmission; woody vegetation encroachment; and roads and electrical distribution lines. We also examined threats associated with other factors, such as livestock grazing; shrub control and eradication; collision mortality from fences; predation; influence of anthropogenic noise; fire; and extreme weather events. We also considered cumulative effects associated with all those threats. However, we did not identify any threats that were concentrated in the Sand Sagebrush Ecoregion that were not at similar levels in the remainder of the range of the Northern DPS at a biologically meaningful scale.

As explained in the response to public comments, we considered for this final rule if the Sand Sagebrush Ecoregion is significant in relation to the remainder of the range as an alternative approach to the significant portion of the range analysis. Because *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) have invalidated the definition of ''significant'' set forth in the Final Policy, we determine significance on a case-by-case basis using a reasonable interpretation of significance and providing a rational basis for our determination. For the purposes of this rule, we considered whether the Sand Sagebrush Ecoregion constitutes habitat of high quality relative to the remaining portions of the Northern DPS' range and whether the Sand Sagebrush Ecoregion constitutes high or unique value habitat for the Northern DPS. One way in which we may consider significance is if the identified portion constitutes high or unique value habitat for the species; for example, a portion that provides habitat used by the species to support a life history stage. The Sand Sagebrush Ecoregion does not constitute a portion of the range where limiting life history stages, such as breeding or nesting, are concentrated, as the lesser prairie-chicken is currently carrying out all important life history stages in each portion of the Northern DPS. The lesser prairie-chicken reproduces and nests throughout the Northern DPS, regardless of ecoregion. We also considered if the Sand Sagebrush Ecoregion is a high-quality area that is also the only area that has remained intact where other areas in the range have been impacted by particular threats. Although the Sand Sagebrush Ecoregion is important habitat for the lesser prairie-chicken, it has been degraded due to incompatible grazing, historical conversion of grassland to cropland, woody vegetation encroachment, and roads and electrical distribution lines. When we consider the current condition of the habitat in the Sand Sagebrush Ecoregion relative to the Short-Grass/CRP Ecoregion and Mixed Grass Ecoregion, we find that the habitat in all three ecoregions has been degraded. Thus, after reviewing the Sand Sagebrush Ecoregion portion relative to the range of the Northern DPS, we conclude that the Sand Sagebrush Ecoregion is not significant.

Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine 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's definition of ''significant'' that those court decisions held were invalid.

Determination of Status of the Northern DPS of the Lesser Prairie-Chicken

Our review of the best scientific and commercial data available indicates that the Northern DPS of the lesser prairie-chicken meets the definition of a threatened species. Therefore, we are listing the Northern DPS of the lesser prairie-chicken as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Critical Habitat

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 protection; 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(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that we designate critical habitat at the time a species is determined to be an endangered or threatened species, to the maximum extent prudent and determinable. In the proposed listing rule (86 FR 29432, June 1, 2021), we determined that designation of critical habitat was prudent but not determinable because specific information needed to analyze the impacts of designation was lacking.

We are still in the process of obtaining this information. As a result, we reaffirm our finding that critical habitat is not determinable for the lesser prairie-chicken at this time.

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 (*http://www.fws.gov/lpc*), or from our Southwest Regional 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.

Following publication of this final rule, 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 States of Colorado, Kansas, New Mexico, Oklahoma, and Texas will be eligible for Federal funds to implement management actions that promote the protection or recovery of the lesser prairie-chicken. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Please let us know if you are interested in participating in recovery efforts for the lesser prairie-chicken. 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 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)(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 any endangered or threatened 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.

Some examples of Federal agency actions within the species' habitat that may require consultation, as described in the preceding paragraph include: landscape-altering activities on Federal lands; provision of Federal funds to State and private entities through Service programs, such as the PFW Program, the State Wildlife Grant Program, and the Wildlife Restoration Program; construction and operation of communication, radio, and similar towers by the Federal Communications Commission or Federal Aviation Administration; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; construction and management of petroleum pipeline by the Federal Energy Regulatory Commission; construction and maintenance of roads or highways by the Federal Highway Administration; implementation of certain USDA agricultural assistance programs; Federal grant, loan, and insurance programs; or Federal habitat restoration programs such as the Environmental Quality Incentive Program and CRP; and development of Federal minerals, such as oil and gas.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under

certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

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 final listing on proposed and ongoing activities within the range of a listed species. For the Northern DPS of the lesser prairie-chicken, which we are listing as threatened, the discussion below in section II regarding protective regulations under section 4(d) of the Act complies with our policy.

We now discuss specific activities related to the Southern DPS, which we are listing as endangered. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive. As identified in the SSA report, restoration actions are essential for conservation of the lesser prairie-chicken. Restoration actions will not constitute a violation of section 9 as those actions are implemented on lands that are not currently lesser prairie-chicken habitat. These restoration actions include:

(1) Planting previously tilled or no till croplands to grasses;

(2) Removal of nonnative or invasive trees and shrubs, not including shinnery oak or sand sagebrush; and

(3) Removal of existing infrastructure including oil and gas infrastructure, electrical transmission and distribution lines, windmills, existing fences, and other anthropogenic features impacting the landscape.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act in the Southern DPS of the lesser prairie-chicken if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Actions that would result in the unauthorized destruction or alteration of the species' habitat. Such activities could include, but are not limited to, the removal of native shrub or herbaceous vegetation by any means for any infrastructure construction project or the direct conversion of native shrub or herbaceous vegetation to another land use.

(3) Actions that would result in sustained alteration of preferred vegetative characteristics of lesser prairie-chicken habitat, particularly those actions that would cause a reduction or loss in the native invertebrate community within those habitats or alterations to vegetative composition and structure. Such activities could include, but are not limited to, incompatible livestock grazing, the application of herbicides or insecticides, and seeding of nonnative plant species that would compete with native vegetation for water, nutrients, and space.

(4) Actions that would result in lesser prairie-chicken avoidance of an area during one or more seasonal periods. Such activities could include, but are not limited to, the construction of vertical structures such as power lines, communication towers, buildings, infrastructure to support energy development, roads, and other anthropogenic features; motorized and nonmotorized recreational use; and activities such as well drilling, operation, and maintenance, which would entail significant human presence, noise, and infrastructure.

(5) Actions, intentional or otherwise, that would result in the destruction of eggs or active nests or cause mortality or injury to chicks, juveniles, or adult lesser prairie-chickens.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act in regard to the Southern DPS of the lesser prairie-chicken should be directed to the Southwest Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Final 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).

The provisions of this 4(d) rule will promote conservation of the Northern DPS of the lesser prairie-chicken by encouraging essential conservation efforts and management that enhance habitat quantity and quality for the lesser prairie-chicken. The provisions of

this rule are one of many tools that we will use to promote the conservation of the Northern DPS of the lesser prairie-chicken.

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.

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 4(d) Rule

Exercising this authority under section 4(d), we have developed a final rule that is designed to address the specific threats and conservation needs of the Northern DPS of the lesser prairie-chicken. As discussed above under Summary of Biological Status and Threats, threats including habitat loss, fragmentation, and degradation are affecting the status of the Northern DPS of the lesser prairie-chicken. A range of activities have the potential to affect the Northern DPS of the lesser prairie-chicken, including actions that would result in the unauthorized destruction or alteration of the species' habitat. Such activities could include, but are not limited to: the removal of native shrub or herbaceous vegetation by any means for any infrastructure construction project or direct conversion of native shrub or herbaceous vegetation to another land use; actions that would result in the long-term alteration of preferred vegetative characteristics of lesser prairie-chicken habitat, particularly those actions that would cause a reduction or loss in the native invertebrate community within those habitats.

Activities that may result in long-term alteration of lesser prairie-chicken habitat could include, but are not limited to, incompatible livestock grazing; the application of herbicides or insecticides; seeding of nonnative plant species that would compete with native vegetation for water, nutrients, and space; and actions that would result in lesser prairie-chicken avoidance of an area during one or more seasonal periods. Activities that may result in lesser prairie-chicken avoidance of an area include, but are not limited to, the construction of vertical structures such as power lines; communication towers; buildings; infrastructure to support energy development, roads, and other anthropogenic features; motorized and nonmotorized recreational use; and activities such as well drilling, operation, and maintenance, which would entail significant human presence, noise, and infrastructure; and actions, intentional or otherwise, that would result in the destruction of eggs or active nests or cause mortality or injury to chicks, juveniles, or adult lesser prairie-chickens. Regulating these activities would slow the rate of habitat loss, fragmentation, and degradation and decrease synergistic, negative effects from other threats.

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 the protections, prohibitions, and exceptions in this final 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 Northern DPS of the lesser prairie-chicken.

The protective regulations we are finalizing for the Northern DPS of the lesser prairie-chicken 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 of these prohibitions for the Northern DPS of the lesser prairie-chicken because the DPS is at risk of extinction in the foreseeable future and putting these prohibitions in place will help to prevent further declines, preserve the species' remaining populations, slow its rate of decline, and decrease synergistic, negative effects from other ongoing or future threats.

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 prohibit take of the Northern DPS of the lesser prairie-chicken, except for take resulting from those actions and activities specifically excepted by the 4(d) rule.

It is appropriate to extend the standard section 9 prohibitions for endangered species to the Northern DPS of the lesser prairie-chicken in order to conserve the species, with several exceptions, which we found are necessary and advisable to provide for the conservation of the DPS. While developing this 4(d) rule, the Service considered exceptions to the standard section 9 prohibitions for endangered species that would facilitate essential conservation actions needed for the Northern DPS. We consider essential conservation actions to include restoration actions, use of prescribed fire, and compatible grazing management as the primary essential conservation actions needed to conserve the lesser prairie-chicken.

For the purposes of this rule and our SSA analysis, we consider restoration actions to be actions that convert areas that are currently not habitat for lesser prairie-chickens to areas that are habitat for lesser prairie-chicken. These actions are essential for the conservation of the

species as this is the only way to reverse past and current trends of habitat loss and fragmentation. For the lesser prairie-chicken, the primary restoration actions consist of woody vegetation removal in and adjacent to grasslands (this does not include the removal of sand shinnery oak (specifically, *Quercus havardii* species) or sand sagebrush (specifically, *Artemisia filifolia* species)). Other restoration actions include removal of existing anthropogenic features (such as existing energy infrastructure, roads, fences, windmills, and other anthropogenic features), and converting cropland to grassland. We have determined that an exception under this 4(d) rule is not needed for these restoration actions as they occur on lands already impacted or altered in ways such that they no longer represent lesser prairie-chicken habitat and thus there is no potential for a section 9 violation.

We also considered the value provided by the implementation of prescribed fire on the landscape. Prior to extensive Euro-American settlement, frequent fires helped confine trees (and other woody vegetation) like eastern red cedar to river and stream drainages and rocky outcroppings. However, settlement of the Southern Great Plains altered the historical ecological context and disturbance regimes. The frequency and intensity of these disturbances directly influenced the ecological processes, biological diversity, and patchiness typical of Great Plains grassland ecosystems, which evolved with frequent fire that helped to maintain prairie habitat for lesser prairie-chicken (Collins 1992, pp. 2003–2005; Fuhlendorf and Smeins 1999, pp. 732, 737).

Following Euro-American settlement, fire suppression allowed trees, such as eastern red cedar, to begin invading or encroaching upon neighboring grasslands. Implementation of prescribed fire is often the best method to control or preclude tree invasion of grasslands. However, to some landowners and land managers, burning of grassland can be perceived as unnecessary for meeting their management goals, costly and burdensome to enact, undesirable for optimizing production for cattle, and likely to create wind erosion or ''blowouts'' in sandy soils. Consequently, wildfire suppression is common, and relatively little prescribed burning occurs on private land. Often, prescribed fire is employed only after significant tree invasion has already occurred and landowners consider forage production for cattle to have diminished. Preclusion of woody vegetation encroachment on grasslands of the southern Great Plains using fire requires implementing fire at a frequency that mimics historical fire frequencies of 2–14 years (Guyette et al. 2012, p. 330) and thus further limits the number of landowners implementing fire in a manner that would truly preclude future encroachment. We have determined that while there is a potential for short-term adverse impacts to lesser prairie-chicken, we want to encourage the use of prescribed fire on the landscape; thus, we provide an exception for take resulting from this action in the 4(d) rule.

Finally, we considered the need for grazing activities that result in the vegetation structure and composition needed to support the lesser prairie-chicken. The habitat needs for the lesser prairie-chicken vary across the range, and grazing can affect these habitats in different ways. It is important that grazing be managed at a given site to account for a variety of factors specific to the local ecological site including past management, soils, precipitation, and other factors. This management will ensure that the resulting vegetative composition and structure will support the lesser prairie-chicken. Grazing management that alters the vegetation community to a point where the composition and structure are no longer suitable for lesser prairie-chicken can contribute to habitat loss and fragmentation within the landscape, even though these areas may remain as prairie or grassland. Livestock grazing, however, is not inherently detrimental to the lesser prairie-chicken, provided that grazing management results in a plant community with species and structural diversity suitable for the lesser prairie-chicken. When livestock grazing is managed compatibly, it can be an invaluable tool necessary for managing healthy grasslands benefiting the lesser prairie-chicken.

While developing this 4(d) rule, we found that determining how to manage grazing in a manner compatible with the Northern DPS of the lesser prairie-chicken is highly site-specific based on conditions at the local level; thus, broad and prescriptive determinations within this 4(d) rule would not be beneficial to the species or local land managers. To ensure grazing management is compatible with lesser prairie-chicken conservation, land managers should follow a site-specific grazing management plan that was developed to account for a variety of factors specific to the local ecological site, including past management, soils, precipitation, and other factors. Although we have determined that there is a potential for adverse impacts associated with grazing, we recognize the value that livestock grazing provides when managed compatibly and we want to encourage compatible grazing management. Thus, our 4(d) rule provides an exception for take associated with grazing management when land managers are following a site-specific grazing plan developed by a ''Service-approved party.'' For the purposes of this rule, to be considered as a ''Service-approved party,'' the individual or entity must possess adequate training or experience, typically 5 years or more, in the fields of wildlife management, biology, or range ecology. A ''Service-approved party'' must also have demonstrated the ability to develop a grazing management plan that incorporates all the site-specific conditions discussed above. Finally, a ''Service-approved party'' must have demonstrated the ability to work with landowners to develop site-specific plans which ensure grazing activities result in the vegetative characteristics compatible with the habitat needs for the lesser prairie-chicken or similar species. Prior to the effective date of this rule, the Service will post a list of approved parties to our regional lesser prairie-chicken web page (*https://www.fws.gov/lpc*). This list will be updated as appropriate as additional parties request approval. We may also update these initial requirements for a ''Service-approved party'' and will provide any updated qualifications on our regional lesser prairie-chicken web page (*https://www.fws.gov/lpc*).

Overall, the 4(d) rule will 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 Northern DPS of the lesser prairie-chicken, 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 exceptions to these prohibitions include the following three items, which along with the prohibitions, are set forth in the rule portion of this document:

(1) Continuation of routine agricultural practices on existing cultivated lands.

This 4(d) rule provides that take of the lesser prairie-chicken will not be prohibited provided the take is incidental to activities that are conducted during the continuation of routine agricultural practices, as specified below, on cultivated lands that are in row crop, seed-drilled untilled crop, hay, or forage production. These lands must meet the definition of

cropland as defined in 7 CFR 718.2, and, in addition, must have been cultivated, meaning tilled, planted, or harvested, within the 5 years preceding the proposed routine agricultural practice that may otherwise result in take. Thus, this provision does not include take coverage for any new conversion of grasslands into agriculture.

Lesser prairie-chickens may travel from native rangeland and CRP lands, which provide cover types that support lesser prairie-chicken nesting and brood-rearing, to forage within cultivated fields supporting small grains, alfalfa, and hay production. Lesser prairie-chickens also may maintain lek sites within these cultivated areas, and they may be present during farming operations. Thus, existing cultivated lands, although not a native habitat type, may provide food resources for lesser prairie-chickens.

Routine agricultural activities covered by this provision include:

(a) Plowing, drilling, disking, mowing, or other mechanical manipulation and management of lands.

(b) Routine activities in direct support of cultivated agriculture, including replacement, upgrades, maintenance, and operation of existing infrastructure such as buildings, irrigation conveyance structures, fences, and roads.

(c) Use of chemicals in direct support of cultivated agriculture when done in accordance with label recommendations.

We do not view regulating incidental take resulting from these activities as necessary and advisable for the conservation of the lesser prairie-chicken as, while there may be limited opportunistic use by the species for opportunistic foraging and lekking sites, these lands do not support the vegetative composition and structure necessary to support the full suite of life history functions of the species. None of the provisions in 50 CFR 17.21 would apply to take incidental to activities associated with the continuation of routine agricultural practices, as specified above, on existing cultivated lands that are in row crop, seed-drilled untilled crop, hay, or forage production. These lands must meet the definition of cropland as defined in 7 CFR 718.2, and, in addition, must have been cultivated, meaning tilled, planted, or harvested, within the previous 5 years.

(2) Implementation of prescribed fire for the purposes of grassland management.

This 4(d) rule provides that take of the Northern DPS of the lesser prairie-chicken will not be prohibited provided the take is incidental to activities that are conducted during the implementation of prescribed fire, as specified below, for the purpose of grassland and shrubland management.

As discussed above, fire plays an essential role in maintaining healthy grasslands and shrublands, preventing woody vegetation encroachment, and encouraging the structural and species diversity of the plant community required by the lesser prairie-chicken. The intensity, scale, and frequency of fire regimes in the southern Great Plains has been drastically altered due to human suppression of wildfire resulting in widespread degradation and loss of grasslands. While fire plays an important role, potential exists for some short-term negative impacts to the lesser prairie-chicken while implementing prescribed fire. The potential impacts depend upon what time of the year the fire occurs, extent of habitat burned, and burn severity and include, but are not limited to, disturbance of individuals, destruction of nests, and impacts to available cover for nesting and concealment from predators.

Prescribed fire activities covered by this provision include:

(a) Construction and maintenance of fuel breaks.

(b) Planning needed for application of prescribed fire.

(c) Implementation of the fire and all associated actions.

(d) Any necessary monitoring and followup actions.

Implementation of prescribed fire is essential to managing for healthy grasslands and shrublands, but currently use of prescribed fire is minimal or restricted to frequent use in small local areas within the range of the lesser prairie-chicken. While prescribed fire has the potential for some limited negative short-term effects on the lesser prairie-chicken, we have concluded that the long-term benefits of implementing prescribed fire drastically outweigh the short-term negative effects. None of the provisions in 50 CFR 17.21 apply to the implementation of prescribed fire as discussed above.

(3) Implementation of prescribed grazing following a site-specific grazing management plan developed by a Service-approved party.

This 4(d) rule provides that take of the Northern DPS of the lesser prairie-chicken will not be prohibited provided the take is incidental to grazing management that is conducted by a land manager who is implementing a grazing management plan developed by a qualified party that has been approved by the Service for the specific purposes of this 4(d) rule. These grazing management plans must be reviewed and adjusted to account for the current ecological conditions by the author at a minimum every 5 years, must prescribe actions based upon site-specific conditions including but not limited to soils, precipitation, and past management, and must contain drought management measures. This provision applies only to site-specific grazing management plans developed by a qualified party that has been approved by the Service for the specific purposes of this 4(d) rule.

This provision applies to potential impacts resulting from the following:

(a) Physical impact of cattle to vegetative composition and structure;

(b) Trampling of lesser prairie-chicken nests;

(c) Construction and maintenance of required infrastructure for grazing management, including but not limited to fences and water sources; and

(d) Other routine activities required to implement managed grazing, including but not limited to feeding, monitoring, and moving of livestock.

We find this exception is necessary and advisable for the conservation of the species because compatible grazing is essential to managing for healthy grasslands and shrublands, which provide habitat for the lesser prairie-chicken. While compatible grazing management has the potential for some limited negative short-term effects on the lesser prairie-chicken, we have concluded that the long-term benefits of implementing compatible grazing management that follows a site-specific prescribed grazing plan developed by a qualified party that has been approved by the Service for the specific purposes of this 4(d) rule drastically outweigh the short-term negative effects. Furthermore, as discussed in the background section of this 4(d) rule, compatibly managed grazing is a necessary component for the management and maintenance of healthy grassland for the lesser prairie-chicken. None of the provisions in 50 CFR 17.21 apply to grazing management that is conducted by a land manager who is implementing a site-specific grazing management plan developed by a qualified party who has been approved by the U.S. Fish and Wildlife Service for the specific purposes of this 4(d) rule as discussed above.

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 shall 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 the Northern DPS of the lesser prairie-chicken that may result in otherwise prohibited take without additional authorization.

Nothing in this 4(d) rule changes 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 Northern DPS of the lesser prairie-chicken. However, interagency cooperation may be further streamlined through planned programmatic consultations between us and other Federal agencies, where appropriate.

Required Determinations

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 (NEPA; 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), cert. denied 516 U.S. 1042 (1996)).

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), Executive Order 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 also provided these Tribes the opportunity to review a draft of the SSA report, to provide input prior to making our proposed determination on the status of the lesser prairie-chicken, and during the open comment period, but did not receive any responses.

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 Southwest Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and the Southwest Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we 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. In § 17.11 amend the table in paragraph (h) by adding an entry for ''Prairie-chicken, lesser [Northern DPS]'' and an entry for ''Prairie-chicken, lesser [Southern DPS]'' to the List of Endangered and Threatened Wildlife in alphabetical order under **BIRDS** to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * *	* * *	* * *	*	* * *
BIRDS				
* * *	* * *	* * *	*	* * *
Prairie-chicken, lesser [Northern DPS].	*Tympanuchus pallidicinctus*.	U.S.A. (All lesser prairie-chickens north of a line starting at 37.9868 N, 105.0133 W, and ending at 31.7351 N, 98.3773 W, NAD83; see map at § 17.41(k)).	T	87 FR [*Insert **Federal Register** page where the document begins*], 11/25/2022; 50 CFR 17.41(k).[4d]
Prairie-chicken, lesser [Southern DPS].	*Tympanuchus pallidicinctus*.	U.S.A. (All lesser prairie-chickens south of a line starting at 37.9868 N, 105.0133 W, and ending at 31.7351 N, 98.3773 W, NAD83; see map at § 17.41(k)).	E	87 FR [*Insert **Federal Register** page where the document begins*], 11/25/2022.
* * *	* * *	* * *	*	* * *

■ 3. Amend § 17.41 by adding paragraphs (g) through (k) to read as follows:

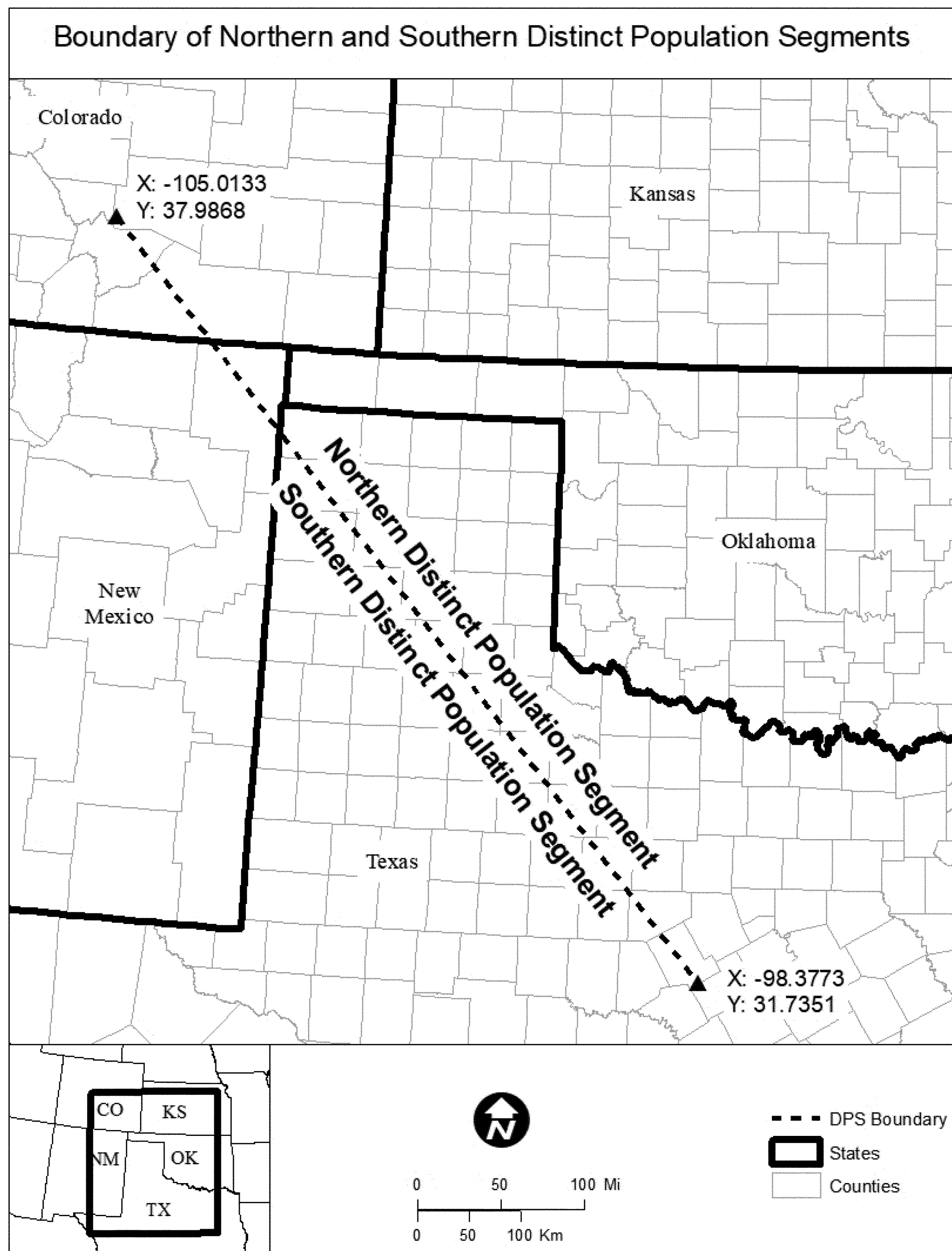
§ 17.41 Special rules—birds.

* * * * *

(g) through (j) [Reserved]

(k) Lesser prairie-chicken *(Tympanuchus pallidicinctus),* Northern Distinct Population Segment (DPS). The Northern DPS of the lesser prairie-chicken pertains to lesser prairie-chickens found northeast of a line starting in Colorado at 37.9868 N, 105.0133 W, going through northeastern New Mexico, and ending in Texas at 31.7351 N, 98.3773 W, NAD83, as shown in the map:

Figure 1 to paragraph (k)



(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) Continuation of routine agricultural practices on existing cultivated lands, including:

(*1*) Plowing, drilling, disking, mowing, or other mechanical manipulation and management of lands;

(*2*) Routine activities in direct support of cultivated agriculture, including replacement, upgrades, maintenance, and operation of existing infrastructure such as buildings, irrigation conveyance structures, fences, and roads; and

(*3*) Use of chemicals in direct support of cultivated agriculture when done in accordance with label recommendations.

(B) Implementation of prescribed fire for the purposes of grassland management, including:

(*1*) Construction and maintenance of fuel breaks;

(*2*) Planning needed for application of prescribed fire;

(*3*) Implementation of the fire and all associated actions; and

(*4*) Any necessary monitoring and followup actions.

(C) Implementation of prescribed grazing following a site-specific grazing management plan developed by a Service-approved party, including:

(*1*) Physical impact of cattle to vegetative composition and structure;

(*2*) Trampling of lesser prairie-chicken nests;

(*3*) Construction and maintenance of required infrastructure for grazing management, including but not limited to fences and water sources; and

(*4*) Other routine activities required to implement managed grazing, including but not limited to feeding, monitoring, and moving of livestock.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–25214 Filed 11–18–22; 8:45 am]

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Part IV

Securities and Exchange Commission

17 CFR Parts 200, 230, 232, et al.

Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 232, 239, 249, 270, and 274

[Release Nos. 33–11125; 34–96158; IC–34731; File No. S7–09–20]

RIN 3235–AM52

Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting rule and form amendments that require open-end management investment companies to transmit concise and visually engaging annual and semi-annual reports to shareholders that highlight key information that is particularly important for retail investors to assess and monitor their fund investments. Certain information that may be more relevant to financial professionals and investors who desire more in-depth information will no longer appear in funds' shareholder reports but will be available online, delivered free of charge upon request, and filed on a semi-annual basis on Form N–CSR. The amendments exclude open-end management investment companies from the scope of the current rule that generally permits registered investment companies to satisfy shareholder report transmission requirements by making these reports and other materials available online and providing a notice of that availability. The amendments also require that funds tag their reports to shareholders using the Inline eXtensible Business Reporting Language (''Inline XBRL'') structured data language to provide machine-readable data that retail investors and other market participants may use to more efficiently access and evaluate investments. Finally, the Commission is adopting amendments to the advertising rules for registered investment companies and business development companies to promote more transparent and balanced statements about investment costs.

DATES: *Effective Date:* This rule is effective January 24, 2023. *Compliance Date:* The applicable compliance dates are discussion in section II.J.

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SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to the following rules and forms:

Commission reference	CFR citation [17 CFR]
Organization; Conduct and Ethics; And Information and Requests	§§ 200.1 through 200.800.
Section 800	§ 200.800.
Securities Act of 1933 (''Securities Act''):[1]	
Rule 156	§ 230.156.
Rule 433	§ 230.433.
Rule 482	§ 230.482.
Regulation S–T:[2]	
Rule 405	§ 232.405.
Securities Act and Investment Company Act of 1940 (''Investment Company Act,'' or the ''Act''):[3]	
Form N–1A	§§ 239.15A and 274.11A.
Securities Exchange Act of 1934 (''Exchange Act'')[4] and Investment Company Act:	
Form N–CSR	§§ 249.331 and 274.128.
Investment Company Act:	
Rule 30a–2	§ 270.30a–2.
Rule 30e–1	§ 270.30e–1.
Rule 30e–3	§ 270.30e–3.
Rule 31a–2	§ 270.31a–2.
Rule 34b–1	§ 270.34b–1.

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[1] 15 U.S.C. 77a *et seq.*

[2] 17 CFR 232.10 through 232.903.

[3] 15 U.S.C. 80a *et seq.*

[4] 15 U.S.C. 78a *et seq.*

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I. Introduction and Background

The Commission is adopting rule and form amendments that are designed to require mutual funds and exchange-traded funds (''ETFs'') to transmit concise and visually engaging annual and semi-annual reports to shareholders.[5] The updated approach to funds' shareholder reports will highlight key information that is particularly important for retail investors to assess and monitor their fund investments.[6] Other, more detailed information that currently appears in funds' shareholder reports will be made available on a website that the shareholder report specifies, filed with the Commission on EDGAR, and delivered to investors free of charge in paper or electronically upon request. These final rules are designed to modernize funds' shareholder reports so these reports will better serve the needs of fund investors—particularly retail investors.[7] The final rules will require a disclosure approach that emphasizes clearly and concisely the information that is particularly useful to a retail audience, will encourage disclosure techniques that promote effective communication, and will continue to make available information that historically has appeared in shareholder reports but that may be more relevant to financial professional and other investors who desire more in-depth information.

This approach is designed to alleviate concerns that fund retail investors currently may receive, and find difficult to use, shareholder reports that are lengthy, complex, and not well-suited to their needs.[8] Investors' inability to understand or use shareholder report disclosure efficiently may impede their ability to monitor their investments and lead to investors maintaining investments in funds that may not be aligned with their investment goals. The final rules' approach for shareholder reports is a continuation of the Commission's initiatives designed to promote clear and concise disclosure for fund investors.[9] It responds to the preferences investors have expressed, over the years and in response to the proposed rules.[10] This approach also builds on a similar ''layered'' disclosure approach that most funds use to provide prospectus information tailored to investors' informational needs.[11]

In August 2020, the Commission proposed rule and form amendments that would require a layered disclosure framework for funds' shareholder reports that is substantially similar to the framework we are adopting under the final rules.[12] The Commission also proposed to address the means by which shareholder reports are transmitted to fund investors. To ensure that all fund investors would experience the anticipated benefits of the proposed new tailored disclosure framework, the Commission proposed to amend the scope of rule 30e–3—the rule that currently permits investment companies to use a ''notice and access'' approach to transmitting shareholder reports—to exclude open-end funds. Instead, funds would have to provide the reports directly to shareholders. In addition to addressing shareholder report contents and transmission, the Commission also proposed amendments to the Commission's investment company advertising rules that were designed to promote more transparent and balanced statements about investment costs. The proposal also included a proposed new alternative approach to satisfy prospectus delivery requirements for existing fund investors (proposed new rule 498B) and proposed amendments to funds' prospectus fee and risk disclosure requirements.

The Commission received comment letters on the proposal from a variety of

[5] For purposes of this release, the term ''fund'' generally refers to an open-end management investment company registered on Form N–1A or a series thereof, unless otherwise specified. Mutual funds and most ETFs are open-end management investment companies registered on Form N–1A. An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. *See* sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)].

[6] This release refers to funds' annual and semi-annual shareholder reports as ''annual reports'' and ''semi-annual reports'' respectively, and collectively as ''shareholder reports.''

[7] ''EDGAR'' is the Commission's Electronic Data, Gathering, Analysis, and Retrieval system.

[8] *See* Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 33963 (Aug. 5, 2020) [85 FR 70716 (Nov. 5, 2020)] (''Proposing Release'') at nn.30 and 32, and accompanying text.

[9] *See, e.g.,* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4545 (Jan. 26, 2009)] (''2009 Summary Prospectus Adopting Release''); Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] (''Investment Company Reporting Modernization Final Rules''); Form CRS Relationship Summary; Amendments to Form ADV, Investment Advisers Act Release No. 5247 (June 5, 2019) [84 FR 33492 (July 12, 2019)]; Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)] (''Variable Contract Summary Prospectus Adopting Release'').

[10] *See, e.g.,* 2009 Summary Prospectus Adopting Release, *supra* footnote 9; *see also infra* section I.A.3.

[11] *See infra* section I.A.2.

[12] *See* Proposing Release, *supra* footnote 8.

commenters, including funds and investment advisers, law firms, other fund service providers, investor advocacy groups, professional and trade associations, and interested individuals.[13] Many commenters supported the proposed use of layered disclosure in funds' shareholder reports.[14] Some recommended enhancements and alternatives to certain areas of the proposed shareholder reports, with respect to their content as well as scope.[15] While many commenters expressed concern regarding the proposed amendments to rule 30e–3, others supported the Commission's proposed approach.[16] Comments on proposed rule 498B were mixed, with some commenters expressly supporting the proposal, some supporting it with modifications, and others directly opposing it.[17] Comments on the proposed prospectus fee and risk disclosure amendments were similarly mixed.[18] Finally, while a number of the commenters that addressed the proposed advertising rule amendments supported them, some stated that the proposed amendments were not necessary in light of Financial Industry Regulatory Authority (''FINRA'') rules addressing fee and expense information in retail communications or suggested that the Commission modify the scope of the proposed amendments.[19]

After considering the comments on the proposal and as discussed in more detail below, we are adopting rule and form amendments that would effectuate the proposed layered disclosure approach for funds' shareholder reports, with modifications to the proposed reports' contents and scope in response to comments and to enhance disclosure effectiveness. We are also adopting—with targeted clarifying changes, but otherwise substantially as proposed—the proposed amendments to exclude open-end funds from the scope of rule 30e–3, as well as the proposed amendments to the investment company advertising rules. As discussed more fully below, we are not adopting proposed rule 498B or the proposed amendments to funds' prospectus fee and risk disclosure requirements.

A. Regulatory Context, and Developments and Analysis Informing Final Rules

1. Fund Shareholder Reports—Regulatory Context

Fund shareholders receive shareholder reports on a semi-annual basis.[20] These reports include detailed information about a fund's operations over a given half- or full-year period. The Investment Company Act, as well as Commission rules, prescribe the content requirements for funds' shareholder reports.[21] Shareholder report contents include, among other items: information about fund expenses and performance, portfolio holdings, funds' financial statements and financial highlights (which are audited in annual reports), information about a fund's board of directors and management, results of shareholder votes, and instructions on how to access additional information, including information regarding the fund's proxy voting record, code of ethics, and quarterly portfolio holdings.[22] Certain of this information, including fund performance information, is required to appear only in annual reports. Some funds also supplement this with information that is not required by Commission rules or forms, such as a president's letter and general market commentary.[23]

Many mutual funds and ETFs are organized as single registrants with several series (sometimes referred to as portfolios).[24] From an investor's perspective, investing in a series provides the same general experience as investing in a fund that is not organized in this way—each series has its own investment objectives, policies, and restrictions, and the Federal securities laws and Commission rules often treat each series as a separate fund.[25] Series of a registrant are often marketed separately, without reference to other series or to the registrant's name.

In addition, a single fund or series can have multiple share classes.[26] Share classes typically differ based on fee structure, with each class having a different sales load and distribution and/or service fee. Currently, fund registrants may prepare a single shareholder report that covers multiple series, as well as multiple share classes of each series.

Fund shareholders currently receive shareholder reports in paper or electronically, depending on their preferences.[27] We understand that shareholders electing electronic delivery of fund disclosure materials typically receive an email that contains a link to where the materials are available online.

For those shareholders who have not elected to receive shareholder reports electronically, funds currently may rely on rule 30e–3 to satisfy shareholder report transmission requirements. If a fund chooses to rely on this rule, a shareholder does not receive paper shareholder reports directly, but instead receives paper notices that a shareholder report is available at an identified website address.[28] Nonetheless, funds relying on rule 30e–3 are required to deliver a paper copy of a shareholder report to any person requesting such a copy, and a fund may no longer rely on rule 30e–3 with respect to any shareholder who has notified the fund (or relevant financial

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[13] The comment letters on the Proposing Release (File No. S7–09–20) are available at *https://www.sec.gov/comments/s7-09-20/s70920.htm.*

[14] *See, e.g.,* Comment Letter of Mutual Fund Directors Forum (Jan. 4, 2021) (''Mutual Fund Directors Forum Comment Letter''); Comment Letter of SIFMA (Dec. 22, 2020) (''SIFMA Comment Letter'').

[15] Comments on particular aspects of the proposed rules' scope, as well as the proposed shareholder report contents, are discussed in detail in sections II.A–B below.

[16] *See infra* section II.E.1.

[17] *See infra* footnotes 68–72 and accompanying text.

[18] *See infra* footnotes 76–79 and 83–84 and accompanying text.

[19] *See infra* sections II.G.1–2; footnote 534 (providing FINRA rule 2210's definitions of retail communications and correspondence).

[20] *See* section 30(e) of the Investment Company Act [15 U.S.C. 80a–29(e)]; current and amended rule 30e–1 under the Investment Company Act [17 CFR 270.30e–1]. A fund or an intermediary may transmit the shareholder report to an investor. Most fund investors hold their fund investments as beneficial owners through accounts with intermediaries. As a result, intermediaries commonly assume responsibility for distributing fund shareholder reports to beneficial owners. *See* Optional internet Availability of Investment Company Shareholder Reports, Investment Company Act Release No. 33115 (June 5, 2018) [83 FR 29158 (June 22, 2018)] (''Rule 30e–3 Adopting Release''), at paragraph accompanying n.274.

[21] *See* section 30(e) of the Investment Company Act; *see also* current and amended rule 30e–1; Item 27 of current Form N–1A and Item 27A of amended Form N–1A (addressing the contents of open-end fund shareholder reports).

[22] *See* Proposing Release, *supra* footnote 8, at nn.14–17 and accompanying text.

[23] *See, e.g., id.* at n.18 and accompanying text.

[24] *See* sections 18(f)(1) and (2) of the Investment Company Act [15 U.S.C. 80a–18(f)(1) AND (2)]; 17 CFR 270.18f–2 (rule 18f–2 under the Investment Company Act).

[25] *See, e.g.,* 17 CFR 270.22c–2(c)(2); 17 CFR 270.22e–4(a)(5); General Instruction A to Form N–1A (defining ''fund'' to mean a registrant or a separate series of the registrant).

[26] *See* 17 CFR 270.18f–3 (rule 18f–3 under the Investment Company Act).

[27] *See* Proposing Release, *supra* footnote 8, at nn.21–22 and accompanying text; *see also* Use of Electronic Media for Delivery Purposes, Investment Company Act Release No. 21399 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)] (''Electronic Media 1995 Release'') (providing Commission views on the use of electronic media to deliver information to investors, with a focus on electronic delivery of prospectuses, annual reports, and proxy solicitation materials); Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Investment Company Act Release No. 21945 (May 9, 1996) [61 FR 24644 (May 15, 1996)] (''Electronic Media 1996 Release''); Use of Electronic Media, Investment Company Act Release No. 24426 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)] (''Electronic Media 2000 Release'').

[28] *See* current rule 30e–3 [17 CFR 270.30e–3]; Rule 30e–3 Adopting Release, *supra* footnote 20.

intermediary) that the shareholder wishes to receive paper copies of shareholder reports.

The costs of delivering prospectuses and shareholder reports, including printing and mailing costs and processing fees, are generally fund expenses borne by shareholders.

2. Developments Supporting Layered Disclosure Approach to Fund Shareholder Reports

The Commission's proposed layered disclosure approach to funds' shareholder reports builds on decades of experience with layered fund disclosure, as well as the confluence of two other disclosure-related developments that we believe support further reliance on the use of layered disclosure—the growing length and complexity of shareholder reports over time, and the internet's increasingly important role in maximizing investor access to information.

The Commission's rules permitting the use of summary prospectuses both recognize investors' preferences for concise and engaging disclosure of key information and ensure that additional information that may be of interest to some investors is available through a layered approach to disclosure.[29] These rules generally permit funds to provide summary prospectuses to investors that include ''streamlined and user-friendly information that is key to an investment decision,'' with more-detailed information that may be of interest to some investors available online.[30] We believe that these initiatives have benefitted investors, and we estimate that approximately 92% of funds use summary prospectuses.[31] The Commission has not previously taken comprehensive steps to create a layered disclosure framework for funds' shareholder reports.[32]

Funds' shareholder reports generally have become longer and more complex over the years. This trend has several sources. The Commission's rules have required funds to include additional information over the past several decades, and funds commonly voluntarily provide additional information beyond that which is required, including information about general economic conditions, fund performance, and services provided to shareholders.[33] The ability to include multiple series, and multiple share classes of each series, in a single report also increases these reports' length and complexity. Based on staff analysis, the average annual report is approximately 134 pages long, and the average semi-annual report is 116 pages long.[34] The length can vary substantially, however. Staff has observed annual reports ranging in length from 16 pages to more than 1,000 pages. Most reports that are between 22 and 45 pages long tend to cover a single series.[35]

These trends have been accompanied by internet technology that has continued to evolve, investors' increased access to the internet, and the Commission continuing to recognize the role of the internet in providing disclosure materials and other information to investors.[36] For example, in 2021, approximately 95% of households owning mutual funds had internet access, while only 68% of these households had internet access in 2000.[37] Further advances in technology, including increasing use of mobile devices to access information, can make it even easier for funds and intermediaries to communicate with investors and to provide interactive or customizable information. We understand that funds continue to explore additional ways to use technology to communicate with investors.[38] Against this backdrop, the Commission has recognized that modernizing the manner in which funds and others make information available to investors allows them to leverage the benefits of technology and reduce fund costs while considering the needs and preferences of investors.[39] Continued improvements in presenting information electronically, as well as investors' continually growing comfort with the internet and electronic media as a means of accessing fund information, have been integral in making the use of layered disclosure in the summary prospectus context a success, and we believe these factors will similarly make layered disclosure an effective tool in the context of funds' shareholder reports.

3. Evidence of Investor Preferences Regarding Fund Disclosure

The Proposing Release discussed evidence that was available to the Commission at the time of the proposal showing that investors generally prefer concise, layered disclosure. The proposal considered feedback that the Commission received in response to a June 2018 request for comment seeking feedback on retail investors' experience with fund disclosure and on ways to improve fund disclosure (the ''Fund Investor Experience RFC'').[40] In the proposal, the Commission stated that the Fund Investor Experience RFC commenters' overall preference for summary disclosure is generally consistent with other information the Commission has received—through investor testing conducted prior to the proposal, surveys, and other information-gathering—that similarly indicates that investors strongly prefer concise, layered disclosure.[41] The Commission also discussed feedback from investors responding to the Fund Investor Experience RFC, as well as investors participating in certain past quantitative and qualitative investor testing initiatives on the Commission's behalf, expressing preferences for the inclusion of more tables, charts, and graphs in fund disclosure and supporting the conclusion that investors

[29] *See supra* footnotes 10–11 and accompanying text; *see also* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 9.

[30] *See* 2009 Summary Prospectus Adopting Release, *supra* footnote 9, at section I. The vast majority of funds provide: (1) a summary prospectus to investors in connection with their initial investment decision; and (2) more-detailed information that may be of interest to some investors, which is available online in the form of the ''statutory prospectus'' and Statement of Additional Information (''SAI'').

[31] *See* Proposing Release, *supra* footnote 8, at n.81 and accompanying text. We estimate that as of December 31, 2021, approximately 92% of mutual funds and ETFs use a summary prospectus. This estimate is based on data on the number of mutual funds and ETFs that filed a summary prospectus in 2021 in EDGAR (10,876) and the staff's estimate of the total number open-end funds, including ETFs, registered on Form N–1A (11,840).

[32] *See* Proposing Release, *supra* footnote 8, at n.83 and accompanying text (noting that the Commission has, however, adopted rules that permit streamlined disclosure of portfolio holdings in funds' shareholder reports).

[33] *See id.* at nn.84–86 and accompanying text.

[34] These figures are based on a 2020 staff review that included a sample of reports from large, mid-sized, and small funds that were available on fund websites.

[35] *See id.*

[36] *See* Proposing Release, *supra* footnote 8, at nn.75–78 and accompanying text.

[37] *See* Investment Company Institute, 2022 Investment Company Fact Book: A Review of Trends and Activities in the Investment Company Industry (2022) (''2022 ICI Fact Book''), *available at https://www.ici.org/system/files/2022-05/2022_factbook.pdf,* at Figure 7.16.

[38] *See, e.g., infra* footnotes 356–358 and accompanying paragraph.

[39] *See* Proposing Release, *supra* footnote 8, at n.79 and accompanying text.

[40] *See* Request for Comment on Fund Retail Investor Experience and Disclosure, Investment Company Act Release No. 33113 (June 5, 2018) [83 FR 26891 (June 11, 2018)] (''Investor Experience RFC''). The comment letters on the Investor Experience RFC (File No. S7–12–18) are available at *https://www.sec.gov/comments/s7-12-18/s71218.htm.* This feedback generally showed that retail investors prefer concise, layered disclosure and feel overwhelmed by the volume of information they currently receive, with some individual investors specifically addressing and supporting a more concise, summary shareholder report. *See* Proposing Release, *supra* footnote 8, at nn.28–30 and accompanying text.

[41] *See id.* at n.31 and accompanying text.

view funds' existing shareholder reports as too lengthy and complicated.[42]

Feedback on investors' preferences that the Commission received in response to the Proposing Release was consistent with the Commission's understanding of investors' preferences that the Proposing Release described, with the vast majority of individuals who commented on the proposal expressing support for the length, format, and content of the proposed streamlined annual report.[43] Industry commenters expressed support for the proposed layered disclosure approach.[44] Industry commenters similarly supported the use of streamlined shareholder documents and reducing the length and complexity of information shareholders receive, ultimately leading to an improved overall investor experience.[45]

Comments from individual investors similarly suggested that the proposed shareholder report approach was in line with their preferences in terms of the length of material and content areas that investors find to be useful to monitor fund investments. To help market participants understand the proposed shareholder report, the Commission published a hypothetical annual report to illustrate what a more concise, tailored shareholder report could look like, as well as a feedback flier that investors could use to provide their views on the hypothetical report.[46] The Commission received feedback flier responses from individual investors as well as academics. Of the respondents who answered the feedback flier question, ''Overall, would the sample shareholder report be useful in monitoring your fund investments?'' the vast majority responded positively.[47] The vast majority of respondents who answered a question in the feedback flier about the length of the hypothetical report responded that the length was ''about right.''

One comment letter also included data that this commenter had compiled about individual investors' preferences as expressed in response to the hypothetical report and feedback flier that the Commission published.[48] This commenter engaged a market research firm to provide the feedback flier to 2,000+ mutual fund and/or ETF investors and to collate responses from these investors. The commenter reported that, based on this analysis, 91% of respondents said that the hypothetical streamlined annual and semi-annual reports would be useful in monitoring their fund investments.[49] This analysis found that 78% of respondents said that the length was ''about right,'' with 16% saying that the length was ''too long'' and 6% saying that the length was ''too short.''

In addition to feedback flier responses, the Commission also received traditional comment letters from individuals, who similarly expressed broad support for the proposed approach to fund shareholder reports. One remarked that the hypothetical report was ''much better than what we have now.'' [50] Several likewise stated that they supported the proposed streamlined shareholder report, with one commenting, ''I think it contains the relevant information and would be more useful to investors than the current annual report.'' [51] One individual, however, expressed that ''more should be done to push transparency, plain English and brevity of disclosure.'' [52]

The Commission also received feedback on individuals' preferences and views through qualitative investor interviews and a study on performance benchmarks that the Commission's Office of the Investor Advocate (''OIAD'') designed (the ''OIAD Benchmark Study'').[53] The qualitative interviews aimed to generate hypotheses about certain content areas in a fund shareholder report that may cause confusion and lead to impediments to investor understanding of key information. These interviews focused in particular on investors' understanding of fund performance disclosure, as displayed in connection with broad-based and narrow performance benchmark indexes. The objective of the qualitative interviews was to provide background for a more extensive quantitative experimental study. In addition, OIAD recommended additional research devoted to certain other issues that arose during the qualitative interviews, including exploring ways of explaining share classes to investors, to the extent that share classes are a necessary component of fund disclosures.[54]

Following the qualitative interviews, OIAD conducted a study on the impact of fund performance benchmarks on investor decision-making. This research examined market data, and the results of a large behavioral experiment sampling a general population, to understand how fund companies employ benchmarks and how individuals respond to the presentation of benchmarks. The OIAD Benchmark Study, which is discussed in more detail below, analyzes individuals' responses to benchmarks, including how individuals respond to benchmarks that outperform and underperform the fund, and examines whether there is a differential impact in performance graphs' use of broad versus narrow benchmarks on a fund's attractiveness.

Each of these avenues offering evidence of investor preferences and behaviors in response to fund disclosure has provided important context and support for the final rules' approach to fund shareholder reports. Staff will evaluate investor preferences and

[42] *See id.* at n.32–37 and accompanying text.

[43] *See infra* footnotes 47–51 and accompanying text.

[44] *See, e.g.,* Comment Letter of CFA Institute (Dec. 30, 2020) (''CFA Institute Comment Letter''); Comment Letter of Fidelity (Jan. 4, 2021) (''Fidelity Comment Letter''); Mutual Fund Directors Forum Comment Letter.

[45] *See* SIFMA Comment Letter; *see also* Comment Letter of Teachers Insurance and Annuity Association of America (Jan. 4, 2021) (''TIAA Comment Letter''); Comment Letter of FS Investments (Jan. 4, 2021) (''FS Investments Comment Letter'').

[46] *See* Proposing Release, *supra* footnote 8, Appendix A (''Hypothetical Streamlined Shareholder Report'') *available at https://www.sec.gov/files/final_2020_im_annual-shareholder%20report.pdf* and Appendix B (''Shareholder Report Feedback Flier''), *available at https://www.sec.gov/rules/proposed/2020/im-shareholder-report-ff.html.*

[47] Commenters also expressed views about the relative usefulness of the different proposed content areas as illustrated in the hypothetical report, and these comments are described in more detail in section II.A.2 *infra.*

[48] Comment Letter of Broadridge Financial Solutions, Inc. (Jan. 4, 2021) (''Broadridge Comment Letter'').

[49] The Broadridge Comment Letter stated, ''Half of the participants were randomly assigned to view the SEC's hypothetical streamlined annual shareholder report, and the other half viewed a streamlined semi-annual report.'' The Commission only published a hypothetical streamlined annual report and did not also publish a hypothetical semi-annual report. The hypothetical semi-annual report prototype that Broadridge included in its comment letter appears to have been created by Broadridge, based on the hypothetical annual report that the Commission published.

[50] Comment Letter of James J. Angel (Jan. 6, 2021) (''Angel Comment Letter'').

[51] Comment Letter of Lisa Barker (Jan. 3, 2021) (''Barker Comment Letter''); *see also* Comment Letter of Ryan O'Malley (Dec. 29, 2021) (''O'Malley Comment Letter'') (''I generally like the idea of a brief shareholder report.''); Comment Letter of Tom Riker (June 2, 2021) (''Riker Comment Letter'') (''I support the streamlined shareholder report proposal.''); *see also* Comment Letter of Mo Abdullah (Oct. 7, 2022) (''Abdullah Comment Letter'') (''The proposed shareholder report seems like the right mix of information.'').

[52] Comment Letter of David Marlboro (Dec. 20, 2020) (''Marlboro Comment Letter'').

[53] *See* Alycia Chin, Jonathan Cook, Jay Dhar, Steven Nash, and Brian Scholl, *How Do Consumers Understand Investment Quality? The Role of Performance Benchmarks,* Office of the Investor Advocate Working Paper 2022–01 (''Chin, et al.''), *available at https://www.sec.gov/files/performance-benchmarks-2022-01.pdf.*

[54] *See id.* at Appendix B; *see also* discussion on fund share classes as section II.A.1.b *infra.*

behaviors as they evolve in the future, including through mechanisms such as investor testing and investor surveys where appropriate, taking into account relevant developments in connection with fund practices, investors' preferences, the fund industry, and financial markets in connection with any future regulatory initiatives.

4. Investment Company Advertisements, and Developments Affecting Fund Marketing Practices

Many registered investment companies and business development companies (''BDCs'') prepare advertising materials, which can include materials in newspapers, magazines, radio, television, direct mail advertisements, fact sheets, newsletters, and on various web-based platforms. These advertising materials are subject to certain requirements under Commission rules. The primary Commission rules addressing investment company advertising include rules 482 and 433 under the Securities Act, rule 34b–1 under the Investment Company Act, and rule 156 under the Securities Act (the term ''investment company advertising rules'' in this release refers to this set of rules).

Rule 482 establishes certain content, legend, and filing requirements for investment company advertisements.[55] Many of the rule's content requirements focus on advertisements that include performance data of certain types of funds, including mutual funds, ETFs, insurance company separate accounts registered as unit investment trusts (''UITs''), and money market funds.[56]

Rule 34b–1 applies to supplemental sales literature (*i.e.,* sales literature that is preceded or accompanied by a prospectus) by any registered open-end company, UIT, or registered face-amount certificate company. Rule 34b–1 includes many of the same requirements as rule 482, including the same performance-related requirements.[57]

Rule 156 states that whether or not a particular description, representation, illustration, or other statement involving a material fact is misleading depends on evaluation of the context in which it is made. The rule discusses several pertinent factors that should be weighed in considering whether a particular statement involving a material fact is or might be misleading in investment company sales literature, including rule 482 advertisements and supplemental sales literature.[58] Rule 156 applies to sales literature used by any person to offer to sell or induce the sale of securities of any investment company, including registered investment companies and BDCs.

Separately, rules issued by FINRA regulating members' communications with the public provide an important source of advertising requirements and guidance for investment companies, as underwriters and/or distributors of investment company shares are commonly FINRA members.[59] FINRA rule 2210, ''Communications with the Public,'' includes both general and specific standards for communications with the public.[60]

In recent years, investment companies increasingly have been marketing themselves on the basis of cost in an effort to attract investors. For instance, we have observed some funds calling themselves ''no-expense'' or ''zero-expense'' funds, or emphasizing their low expense ratios, despite the fact that investors may incur other investment costs.[61] Comments that the Commission received on the Proposing Release similarly recognized ''the trend for some funds to market their investment products based on claims of low or no fees.''[62] Investors may incur certain costs and fees that, despite providing revenue to the fund's adviser and its affiliates (or other parties), are not direct costs of investing in a fund and so are not reflected in a fund's expense ratio, and therefore may be less transparent or clear to certain investors.[63] Additionally, a fund may appear to be a ''zero expense'' fund because its adviser is waiving fees or reimbursing expenses for a period of time, but the fund will incur fees and expenses once that arrangement expires. In these and other cases, we are concerned that, absent appropriate explanations or limitations, investors may believe incorrectly that there are no expenses associated with investing in the fund.

While investment company advertising rules currently place limits on how a fund may present its performance to promote comparability and prevent potentially misleading advertisements, these rules generally do not prescribe the presentations of fees and expenses in advertisements to address similar concerns about comparability or potentially misleading information.[64] Addressing fee comparability in fund advertisements is critical both in light of current trends in

[55] Investment company advertisements typically are prospectuses for purposes of the Securities Act. Rule 482 provides a framework in which investment company advertisements are deemed to be ''omitting prospectuses'' that may include information the substance of which is not included in a fund's statutory or summary prospectus. *See* Proposing Release, *supra* footnote 8, at n.653–654 and accompanying text. Instead of relying on rule 482, registered closed-end funds and BDCs may use free writing prospectuses in accordance with rule 433 and certain other Commission rules for advertising purposes. *See id.* at nn.656–676 and accompanying text.

[56] *See id.* at nn.655–666.

[57] *See id.* at nn.659–661 and accompanying text. The Commission adopted rule 34b–1 to help prevent performance claims in supplemental sales literature from being misleading and to promote comparability and uniformity among supplemental sales literature and rule 482 advertisements.

[58] *See id.* at n.662–663 and accompanying text.

[59] FINRA is a self-regulatory organization composed of brokers and dealers registered under the Exchange Act.

[60] Non-money market fund open-end funds' retail communications and correspondence (as defined in FINRA rule 2210, *see infra* footnote 515) that include performance information also must include fee and expense information that includes: (1) the fund's maximum sales charge; and (2) the total annual fund operating expense ratio, gross of any fee waivers or expense reimbursements (*i.e.,* ongoing annual fees). These funds' standardized performance information, sales charge, and total annual fund operating expense ratio also must be set forth prominently. FINRA rule 2210(d)(5). In addition, FINRA rule 2210 applies to the retail communications of BDCs. *See* FINRA Rule 2210 Interpretative Guidance at C.1, *available at https://www.finra.org/rules-guidance/guidance/faqs/advertising-regulation#b2* (responding, in part, that firms must file with FINRA retail communications concerning BDCs that are registered under the Securities Act).

[61] A fund's expense ratio is the figure in its prospectus fee table that represents the fund's total annual operating expenses, expressed as a percent of the fund's average net assets. *See also* Proposing Release, *supra* footnote 8, at section II.H.1.c (discussing costs that the expense ratio does not reflect).

[62] *See* CFA Institute Comment Letter; *see also* Comment Letter of the Consumer Federation of America (Jan. 4, 2021) (''Consumer Federation of America II Comment Letter'') (discussing concerns that accompany funds being ''increasingly marketed on the basis of costs'').

[63] For example, an investor may incur intermediary costs, such as wrap fees that an investor pays to the sponsor of a wrap fee program (which may be the fund's adviser or its affiliates) for investment advice, brokerage services, administrative expenses, or other fees and expenses. *See* SEC Division of Examinations, Observations from Examinations of Investment Advisers Managing Client Accounts That Participate in Wrap Fee Programs (July 21, 2021), *available at https://www.sec.gov/files/wrap-fee-programs-risk-alert_0.pdf.* All staff statements represent the views of the staff. They are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved their content. These staff statements, like all staff statements, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person. As another example, investment company advertisements that advertise low investment costs, based solely on a fund's prospectus fee table, might not reflect or recognize other categories of costs that may be supplementing a traditional management fee and/or may affect the returns an investor experiences (*e.g.,* intermediary costs). *See* Proposing Release, *supra* footnote 8, at paragraph accompanying n.685.

[64] Commission rules require a fund to disclose maximum sales loads in some advertisements, and FINRA rules also limit how a fund advertisement may describe investment costs in some respects, but these limitations currently apply only to a subset of fund advertisements. *See* Proposing Release, *supra* footnote 8, at section II.H.2.

fund marketing and because of the significant long-term effects that fund fees and expenses can have on investment returns.

B. Overview of the Final Rules

1. Final Rules' Principal Elements

The final rules consist of the following principal elements:

• *Shareholder Reports Tailored to the Needs of Retail Shareholders:* Under the new framework, shareholders will receive concise and visually engaging annual and semi-annual reports designed to highlight information that we believe is particularly important for retail shareholders to assess and monitor their fund investments on an ongoing basis. This information will include—among other things—fund expenses, performance, and portfolio holdings. Funds will have the flexibility to make electronic versions of their shareholder reports more user-friendly and interactive. In addition, funds will be required to tag the information in their shareholder reports using Inline XBRL structured data language.

• *Availability of Additional Information on Form N–CSR and Online:* Information that may be more relevant to financial professionals and other investors who desire more in-depth information will be made available online and delivered free of charge in paper or electronically upon request. This information also will be filed on a semi-annual basis with the Commission on Form N–CSR. This information includes, for example, the schedule of investments and other financial statement elements. Shareholder reports will contain cover page legends directing investors to websites containing this information. Accessibility-related requirements that we are adopting will help ensure that investors can easily reach and navigate the information that appears online.

• *Amendments to Scope of Rule 30e–3 to Exclude Funds Registered on Form N–1A:* To ensure that all fund investors will experience the anticipated benefits of the new tailored shareholder reports, we are amending the scope of rule 30e–3 to exclude open-end funds. This amendment ensures shareholders in open-end funds will directly receive the new tailored annual and semi-annual reports, either in paper or (if the shareholder has so elected) electronically.[65] This change reflects the Commission's continuing efforts to improve the ways investors receive fund disclosure. We believe that this approach represents a more effective means of improving investors' ability to access and use fund information, and of reducing expenses associated with printing and mailing, than continuing to permit open-end funds to rely on rule 30e–3.

• *Fee and Expense Information in Investment Company Advertisements:* Finally, we are adopting amendments that are designed to respond to developments that we have observed in investment company advertising. These amendments require that presentations of investment company fees and expenses in advertisements and sales literature be consistent with relevant prospectus fee table presentations and be reasonably current. These advertising rule amendments affect all registered investment company and BDC advertisements that include fee and expense figures, and where the investment company presents total annual expense figures in their prospectuses. The amendments therefore are not limited to open-end fund advertisements. The amendments also address representations of fees and expenses that could be materially misleading.

2. Other Aspects of Proposal

After considering comments, we are not taking final action on several aspects of the proposal at this time: (1) proposed new rule 498B, which would have provided a new alternative approach to satisfy prospectus delivery requirements for existing fund investors; and (2) proposed amendments to funds' prospectus fee and risk disclosure.

Proposed Rule 498B

In lieu of providing annual prospectus updates to existing fund investors, proposed rule 498B would have provided an alternative approach to keep these investors informed about their fund investments and updates to their funds that occur year over year.[66] Under this proposed rule, new investors would have received a fund prospectus in connection with their initial investment in a fund, as they currently do, but funds could have opted into an alternative approach under which they would not deliver annual prospectus updates to investors thereafter.[67] The proposed layered disclosure framework would instead have relied on the shareholder report and timely notifications to shareholders to keep investors informed about their fund investments.

While some commenters generally supported proposed rule 498B, most commenters, even those who supported the proposed rule, suggested fairly significant modifications.[68] A number of commenters directly opposed the proposed rule.[69] Some of these commenters expressed concern that existing investors would not continue to receive an updated prospectus annually.[70] Many other opposing commenters also expressed concern about the proposed requirement to deliver notices of material fund changes.[71] Other commenters suggested that the proposed new approach to satisfying prospectus delivery obligations could increase the possibility of shareholder litigation (for example, if failing to send a material change notice or not correctly tracking existing investors could result in prospectus delivery obligations not being satisfied).[72]

Improving the fund disclosure framework and investors' experience with fund disclosure continues to be an important priority for the Commission, as does the consideration of how to best help investors make informed investment decisions and monitor their fund investments. In light of the

[65] *See infra* footnote 618 and accompanying text (discussing increase in e-delivery requests since the beginning of the COVID–19 pandemic).

[66] *See* Proposing Release, *supra* footnote 8, at section II.F.

[67] *See* section 5(b)(2) of the Securities Act [15 U.S.C. 77e(b)(2)] (generally requiring that a fund or financial intermediary deliver a prospectus to an investor in connection with a purchase of the fund's securities). Because section 5(b)(2) requires funds to deliver a prospectus to an investor purchasing shares, including existing shareholders who purchase additional shares, funds generally provide annual updates of prospectuses to all shareholders.

[68] *See, e.g.,* Comment Letter of T. Rowe Price Associates, Inc. (Jan. 5, 2021) (''T. Rowe Price Comment Letter''); Comment Letter of Better Markets, Inc. (Jan. 4, 2021) (''Better Markets Comment Letter'') (each commenter expressing support for adopting the rule as proposed); *see also, e.g.,* Comment Letter of the Investment Company Institute (Dec. 21, 2020) (''ICI Comment Letter''); Fidelity Comment Letter; Comment Letter of Tom and Mary (Aug. 12, 2020) (''Tom and Mary Comment Letter'') (each commenter suggesting modifications to the proposed rule).

[69] *See, e.g.,* Comment Letter of Charles Schwab Investment Management, Inc. (Jan. 4, 2021) (''Charles Schwab Comment Letter''); TIAA Comment Letter.

[70] *See, e.g.,* TIAA Comment Letter; Consumer Federation of America II Comment Letter; Broadridge Comment Letter (discussing data this commenter compiled about individual investors' preferences showing that 88% of surveyed investors ''prefer the status quo of annual prospectus delivery'').

[71] *See, e.g.,* Comment Letter of Dechert LLP (Jan. 4, 2021) (''Dechert Comment Letter''); ICI Comment Letter; Comment Letter of Stradley Ronon Stevens & Young, LLP (Jan. 15, 2021) (''Stradley Ronon Comment Letter''); Comment Letter of The Vanguard Group, Inc. (Dec. 22, 2020) (''Vanguard Comment Letter''); SIFMA Comment Letter; Fidelity Comment Letter.

[72] *See, e.g.,* Dechert Comment Letter; Comment Letter of Sidley Austin LLP (Dec. 29, 2020) (''Sidley Austin Comment Letter''); Comment Letter of the Center for Capital Markets Competitiveness (Jan. 4, 2021) (''Center for Capital Markets Competitiveness Comment Letter'').

comments received, which we believe raise issues that merit further consideration, we are not adopting rule 498B at this time.

Proposed Amendments to Funds' Prospectus Fee Disclosure

The Commission proposed amendments to funds' prospectus disclosure requirements to provide greater clarity and more consistent information regarding fund fees and expenses. The proposal would have replaced the existing fee table in the summary section of funds' statutory prospectuses with a simplified fee summary, and the Commission also proposed to simplify the fee example that currently appears in funds' prospectuses.[73] The full, existing fee table would be moved to the statutory prospectus under the proposal, for use by investors seeking additional details about fund fees.[74] Finally, the proposal would have replaced certain terms in the current fee table with terms that were designed to be easier to understand by most investors.[75]

Comments on the proposed fee summary, simplified example, and proposed new fee terminology were mixed. Some agreed that investors could benefit from simplified prospectus fee disclosures and generally supported the proposed approach.[76] Several commenters, however, opposed the inclusion of the fee summary and noted that having multiple different fee presentations could be confusing for investors and would be burdensome for funds.[77] A number of commenters opposed many of the proposed new terms, stating that they would not further investor comprehension and could be more confusing than the current terms.[78] Some commenters also recommended that the Commission should verify the benefits of the proposed approach through additional investor testing.[79]

The proposal also included a new approach to disclosing acquired fund fee and expenses (''AFFE'').[80] Currently, all registered investment companies that invest in other ''acquired funds,'' including BDCs and private funds that would be investment companies but for sections 3(c)(1) or 3(c)(7) of the Investment Company Act, disclose AFFE in their prospectus fee tables.[81] AFFE shows the investing fund's pro rata share of the fees and expenses of any underlying funds. Under the proposal, a fund that invests less than 10% of the value of its total fund assets in other funds could disclose AFFE in a footnote to the fee table, instead of including AFFE as a fee table line item (which is included as a component of the fund's bottom-line ongoing annual operating expenses). The proposed new approach to AFFE disclosure was designed to maintain the benefits of transparent AFFE disclosure and to provide more consistent disclosure of information related to indirect costs.[82]

Commenters expressed varying concerns about the proposed AFFE approach. A number of commenters suggested that the proposed approach to AFFE disclosure would decrease transparency of funds' AFFE.[83] These commenters urged the Commission to retain the current approach to provide investors full and clear information about funds' fees and expenses. Some members of the fund industry generally supported the changes, although some requested that the proposal be significantly broadened, including suggestions to carve BDCs out from the definition of ''acquired fund'' altogether.[84]

Helping investors more readily understand fund fees and expenses is an important priority of the Commission. In light of the comments received, which we believe raise issues that merit further consideration, we are not adopting the proposed changes at this time.

Proposed Amendments to Funds' Prospectus Risk Disclosure

The Commission also proposed amendments to funds' prospectus disclosure requirements that were designed to help investors more readily understand funds' principal risks.[85] These amendments would have added specificity to the existing requirement that funds must disclose principal risks in their prospectuses. The proposed amendments clarified that a ''principal'' risk is one that would place more than 10% of the fund's assets at risk and is reasonably likely to occur in the future. The proposal also would have required that funds' description of risks be brief and organized in order of importance.

While some commenters supported the proposed approach, most generally opposed it.[86] Commenters expressed concern about the perceived difficulty and subjectivity of determining which risks currently or in the future will place more than 10% of the fund's assets at risk, as well as ordering risk disclosure, and the potential of increased liability for funds associated with this.[87]

Helping investors more readily understand funds' principal risks is an important priority of the Commission. In light of the comments received, which we believe raise issues that merit further consideration, we are not adopting the proposed risk disclosure amendments at this time.

II. Discussion

A. Annual Reports

In order to effectuate the new streamlined shareholder reports for open-end funds, we are adopting substantially as proposed new Item 27A to Form N–1A to specify the design and content of funds' annual and semi-annual reports. We also are removing, as proposed, the provisions in Item 27 of

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[73] *See* Proposing Release, *supra* footnote 8, at sections II.H.1.b–e.

[74] *See id.* at sections II.H.1.b–c.

[75] *See id.* at section II.H.1.f.

[76] Comment Letter of Morningstar Inc. (Jan. 4, 2020) (''Morningstar Comment Letter''); Comment Letter of Consumer Federation of America (Dec 15, 2020) (''Consumer Federation of America I Comment Letter'').

[77] *See, e.g.,* SIFMA Comment Letter; Dechert Comment Letter; FS Investments Comment Letter.

[78] *See, e.g.,* ICI Comment Letter; SIFMA Comment Letter; CFA Institute Comment Letter; Charles Schwab Comment Letter; Comment Letter of Dimensional Fund Advisors (Jan. 4, 2021) (''Dimensional Comment Letter'').

[79] *See, e.g.,* Consumer Federation of America II Comment Letter; ICI Comment Letter; Dechert Comment Letter.

[80] *See* Proposing Release, *supra* footnote 8, at section II.H.1.g.

[81] *See id.* at nn.604–605 and accompanying text.

[82] *See id.* at nn.608–614, and accompanying and following paragraphs.

[83] *See, e.g.,* Consumer Federation of America II Comment Letter; Barker Comment Letter; Morningstar Comment Letter; Comment Letter of Tom Williams (Aug. 6, 2020) (''Williams Comment Letter'').

[84] *See, e.g.,* Comment Letter of the Small Business Investor Alliance (Dec. 4, 2020); Comment Letter of the Coalition for Business Development (Jan. 4, 2021); ICI Comment Letter; *see also, e.g.,* Final Report on 2018 SEC Government-Business Forum on Small Business Capital Formation (June 2019), *available at https://www.sec.gov/info/smallbus/gbfor37.pdf* (discussing, among other things, forum recommendations on BDCs and AFFE. The SEC conducts the Government-Business Forum on Small Business Capital Formation annually. The recommendations contained in this report are solely the responsibility of Forum participants from outside the SEC, who were responsible for developing them. The recommendations are not endorsed or modified by the SEC and do not necessarily reflect the views of the SEC, its Commissioners or any of the SEC's staff members.).

[85] *See* Proposing Release, *supra* footnote 8, at section II.H.2.

[86] *See, e.g.,* Consumer Federation of America II Comment Letter; Comment Letter of NASAA (Jan. 4, 2021) (''NASAA Comment Letter''); Comment Letter of the Americans for Financial Reform Education Fund (Jan. 4, 2021) (''AFREF Comment Letter'') (each expressing overall support for the changes); *contra* ICI Comment Letter; Sidley Austin Comment Letter; Dechert Comment Letter; Comment Letter of John Hancock (Jan. 4, 2021) (''John Hancock Comment Letter'') (each expressing general opposition).

[87] *See, e.g.,* Sidley Austin Comment Letter; Comment Letter of Federated Hermes (Jan. 4, 2021) (''Federated Hermes Comment Letter'').

current Form N–1A that relate to annual and semi-annual reports.[88]

The table below summarizes the contents that funds will include in their annual reports—or, alternatively, that they will file on Form N–CSR—in comparison to current shareholder report disclosure requirements.[89] While the new content requirements for shareholder reports that are transmitted in paper will generally be the same as the requirements for reports that are transmitted electronically (and that appear online or are accessible through mobile electronic devices), we are adopting, as proposed, instructions that address electronic presentation and are designed to provide flexibility to enhance the usability of reports that appear online or on mobile devices.[90]

TABLE 1—ANNUAL REPORT CONTENTS

Current annual shareholder report disclosure *(current Form provision)*	Description of amendments	New rule and form provisions	Discussed below in
	Add new identifying information to the beginning of the annual report.	Item 27A(b) of Form N–1A	Section II.A.2.II.A.2.a.
Expense example *(Form N–1A Item 27(d)(1))*.	Retain in annual report in a more concise form.	Item 27A(c) of Form N–1A	Section II.A.2.II.A.2.b.
Management's discussion of fund performance ("MDFP") *(Form N–1A Item 27(b)(7))*.	Retain in annual report in a more concise form.	Item 27A(d) of Form N–1A	Section II.A.2.II.A.2.c.
	Add new fund statistics section to the annual report.	Item 27A(e) of Form N–1A	Section II.A.2.II.A.2.d.
Graphical representation of holdings *(Form N–1A Item 27(d)(2))*.	Retain in annual report	Item 27A(f) of Form N–1A	Section II.A.2.II.A.2.e.
	Add new material fund changes section to the annual report.	Item 27A(g) of Form N–1A	Section II.A.2.II.A.2.f.
Changes in and disagreements with accountants *(Form N–1A Item 27(b)(4))*.	Retain in annual report in summary form	Item 27A(h) of Form N–1A	Section II.A.2.II.A.2.g.
	The entirety of the currently-required disclosure would move to Form N–CSR and would need to be available online and delivered (in paper or electronic format) upon request.	Item 8 of Form N–CSR Rule 30e–1(b)(2) and (b)(3).	Section II.C.2.II.C.1.c.
Statement regarding the availability of quarterly portfolio schedule, proxy voting policies and procedures, and proxy voting record *(Form N–1A Item 27(d)(3) through (5))*.	Include a more general reference to the availability of additional fund information in the annual report.	Item 27A(i) of Form N–1A	Section II.A.2.II.A.2.h.
	Add provision allowing funds to optionally disclose in their annual reports how shareholders may revoke their consent to householding [91].	Item 27A(j) of Form N–1A	Section II.A.2.II.A.2.i.
Financial statements, including schedule of investments *(Form N–1A Item 27(b)(1))*.	Move to Form N–CSR Would need to be available online and delivered (in paper or electronic format) upon request.	Item 7(a) of Form N–CSR Rule 30e–1(b)(2) and (b)(3).	Section II.C.1.II.C.1.a.
Financial highlights *(Form N–1A Item 27(b)(2))*.	Retain certain data points, but generally move to Form N–CSR. Would need to be available online and delivered (in paper or electronic format) upon request.	Item 7(b) of Form N–CSR Rule 30e–1(b)(2) and (b)(3).	Section II.C.1.C.1.b.
Results of any shareholder votes during the period *(Rule 30e–1(b))*.	Move to Form N–CSR Would need to be available online and delivered (in paper or electronic format) upon request.	Item 9 of Form N–CSR Rule 30e–1(b)(2) and (b)(3).	Section II.C.1II.C.1.d.
Remuneration paid to directors, officers, and others *(Form N–1A Item 27(b)(3))*.	Move to Form N–CSR Would need to be available online and delivered (in paper or electronic format) upon request.	Item 10 of Form N–CSR Rule 30e–1(b)(2) and (b)(3).	Section II.C.1.II.C.1.e.
Statement regarding the basis for the board's approval of investment advisory contract *(Form N–1A Item 27(d)(6)(i))*.	Move to Form N–CSR Would need to be available online and delivered (in paper or electronic format) upon request.	Item 11 of Form N–CSR Rule 30e–1(b)(2) and (b)(3).	Section II.C.1.II.C.1.f.

[88] The final rules generally require funds to reorganize the presentation of currently-required information. To the extent that any of the amendments require funds to disclose new information other than is required in section 30(e), such changes are appropriate in the public interest for the reasons discussed more fully in sections II.A.2 and II.B.1.

[89] This release separately discusses the content requirements for funds' semi-annual reports. *See infra* section II.B.

[90] *See infra* section II.A.4.

[91] "Householding" permits funds to deliver a single copy of a prospectus, proxy materials, and a shareholder report to investors who share the same address and meet certain other requirements in order to avoid duplication of materials to investors who invest in funds through a variety of individual and family accounts.

TABLE 1—ANNUAL REPORT CONTENTS—Continued

Current annual shareholder report disclosure *(current Form provision)*	Description of amendments	New rule and form provisions	Discussed below in
Management information and statement regarding availability of additional information about fund directors *(Form N–1A Item 27(b)(5) and (6))*.	Remove from shareholder reports, but information would remain available in a fund's SAI, which is available online or delivered upon request.	....	Section II.D.
Statement regarding liquidity risk management program *(Form N–1A Item 27(d)(6)(ii))*.	Remove from shareholder reports	....	Section II.D.
Rule 30e–3 disclosure, if applicable *(Form N–1A Item 27(d)(7))*.	Remove from shareholder reports	....	Section II.E.
Funds have discretion to provide other information in their shareholder reports (*e.g.,* president's letter).	Disclosures in the annual report are restricted to that which is required or permitted under Item 27A of Form N–1A (other materials may accompany the transmission of the report, so long they meet the prominence requirements for materials that accompany the report).	Instructions 1 and 12 to Item 27A(a) of Form N–1A.	Section II.A.1.c.

1. Scope of Annual Report Disclosure, and Registrants Subject to Amendments

a. Series Scope

We are adopting, as proposed, the requirement that funds must prepare separate annual reports for each series of a fund. As a result, under the final rules, a fund shareholder will receive an annual report that addresses only the series in which that shareholder is invested. Many mutual funds and ETFs are organized as single registrants with several series (sometimes referred to as portfolios).[92] Currently, fund registrants may prepare a single shareholder report that covers multiple series. As the Commission stated in the Proposing Release, we believe this approach contributes to the length and complexity of shareholder reports.[93] Because the length and complexity associated with multi-series shareholder reports are inconsistent with our goal of creating concise shareholder report disclosure that shareholders can more easily use to assess and monitor their ongoing fund investments, the final rules will require fund registrants to prepare separate annual reports for each series of the fund.[94] We believe a shareholder is more likely to read a shareholder report targeted to that shareholder's fund as opposed to a multi-series report that may also cover a number of other funds.

Most commenters supported this proposed requirement, stating that it would significantly reduce the length of the report and make it easier for shareholders to navigate.[95] Some commenters, however, urged the Commission to continue to allow fund complexes to bundle the shareholder reports of certain types of funds together in one report, in selected circumstances.[96] For example, these commenters urged the Commission to allow funds with similar investment strategies to be bundled in the same report, such as target date funds, target risk funds, state tax exempt funds, and money market funds. These commenters argued that shareholders would benefit from seeing other investment options that are available to them within the complex. Additionally, some of these commenters stated that, because disclosures related to funds with similar strategies and risk profiles likely would be similar, allowing these funds to be bundled together in a single report would allow fund complexes to organize their similarly-managed funds efficiently into a single report.[97] Some commenters likewise argued that fund complexes should have further flexibility to bundle series as they see fit to allow them to organize their reports efficiently and reduce the costs associated with preparing shareholder reports.[98] Finally, some commenters urged the Commission to allow insurance companies providing shareholder reports to holders of variable contracts to provide combined reports for those series available as investment options for a particular variable contract.[99] These commenters stated that this practice would be consistent with rule 498 under the Securities Act and argued that contract holders would benefit from receiving a single document that contains information regarding all of the

[92] *See* Proposing Release, *supra* footnote 8, at nn.108–110 and accompanying text (noting that each series has its own investment objectives, policies and restrictions and that the Federal securities laws and Commission rules often treat each series as a separate fund).

[93] *See* Proposing Release, *supra* footnote 8, at text accompanying n.111 (providing examples of how the current presentation of multiple series within a single shareholder report may confuse shareholders); *see also supra* at text accompanying footnotes 8 and 29.

[94] *See* Instruction 4 to Item 27A(a) of amended Form N–1A. As proposed, fund registrants could continue to include multiple shareholder reports that cover different series in a single Form N–CSR report filed on EDGAR under the final rules.

[95] *See, e.g.,* CFA Institute Comment Letter; Morningstar Comment Letter; NASAA Comment Letter; Comment Letter of Prof. William A. Jacobson, Cornell Law School (Dec. 29, 2020) (''Cornell Law School Comment Letter''); Barker Comment Letter; *see also* Comment Letter of Donnelley Financial Solutions (Dec. 30, 2020) (''DFIN Comment Letter'') (supporting this requirement and stating that, if the Commission were to allow certain series to be bundled into a single shareholder report, the Commission should at a minimum require all information for each series appear together to eliminate the need for a shareholder to navigate the entire report to review all the information on a single series).

[96] *See, e.g.,* ICI Comment Letter; SIFMA Comment Letter; Fidelity Comment Letter; T. Rowe Price Comment Letter; Vanguard Comment Letter; Comment Letter of Capital Research and Management Company (Jan. 4, 2021) (''Capital Group Comment Letter''); John Hancock Comment Letter.

[97] *See, e.g.,* T. Rowe Price Comment Letter; SIFMA Comment Letter; John Hancock Comment Letter.

[98] *See, e.g.,* Vanguard Comment Letter; Capital Group Comment Letter; John Hancock Comment Letter.

[99] *See, e.g.,* ICI Comment Letter; SIFMA Comment Letter; Fidelity Comment Letter; John Hancock Comment Letter.

investment options available under the variable contract.[100]

After considering these comments, we continue to believe a multi-series report is inconsistent with our goal of creating concise shareholder report disclosure that shareholders can more easily use to assess and monitor their ongoing fund investments. For example, if the report were to include information about multiple series, a shareholder that is invested in one series of the registrant would need to spend more time searching through the report to find disclosure related to that shareholder's investment. Additionally, even if there may be some efficiencies gained for fund complexes in bundling the reports of funds with similar investment strategies, we believe those benefits are not justified by the resulting inconsistency in which some funds' shareholder report content would be bundled together in a single report while others would have individual shareholder reports.[101]

Furthermore, we believe that bundling funds with similar strategies could present an increased risk of shareholder confusion. For instance, if two series included in the same shareholder report were to have similar names, such as two tax-exempt funds or two target date funds where only the target date in the name differs (*e.g.,* ''XYZ Target Retirement 2040 Fund'' versus ''XYZ Target Retirement 2045 Fund''), there could be a greater risk that a shareholder would mistakenly review information that does not relate to that person's investment.[102] Because the shareholder report is designed to assist existing shareholders in monitoring their investments on an ongoing basis, rather than serving as a mechanism for funds to provide shareholders information about other products, we disagree with commenters who suggested that bundling funds with similar strategies together in a single report, such as target date funds, would be useful to investors.[103]

Furthermore, we have similar concerns about commenters' suggestions to permit bundling shareholder reports of those funds that are available as investment options underlying variable contracts, although this is permitted for summary prospectuses. In the context of reports to existing shareholders who use these reports to monitor their investments on an ongoing basis (as opposed to prospective investors making an initial investment decision and who are a key audience for summary prospectuses), we see little benefit to such contract holders from allowing insurance companies to bundle together all the underlying series, many of which the shareholders are not invested in.[104] Contract holders seeking to shift their investments to other available investment options may consult the contract's annual prospectus update, or for variable contract registrants that use a summary prospectus, the appendix of investment options/portfolio companies that an updating summary prospectus is required to include.[105]

b. Class Scope

To reduce the complexity of disclosure as well as to provide more tailored information that is specific to a shareholder's investment in the fund, the final rules, in a change from the from the proposal, will require that a fund prepare and transmit to the shareholder a shareholder report that covers the single class of a multiple-class fund in which the shareholder invested.[106] We requested comment on whether a shareholder report should be limited to a single class. After considering the comments received in response to this request, among other factors, we believe that this requirement will make it easier for shareholders to navigate the shareholder report disclosure and understand how it applies to their own interests in the fund, as shareholders only will receive reports applicable to their share class.[107] Although different share classes of a fund represent interests in the same investment portfolio, and certain shareholder report disclosure will be the same for all classes, the final rules recognize that there is significant disclosure that varies among share classes, such as expenses and performance data.

Commenters' support for the proposal to include *all* of a fund's share classes in a single shareholder report was mixed. Certain commenters generally supported the proposed approach and stated that shareholders monitoring their investments may benefit from seeing other cheaper classes that may be available.[108] One of those commenters, nevertheless, suggested that it would be beneficial if a fund were to provide a brief description of share class availability and investor eligibility requirements for each share class.[109] Other commenters, however, suggested that including all share classes in the tailored shareholder report could result in lengthy and complex disclosure, particularly with the class-specific information regarding fees and performance data that would be required under the proposal.[110] One commenter suggested that the Commission require that a fund show class-specific information, such as information regarding expenses and performance data, for only the ''primary'' share class.[111] Another commenter observed that some funds have many classes, many of which that are not available to most investors, and suggested that the Commission limit the number of classes a fund may show in the annual report.[112]

[100] *See* ICI Comment Letter (stating that, while rule 498 prohibits the bundling of summary prospectuses for different funds together, it provides an exception from this prohibition for funds that are all available as investment options for a particular variable contract); *see* also John Hancock Comment Letter (also stating that insurance companies that offer funds as investment options sometimes request that certain reports be combined rather than separated into multiple reports).

[101] *See, e.g.* Morningstar Comment Letter (also stating that the costs associated with creating separate shareholder reports for each fund would not be significant because fund complexes would simply be required to divide what is currently reported in one document into several smaller documents); *see also infra* section IV.C.2.

[102] *See* Morningstar Comment Letter.

[103] *See* DFIN Comment Letter (noting that the cost of requiring only one series to be included in a shareholder report is mitigated by the cost savings derived from the proposal's exclusion of financial statements from the shareholder report); *see also infra* section IV.C.2.

[104] *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 9 at n. 16 (noting that investment options offered by variable annuity contracts can be numerous, with some contracts offering more than 250 investment options).

[105] *See* Item 18 of Form N–3 [17 CFR 239.17a and 274.11b]; Item 17 of Form N–4 [17 CFR 239.17b and 274.11c]; Item 18 of Form N–6 [17 CFR 239.17c and 274.11d].

[106] *See* Instruction 4 to Item 27A(a) of amended Form N–1A. To effectuate the requirement to prepare separate shareholder reports for each share class, we are also adopting changes to: proposed Item 27A(b)(1) and (b)(2) (to identify on the cover page the class and exchange ticker symbol of the class to which the shareholder report relates); proposed Item 27A(c), Instruction 1.(e) (to delete the requirement that a fund provide a separate line in the expense table for each class); proposed Item 27A(d), Instruction 13 (to clarify the requirements for management's discussion of fund performance in the context of multiple class funds); and proposed Item 27A(e) (to add an instruction providing that if a fund includes a statistic that is calculated based on the fund's performance or fees, the fund must show the statistic for the class of the fund to which the report relates, and to clarify that a fund may include performance-based statistics only if the relevant class has at least one year of performance). *See infra* section II.A.2.

[107] *See* Proposing Release, *supra* footnote 7, at section II.B.1.

[108] *See, e.g.,* CFA Institute Comment Letter; ICI Comment Letter; Morningstar Comment Letter.

[109] *See* Morningstar Comment Letter.

[110] *See* Capital Group Comment Letter; *see also* Tom and Mary Comment Letter.

[111] *See* Capital Group Comment Letter.

[112] *See* Tom and Mary Comment Letter.

After considering the statements of support as well as the concerns raised by commenters, we have determined to require that a shareholder report cover a single class of a multiple-class fund. We agree with commenters that including all share classes of a multiple class fund could result in lengthy and complex disclosure, particularly when a fund has a large number of share classes.[113] The length and complexity that would result by including all classes of multiple class fund would make it more difficult for a shareholder to identify information, such as fees and performance, that may differ based on the share class in which the shareholder invested. Further, such lengthy and complex shareholder reports would be inconsistent with our goal of creating concise shareholder report disclosure so shareholders can more easily use the reports to assess and monitor their ongoing fund investments.

Instead of this approach, we considered adopting the approach a commenter suggested, in which all share classes could be included in a shareholder report if the fund were to provide additional disclosure about share class availability and eligibility to assist with a shareholder's understanding of share classes.[114] However, this approach would not address the concern that the inclusion of information about multiple share classes could result in lengthy and complex shareholder report disclosure that would run counter to our goal of creating concise shareholder report disclosure.[115] Further, we believe that investors may benefit from having class-specific shareholder reports, as it may be difficult for some investors to identify or recall the share class in which they had invested. Including additional information about share class eligibility would not necessarily help to address these concerns. In addition, providing concise, plain-English disclosure about share class eligibility could be particularly challenging. Based on staff experience, including multiple share classes in a shareholder report may make it more difficult for some retail shareholders to efficiently review information relevant to their share classes, even those with specialized knowledge about investing in funds.[116]

We recognize, however, that shareholders and other market participants could benefit from information about the other share classes offered by a multiple class fund. To assist with shareholders' and other market participants' analysis of those share classes, our final rules will require website posting of fund documents that will enable these parties to obtain information about those other share classes easily.[117] Further, in a change from the proposal, we are adopting requirements for funds to tag the shareholder report contents in a structured, machine-readable data language, which will make shareholder report disclosure, including class-specific disclosure, more readily available and easily accessible for aggregation, comparison, filtering, and other analysis.[118] Accordingly, we believe it is appropriate to limit a shareholder report to one class of a multiple class fund so shareholders can more easily use the reports to assess and monitor their ongoing fund investments.

c. Scope of Content

As proposed, the final rules will generally allow a fund to include in its annual report only the information that Item 27A of Form N–1A specifically permits or requires.[119] We also are adopting, as proposed, three additional provisions related to the content of a fund's annual report. First, if a fund's particular circumstances may cause the required disclosures to be misleading, the final rules will allow a fund to add information to the report that is necessary to make the required disclosure items not misleading.[120] Disclosure in response to this provision generally should be brief. Second, as proposed, if a required disclosure is inapplicable, the final rules will permit the fund to omit the disclosure, and a fund similarly may modify a required legend or narrative information if the modified language contains comparable information to what is otherwise required.[121] Finally, as proposed, the final rules will not permit a fund to incorporate by reference any information into its annual report.[122] That is, a fund could not refer to information that is located in other disclosure documents in order to satisfy the content requirements for an annual report.

Commenters generally supported the proposed requirement to limit the information included in the shareholder report, and they agreed that this limitation would help focus shareholder reports on the most salient issues to shareholders.[123] One commenter expressly supported the proposal to allow funds to omit information from the required items that is inapplicable to the fund, and to modify required legends or narratives so long as the modification contains comparable information to what is required.[124] To provide funds with additional flexibility, one commenter suggested allowing funds to include supplemental information reasonably related to the required content or including an ''unrestricted'' section of the report

[113] According to staff review of filings received by the Commission on Form N–CEN [17 CFR 274.101] through March 14, 2022, the largest number of share classes reported by multiple class fund was 23 share classes.

[114] *See* Morningstar Comment Letter.

[115] *See* Proposing Release, *supra* footnote 8, at 19; *see also* Comment Letter of Frank Dalton (Jan. 3, 2021) (''Frank Dalton Comment Letter'') (suggesting that there be one report per fund).

[116] *See, e.g., Updated Investor Bulletin: Mutual Fund Classes,* SEC Office of Investor Education and Advocacy (updated Feb. 24, 2021) *available at https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins-61* (addressing common questions about fund share classes). *See also supra* footnote 54 and accompanying text (describing recommendations for future research exploring ways of explaining share classes to investors).

[117] *See* amended rule 30e–1; *see also infra* section II.C.2 regarding the posting of information that funds will file as Items 7–11 of amended Form N–CSR, such as fund financial statements and information about changes in and disagreements with accountants.

[118] *See infra* section II.H.

[119] *See* Instruction 3 to Item 27A(a) of amended Form N–1A; *see also* Proposing Release, *supra* footnote 8, at n.115 (noting that funds would have flexibility with respect to the use of online tools to assist shareholders in understanding the contents of an annual report that appears online or otherwise is provided electronically).

[120] *See* Instruction 2 to Item 27A of amended Form N–1A (permitting a fund to include disclosure that is required under 17 CFR 270.8b–20 (rule 8b–20 under the Investment Company Act)); rule 8b–20 under the Investment Company Act (providing, ''[i]n addition to the information expressly required to be included in a registration statement or report, there shall be added such further information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading''); *see also* Proposing Release, *supra* footnote 8, at paragraph accompanying n.117 (discussing, for example, that if a fund changed its investment policies or structure during or since the period shown, the expense, performance, or holdings information that a fund must include in its annual report may require additional disclosure to render those presentations not misleading).

[121] *See* Instruction 7 to Item 27A(a) of amended Form N–1A; *see also* Proposing Release, *supra* footnote 8, at n.119 (discussing that a goal of this instruction was to promote better-tailored disclosure).

[122] *See* Instruction 5 to Item 27A(a) of amended Form N–1A; *see also* Proposing Release, *supra* footnote 8, at n.120.

[123] *See, e.g.,* ICI Comment Letter; Consumer Federation of America II Comment Letter; Morningstar Comment Letter; NASAA Comment Letter.

[124] *See* ICI Comment Letter. *But see* Morningstar Comment Letter and Consumer Federation of America II Comment Letter (expressing concern that allowing funds to modify legends may lead to obscuring important information and stressing the importance of maintaining consistency where possible in section headers so that investors can more readily consume reports since they may receive multiple reports).

where funds can provide discretionary content.[125]

Comments on the proposed prohibition on incorporation by reference in the shareholder report were mixed. Some commenters supported the proposed prohibition, for example noting it would make it easier for shareholders to understand the report without consulting additional sources.[126] By contrast, others opposed this prohibition based on concerns that it may lead in increased litigation risk.[127] Commenters sought reassurance that information that will now be submitted online on Form N–CSR will still be considered part of the ''total mix of information'' assessed by courts in instances of shareholder litigation.[128] The final rules are not intended to change courts' assessment of the total mix of information.

We continue to believe that allowing only the required or permitted information to appear in a fund's annual report will promote consistency of information presented to shareholders and allow retail shareholders to focus on information particularly helpful in monitoring their investment in a fund.[129] As discussed above, the final rules provide funds with some flexibility to tailor the required information to their unique characteristics.[130] Additionally, in the limited circumstances in which it may be appropriate for a fund to provide less or more information than what Item 27A requires or permits, the final rules allow the fund to omit information that is inapplicable to the fund and/or add additional information to make the required disclosure items not misleading. We believe that expanding the shareholder report to include supplemental information, for example in an ''unrestricted'' section of the report, could lead to significant increases in the length of the document and would be inconsistent with our goal of focusing the report on the most salient information for shareholders.

Although the final rules will only permit the inclusion of certain information in the annual report and prohibit incorporation by reference, funds will be required to refer shareholders to the availability of certain additional website information near the end of the report.[131] The final rules, however, will—as proposed—permit funds to provide additional information to shareholders in the same transmission as the shareholder report, so long as the shareholder report is given greater prominence than any other materials included in the same transmission, except for certain specified disclosure materials.[132] The disclosure materials that are exceptions to this ''greater prominence'' requirement include summary prospectuses, statutory prospectuses, notices of the online availability of proxy materials, and other shareholder reports. Therefore, we believe that the final rules appropriately balance providing funds with the flexibility to provide shareholders with information relevant to the fund's unique characteristics, while maintaining a concise shareholder report that highlights the most relevant information for shareholders and promotes comparability across funds.

Some commenters suggested adding content areas to the shareholder report, which they suggested would be useful for investors in monitoring their investments.[133] First, two commenters requested that funds be allowed to continue to include information related to the tax character of distributions in the shareholder report to comply with certain IRS requirements.[134] These commenters asserted that, absent relief from the IRS, funds would have to make a separate mailing to shareholders disclosing this tax-related information.[135] Several commenters also suggested that funds should be required to provide additional risk-related information.[136] Finally, one commenter suggested that funds should be required to disclose how much the fund manager invests in the fund.[137]

After considering commenter suggestions, we do not believe it is necessary to permit or require any additional content areas in the shareholder report under the final rules. First, we believe that this disclosure, unlike the other required content areas of the streamlined shareholder report, would not as directly contribute to retail investors' understanding of the fund's operations and performance over the relevant performance period, and would add length and complexity to the shareholder report. Additionally, we do not believe it is necessary to permit funds to describe the tax character of distributions in the shareholder report, because a fund could distill such tax-related disclosure in a manner that would meet the final rules' requirements for a fund statistic, or if a fund determines that such information is relevant to the MDFP, the fund could consider including the relevant disclosure in the fund statistics or MDFP sections of the shareholder report under the final rules.[138] Also, as the final rules do not alter the requirements for delivering annual prospectus updates, which include information about the fund's principal risks, we do not believe it is also necessary to require funds to include additional risk-related information in their shareholder reports.[139] Similarly, we do not believe it is necessary to require funds to include information regarding how much the fund manager invests in the

[125] *See* Sidley Austin Comment Letter.

[126] *See, e.g.,* ICI Comment Letter; Morningstar Comment Letter; Consumer Federation of America II Comment Letter; NASAA Comment Letter.

[127] *See, e.g.,* Capital Group Comment Letter; Stradley Ronon Comment Letter; Vanguard Comment Letter; Dechert Comment Letter.

[128] *See, e.g.,* ICI Comment Letter; Dechert Comment Letter,

[129] *See* Proposing Release, *supra* footnote 8, at text following n.116 (noting that this approach would also encourage more impartial information by preventing funds from adding information commonly used in marketing materials).

[130] *See id.* at n.116 (noting that many of the instructions to each requirement in the shareholder report provide some flexibility so that a fund can tailor its presentation of information to match how the fund invests. For instance, a fund has the ability to select the categories that are reasonably designed to depict clearly the types of a fund's investments when preparing its graphical representation of holdings).

[131] *See* Item 27A(i) of amended Form N–1A.

[132] *See* Instruction 12 to Item 27A(a) of amended Form N–1A; *see also* Proposing Release, *supra* footnote 8, at text accompanying n.125 (explaining that the Commission would consider a fund to satisfy the ''greater prominence'' requirement if, for example, the shareholder report is on top of a group of paper documents that are provided together or, in the case of an electronic transmission, the email or other message includes a direct link to the report or provides the report in full in the body of the message).

[133] *See, e.g.,* ICI Comment Letter; Federated Hermes Comment Letter; Comment Letter of the Independent Trustees of the Morningstar Funds Trust (Oct. 20, 2020) (''Morningstar Trustees Comment Letter''); CFA Institute Comment Letter; Morningstar Comment Letter.

[134] ICI Comment Letter; Federated Hermes Comment Letter.

[135] ICI Comment Letter (explaining that the Internal Revenue Code requires regulated investment companies, including funds, to report the tax character of certain distributions paid in written statements delivered to shareholders. Although this requirement is satisfied through delivery of the Form 1099–DIV, certain shareholders do not receive this form. Therefore, funds frequently choose to include this disclosure in the shareholder report as a means of ensuring compliance with the reporting requirement).

[136] Morningstar Comment Letter; Morningstar Trustees Comment Letter (urging the Commission to shorten liquidity risk discussion and require additional discussion of other risks if relevant, such as derivatives risks and concentration risk); Angel Comment Letter (suggesting that a fund be required to disclose its historical standard deviation of returns compared to its benchmark's standard deviation of returns as a uniform quantitative risk measure).

[137] Morningstar Comment Letter.

[138] *See infra* section II.A.2.c.i (discussing the narrative MDFP disclosure requirements) and text accompanying *infra* footnote 263 (discussing the requirements for the disclosing additional fund statistics).

[139] *See supra* footnote 67.

fund in the shareholder report because such information is already disclosed in the fund's SAI and may be available on fund websites, and we believe that this disclosure would not be particularly salient to retail investors monitoring their investments.[140]

d. Scope With Respect to Other Registrants

As proposed, the final annual report disclosure rules will apply only to shareholder reports for investment companies registered on Form N–1A.[141] The amendments do not extend to other investment companies such as closed-end funds, UITs, or open-end managed investment companies not registered on Form N–1A (*i.e.,* issuers of variable annuity contracts registered on Form N–3).

Several commenters suggested that the Commission should reevaluate consistency of disclosure across all different fund types (*e.g.,* closed-end funds and UITs, as well as open-end funds) because the shareholders across fund types have similar informational needs and would likely all benefit from a similar layered approach to disclosure.[142]

We agree that disclosure consistency, and continuing to consider consistency in informational needs among shareholders in different types of investment companies, are important policy matters, and topics that the Commission and staff will continue to evaluate. In the past several years, the Commission adopted changes to the disclosure framework for closed-end funds and variable contracts tailored to these investment companies' characteristics.[143] Before considering any additional or different disclosure amendments for closed-end funds and variable contracts, we believe it is necessary to understand funds' and investors' experience with these new disclosure frameworks for closed-end funds and variable contracts and assess their impact.

Some commenters also suggested that funds offered exclusively to other funds or offered only to institutional investors be exempt from the obligation to prepare shareholder reports.[144] These commenters argued that, because the shareholder report is oriented towards retail shareholders, there is little benefit in requiring funds that are sold exclusively to these investors to prepare, transmit, and file these reports. These commenters suggested that such funds instead could rely on the financial statements and other Form N–CSR requirements filed with the Commission to keep institutional investors informed about their fund investments.

We do not believe that such an exemption is necessary or appropriate. Currently registered funds offered exclusively to other funds, or only to institutional investors, transmit complete annual and semi-annual reports to their shareholders. Under the final rules, these funds will now be required to provide shareholders with a significantly shorter document. While shareholder reports under the final rules include content that is designed to be particularly salient to retail investors, these reports include core fund information that all investors can use to monitor fund investments, and that supplements information that investors could glean from a fund's financial statements. Additionally, to the extent a fund limits its investor base to institutional investors and is able to qualify for the exclusions from the investment company definition in sections 3(c)(1) or 3(c)(7) of the Investment Company Act, the fund can operate as a private fund under those exclusions and will not be subject to the shareholder report requirements of section 30 of the Act.

2. Contents of the Annual Report

The following table outlines the information the final rule will generally require funds to include in their annual reports.

TABLE 2—OUTLINE OF ANNUAL REPORT

	Description	Item of amended form N–1A	Item of current form N–1A containing similar requirements
Cover Page or Beginning of Report	Fund/Class Name	Item 27A(b).	
	Ticker Symbol	Item 27A(b).	
	Principal U.S. Market(s) for ETFs	Item 27A(b).	
	Statement Identifying as "Annual Shareholder Report".	Item 27A(b).	
	Legend	Item 27A(b).	
	Statement on Material Fund Changes in the Report.	Item 27A(b).	
Content	Expense Example	Item 27A(c)	Item 27(d)(1).
	Management's Discussion of Fund Performance.	Item 27A(d)	Item 27(b)(7).
	Fund Statistics	Item 27A(e).	
	Graphical Representation of Holdings	Item 27A(f)	Item 27(d)(2)
	Material Fund Changes	Item 27A(g).	
	Changes in and Disagreements with Accountants.	Item 27A(h)	Item 27(b)(4).
	Availability of Additional Information	Item 27A(i)	Item 27(d)(3) through (5).
	Householding Disclosure (optional)	Item 27A(j)	(*)

* Rule 30e–1(f)(3) currently requires a fund to explain, at least once a year, how shareholders may revoke their consent to householding. This explanation is not currently required in funds' shareholder reports. As proposed, we are not requiring it in the annual report.

[140] *See* Item 20(c) of current and amended Form N–1A; *see also* rule 498(e) (requirements to make certain materials—including a fund's SAI—available on a website, for funds that use summary prospectuses in reliance on rule 498).

[141] These funds represent the vast majority of investment company assets under management. *See infra* section IV.B.1.

[142] Tom and Mary Comment Letter; Dechert Comment Letter; CFA Institute Comment Letter; Comment Letter from Donald (Attorney) (Oct. 12, 2020) ("Donald Comment Letter").

[143] *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 9; Securities Offering Reform for Closed-End Investment Companies, Investment Company Act Release No. 33836 (Apr. 8, 2020) [85 FR 33290 (June 1, 2020)] ("Closed-End Fund Offering Reform Adopting Release").

[144] ICI Comment Letter; Fidelity Comment Letter; T. Rowe Price Comment Letter.

As proposed, the annual report will not be subject to page or word limits under the final rules. Commenters agreed with this approach and one commenter stated that adopting a page limit may have the unintended effect of producing dense, visually unappealing disclosures when funds try to squeeze necessary information into a limited space.[145] Another commenter said that the Commission's proposed approach would provide funds with the flexibility to provide explanatory or qualifying information to the extent they believe it is necessary or appropriate.[146] We believe that the proposed restrictions on the contents of these reports would naturally limit their length, which would support our goal of concise, readable disclosure without the need for further restrictions on page length or word count.[147]

a. Cover Page or Beginning of the Report

The final amendments to Form N–1A will require a fund to provide the following information on the cover page or at the beginning of the annual report:[148]

- As proposed, the name of the fund and the class to which the annual report relates; [149]
- As proposed, the exchange ticker symbol of the fund's shares, or the ticker symbol of the class adjacent to the class name;
- As proposed, if the fund is an ETF, the principal U.S. market(s) on which the fund's shares are traded;
- As proposed, a statement identifying the document as an ''annual shareholder report;''
- Substantially as proposed, the following legend: ''This annual shareholder report contains important information about [the Fund] for the period of [beginning date] to [end date]. You can find additional information about the Fund at [Fund website address]. You can also request this information by contacting us at [toll-free telephone number and, as applicable, email address].'' [150]; and
- In addition to the proposed cover page elements, we are also adopting a requirement that if the shareholder report describes material fund changes, a fund will have to include the following prominent statement, or a similar clear and understandable statement, in bold-face type: ''This report describes changes to the Fund that occurred during the reporting period.'' [151]

Commenters generally supported the proposed cover page information, and some recommended certain enhancements.[152] One commenter suggested that the Commission require funds to include a brief description of investor eligibility requirements for each share class so that shareholders understand if there is an opportunity to move to a more appropriate class.[153] Another commenter requested that funds disclose their investment objectives on the cover page.[154] One commenter also requested that material fund changes should be disclosed on the cover page.[155] Finally, one commenter suggested that the Commission should adopt an instruction to the required legend, similar to a current instruction in Form N–1A related to prospectuses, to provide flexibility for underlying funds used as investment options for variable contracts to modify the legend in a manner that is consistent with their structure.[156]

As discussed above, the final rules will require that a shareholder report cover a single class of a multiple-class fund.[157] Therefore, we do not believe it is necessary to include additional information regarding share class eligibility. Similarly, because shareholders will continue to receive annual prospectus updates under the final rules, we do not believe it is necessary to require or permit funds to include a fund's investment objective (which also appears in the prospectus) in the shareholder report. We believe that adding the fund's investment objective would be duplicative and, in light of this, unnecessarily increase the length of the shareholder report.

The final rules also will not require a fund to describe material changes on the cover page of the shareholder report. Because the shareholder report will be a relatively short document, we anticipate investors would see this information within a few pages following the cover page or beginning of the report. However, we agree with commenters that it may be useful for shareholders to be alerted to material changes that occurred during the reporting period. Therefore, in a change from the proposal, if a shareholder report includes a discussion of material fund changes, the final rules will require the cover page of the report to include a prominent statement, in bold-face type, explaining that the report describes certain changes to the fund that occurred during the reporting period.[158]

Finally, we do not believe it is necessary to adopt an instruction to the required legend specifically allowing funds that serve as the underlying investment options for variable contracts to modify the legend in a manner that is consistent their structure. As discussed above, Instruction 7 to Item 27A already allows funds to modify a required legend or narrative information so long as the modified language contains comparable information.[159] A more specific instruction for funds that serve as the underlying investment options for variable contracts is unnecessary.

b. Fund Expenses

The final rules will require a simplified expense presentation in the annual report, modified from the proposed presentation to take into account concerns raised by commenters. Under the final rules, a fund will be required to provide a table showing the expenses associated with a hypothetical $10,000 investment in the fund during the preceding reporting period in two formats: (1) as a percent of a shareholder's investment in the fund

[145] Consumer Federation of America II Comment Letter.

[146] NASAA Comment Letter.

[147] *See, e.g., infra* at text following footnote 271 (stating that, in the fund statistics section of the shareholder report, funds have the flexibility to include additional statistics that the fund believes would help shareholders better understand the fund's activities and operation during the reporting period, but cautioning that funds should carefully consider the inclusion of any statistic that requires extensive narrative explanation).

[148] *See* Item 27A(b) of amended Form N–1A.

[149] In a change from the proposal, the final rules will require that a shareholder report cover a single class of a multiple-class fund. *See* Instruction 4 to Item 27A(a) of amended Form N–1A; *see also supra* footnote 106 and accompanying text.

[150] In a change from the proposal, the legend under the final rules does not contain the phrase ''[as well as certain changes to the Fund].'' This phrase is duplicative of the requirement under the final rules to include a separate legend highlighting that a shareholder report describes material fund changes, if applicable. *See* Item 27A(b)(4) of amended Form N–1A.

[151] *See* Item 27A(b) of amended Form N–1A. The reference to the ''beginning'' of an annual report is designed to address circumstances in which there is not a physical page that would precede the report, for example, when the report appears online or on a mobile device. *See infra s*ection II.A.4.

[152] *See, e.g.,* ICI Comment Letter; Capital Group Comment Letter.

[153] Morningstar Comment Letter.

[154] Capital Group Comment Letter.

[155] Comment Letter of Dominic Rosa (Sept. 16, 2020) (''Dominic Rosa Comment Letter'').

[156] *See* ICI Comment Letter (noting that the term ''us,'' as used in the phrase ''contacting us'' in the required legend, could be read to refer to the fund. However, for funds that serve as investment options for variable contracts, shareholder reports are delivered to contract holders. The record holders of underlying funds are the insurance company separate accounts, and underlying funds have no visibility or access to contract holders); *see also* General Instruction C.3.(d) of current Form N–1A.

[157] *See* Instruction 4 of Item 27A(b) of amended Form N–1A.

[158] Item 27A(b) of amended Form N–1A.

[159] *See supra* text accompanying footnote 121.

(*i.e.,* expense ratio), and (2) as a dollar amount. In a change from the proposal, the expense presentation under the final rules will not require the table also to include information about the fund's total return during the period.[160] Additionally, the final rules do not include the proposed requirement for a fund to include an explanation, in a footnote to the expense example, that expense information does not reflect shareholder transaction costs associated with purchasing or selling fund shares.

Simplified Expense Table

The final rules include a simplified expense table that will replace the current expense example in the shareholder report, which consists of two different tables, along with the currently-required narrative preamble.[161] Commenters generally supported simplifying the expense presentation in the shareholder report and eliminating the narrative preamble to the table.[162] In addition, the expense table under the final rules is more simplified than the proposed presentation and is designed to provide shareholders with a basis for comparing the level of current period expenses of different funds (as percentages are comparable), as well as to permit shareholders to estimate the costs, in dollars, that they incurred over the reporting period. The expense presentation will appear as follows, and the individual aspects of the example are described in more detail below.

WHAT WERE THE FUND COSTS FOR THE LAST [YEAR/SIX MONTHS]?

[Based on a hypothetical $10,000 investment]

[Fund or class name]	Costs of a $10,000 investment	Costs paid as a percentage of a $10,000 investment
	$	%

As proposed, the final rules require a fund to provide the expenses associated with a hypothetical $10,000 investment in the fund during the preceding reporting period. Currently, funds are required to show expenses associated with a $1,000 investment. The Commission proposed an increased dollar value in order to present a more realistic investment amount for an individual shareholder today.[163] Commenters supported the higher $10,000 assumed investment amount.[164] One commenter, however, stated that funds with a higher minimum investment should be required to show that higher investment amount in the expense presentation.[165] As this would undermine comparing different funds, we are not requiring funds with higher minimum investment amounts to show that higher amount.

In addition to the cost in dollars of a $10,000 investment and the expense ratio, the proposed expense table also would have required a fund to show returns information, which was designed to facilitate shareholders' understanding of how costs and performance affect their ending account values. Some commenters, including retail investors, requested that the expense example exclude returns information, and provide only costs.[166] These commenters stated that presenting returns information in the expense table might be confusing for shareholders and repetitive of the performance information that appears later in the document. Additionally, one commenter supported an approach that includes returns information in the expense table, but stressed the importance of highlighting the costs paid in dollars and expense ratio tables through text features, such as bold-face type, to emphasize the importance of those two data points.[167] After considering commenters' concerns, the presentation of fund expenses under the final rules will not include fund returns information because we agree that presenting returns information in the expense example is duplicative of the returns information that is presented in the MDFP section of the report and could add unnecessary complexity and confusion to the expense presentation. For example, because a fund's reported return would relate to the fund's fiscal year, including return information could result in different funds presenting substantially different returns based primarily on whether a given fund's fiscal year included a time period with aberrant market performance. We also believe that the simplified presentation—presenting just the costs in dollars and the expense ratio—would help to focus investors on this key information.[168]

Additional Aspects of the Shareholder Report's Presentation of Expenses

Some commenters suggested additional modifications to the proposed expense presentation. First, we proposed an expense table title: ''What were your Fund costs for the period? (based on a hypothetical $10,000 investment).'' Additionally, under the proposal, the column in the table that would include the fund's expense ratio was entitled ''costs paid as a percentage of your investment.'' One commenter requested we modify these two headers to remove the references to ''your'' because an investor might reasonably interpret these uses of the possessive pronoun as actually reflecting that investor's own personal experience.[169] We agree, that the use of the term ''your'' in the header to the table and the title of the expense ratio column could confuse investors, and we have changed these two headers to clarify that the expenses presented in

[160] *See* Proposing Release, *supra* footnote 8, at n.142. The proposed expense presentation would have required a fund to show a beginning account value of $10,000, costs paid during the period, the fund's total return during the period before costs were paid, and the ending account value based on the fund's net asset value return. *See id.* at nn.154–155 and accompanying text. Under the proposal, ETFs were required to include the ending value of the account based on market value return. *See id.* at n.159 and accompanying text.

[161] *See* Proposing Release, *supra* footnote 8, at text accompanying nn.145–146 (explaining that the current expense presentation requires funds present two tables: the first showing the actual cost in dollars for a $1,000 investment in the fund over the prior six-month period based on the actual return of the fund, and the second showing the cost in dollars for a $1,000 investment in the fund over the prior six-month period based on a hypothetical 5% annual return); *see id.* at n.162 and accompanying text (discussing the currently-required narrative preamble).

[162] *See, e.g.,* ICI Comment Letter; AFREF Comment Letter; NASAA Comment Letter; CFA Institute Comment Letter; Abdullah Comment Letter. *But see* Consumer Federation of America II Comment Letter (suggesting that the Commission conduct investor testing to determine if investors would prefer the current presentation).

[163] *See* Proposing Release, *supra* footnote 8, at n.151 and accompanying text.

[164] *See, e.g.,* Consumer Federation of America II Comment Letter; Morningstar Comment Letter.

[165] ICI Comment Letter.

[166] *See, e.g.,* Comment Letter of Sandra Degan (Aug. 25, 2020) (''Sandra Degan Comment Letter''); Comment Letter of Ubiquity (Sept. 14, 2020) (''Ubiquity Comment Letter''); Williams Comment Letter; Tom and Mary Comment Letter; Barker Comment Letter. Additionally, two commenters objected to the ETF-specific requirement to show the ending account value based on both NAV and market value return, and stated that ETFs should only be required to show NAV. *See* Ubiquity Comment Letter, Tom and Mary Comment Letter.

[167] CFA Institute Comment Letter.

[168] Because the final rules will not include fund return information in the expense example, the expense table will not include the proposed ''ending value of the account'' column and related instructions, including the proposed instructions requiring the presentation of expense information as a mathematical expression and the requirement to give more prominence to the ''cost paid'' and ''cost paid as a percentage of your investment'' columns than the other columns in the table. Similarly, commenter concerns regarding the disclosure related to ETF-specific requirement to show the ending account value based on both NAV and market value return are moot.

[169] NASAA Comment Letter.

the table are a reflection of a hypothetical $10,000 investment.

Additionally, the final rules will replace the proposed header reference to "the period" with a more specific reference to either "the past year" or "the past six months," depending on whether the report is an annual or semi-annual report. We believe this more specific heading reference to the relevant period will help shareholders better appreciate that the figures in the semi-annual report expense table reflect a shorter period than the annual report (and thus these figures will likely be smaller than the parallel figures in the annual report).

The proposal also would have included a new footnote to the expense presentation that would have required a fund to include a footnote briefly explaining, in plain English, that the expense information does not reflect shareholder transaction costs associated with purchasing or selling fund shares.[170] This was designed to inform investors that there may be additional costs not reflected in the expense example, if applicable. Some retail investors stated that the proposed footnote is of limited value and recommended streamlining it.[171] After considering commenter concerns, we agree this footnote would provide limited information to investors, particularly since it would not have included quantitative information regarding these costs, and these costs may vary based on distribution channel, making it difficult to present this information concisely in the footnote or otherwise. By merely alerting investors to the possibility of additional costs, the proposed footnote could make the table less readable without providing investors information they could use effectively in evaluating the expense presentation. We therefore are not adopting that proposed footnote.

We are adopting, as proposed, an instruction that will direct funds to calculate "Costs of a $10,000 investment" by multiplying the figure in the "Cost paid as a percentage of a $10,000 investment" column by the average account value over the period based on an investment of $10,000 at the beginning of the period.[172] The figure in the "Cost paid as a percentage of your investment" column, in turn, will be the fund's expense ratio as it appears in the fund's most recent audited financial statements or financial highlights.[173]

Additionally, as proposed, we are retaining three current instructions that we believe continue to provide important information to shareholders.[174] First, if a fund incurred any "extraordinary expenses" during the reporting period, the fund may briefly describe, in a footnote to the expense table, what the actual expenses would have been if these extraordinary expenses were not incurred.[175] The Commission received no comments on this instruction. Second, if a fund is a feeder fund, the fund must reflect the aggregate expenses of the feeder fund and the master fund in the expense table and include a footnote stating that the expense table reflects the expenses of both the feeder and master funds.[176] One commenter supported continuing to permit funds to report aggregated fees with the related footnote, and noted that allowing reporting in this manner allows investors to more easily understand the total expenses they are paying.[177] No commenters opposed the instruction. Finally, if a fund's shareholder report covers a period of time that is less than a full reporting period, the fund must include a footnote to the table noting this and explaining that expenses for a full reporting period would be higher than the figures shown.[178] We received no comments on this instruction.[179]

Feedback on Including Additional or Different Information About Fund Costs

Some commenters also responded to the Commission's request for comment on differences in the expense presentations in the annual report and prospectus.[180] These presentations currently differ in that the shareholder report expense example is derived from a fund's audited financial statements and therefore reflects actual historical expenses that a shareholder incurred over the past year (*i.e.,* backwards-looking expenses). The prospectus fee table and expense example, on the other hand, reflect hypothetical future expenses (*i.e.,* forward-looking expenses).[181] Some commenters argued that the expense presentations of the prospectus and annual report should be aligned.[182] Similarly, one commenter suggested that the shareholder report expense example should disclose the prospectus expense ratio and explain any differences in a footnote.[183] Furthermore, some commenters suggested that the expense presentation in the shareholder report should include additional transaction costs, beyond commissions, including costs paid from fund assets for investment research and payments made to affiliated securities lending agents.[184] Conversely, one commenter urged the Commission to exclude interest expenses and dividends paid on short sales from the current expense ratio, on the basis that these

[170] The proposal would have also required a fund to include a footnote to the proposed returns information that would be included in the expense presentation, describing other costs that are included in the fund's total return if material to the fund. Because the final rules' expense presentation does not include returns-related information, we are not adopting this footnote requirement. *See* Proposing Release, *supra* footnote 7, at n.164.

[171] Williams Comment Letter; Tom and Mary Comment Letter.

[172] *See* Instruction 2(a) to Item 27A(c) of amended Form N–1A. As proposed, the computation instructions will also require funds to assume reinvestment of all dividends and distributions. *See* Instruction 2(b) to Item 27A(c) of amended Form N–1A.

[173] *See* Instruction 2(c) to Item 27A(c) of amended Form N–1A. In the semi-annual report, the fund's expense ratio will be calculated in the manner required by Instruction 4(b) to Item 13(a) of current and amended Form N–1A, using the expenses for the fund's most recent fiscal half-year. *Id.*

[174] *See* Proposing Release, *supra* footnote 7, at paragraph following n.171.

[175] *See* Instruction 1(d) to Item 27A(c) of amended Form N–1A (defining "extraordinary expenses" as "expenses that are distinguished by their unusual nature and by the infrequency of their occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the Fund, taking into account the environment in which the Fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the Fund operates. The environment of a Fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of government regulation").

[176] *See* Instruction 1(b) to Item 27A(c) of amended Form N–1A.

[177] Morningstar Comment Letter.

[178] *See* Instruction 1(c) to Item 27A(c) of amended Form N–1A. This would generally apply to newly-formed funds that are required to file an annual or semi-annual report for a period shorter than the reporting period.

[179] While the proposal included an instruction that would have required a separate expense table, or a separate line item in the expense table, for each class of as multiple-class fund, this instruction is moot in light of the final rules' requirement that a shareholder report cover only a single class of a multiple-class fund. *See* Instruction 4 to Item 27A(a) of amended Form N–1A; *see also* footnote 106 and accompanying text; *see also* Proposing Release, *supra* footnote 7, at n.174 and accompanying text.

[180] *See* Proposing Release, *supra* footnote 8, at text following n.600; *see also, e.g.,* Dominic Rosa Comment Letter; Barker Comment Letter; Tom and Mary Comment Letter; Capital Group Comment Letter; Morningstar Comment Letter.

[181] Currently, the prospectus fee table also reflects sales loads that an investor would pay and AFFE, whereas the shareholder report expense presentation does not, because these elements are not reflected in the fund's financial statements. *See* Proposing Release, *supra* footnote 8, at n.148 and accompanying text.

[182] Dominic Rosa Comment Letter; Barker Comment Letter; Tom and Mary Comment Letter; Capital Group Comment Letter.

[183] Morningstar Comment Letter.

[184] Dimensional Comment Letter; AFREF Comment Letter.

adjustments would make expense information more comparable across funds.[185] Finally, other commenters also argued that the Commission should require funds to disclose—on fund websites or in the prospectus, as a complement to shareholder report disclosure—best execution policies reflecting ''efforts to ensure that fund transaction costs, including commission dollars generated by the fund,'' directly benefit shareholders.[186]

Because the prospectus and shareholder report differ in the time periods that they reflect (*i.e.,* the prospectus is ''forward looking'' while the shareholder report is ''backward looking''), aligning the expense presentations in these documents presents significant challenges. Additionally, we believe that it would be confusing to investors to be given two expense ratios in the shareholder report (one backwards-looking, derived from the audited financial statements, and the other from the forward-looking prospectus). Furthermore, because the shareholder report is designed to provide shareholders with a summary of the key information provided in the fund's audited financial statements, we continue to believe that the types of costs reflected in the shareholder report expense example should be derived from those that are included in the fund's audited financial statements. As discussed above, however, helping investors more readily understand fund fees and expenses is an important priority of the Commission and we believe that the general topic of fund fee disclosure effectiveness, in light of comments received, merits further consideration.[187]

c. Management's Discussion of Fund Performance

Substantially as proposed, the final rules will largely maintain the current requirements for the MDFP section of the annual report, with several targeted changes.[188] In particular, we are adopting amendments to the current MDFP requirements to make the disclosure more concise. Additionally, the final rules include additional performance-related information that is available in fund prospectuses, including certain performance information and comparative information showing the average annual total returns of one or more relevant benchmarks, modified from the proposal to take into account the final rule's requirement for the shareholder report to cover a single class of a multiple-class fund. We also are amending, as proposed, the definition of an appropriate broad-based securities market index to require that all funds compare their performance to the overall applicable securities market, for purposes of both fund annual reports and prospectuses.

i. Narrative MDFP Disclosure

As proposed, the final rules retain the current requirement for funds' annual reports to include a narrative discussion of factors that materially affected a fund's performance during the most recent fiscal year, with minor modifications from the current requirements to encourage concise disclosure.[189] In particular, the final rules amend the current requirement to specify the disclosure must ''briefly summarize'' the ''key'' factors that materially affected the fund's performance during the last fiscal year, including the relevant market conditions and the investment strategies and techniques used by the fund's investment adviser. As proposed, the final rules instruct funds not to include lengthy, generic, or overly broad discussions of these factors.[190] The instruction, as proposed, also directs funds to use graphics or text features—such as bullet lists or tables—to present the key factors, as appropriate. Finally, as proposed, the final rules will not allow funds to include any additional information—such as a fund president's letter to shareholders, interviews with portfolio managers, general market commentary, and other similar information—in the shareholder report.[191]

Commenters supported the proposed amendments to the narrative MDFP section and stated that the proposed approach appropriately maintains a fund's flexibility in presenting information that is most salient to investors, while requiring such information to be presented in a visually engaging and accessible format.[192] In addition, survey data submitted by a commenter indicated that retail investors, and older investors in particular, expressed that the new presentation would help them better understand fund performance.[193]

We are adopting the narrative MDFP section as proposed because we continue to believe providing shareholders with a more streamlined and visually engaging presentation of the key factors affecting fund performance will allow shareholders to focus on the most salient fund information.[194] Our approach balances the need for funds to have flexibility in determining what information is salient given a fund's unique strategy and risk profile, while encouraging funds to present that information in a manner that is most effective for shareholders. Therefore, we do not believe it is necessary to further limit the narrative MDFP disclosure.

ii. Performance Line Graph and Guidance on Use of Market Indexes in Performance Disclosure

Substantially as proposed, the final rules will retain the requirements for the performance line graph currently included in annual reports, with certain amendments designed to improve the current presentation and to reflect that a shareholder report will cover a single class of a multiple-class fund.[195] The shareholder report must include a performance line graph that shows the performance of a $10,000 investment in the fund and in an appropriate broad-based securities market index over a 10-year period.[196] In addition, a fund has

[185] *See* Morningstar Comment Letter (arguing that removing interest and dividend expenses from the expense ratio gives investors a better sense for what a fund company is charging them for the cost of running the fund and allows funds with different types of investments to present their expenses in a comparable way. Morningstar has adjusted its methodology for calculating fund expense ratios in their data to exclude interest and dividend expenses).

[186] Comment Letter of Healthy Markets Association (Nov. 6, 2020) (''Healthy Markets Association Comment Letter''); *see also* CFA Institute Comment Letter.

[187] *See supra* text following footnote 84.

[188] *See* Proposing Release, *supra* footnote 7, at text following n.176 (explaining that the current MDFP disclosure generally includes: a narrative discussion of the factors that materially affected the fund's performance; a performance line graph; a table showing the fund's average annual total returns; a discussion of the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the fund's investment strategies and per share net asset value, as well as the extent to which the fund's distribution policy resulted in distributions of capital; and for ETFs that do not provide certain premium or discount information on their websites, a table showing the number of days the fund shares traded at a premium or discount to net asset value).

[189] *See* Item 27A(d)(1) of amended Form N–1A.

[190] *See* Instruction 1 to Item 27A(d)(1) of amended Form N–1A.

[191] *See supra* text accompanying footnote 131. Additional information could, however, accompany the shareholder report provided that it meets the prominence requirements for materials that accompany the report. *See* Instruction 12 to Item 27A(a) of amended Form N–1A.

[192] *See, e.g.,* Consumer Federation of America II Comment Letter; ICI Comment Letter; Fidelity Comment Letter.

[193] Broadridge Comment Letter.

[194] *See* Proposing Release, *supra* footnote 7, at text following n.180.

[195] *See* Item 27A(d)(2) of amended Form N–1A and related instructions.

[196] An ''appropriate broad-based securities market index'' is administered by an organization that is not an affiliated person of the fund, its investment

Continued

the option to compare its performance to other indexes, including more narrowly based indexes that reflect the market sectors in which the fund invests. We continue to believe the line graph presentation helps shareholders understand how the fund has performed over a 10-year time horizon compared to an appropriate broad-based securities market index and other relevant indexes, as applicable.[197]

We are adopting the instructions related to the line graph largely as proposed, with some conforming changes to reflect other aspects of the final rules. First, in a change from the proposal, the final rules include an instruction that requires a fund to present performance information for the class covered in the shareholder report. Second, as proposed, the final rules remove the current instruction that allows the line graph to cover periods longer than the past 10 fiscal years. Third, as proposed, the final rules include an instruction that defines a ''broad-based'' index as one that represents the overall applicable domestic or international equity or debt markets, as appropriate.[198] And as proposed, the instructions under the final rules will continue to permit a fund to include narrower indexes that reflect the market segments in which the fund invests in its performance presentation, along with the required appropriate broad-based securities market index.[199]

Commenters generally supported the retention of the performance line graph as well as the prohibition on showing more than 10 years of performance.[200] Some commenters requested enhancements to the line graph. For example, one commenter suggested the line graph should include percentage values along with dollar amounts to facilitate comparisons.[201] Additionally, one commenter suggested allowing funds to add labels at each significant point in the line graph to enhance comprehension of risk and improve the user experience.[202] Two commenters suggested funds should be required to include a bar chart of returns, similar to what is currently included in the prospectus, along with the line graph.[203]

We continue to believe, as discussed more fully in the Proposing Release, that limiting the performance line graph to 10 years is important to avoid unrealistic investor performance-related expectations and allow investors to easily identify volatility.[204] We also believe adding labels at significant points on the line graph may clutter the presentation and hinder an investor's ability to understand the information provided.

Further, we continue to believe the line graph is more useful for investors in the shareholder report than a bar chart. Like a bar chart, a line graph helps illustrate the variability of a fund's returns (*e.g.,* whether the fund's returns have been volatile or relatively consistent from year to year). But given the other benefits of the line graph—particularly that it presents performance in dollar terms that may be easier for some shareholders to assess—the final rules we are adopting maintain the line graph presentation.[205] Moreover, the line graph presentation may help investors understand the general benefits of long-term investments (*e.g.,* compound interest).

Comments on Broad-Based Securities Market Index

Commenter reactions to the proposed definition of an appropriate broad-based securities market index were mixed. Some commenters supported the retention of the requirement to present performance relative to a broad-based index, as well as the proposed definition.[206] One commenter stated that the requirement to compare performance to the overall applicable securities markets would be useful to investors, as it makes the information more comparable across funds, and should ''also help prevent funds from selecting for comparison a narrow index designed to make their own performance look artificially strong.'' [207] Another, supporting the proposed requirement, stated that the requirement would ''ensure that investors have a simple, readily-accessible window into the performance of a specific investment fund against the broader performance of the securities markets.'' [208] Some commenters asked for additional guidance. For example, one commenter suggested that the definition incorporate more specific criteria regarding index methodology.[209] Another commenter requested the Commission to provide additional clarity on indexes that would satisfy the proposed definition, such as country-specific indexes, ESG indexes, and indexes of particular capitalizations.[210] Further, another commenter suggested that the Commission publish a list of permissible indexes.[211]

In contrast, many industry commenters objected to the proposed definition.[212] These commenters argued that, for some fund strategies like multi-asset funds and alternative strategy funds, a comparison to an index representing the entire market would be less useful and could be misleading to investors because these fund strategies are not designed to invest in, nor provide the performance associated with, any particular overall market. Commenters also questioned the default requirement to include a broad-based index in a fund's performance line graph. Although the proposal allows funds to show a secondary index that is more tailored to the fund's strategy, commenters argued including any broad-based market index would be confusing to investors in certain

adviser, or principal underwriter, unless the index is widely recognized and used. *See* Instruction 6 to Item 27A(d)(2) of amended Form N–1A.

[197] *See* Proposing Release, *supra* footnote 7, at nn.191–193 and accompanying text.

[198] The amendments to the definition of an appropriate broad-based securities market index would affect performance presentations in fund prospectuses, as well as fund annual reports.

[199] *See* Instruction 7 to Item 27A(d)(2) of amended Form N–1A. This release sometimes refers to the appropriate broad-based securities market index as the ''primary index'', and any narrower index(es) as ''secondary index(es).''

[200] *See, e.g.,* Consumer Federation of America II Comment Letter; Cornell Law School Comment Letter; Morningstar Comment Letter; Morningstar Trustees Comment Letter; CFA Institute Comment Letter. *But see* ICI Comment Letter (objecting to the prohibition showing performance beyond 10 years).

[201] Cornell Law School Comment Letter.

[202] Morningstar Comment Letter.

[203] Morningstar Trustees Comment Letter; CFA Institute Comment Letter.

[204] *See* Proposing Release, *supra* footnote 7, at text following n.196 (discussing, for example, that for funds that have been in existence for a long period of time (*e.g.,* 40 years), a line graph that shows the performance of a $10,000 investment at the outset of the fund may not be particularly relevant for the average shareholder, who likely has not been invested in the fund for such an extended period of time).

[205] This complements the percentage-based presentation in the average annual total returns table. *See* Proposing Release, *supra* footnote 8, at n.193.

[206] *See, e.g.,* Comment Letter of Index Industry Association (Jan. 4, 2021) (''Index Industry Association Comment Letter''); Consumer Federation of America II Comment Letter; NASAA Comment Letter; Tom and Mary Comment Letter; Ubiquity Comment Letter.

[207] *See* Consumer Federation of America II Comment Letter; *see also* Index Industry Association Comment Letter (comparing fund performance against a broad-based market index in fund reporting materials ''promotes transparency and helps shareholders evaluate their goals''); *see also* Abdullah Comment Letter (stating that it is problematic that funds include narrow indexes as their broad-based index).

[208] *See* NASAA Comment Letter.

[209] *Id.*

[210] Tom and Mary Comment Letter.

[211] Ubiquity Comment Letter.

[212] *See, e.g.,* ICI Comment Letter (suggests changing index definition to ''appropriate index''); SIFMA Comment Letter; Morningstar Comment Letter; Fidelity Comment Letter; Capital Group Comment Letter; John Hancock Comment Letter; TIAA Comment Letter; Comment Letter of IHS Markit (Jan. 4, 2021) (''IHS Markit Comment Letter'').

circumstances.[213] For example, one commenter argued that investor confusion could result if the Commission were to require an index fund that seeks to track a narrow index as a principal investment strategy to compare itself to a different, broad-based index.[214] Furthermore, some commenters argued the proposed broad-based index requirement would impose additional licensing fees on funds.[215] Similarly, one commenter argued retaining the current ''widely recognized and used'' standard for using an affiliated index as a fund's primary index disadvantages smaller funds, whose affiliated indexes would be less likely to meet this standard and for which the expense of licensing a ''widely recognized and used'' index may be more significant.[216]

Some commenters suggested alternatives designed to alleviate investor confusion concerns and to enhance benchmark indexes' informational value. For example, some commenters urged the Commission to consider requiring labeling the primary index as a ''general market index'' (or similar) to clarify how an investor should use the information it presents.[217] Other commenters suggested the primary index should be one that is specifically tailored to the fund's strategy and the secondary index should be one that represents the overall market.[218] Some of these commenters also suggested that funds be permitted to provide additional information about more narrowly tailored indexes, such as the index's underlying components and their weights,[219] and an explanation of why the fund believes that the chosen index is an appropriate indicator of the fund's performance.[220]

After considering comments and the findings of the OIAD Benchmark Study, we are adopting the proposed definition of ''appropriate broad-based securities market index'' and retaining the current requirement that a fund must include such an index in its performance line graph. We continue to believe all funds should compare their performance to the overall market and that including a broad-based index in performance disclosure gives investors readily-accessible contextual information about market performance.[221] While performance disclosure that includes an index based on a narrow segment of the market may be useful for comparison purposes, this does not substitute for the inclusion of an index that provides information about the performance of the fund against the broader market. For example, if the Commission were to permit an index fund that seeks to track a narrow index as a principal investment strategy to show only the performance of the narrow index it seeks to track, and the performance of the fund and the index were very similar (as they would be to the extent that the fund tracks the index closely), such a performance presentation would show the extent to which the fund tracks the index but would be less helpful to investors to provide broader performance context.[222] As another example, the inclusion of a broad-based index helps an investor in a sector-specific fund determine not only how the fund's performance relates to that of its peers, but how the fund's performance relates to the performance relative to the market as a whole. Therefore, investors in such funds would benefit from additional contextual information regarding the performance of the overall market.[223]

The final rules' approach is supported in part by the findings of the OIAD Benchmark Study, which observed that benchmarks can help contextualize a fund's performance information for investors, and that some investors use this information to make investment decisions.[224] The study also found that investors of varying levels of sophistication report preferring performance disclosure that includes both broad and narrow benchmarks.[225] Furthermore, while commenters suggested that narrower benchmarks could provide more useful comparative information, the OIAD Benchmark Study concluded that investors' decision-making was generally driven by the positioning of the fund's performance relative to the benchmark presented (*i.e.,* whether the fund underperformed or outperformed the benchmark), irrespective of whether the benchmark presented is narrow or broad.[226] Therefore, as we continue to believe a comparison to the overall market is important contextual information for investors, the evidence that the study provided does not, in our view, support changing the proposed approach or adopting an alternative requirement (for example, requiring the

[213] *Id.*

[214] Supplemental Comment Letter of the Investment Company Institute (Oct. 10, 2022) (''ICI Comment Letter on the OIAD Benchmark Study''). *But see* Abdullah Comment Letter (''Since 40% of fund assets are index funds, it would be interesting to see whether the performance [of] an index that lines up quite closely with an index fund is useful to investors. I hypothesize that such a presentation provides no benefit to an investor and so should not be permitted as the sole benchmark.'').

[215] ICI Comment Letter; SIFMA Comment Letter; Vanguard Comment Letter; Dimensional Comment Letter; Fidelity Comment Letter; T. Rowe Price Comment Letter; *see also infra* paragraph accompanying footnotes 751–752 (discussing potential effects of the final rules' changes to the term ''appropriate broad-based securities market index'' on the costs that funds bear, including additional costs to funds in the form of index-licensing fees, and stating that the amount of these costs will depend, among other things, on market competition among index providers). *But see* Index Industry Association Comment Letter (stating fees charged by broad-based index providers are small and costs to funds would be minimal).

[216] ICI Comment Letter.

[217] Fidelity Comment Letter; CFA Institute Comment Letter.

[218] Morningstar Comment Letter; Federated Hermes Comment Letter; John Hancock Comment Letter; IHS Markit Comment Letter; T. Rowe Price Comment Letter.

[219] T. Rowe Price Comment Letter.

[220] IHS Markit Comment Letter.

[221] *See supra* footnotes 206–208 and accompanying text.

[222] *See supra* footnote 214.

[223] *See, e.g.,* CFA Institute Comment Letter (''Even if a fund outperforms its benchmark, that may be slight consolation if the strategy itself performs poorly against the market. Therefore, the investor should also compare a fund's returns against the market as a whole.'').

[224] *See* OIAD Benchmark Study, *supra* footnote 53; *see also* ICI Comment Letter on the OIAD Benchmark Study (noting the importance of performance benchmarks to investors).

[225] OIAD Benchmark Study, *supra* footnote 53 at ''Figure 9. Preferences for benchmarks.'' In the sections of the OIAD Benchmark Study that analyze benchmarks that currently exist in the mutual fund industry, the study identified funds' broad-based benchmarks first by identifying data from the Morningstar Direct open-end fund database that capture ''primary'' and ''secondary'' indexes, and then by reclassifying these indexes as broad and narrow benchmarks based on the correlation of each index with the S&P 500 Index. Commenters objected to the use of the S&P 500 Index in the study's methodology, arguing that the Commission should not ''define or insinuate that a broad-based index must or should have certain correlation to the S&P 500 Index.'' *See* Abdullah Comment Letter; *see also* ICI Comment Letter on the OIAD Benchmark Study (stating that ''*de facto* SEC endorsement of certain indexes would create market distortions and likely increase fund licensing costs''). The OIAD Benchmark Study, including its methodology and findings, does not reflect findings or conclusions by the Commission as to what constitutes a broad-based index under the final rules. *See infra* text accompanying footnotes 230–233 (providing general guidance and examples of the indexes that would qualify as broad-based indexes under the rule).

[226] *See* OIAD Benchmark Study, *supra* footnote 53; *see also* ICI Comment Letter on the OIAD Benchmark Study (stating that ''the underlying results do not find evidence that survey participants believed that the broad benchmark is a better reference point than the narrow benchmark''). A different academic study also examines fund performance benchmarks, but with a focus on funds' behavior with respect to the performance benchmarks that they select, how benchmark changes affect the appearance of funds' benchmark-adjusted performance, as well as fund flows that result from changes in performance benchmarks. *See* Kevin Mullally and Andrea Rossi, *Moving the Goalposts? Mutual Fund Benchmark Changes and Performance Manipulation* (June 24, 2022), *available at* Mullally, Kevin and Rossi, Andrea, Moving the Goalposts? *Mutual Fund Benchmark Changes and Performance Manipulation* (June 24, 2022) *available at https://ssrn.com/abstract=4145883.*

inclusion of an ''appropriate'' benchmark as opposed to an ''appropriate broad-based'' benchmark). In addition, the study showed that investors find a fund significantly less attractive when a performance graph shows the fund's performance accompanied by a single benchmark that outperforms the fund. Therefore, to the extent that it could be easier for a fund to find a narrow benchmark that underperforms the fund than a broad benchmark, we do not see a reason to discontinue the current requirement to include a broad benchmark, as the requirement to include only a narrower benchmark could lead to gaming behavior. Two commenters specifically addressed the OIAD Benchmark Study and raised concerns regarding the methodology used by the study and the impact such methodology had on the study's conclusions.[227] However, the elements of the OIAD Benchmark Study that support the approach under the final rules are not impacted by the methodology concerns that commenters raised.[228]

We recognize that there is a broad diversity of investment strategies that funds employ, and that certain funds, such as multi-asset and alternative strategy funds, do not invest within a single overall market or attempt to provide returns that are related to the returns of any single overall market. However, comparing the performance of these types of funds against an overall market index will provide shareholders with valuable information regarding how their investments might have performed had their money been invested directly in the holdings included in the index. Further, as discussed above we continue to believe that such a presentation may be useful to investors. And investors may continue to prefer such a presentation, as the OIAD Benchmark Study did not find evidence supporting the notion that study participants believe that a narrow benchmark is a better reference point than a broad benchmark.[229] Additionally, the final rules will allow funds to include narrower indexes, reflecting the market segments in which the fund invests, in the performance presentation. This flexibility will allow funds with unique investment strategies to show the performance of an index that is more closely aligned with the fund's investments.

A ''broad-based'' index that ''represents the overall applicable'' market will of course not necessarily include every security in a given market.[230] The revised definition is designed to ensure that a fund's broad-based index is one that reasonably represents the applicable market. To assist funds in their selection of indexes, we are providing some general guidance and examples of the types of indexes that would satisfy the final rules. For example, for a fund that invests primarily in the equity securities of a non-U.S. country, an index representing the overall equity market of the non-U.S. country would satisfy the final rule's requirements.[231] In contrast, an appropriate benchmark for a fund that invests primarily in the equity securities of a subset of the U.S. market, such as healthcare companies, should show its performance against the overall U.S. equities market, rather than a benchmark consisting of only healthcare companies. Such a fund could also show its performance against an additional, more narrowly tailored healthcare index.[232] We similarly do not believe that indexes that include characteristics such as ''growth,'' ''value,'' ''ESG,'' or ''small- or mid-cap'' represent the overall market, and therefore these indexes would not be appropriate broad-based securities market indexes under the final rules.

An ''appropriate'' broad-based securities market index that a fund selects may include components that do not directly overlap with the fund's investments, if the index's components share similar economic characteristics to the fund's investments such that they provide an appropriate point of comparison. For example, funds such as multi-asset and alternative strategy funds that do not invest within a single overall debt or equity market could select an index that shares other economic characteristics with the fund, such as an index that has similar volatility to the fund. Additionally, as the Commission stated in the Proposing Release, a fund that invests in both equity and debt securities could include more than one appropriate broad-based securities market index.[233] Such a fund could also include a blended index—one that combines the performance of more than one index, such as equity and debt indexes—as an additional index to supplement the appropriate broad-based securities market index(es) that the fund includes.

Furthermore, because the indexes that are available for funds to select change over time, we are not publishing a list of permissible indexes. We also are not further restricting permissible indexes by incorporating more specific criteria regarding index methodology, as maintaining more specific criteria that are evergreen would be challenging in light of developments in funds' investment strategies and changes in the availability of indexes over time. We also are not adopting commenter suggestions to label indexes or to allow funds to provide additional contextual information regarding indexes because we think the name of the index itself is sufficient for investor understanding and will give investors the opportunity to seek further information on the indexes chosen by the fund.[234]

While we appreciate commenters' concerns regarding index licensing fees, we continue to believe comparative performance disclosure provides contextual information investors need in order to make informed investment decisions. After considering suggestions that smaller funds could more readily use affiliated indexes if the Commission were to amend the current requirement for such indexes to be ''widely recognized and used,'' we are retaining the current requirement. This is an important protection against potential conflicts of interest, including the potential ability of an affiliated index

[227] *See* Abdullah Comment Letter; *see also* ICI Comment Letter on the OIAD Benchmark Study.

[228] Those concerns chiefly focused on the sections of the OIAD Benchmark Study that analyze benchmarks that currently exist in the mutual fund industry (Section 2, ''Institutional Background on Benchmark Requirements,'' Section 7, ''Analysis of Benchmark Performance Data,'' and Section 8, ''General Discussion''). These concerns focused on the methodology for determining which benchmark in a fund's disclosure is the broad-based benchmark that is required to appear in its performance disclosure. The discussion of the OIAD Benchmark Study included in this section of the release, on the other hand, relates to the results of the large behavioral experiment that the study describes, as well as the qualitative pilot study.

[229] *See supra* paragraph accompanying footnote 212; *see also id.*

[230] ICI Comment Letter (stating that, when selecting an index, funds will have to make judgements on how broad an index should be).

[231] *See* Disclosure of Mutual Fund Performance and Portfolio Managers, Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 19050 (Apr. 12, 1993)], at n.21 and accompanying paragraph.

[232] *See* Instruction 7 to Item 27A(d)(2) of amended Form N–1A.

[233] Proposing Release, *supra* footnote 8, at text accompanying n.202.

[234] *See* OIAD Benchmark Study, *supra* footnote 53 (finding no evidence to support the claim that textual clarifications of benchmark's improved investor comprehension or otherwise altered investment decisions). *But see* Abdullah Comment Letter (stating that the final rules should require funds to provide textual clarifications of indexes where the index components are not obvious from the index's name or is not otherwise well known to investors). Funds that wish to provide further information regarding the fund's performance as it compares to the indexes provided may do so in the narrative MDFP section of the release to the extent that such disclosure meets the requirements of that section.

provider to manipulate an underlying index to the benefit of the fund.

iii. Performance Table

Substantially as proposed, the final rules will retain the current requirement that funds' annual reports include a table presenting average annual total returns for the past 1-, 5-, and 10-year periods, with certain amendments designed to reflect that a shareholder report will cover a single class of a multiple-class fund.[235] Specifically, as proposed, the final rules will require the table to include several additional pieces of information: (1) the average annual total returns of an appropriate broad-based securities market index;[236] and (2) the fund's average annual total returns without sales charges (in addition to current disclosure showing returns reflecting applicable sales charges). While the proposal would have required average annual total return information for all available share classes, the final rules require this information only for the share class to which the report relates, and therefore the final rules will not include this proposed requirement.

Additionally, as proposed, the final rules simplify the statement that currently accompanies the line graph and table.[237] Also as proposed, funds will be required to use text features to make this statement noticeable and prominent through, for example, graphics, larger font size, or different colors or font styles. Furthermore, substantially as proposed, the final rules include a new instruction allowing funds to add brief additional disclosure that would contextualize the line graph and average annual returns table. Specifically, if a material change occurred to the fund during the relevant performance period, such as a change in investment adviser or a change to the fund's investment strategies, the fund may include a brief legend or footnote to describe the change and when it occurred.[238] Finally, as proposed, the final rules require funds that provide updated performance information through widely accessible mechanisms, such as fund websites, to include a statement in the shareholder report directing shareholders to where they can find this information.[239]

Commenters generally supported the proposed changes to the average annual total returns table, noting that the changes will better align this table in the shareholder report with the returns reported in the prospectus.[240] One commenter suggested that funds should be required to show the 3-year period of returns, in addition to the proposed 1-, 5- and 10-year periods.[241] This commenter stated that an additional intermediate time horizon is especially important for funds with less than 10 years of performance. Because funds with less than 10 years of performance will be required to show performance for the life of the fund, we do not believe that an additional intermediate period of returns would benefit investors, particularly since the performance table already shows two other intermediate periods that are relatively close in time (*i.e.,* 1- and 5-year periods).[242]

iv. Other MDFP Amendments

As proposed, the final rules simplify the current annual report requirement for a fund to discuss the effect of any policy or practice of maintaining a specified level of distribution to shareholders (a ''stable distribution policy'') on the fund's investment strategies and per share net asset value during the last fiscal year, as well as the extent to which the fund's distribution policy resulted in distributions of capital. Specifically, under the final rules, a fund that has a stable distribution policy and was unable to maintain the specified level during the past fiscal year would need to disclose this.[243] As proposed, the final rules also maintain disclosure concerning distributions that resulted in returns of capital.[244] The final rules' requirements, which—as proposed—modify current requirements by focusing on circumstances when a fund was unable to meet the specified level of distribution in its stable distribution policy or had distributions that resulted in returns of capital, are designed to provide more meaningful disclosure to shareholders.[245] No commenters discussed these requirements.

The final rules, like current annual report requirements, do not require money market funds to include MDFP. Two commenters supported maintaining the current approach for money market funds.[246] One requested that the Commission clarify that money market funds are permitted, but not required, to provide MDFP in their shareholder reports, *and* are allowed to include some, but not all the required MDFP disclosures.[247] The final rules permit money market funds to retain the current option of including MDFP discussion in their shareholder reports and clarify that they are permitted but not required to disclose some or all of the information required in the MDFP so long as the information they choose to include meets the requirements of the relevant item, and related instructions on the form, and is not incomplete, inaccurate, or misleading.[248]

d. Fund Statistics

Substantially as proposed, the final rules require a fund to disclose certain fund statistics in its annual report, including the fund's: (1) net assets, (2) total number of portfolio holdings, (3) for funds other than money market funds, portfolio turnover rate, and (4) the total advisory fees paid by the fund

[235] *See* Item 27A(d)(2) of amended Form N–1A and related instructions.

[236] As proposed, the final rules also will permit funds to include returns information for one or more other relevant indexes, such as a more narrowly based index that reflects the market sectors in which the fund invests. *See* Proposing Release, *supra* footnote 7, at n.215 and accompanying text.

[237] Under the final rules, funds will be required to include a statement to the effect that the fund's past performance is not a good predictor of how the fund will perform in the future. The final rules also make a conforming change to similar language that must appear in the prospectus. *See* Item 4(b)(2) of amended Form N–1A.

[238] Funds will have discretion to determine when to disclose information about a prior material change to a fund in connection with its performance presentation. However, a fund will need to disclose information about such a change if, absent that disclosure, the fund's performance presentation would otherwise be misleading. *See* Proposing Release, *supra* footnote 7, at nn.227–229 and accompanying text.

[239] If a fund were to include such a statement, it also would be required to provide a means of facilitating access to the updated performance information, including, for example, a hyperlink to where the information may be found if the shareholder report is provided electronically or a URL address or QR code if the shareholder report is delivered in paper format.

[240] *See, e.g.,* ICI Comment Letter; Morningstar Comment Letter; Consumer Federation of America II Comment Letter; Capital Group Comment Letter (also suggested changing the order of items in report to show the average annual total returns table before fund expenses). We are maintaining the ordering of the items in the shareholder report as proposed because we believe that expense information should be highlighted first for shareholders.

[241] Morningstar Comment Letter.

[242] Additionally, shareholders interested in reviewing performance during periods not shown in the performance table can find this information in the performance line graph. *See supra* text accompanying footnote 196.

[243] *See* Item 27A(d)(3) of amended Form N–1A.

[244] *See id.*

[245] The Commission recently adopted amendments to limit the requirement that ETFs provide premium and discount information in their annual reports to only those ETFs that do not provide premium and discount disclosure on their websites in accordance with 17 CFR 270.6c–11 [Investment Company Act rule 6c–11]. *See* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) [84 FR 57162 (Oct. 24, 2019)]. As proposed, the final rules do not amend this annual report requirement beyond a technical amendment to clarify that it only applies to ETFs.

[246] ICI Comment Letter; Fidelity Comment Letter.

[247] ICI Comment Letter.

[248] *See* Item 27A(d) of amended Form N–1A.

during the reporting period.[249] As proposed, the final rules also permit a fund to disclose any additional statistics that the fund believes would help shareholders better understand the fund's activities and operations during the reporting period. These provisions are designed to provide succinct fund information, in a user-friendly format, that encourage investors to focus on certain significant factors in evaluating the fund's operations and performance.

The final rules include several related instructions.[250] First, in a change from the proposal (which did not include such an instruction), under the final rules the required fund statistics must precede any additional permitted statistics the fund chooses to include. We believe that disclosing the required statistics first will enhance comparability of the required fund statistics across funds. Next, as proposed, if a fund provides a statistic also required under Form N–1A, the fund must follow Form N–1A instructions describing the calculation method for the relevant statistic. Additionally, as proposed, the final rules include an instruction that encourages a fund to use tables, bullet lists, or other graphics or text features to present the fund statistics.

As proposed, if a statistic is included in, or could be derived from, a fund's financial statements or financial highlights, the final rules require a fund to use or derive such statistic from the fund's most recent financial statements or financial highlights. Substantially as proposed, the final rules permit a fund to describe briefly the significance or limitations of any disclosed statistics in a parenthetical or similar presentation. The proposed instruction also would have permitted a footnote explaining the significance or limitation of any disclosed statistic. In a change from the proposal and consistent with commenters' suggestions, the final rules do not permit a footnote presentation because we believe that footnotes in this context would detract from the concise nature of the statistic disclosure, therefore diminishing the effectiveness of disclosed information that may be important to shareholders, and that such a presentation is inconsistent with the Commission's goal of streamlined, plain English disclosure in funds' shareholder reports.[251] Additionally, in a change from the proposal, the instructions to the final rules include multiple-class funds' requirements for calculating statistics based on the fund's performance or fees, in light of the final rules' requirement that a shareholder report cover a single class of a multiple-class fund.[252] Finally, as proposed, the final rules state that any additional statistics that a fund chooses to include are to be reasonably related to the fund's investment strategy. Collectively, these instructions are designed to enhance comparability of shareholder reports across funds and prevent disclosure "creep."[253]

Commenters generally supported the proposed requirements to include certain fund statistics in the shareholder report.[254] Some commenters requested that certain additional statistics be required or expressly permitted. For example, one commenter suggested funds "with a stated ESG-oriented investment strategy" be allowed to incorporate relevant ESG statistics if they wish, and "make reference to supplementary ESG focused content as appropriate."[255] Another commenter urged the Commission to require a fund to disclose its unrealized capital gains per share as well the fund's historical standard deviation of returns compared to its benchmark's standard deviation of returns.[256] Additionally, one commenter requested we expressly permit other optional statistics related to the fund's portfolio or the portfolio relative to the fund's benchmark index, such as average market capitalization, average price/earnings ratio, and average earnings growth rate, among others.[257] Finally, one commenter suggested that money market funds be exempt from the requirement to disclose portfolio turnover rate.[258]

The final rules do not require any of the additional statistics that commenters suggested. We continue to believe that required statistics should be limited to those that are generally applicable to all funds and provide useful context for other required information elsewhere in the shareholder report. Because funds will be required to provide a graphical presentation of holdings, knowing the fund's net assets will allow a shareholder to appreciate better the impact of each holding on the overall performance of the fund.[259] Similarly, we continue to believe that, together with the graphical holdings information and net assets, knowing the number of a fund's holdings could help investors to understand better the fund's diversification, which could in turn provide insight into the fund's susceptibility to market fluctuations.

Additionally, because a higher portfolio turnover rate generally indicates higher transaction costs and may result in higher taxes, we continue to believe that disclosing the fund's portfolio turnover rate provides shareholders with a more complete view of the costs associated with investing in the fund. However, we agree with the commenter's suggestion to exclude money market funds from the requirement to disclose portfolio turnover, as most money market funds' securities mature in one year or less and have reflected this change in the final rules.[260]

We are not requiring a fund to disclose its unrealized capital gains per share as suggested by one commenter, although a fund could include this information at its option in addition to the required statistics. We recognize that capital gains distributions can have significant tax consequences for investors holding fund shares in taxable accounts, particularly if these distributions are unexpected. However, we do not believe that most retail shareholders would appreciate the tax implications of unrealized capital gains without additional explanatory disclosure, which would add length and

[249] *See* Item 27A(e) of amended Form N–1A. In a change from the proposal, the final rules include a new statistic related to the disclosure of the total advisory fees the fund paid. Additionally, in a change from the proposal, which would have required all funds to disclose their portfolio turnover rate, the final rules exclude money market funds from the requirement to disclose portfolio turnover rate. *See infra* footnote 260 and accompanying text.

[250] *See* Instructions to Item 27A(e) of amended Form N–1A.

[251] *See, e.g.,* Tom and Mary Comment Letter; Williams Comment Letter.

[252] This instruction specifies that, if a fund is a multiple-class fund, and the fund provides a statistic that is calculated based on the fund's performance or fees (*e.g.,* yield or tracking error), the fund must show the statistic for the class of the fund to which the report relates.

[253] *See supra* text accompanying footnote 33 (noting that funds' shareholder reports generally have become longer and more complex over the years).

[254] *See, e.g.,* Morningstar Comment Letter; ICI Comment Letter; Comment Letter of Purcell Communications (Nov. 11, 2020) ("Purcell Communications Comment Letter"); Angel Comment Letter.

[255] Purcell Communications Comment Letter (addressing funds with environmental, social, and governance ("ESG") investment practices).

[256] Angel Comment Letter.

[257] ICI Comment Letter.

[258] *Id.* This commenter noted that money market funds are not required to calculate and disclose portfolio turnover as part of the financial highlights table, and excluding them from this fund statistic requirement would be consistent with this approach. *See* Instruction 4(c) to Item 13 of amended Form N–1A (mis-numbered as Instruction 4(b) to Item 13 of current Form N–1A).

[259] Because the measure of a fund's net assets is included in the fund's audited financial statements, the fund will be required to use or derive such statistic from the fund's audited financial statements.

[260] *See* Item 27A(e) of amended Form N–1A.

complexity to the shareholder report.[261] Additionally, because disclosure of unrealized capital gains per share would not be relevant to all fund types, such as ETFs, we do not believe it is necessary to require the disclosure of a statistic that is not relevant across a large percentage of funds.

Similarly, we are not adopting another commenter's suggestion to mandate disclosure of historical standard deviation of returns compared to a fund's benchmark's standard deviation of returns because we do not believe it would be useful to most retail investors without additional disclosure explaining how they should consider such information in their investment decision process.[262] The Commission has considered whether funds should be required to disclose uniform risk metrics in the past, and as fund strategies continue to diversify and increase in complexity, we will continue to consider whether additional risk-related disclosure or reporting is appropriate and can be disclosed in a manner that is salient to retail investors.[263]

Finally, we do not believe it is necessary to prescribe specific statistics that a fund is permitted, but not required, to include. Such an approach could lead funds to include all of these additional statistics due to the perception that the Commission is encouraging these specific statistics, regardless of whether they would be salient to the fund's shareholder base. It also may lead to disclosure ''creep'' and result in a significantly longer and more complex shareholder report, contrary to our stated objectives.

We are, however, in a change from the proposal adopting the requirement for funds to disclose an additional statistic regarding the total amount of advisory fees paid. To calculate the total advisory fees paid, the fund will be required to disclose the amount of investment advisory fees that are payable to the investment adviser and disclosed in the fund's statement of operations.[264] This statistic provides investors the aggregate amount of actual advisory fees, in dollars paid.[265] This aggregated fund expense information complements the information in the expense table and provides fund shareholders with a more complete view of the fund's expenses in a concise manner.

In the Proposing Release, the Commission sought feedback on whether other data elements from the financial statements should be included in the shareholder reports and whether there are ways to enhance transparency of fund expenses.[266] In particular, the Commission sought feedback regarding whether, and if so how, funds could provide investors with additional information regarding how a fund's adviser and its affiliates receive compensation from the fund in order to better understand fund costs and potential conflicts of interest.[267] Commenters suggested a variety of ways to amend the shareholder report expense table to provide shareholders with a more complete view of the fees charged by the fund.[268] After considering these comments, we believe requiring funds to disclose, in dollars, the total amount of advisory fees paid as a single statistic in the shareholder report will give an additional tool to investors to understand the aggregate fees that investors pay for fund management and will complement the fund expense table, which provides the amount of fees paid on a hypothetical $10,000 investment. The fees paid on a hypothetical $10,000 investment will help investors approximate their own expenses, while the aggregate fees paid to the adviser will help contextualize that information by allowing investors to consider their own expenses relative to the total amount of advisory fees paid. We also believe that this simplified presentation of the more complex and detailed expense disclosure included in the fund's financial statements will further the Commission's goal of providing concise disclosure that will help shareholders better understand information provided in the fund's financial statements.

Some commenters suggested certain enhancements and additional guidance on the proposed statistics requirements. For example, one commenter suggested that, if a fund statistic changed significantly during the most recent fiscal year, the fund should be permitted to briefly describe the factors that contributed to the change.[269] Another commenter suggested funds that choose to change a statistic be required to maintain the prior statistic for an additional year, to avoid cherry-picking.[270] Additionally, one commenter suggested that, if a fund uses a statistic not otherwise included in the fund's other regulatory documents, the fund should be required to direct shareholders to where they can find information on the methodology the fund used to calculate the statistic.[271]

Aside from the changes discussed above, we are not adopting any other changes to the proposed instructions. We do not believe it is necessary to allow funds to describe the factors that contributed to any significant changes to disclosed statistics that occurred during the most recent fiscal year. Such an explanation could require potentially technical, narrative disclosure that would make the statistics disclosure less concise and less salient. If a fund believes that such contextual information would be useful to investors in understanding the fund's performance over the relevant period, the fund can provide such narrative explanation in the MDFP section of the report. We believe it is important to limit any narrative disclosure in the fund statistics section in order to maintain the usefulness of such disclosures to investors. Relatedly, while the final rules will allow funds to

[261] *See, e.g.,* Angel Comment Letter. While this commenter urged the Commission to require unrealized capital gains as a fund statistic, the commenter stated that the value of such disclosure to retail investors is limited to alerting investors that ''this is an important item, giving them the desire to learn more about it.''

[262] *See, e.g., id.* (stating that, in addition to the historical deviation of the fund over the last 1, 5, and 10 year periods, funds should be required to include the historical deviation of the fund's benchmark for investors to be able to appreciate how much risk their fund has taken over the last 1, 5, and 10 year periods as compared to the benchmark's standard deviation).

[263] *See* Improving Descriptions of Risk by Mutual Funds and Other Investment Companies, Investment Company Act Release No. 20974 (Mar. 29, 1995) [60 FR 17172 (Apr. 4, 1995)]. Funds currently report certain portfolio- and position-level risk metrics on Form N–PORT. *See* Items B.3, C.9.f.v, C.11.c.vii, and C.11.g.iv of Form N–PORT.

[264] *See* paragraph 2(a) of rule 6–07 of Regulation S–X [17 CFR 210.6–07]. The total amount of advisory fees should be disclosed on a net basis, which will require the calculation of this amount to include any reductions or reimbursements of such fees that were in effect during the reporting period.

[265] The rules generally provide that, when a multiple class fund shows statistics that are calculated based on the fund's performance or fees, such a fund must show the statistic only for the share class that the report covers. *See* Instruction 7 to Item 27A(e) of amended Form N–1A. However, the total amount of advisory fees paid, as disclosed in the fund statistics section of the shareholder report, should not be disclosed on a class-specific basis, and must instead be disclosed for the fund as a whole, consistent with rule 6–07 of Regulation S–X. We believe that it is important for investors to have a complete view of the total amount of income an adviser receives from the fund in order to appreciate fully the amounts paid to the adviser and to ensure that this number is comparable across shareholder reports of other funds, irrespective of the class that report covers.

[266] Proposing Release, *supra* footnote 8, at text accompanying n.411.

[267] *Id.* at text accompanying n.593 (also requesting feedback on, among other things, whether funds should disclose any revenue paid to the fund's adviser or its affiliates that the fee table does not reflect (*e.g.,* outside of the management fee), as a percent of fund assets or a percent of the fund's total expenses).

[268] *See supra* footnotes 180–186 and accompanying text.

[269] ICI Comment Letter.

[270] Ubiquity Comment Letter.

[271] Morningstar Comment Letter.

describe any significance or limitations of any disclosed statistics in a parenthetical or similar presentation, funds should carefully consider the inclusion of any statistic that requires extensive narrative explanation. As proposed, any statistic that the fund opts to include in the shareholder report must be one that is reasonably related to the fund's investment strategy and one that the fund believes would help shareholders better understand the fund's activities and operations during the reporting period. A statistic that requires extensive explanation may be confusing to retail investors and therefore may not help them to better understand the fund's activities and operations.

For similar reasons we are not adopting a commenter's suggestion that funds be required to continue to disclose a permitted statistic for an additional year before removing it because we believe that such a requirement would unnecessarily increase the length and complexity of the shareholder report. In addition, if a change in the fund's investment strategy during the reporting period caused a statistic to be less relevant, requiring a fund to disclose such a statistic for an additional year would be confusing to investors. Furthermore, we are not adopting the suggested requirement for funds to direct shareholders to where they can find information on the methodology the fund used to calculate a permitted statistic, because we believe that such a requirement could significantly increase the length of the shareholder report.

e. Graphical Representation of Holdings

Substantially as proposed but with certain changes designed to address commenters' feedback, the final rules retain the current requirements related to the graphical representation of holdings that funds include in their shareholder reports, including certain revisions designed to improve the current disclosure. Funds will be required to disclose one or more tables, charts, or graphs depicting the fund's portfolio holdings by category, as of the end of the reporting period, as they do today.[272] As proposed, the final rules specify that a fund must disclose its graphical representation of holdings using categories, and with a basis of presentation, that are reasonably designed to depict clearly the types of investments made by the fund, given its investment objectives.[273] The purpose of the graphical representation of holdings disclosure requirement is to illustrate, in a concise and user-friendly format, the allocation of a fund's investments across particular categories of investments (such as asset classes). Commenters indicated that investors view this data as important to understanding their fund investments.[274] We continue to believe that a layered approach to the disclosure of portfolio holdings, where a graphical representation of holdings continues to appear in the annual report, and more detailed and current portfolio holdings information—which currently appears in the shareholder report as the fund's schedule of investments—is available online and upon request, helps shareholders understand how the fund invested its assets.[275]

We are adopting several changes to the current graphical representation of holdings requirements. First, substantially as proposed, we are newly permitting a fund to show its holdings based on total exposure to particular categories of investments. Funds will be permitted to use this presentation method in addition to ones currently available to them, namely, showing holdings based on the percentage of net asset value or total investments attributable to each category.[276] We also, as proposed, are adopting minor revisions to the current instructions with respect to funds that depict portfolio holdings according to credit quality. These revisions are designed to keep related disclosures brief and concise. Finally, in a change from the proposal and in consideration of comments received, the final rules explicitly permit a fund to include, along with the graphical representation of holdings, a list of its largest 10 portfolio holdings and the percentage of the fund's net asset value, total investments, or total exposure attributable to each such holding.

Presentation Based on Total Exposure

The final rules include flexibility, as proposed, for funds to base the tabular or graphic representation of holdings on the fund's total exposure to particular categories of investments.[277] However, in a change from the proposal, the final rules will not allow funds to base this presentation only on the fund's *net* exposure to particular categories of investments. The final rules allow funds to show net exposure in addition to the required total exposure presentation.[278] One commenter specifically supported the proposal to allow such a net presentation as useful for funds that have significant derivatives investments.[279] Conversely, another commenter advised that providing total, rather than net, exposure provides investors a true sense of the fund's exposures.[280]

We continue to believe that expanding the permissible presentations to allow a fund to show its holdings based on their investment exposure will provide a more meaningful presentation for funds that use derivatives to obtain investment exposure as part of their investment strategies. Upon further consideration of comments received, we are persuaded that showing only a net exposure presentation of holdings may not be representative of a fund's exposures, particularly for certain funds that hold both long and short positions. For example, allowing these funds to show only a net exposure presentation could lead investors to believe that the fund's exposure to a particular sector or industry is lower than that provided by the fund's investments.[281]

[272] The categories that funds may depict in the graphical representation of holdings may include, for example, type of security, industry sector, geographic region, credit quality, or maturity.

[273] Funds' graphical representation of holdings disclosure currently must adhere to these requirements under Item 27(d)(2) of current Form N–1A. No commenter addressed these requirements.

[274] Responses to the Investor Feedback Flier generally indicated that the respondents found the graphical representation of holdings information useful in monitoring their investments. *See supra* footnote 47 and accompanying text. Additionally, survey data that one commenter provided similarly found a majority of investors said that this presentation is useful to them. *See supra* footnote 48 and accompanying text.

[275] Proposing Release, *supra* footnote 8, at text accompanying nn.261–262 (discussing the Commission's understanding of investors' preferences with respect to disclosure of funds' portfolio holdings). The full schedule of portfolio holdings will be available online and upon request on at least a quarterly basis. *See* rule 30e–1(b)(2). We discuss the availability of the schedule of investments in *infra* sections II.C.1.a and II.C.2.a. *See also* rule 6c–11 under the Investment Company Act, which requires daily portfolio holdings for ETFs relying on the rule.

[276] *See* Item 27(d)(2) of current Form N–1A.

[277] *See* Item 27A(f) of amended Form N–1A.

[278] *Id.*

[279] ICI Comment Letter (also stating that this presentation is particularly beneficial to funds that hold both long and short positions because, under the proposal, they would be allowed present the long and short positions separately (*i.e.,* total exposure) or show the combined effect of both positions (*i.e.,* net exposure)).

[280] Morningstar Comment Letter (arguing that funds should be required to show long and short exposures by asset class, rather than only the net allocation to better represent the exposures of the portfolio).

[281] As an example, if a fund had a 5% long position in XYZ Automotive Co. and a 4% short position in QRS Automotive Inc., a total exposure presentation would require the fund to show the 5% long position in the automotive industry and separately show a 4% short position. A net exposure presentation would only show a position of 1% in the automotive industry, however, based on the assumption that the two investments would

For these reasons, under the final rules, a fund that holds both long and short positions and chooses to use total exposure as a basis for presenting the fund's graphical representation of holdings must depict the long and short exposures to each category of investments separately. This approach is consistent with the definition of ''derivatives exposure'' that the Commission adopted in rule 18f–4.[282] We also believe that this approach is consistent with the final rule requirement that funds disclose holdings categories and a basis of presentation in a manner that is ''reasonably designed to depict clearly the types of investments made by the Fund, given its investment objectives.'' As proposed, a fund that uses total exposure as a basis for representing its holdings will also be permitted to include a brief explanation of this presentation.[283] Such a fund also will be permitted, but not required, to show a net exposure presentation.

Funds Depicting Portfolio Holdings According to Credit Quality

For funds that choose to depict portfolio holdings according to credit quality, we are adopting as proposed an amendment instructing these funds to keep the required disclosures related to this presentation brief and concise.[284] A fund that depicts its portfolio holdings according to credit quality is currently required to describe how the credit quality of its holdings was determined and, if credit ratings are used, the fund must explain why it selected a particular credit rating.[285] The length of this disclosure currently varies among funds, and this amendment is designed to keep narrative disclosures in the annual report brief. The Commission received no comments on the proposed amendment.

Permitted Disclosure of Top 10 Portfolio Holdings

In a change from the proposal, the final rules will allow a fund to disclose, in a table or chart that appears near the fund's graphical representation of holdings, the fund's largest 10 portfolio holdings.[286] A fund that chooses to include this presentation also may show the percentage of the fund's net asset value, total investments, or total exposure attributable to each such holding.

Two commenters suggested that the Commission should require or permit funds to include a list of top 10 or 25 holdings and the percentage of these holdings.[287] One of these commenters stated that it is ''quite common'' for equity funds to include such information, and that such lists are informative to shareholders and do not add significantly to the length of the report.[288] The other commenter stated that this additional information would highlight fund concentration risk.[289]

We agree that allowing a fund to include a list of its largest 10 holdings and the percentage of the fund's net asset value, total investments, or total exposure that each such holding represents would complement the other information provided in the graphical representation of holdings and be informative to shareholders. When combined with required disclosure on the number of portfolio holdings, this disclosure will provide shareholders with additional information about a fund's potential concentration risk. However, we believe that allowing funds to show a larger number of individual holdings, such as the largest 25 fund holdings, would unnecessarily increase the length of the report with little added benefit to shareholders. We are permitting disclosure of a fund's top 10 portfolio holdings, rather than requiring it, because this disclosure may not be as useful for certain types of funds (for example, a fund with hundreds of holdings, each representing a very small fraction of the fund's net asset value) as it is for others.

Other Comments on Graphical Representation of Holdings

Additionally, one commenter suggested requiring a fund of funds to show its asset allocation based on the underlying holdings of the acquired funds.[290] We are not adopting such a requirement. Because the fiscal year end of a top-level fund may differ from that of its underlying funds, the top-level fund may not have access to current underlying fund holdings information as of the date of the top-level fund's shareholder report. A top-level fund would be permitted to show its asset allocation based on the underlying holdings of the acquired funds, however, provided that the presentation otherwise meets the requirements for the graphical representation of holdings disclosure we are adopting.

The same commenter suggested that the Commission should require funds to standardize the format for showing exposures such that all funds use the same terminology and asset classes to enhance comparability. While we appreciate the comparative value such an approach would provide, we continue to believe that funds should have flexibility to tailor disclosure to their specific holdings and investment strategies in a manner that best communicates this information to shareholders. Maintaining an evergreen, rule-based compendium of the terminology that funds could include would be challenging, given the diversity of fund strategies and portfolio investments. The presentation requirements in the final rules for funds' graphical representation of holdings disclosure balances these considerations with our interest in clear and salient portfolio holdings disclosure.

f. Material Fund Changes

The final rules will require a fund to describe material changes to the fund in the annual report.[291] We are adopting this requirement substantially as proposed, with certain modifications to address commenter concerns.

Specifically, a fund will be required to describe a material change since the beginning of the reporting period briefly with respect to any of the following items:

- A change in the fund's name (as described in Item 1(a)(1) of Form N–1A);
- A change in the fund's investment objectives or goals (as described in Item 2 of Form N–1A);
- A change in the fund's annual operating expenses, shareholder fees, or maximum account fee (as described in Item 3 of Form N–1A), including the termination or introduction of an expense reimbursement or fee waiver arrangements;
- A change in the fund's principal investment strategies (as described in Item 4(a) of Form N–1A); [292]

be inversely correlated. But any assumed correlation may not hold under all circumstances.

[282] *See* Use of Derivatives by Registered Investment Companies and Business Development Companies Investment Company Act Release No. 34084 (Nov. 2, 2020) [85 FR 83162 (Dec. 21, 2020)] (''Derivatives Adopting Release'') (requiring derivatives exposure calculations to be based on ''gross'' notional amounts, rather than a figure based on calculations that net long and short positions).

[283] *See* Item 27A(f) of amended Form N–1A. No commenters addressed this permitted explanation.

[284] *See id.*

[285] *See* Item 27(d)(2) of current Form N–1A.

[286] *See* Item 27A(f) of amended Form N–1A.

[287] ICI Comment Letter; Morningstar Comment Letter.

[288] ICI Comment Letter.

[289] Morningstar Comment Letter. This commenter stated that information about a fund's top 10 holdings would indicate potential concentration risk better than the proposed requirement for all funds to disclose the number of portfolio holdings as part of their disclosures on fund statistics.

[290] *Id.*

[291] *See* Item 27A(g) of amended Form N–1A.

[292] *See* Proposing Release, *supra* footnote 8, at n.273 (discussing the requirements of rule 35d–1, the ''names rule,'' and discussing how disclosure of a change in the fund's principal investment

Continued

- A change in the principal risks of investing in the fund (as described in Item 4(b) of Form N–1A); and
- A change in the fund's investment adviser(s), including sub-adviser(s) (as described in Item 5(a) of Form N–1A).[293]

Additionally, as proposed, a fund may describe other material fund changes that it would like to disclose to its shareholders.[294] In a change from the proposal, the final rules also permit a fund to describe other changes that may be helpful for investors to understand the fund's operations and/or performance over the reporting period.[295] A fund also may disclose material planned changes in connection with updating its prospectus for the current fiscal year. A fund will have to provide a concise description of each change that provides enough detail to allow shareholders to understand the change and how it may affect shareholders.[296]

The purpose of these requirements is to highlight and consolidate disclosure of material changes in a way that increases the salience of this disclosure. Currently, fund shareholders typically receive information about these changes in: (1) annual prospectus updates; or (2) other prospectus updates they may receive throughout the year (which can take the form of a prospectus ''sticker'' or an updated copy of the fund's prospectus). We are concerned, however, that material changes may not always be readily apparent to a shareholder. For example, changes in the annual prospectus update may not be easy for an average shareholder to identify.[297] There is no requirement for a fund to identify or highlight changes to the fund in its prospectus.[298] We also understand that there is diversity of practices among funds regarding what changes result in a prospectus sticker, and whether to transmit the sticker to shareholders. The categories of fund changes that we are requiring funds to disclose in their annual reports are meant to capture the types of material changes to a fund's operations that we believe are important to fund shareholders, that may influence their investment decisions, and that are more likely to occur.

The proposal would have added a new section to the annual report that would have required funds to describe briefly any material change in an enumerated list of items (as well as any other material change that the fund chooses to disclose) that has occurred since the beginning of the reporting period or that the fund plans to make in connection with its annual prospectus update.[299] Commenter responses to this proposed requirement were mixed. Some commenters supported this requirement.[300] Additionally, survey data submitted by one commenter indicated that a majority of retail investors found this disclosure useful.[301] Other commenters objected to this disclosure.[302] These commenters argued that providing a list of material changes, without the benefit of context from the prospectus, is not useful to investors. Additionally, several commenters took issue with the proposed approach of providing an enumerated list of material changes that would necessitate disclosure, arguing it was too prescriptive.[303] These commenters recommended that the Commission adopt a more principles-based approach, with one stating this approach would address concerns that one fund may reasonably view a particular type of change as material while another may not, given differences in funds' respective investment objectives, holdings, strategies, and risk profile.[304] One commenter stated that, if the Commission adopts a list, it should provide additional guidance to assist funds in determining whether a ''material'' change has occurred for any enumerated topic.[305] In contrast, one commenter urged the Commission to limit material changes to those included in the list and stated that funds should not be given the flexibility to disclose additional items in order to limit the length of the shareholder report.[306]

Some commenters suggested alternative approaches. For example, several suggested defining material changes as those that would require a fund to file an amendment to the fund's registration statement pursuant to rule 485(a) under the Securities Act.[307] In contrast, some commenters stated that the use of the term ''material'' in this section raises questions with respect to the impact of this requirement on the concept of materiality embedded in the requirements of rule 485(a) under the Securities Act.[308] One commenter

strategies could serve as a notice of a change to an investment policy as required under the names rule).

[293] As proposed, the final rules will not require a fund to disclose a change in a sub-adviser where Item 5 of Form N–1A would not require the fund to disclose the name of the sub-adviser in its prospectus. *See* Instructions 1 and 2 to Item 5 of current and amended Form N–1A.

[294] *See* Item 27A(g) of amended Form N–1A.

[295] In a change from the proposal, the final rules include the phrase ''or changes that may be helpful for investors to understand the fund's operations and/or performance over the reporting period'' in this provision. *See* Item 27A(g) of amended Form N–1A. For example, a fund could disclose plans to liquidate or merge the fund, even if previously disclosed to shareholders.

[296] As proposed, this section of the shareholder report must include a legend to the effect of the following: ''This is a summary of certain changes [and planned changes] to the Fund since [date]. For more complete information, you may review the Fund's next prospectus, which we expect to be available by [date] at [website address] or upon request at [toll-free telephone number and, as applicable, email address].''

[297] This also may be the case when a fund delivers a sticker, though a sticker typically would identify a change more explicitly.

[298] Some other types of registered investment companies currently are required to identify certain changes in their shareholder disclosure materials. *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 9 (requiring updating summary prospectuses for variable contracts, which provide a brief description of any important changes with respect to the contract that occurred within the prior year to allow investors to better focus their attention on new or updated information relating to the contract); rule 8b–16(b) under the Investment Company Act (requiring certain registered closed-end funds to identify specific types of material changes in their annual reports).

[299] *See* Proposing Release, *supra* footnote 8, at n.271–272 and accompanying text. The proposed enumerated list of items varied from the enumerated list under the final rules by requiring a fund to disclose an *increase,* rather than a change, in the fund's ongoing annual fees, transaction fees, or maximum account fee (as described in Item 3 of Form N–1A) as well as requiring a fund to disclose a change in the fund's portfolio manager(s) (as described in Item 5(b) of Form N–1A).

[300] *See, e.g.,* Morningstar Comment Letter; NASAA Comment Letter; Fidelity Comment Letter; Consumer Federation of America II Comment Letter.

[301] Broadridge Comment Letter (also stating that surveyed investors identified certain changes in particular as important, including changes to investment objectives, risks, strategies, fund management, and changes that impact fund performance).

[302] *See, e.g.,* Stradley Ronon Comment Letter; TIAA Comment Letter; Tom and Mary Comment Letter (recommending instead adding the proposed list of material changes to the beginning of the prospectus).

[303] *See, e.g.,* ICI Comment Letter; Vanguard Comment Letter; Capital Group Comment Letter; SIFMA Comment Letter (supporting the proposed disclosure in principle but objecting to the list approach); John Hancock Comment Letter (suggesting replacing list with non-exhaustive list of examples as guidance in the adopting release).

[304] *See* ICI Comment Letter.

[305] SIFMA Comment Letter (providing a list of suggested factors funds could consider, including: (1) what is the nature of the change and does it reflect a change in the way the fund is currently being managed and/or does it reflect a material change in the fund's risk profile; (2) which section(s) of the prospectus does the change impact; (3) how likely would the change be to influence a shareholder's decision to continue to invest in the fund; and (4) what is the length of time before existing shareholders will have ''access'' to the information (*e.g.,* in the event the changes will be simply folded into the annual prospectus update that will be accessible to shareholders on the fund's website).

[306] Fidelity Comment Letter.

[307] *See, e.g.,* ICI Comment Letter; Vanguard Comment Letter; Federated Hermes Comment Letter.

[308] *See* SIFMA Comment Letter; John Hancock Comment Letter (requesting the Commission clarify

suggested that a material change should be defined as one that triggers a supplement or ''sticker'' filing.[309]

Commenters also raised concerns regarding certain topics included in the proposed list of material changes. For example, many commenters argued that portfolio manager changes should not be included in the list because these changes are immaterial in many circumstances.[310] Additionally, several commenters opposed including planned changes in connection with the fund's annual prospectus update, arguing funds should only discuss actual changes because planned changes may not be finalized.[311] These commenters also argued that requiring disclosure of future changes may create certain operational challenges for funds.[312]

Commenters also requested additional guidance and clarification regarding the list of material fund changes. Many related to fees. One commenter requested the Commission clarify that material increases in fees should only be disclosed if the increase is the result of a material increase in contractual fee rates, rather than the result of a loss in a breakpoint or a change in performance-related expenses.[313] Another commenter suggested that, instead of requiring disclosure of material increases in the fund's ''ongoing annual fees, transaction fees, or maximum account fee, it would be more protective for investors to mandate that any new fees be highlighted as well, irrespective of how the fees are characterized or the fees' potential magnitude.'' [314] This same commenter requested that the Commission add to the list any change in the fund's performance benchmark. Another commenter suggested the list also should include a decrease in fund fees and expenses, as well as an increase.[315]

Commenters also requested guidance about the level of detail that would appear in the required disclosure. One commenter suggested that funds be allowed to provide a narrative explanation of the reasons for the material change.[316]

After considering these comments, we are adopting this requirement substantially as proposed, with some modifications to address commenter concerns. We are retaining a list-based approach, where a fund must briefly describe any material change with respect to any listed item that has occurred since the beginning of the reporting period. We continue to believe that this approach will provide more certainty to funds about the types of changes they must disclose and enhance consistency of annual report disclosure across funds. We appreciate the concern that different funds may reasonably view different types of changes as material. We have therefore incorporated an addition to the final rules' provision that would permit funds to include material changes regarding topics that do not appear on the enumerated list. The addition to this proposed provision clarifies that funds also are permitted to describe changes that may be helpful for investors to understand the fund's operations and/or performance over the reporting period.

We are not, however, defining a material change for this purpose as a change that would require a fund to file an amendment to the fund's registration statement under rule 485(a) under the Securities Act because we do not believe linking this new disclosure requirement to that rule is necessary. The concept of materiality is a bedrock feature of the federal securities laws, and funds have extensive knowledge and experience in applying this standard in a wide array of contexts.[317]

While a fund should base the determination of whether a change is material on the facts and circumstances of the fund and the specific change, we are providing general guidance on the factors that funds could consider in making that determination. Factors funds may wish to consider include the nature of the change, whether it reflects a material change in the way the fund is currently being managed, whether it reflects a material change in the fund's risk profile, which section(s) of the prospectus the change affects,[318] and how likely the change would be to influence a shareholder's decision to continue to invest in the fund. For example, if a change to the fund's principal risks is due to a change in the way the fund is managed, such a change would likely be considered a material change. By contrast, if a fund that invests heavily in a foreign country changes its description of that foreign country risk as a result of changes in the country's political landscape, such a change would likely not constitute a material change.

The list of topics under the final rules differs in several ways from the proposed list. First, we agree with the commenters who suggested that the list should not include changes in portfolio managers. Under many circumstances, shareholders may not consider portfolio manager changes to be material in their ability to understand the fund's operations and performance over the past year, and may not consider these to be a material factor in deciding whether to buy, sell, or hold fund shares. If a fund considers a portfolio manager change to be a material change that should be disclosed, it would be permitted to disclose this change under the final rules, as the final rules include flexibility to disclose changes about topics that do not appear on the list.[319]

Second, we agree with certain commenters that a fund should have to disclose *any* material change in fund fees, even those that do not result in fee increases. We also agree with commenters who suggested that that fee movements of any kind, and irrespective of how the fees are characterized (*i.e.,* regardless of whether they are the result of a change in the contractual fees or a change in performance-related fees), are the type of material information that we believe

that changes the fund experiences in the list of topics do not necessarily mandate a 485(a) filing)*; see also* rule 485(a) and (b) under the Securities Act [17 CFR 230.485] (post-effective amendments to registration statements filed under rule 485(b) may be filed for certain specified purposes, including ''making any non-material changes which the registrant deems appropriate'').

[309] Capital Group Comment Letter. *But see* ICI Comment Letter; SIFMA Comment Letter (each opposing defining material changes as those that trigger a rule 497 sticker filing, given the diversity of practices among funds on when to sticker and whether to transmit the sticker to shareholders).

[310] *See, e.g.,* SIFMA Comment Letter; Dechert Comment Letter; ICI Comment Letter (arguing that changes in portfolio managers are particularly irrelevant for index funds), Fidelity (arguing that only changes in the lead portfolio manager, or a fund's single portfolio manager, should be considered material).

[311] *See, e.g.,* ICI Comment Letter; SIFMA Comment Letter; Vanguard Comment Letter; Fidelity Comment Letter; Dechert Comment Letter; Stradley Ronon Comment Letter.

[312] *See, e.g.,* Federated Hermes Comment Letter; Dechert Comment Letter (stating that, if funds are required to disclose changes that are anticipated to occur after the close of the reporting period, there will be an increased administrative burden on funds to monitor and track changes that have not yet been reported to shareholders and suggesting that funds could be permitted, rather than required, to disclose future changes).

[313] ICI Comment Letter.

[314] NASAA Comment Letter.

[315] Charles Schwab Comment Letter.

[316] CFA Institute Comment Letter; *see also* Morningstar Comment Letter (suggests requiring funds disclose where shareholders can find more information regarding material changes).

[317] *See, e.g., Basic* v. *Levinson,* 485 U.S. 224, 231 (1988) (''*Basic* v. *Levinson*''); *see also* Selective Disclosure and Insider Trading, Release No. 33–7881 (Aug. 15, 2000) [65 FR 51715 (Aug. 24, 2000) (citing *Basic* v. *Levinson* and stating that materiality has been defined by existing case law).

[318] A change that affects the summary prospectus is more likely to rise to the level of a material change than one that would only affect the statutory prospectus.

[319] For example, if the fund has a single portfolio manager who is well-known in the industry and prominently identified in fund advertisements, such a fund might consider a change in its portfolio manager to be a material change that would warrant disclosure in the shareholder report.

retail investors would find to be important in their decisions to continue to hold shares of the fund.[320] Because the termination or introduction of an expense reimbursement or fee waiver arrangement can affect the fees that a shareholder pays, in a change from the proposal the final rules clarify that these are changes that should be disclosed.[321]

Additionally, because a change in the fund's index will be highlighted in the MDFP section of the shareholder report, we do not believe it is necessary to add changes to the index in the enumerated list of material fund changes.[322]

The final rules do not require disclosure of changes the fund plans to make in connection with its next annual prospectus update. We agree with commenters that this requirement could create certain operational challenges for funds because of the increased administrative burdens funds will incur if they have to monitor changes occur after the end of the reporting period. A fund, however, will be permitted to include such a change in its annual report if it is a material change.[323]

g. Changes in and Disagreements With Accountants

As proposed, the final rules require funds to include a concise discussion of certain disagreements with accountants in the annual report. Specifically, when a fund has a material disagreement with an accountant that has resigned or been dismissed, the final rules will require the fund to include in its annual report: (1) a statement of whether the former accountant resigned, declined to stand for re-election, or was dismissed and the date thereof; and (2) a brief, plain English description of disagreement(s) with the former accountant during the fund's two most recent fiscal years and any subsequent interim period that the fund discloses on Form N–CSR.[324] As proposed, this required information is a high-level summary of more-detailed information that currently is required to appear in funds' shareholder reports.[325] Funds will be required to file the currently-required more-detailed information, as proposed, on Form N–CSR. Funds will not be required to disclose the absence of disagreements in response to the final rules' shareholder report disclosure requirement.

Commenters overwhelmingly supported these changes, explaining that accounting or auditing-related disagreements with accountants are particularly significant occurrences that should be prominently disclosed to shareholders.[326] We agree with commenters, and we believe that retaining this disclosure in funds' shareholder reports in summary form continues to be important because this would enhance the prominence of this disclosure and put investors on notice of the dismissal or resignation of an accountant and the existence of a material disagreement with that accountant. We continue to believe this shareholder report disclosure could discourage funds from engaging in audit ''opinion shopping.'' [327]

h. Availability of Additional Information

We are adopting, as proposed, the requirement for funds to include a brief, plain English statement in the shareholder report that informs investors about certain additional information that is available on the fund's website.[328] This statement must include plain English references to, as applicable, the fund's prospectus, financial information, holdings, and proxy voting information.[329] In addition, and as proposed, if the shareholder report appears on a fund's website or otherwise is provided electronically, the fund must provide a means of immediately accessing this additional information (such as a hyperlink or QR code).[330]

As proposed, the final rules will provide a fund with the flexibility to refer to other information available on this website, if it reasonably believes that shareholders would likely view the information as important.[331] This additional information referred to in the annual report would have the same status under the Federal securities laws as any other website or other electronic content that the fund produces or disseminates.[332]

Two commenters supported the ability of funds to refer to other important information available on the fund's website.[333] We are adopting this requirement as proposed. We continue to believe that it recognizes the importance of the referenced information to some investors. Highlighting the availability and location of additional information is consistent with a layered approach to fund disclosure that makes more-detailed or technical information available to those investors who find the information valuable. Additionally, we believe the flexibility for funds to refer to other information in the required statement is appropriate because funds may wish to provide additional information to investors more tailored or relevant to a given fund. We also continue to believe this flexibility is appropriate given the content limitations imposed on the shareholder report.[334]

[320] *See supra* section I.A.3.

[321] The proposed rules would have required disclosure of a change of ''the fund's ongoing annual fees, transaction fees, or maximum account fee.'' The terms ''ongoing annual fees'' and ''transaction fees'' reflect the terms that the Commission proposed to replace current terms in the fee table: ''annual fund operating expenses,'' and ''shareholder fees,'' respectively. Because we are not adopting the proposed new terms, the proposed requirements in the final rules for disclosing material fund changes include the terms ''annual fund operating expenses'' and ''shareholder fees.''

[322] *See* Instruction 8 to Item 27A(d)(2) of amended Form N–1A.

[323] *See* Item 27A(g) of amended Form N–1A. The final rules also clarify—as the proposal did—that a fund will not be required to disclose a material change that it already disclosed in its last annual report.

[324] *See* Item 27A(h) of amended Form N–1A.

[325] *See* Proposing Release, *supra* footnote 8, at text accompanying nn.293 and 294. The current disclosure requirement, like the requirement we are adopting, is applicable only if a fund's accountant has resigned or was dismissed. In this case, the fund has to disclose the information that 17 CFR 229.304 [Item 304 of Regulation S–K] requires, concerning the circumstances surrounding the former accountant's dismissal or resignation, whether in the fund's two most recent fiscal years there were certain accounting-related disagreements with the former accountant, and other related information.

[326] ICI Comment Letter; CFA Institute Comment Letter; Consumer Federation of America II Comment Letter.

[327] *See* Proposing Release, *supra* footnote 8, at text accompanying nn.296–297 (discussing audit opinion shopping).

[328] *See* Item 27A(i) of amended Form N–1A. Under the final rules the term ''the Fund's'' in the required statement is placed in brackets to clarify that such information may be available either on the fund's website, or another website belonging to, for example, the fund sponsor.

[329] Currently, a fund is required to include statements regarding the availability of the fund's: (1) quarterly portfolio schedule, (2) proxy voting policies and procedures, and (3) proxy voting record. *See* current Items 27(d)(3) through (5) of Form N–1A. The final rule consolidates the currently-required statements about the availability of this information in a single statement that covers this same information, along with information about the availability of the prospectus and financial information.

[330] *See* Instruction 9 to Item 27A(a) of amended Form N–1A.

[331] *See* Proposing Release, *supra* footnote 8, at text following n.313 (providing examples of information to which a fund may wish to refer investors, such as a document describing the benefits of certain types of investments, a description of credit ratings, additional performance presentations, or additional commentary about how the fund performed).

[332] *See id.* at text accompanying n.315 (noting that the fact that a shareholder report references other information available on a website does not change the legal status of the referenced information); *see also* discussion at *infra* section II.A.4.

[333] ICI Comment Letter; Morningstar Comment Letter (also discussing the format of information presented online, which we discuss below in section II.C.2.b).

[334] As proposed, the annual report may only include information that Item 27A of amended Form N–1A specifically permits or requires. *See*

i. Householding

As proposed, the final rules retain the current provision that permits funds to explain in their annual report how to revoke consent to the householding of the annual report.[335] One commenter expressly supported the proposed requirement, stating that funds have experience applying the Commission's householding rules and have found this framework to be effective.[336]

Rule 30e–1 currently permits, and our final rules will continue to permit, the householding of fund shareholder reports if, in addition to the other conditions set forth in the rule, the fund has obtained from each investor written or implied consent to the householding of shareholder reports at such address.[337] The rule will continue to require funds that wish to household shareholder reports based on implied consent to send a notice to each investor stating, among other things, that the investors in the household will receive one report in the future unless the investors provide contrary instructions. In addition, at least once a year, funds relying on the householding provision must explain to investors who have provided written or implied consent how they can revoke their consent. One way to satisfy this annual notice requirement is to include a statement in the annual report. The final rules continue to permit funds to include this statement in the annual report.

3. Format and Presentation of Annual Report

We are adopting, substantially as proposed, general instructions related to the format and presentation of shareholder reports, designed to improve and simplify their presentation and encourage funds to use plain-English, investor-friendly principles when drafting their reports.[338]

First, as proposed, the final rules include an instruction specifying that the information in annual reports must be appear in the same order as is required under the amendments to Form N–1A. Consistent with the proposal, the final rules also include requirements that funds use ''plain English'' principles for the organization, wording, and design of the annual report.[339] In addition, as proposed, the instructions encourage funds to consider using, as appropriate, question-and-answer format, charts, graphs, tables, bullet lists, and other graphics or text features as a way to help provide context for the information presented. Finally, the instructions will include legibility requirements for the body of every printed shareholder report and other tabular data.[340]

Commenters generally supported the format and presentation requirements.[341] Additionally, according to survey results submitted by one commenter, retail investors indicated these requirements would be helpful in monitoring their investments.[342] While no commenters objected to the proposed format and presentation requirements, several suggested that more standardization than the proposal would result in investor protection benefits. One commenter suggested the Commission consider requiring standardized language to help investors identify key information, and that the Commission could improve readability by requiring funds to use standardized language for their benchmarking disclosures.[343] A different commenter, however, supported the flexibility that the Commission provided to modify information that otherwise would be required to appear in certain proposed headings and legends, if this information would not be applicable to a particular fund.[344] Another commenter recommended that the Commission establish a ''uniform format'' for the annual report, ''as it has when displaying information on more-structured filings like Form N–MFP, to enable investors to more easily compare funds.''[345]

We continue to believe that the proposed requirements for shareholder reports' format and presentation will help promote effective communication between the fund and its investors, and therefore are adopting these requirements. For example, requiring that information appear in a specific order will promote consistency and comparison across funds and allow shareholders to review the most salient information, such as fund expenses, first. Additionally, ''plain English'' and legibility requirements, as well as the format and design instructions, will help ensure that shareholder reports are easily readable by investors. We are not adopting additional requirements for reports' uniformity, such as requiring additional standardized language, because we believe the final rules' approach appropriately balances the goals of promoting comparability, readability, and conciseness, with the variety of funds and strategies that will be subject to the final rules' requirements. We also are mindful that any further restrictions on the format and presentation of shareholder reports could prevent our requirements from remaining ''evergreen'' in light of evolving technology and increased complexity of funds and strategies. Additionally, this approach takes into account the differences in format and function between a reporting form that is required to support the Commission's examination and regulatory programs, and disclosure—like funds' shareholder reports—whose primary audience is retail investors.[346]

4. Electronic Annual Reports

Fund shareholders may access their annual reports online, rather than (or in addition to) reviewing the reports in paper format.[347] We recognize that the use of electronic channels, and the overlay of electronic tools onto required regulatory documents, may present both

Instruction 3 to Item 27A(a) of amended Form N–1A.

[335] *See* current rule 30e–1(f); amended rule 30e–1(e); and Item 27A(j) of amended Form N–1A.

[336] ICI Comment Letter.

[337] *See* current rule 30e–1(f).

[338] *See generally* Instructions to Item 27A(a) of amended Form N–1A.

[339] The proposal included a similar plain English requirement, which directed funds to ''use plain English . . . taking into consideration Fund shareholders' level of financial experience.'' Because funds are familiar with the plain English requirements of rule 421 under the Securities Act, and because funds' shareholders' level of financial experience may vary within a fund (and may not be directly known by a fund), we are adopting limited modifications to the proposed requirement. Therefore, the provision in the final rules specifies that the plain English requirements of rule 421 apply to shareholder reports, and disclosure in funds' shareholder reports must be provided in plain English under rule 421(d). These modifications are designed to enhance consistency with the plain English requirements of other aspects of the Federal securities laws.

[340] In a shareholder report posted on a website or otherwise provided electronically, the instructions provide that a fund may satisfy legibility requirements applicable to printed documents by presenting all required information in a format that promotes effective communication as described in Instruction 8 to Item 27A(a) of amended Form N–1A.

[341] *See, e.g.,* Consumer Federation of America II Comment Letter; Broadridge Comment Letter; Sidley Austin Comment Letter; TIAA Comment Letter.

[342] Broadridge Comment Letter.

[343] Comment Letter of Christina Zhu, Assistant Professor of Accounting, The Wharton School, University of Pennsylvania (Sept. 29, 2020) (''Wharton Comment Letter'').

[344] *See* ICI Comment Letter; *see also* discussion at footnote 124 and accompanying text.

[345] Morningstar Comment Letter.

[346] *See, e.g.,* Money Market Funds Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10060 (Mar. 4, 2010)], at text following n.320 (''MMF Release'') (noting that while the information reported to the Commission on Form N–MFP is not primarily designed for individual investors, the Commission anticipated that many investors, as well as academic researchers, financial analysts, and economic research firms, would use this information to study money market fund holdings and evaluate their risk).

[347] *See supra* footnote 140.

practical and legal questions for fund registrants and other market participants.[348] We are adopting, as proposed, instructions designed to clarify requirements for electronic annual reports and to promote the use of interactive, user-friendly electronic design features. These instructions include: (1) ordering and presentation requirements for reports that appear on a website or are otherwise provided electronically; (2) instructions providing additional flexibility for funds to add tools and features to reports that appear on a website or are otherwise provided electronically; and (3) required links or other means for immediately accessing information referenced in reports available online.[349] Coupled with investors' increasing comfort with internet-based disclosure, we believe the instructions we are adopting will promote electronic disclosure that has the potential to enhance the information that printed paper documents and static electronic documents (such as those in PDF format) provide. At the same time, we are conscious of the need to set minimum standards so that these improvements do not detract from the usefulness of the streamlined shareholder report and ensure that all investors have access to the same baseline level of information.

First we are adopting as proposed clarifications that disclosure requirements for the annual report's ''cover page'' will also be applicable to the ''beginning'' of the report.[350] This is designed to reflect that electronic reports may not have a physical page at their beginning. Similarly, and as proposed, the final item instruction that will provide an ordering requirement for the contents of an annual report also includes a provision for annual reports that appear on a website or are otherwise provided electronically.[351]

We are also adopting, as proposed, instructions that will provide flexibility for funds to add tools and features to annual reports that appear on a website or are otherwise provided electronically.[352] The instructions encourage funds to use online tools designed to enhance an investor's understanding of material in the annual reports.[353] When using interactive graphics or tools, funds are permitted to include instructions on their use and interpretation. The general instructions also state that any explanatory or supplemental information that funds provide as online tools may not obscure or impede understanding of the required disclosures.[354]

For electronic shareholder reports that use online tools, the default online presentation must use the values required by Item 27A. For example, while the default presentation in the expense example and performance line graph must be on a $10,000 assumed investment, a feature may permit an investor to enter a different amount, but the investor must, as a default, be able to view the assumed amount. One result of this instruction will be that when the contents of a fund's annual report are derived from the fund's audited financial statements, the default online presentation will reflect the audited figures.

As proposed, under the general instructions we are adopting, any information in online tools the fund uses, but is not included in the annual report the fund files on amended Form N–CSR, would have the same status under the Federal securities laws as any other website or other electronic content that the fund produces or disseminates. The instruction is designed to remind funds about liability and any filing requirements associated with any additional information that a fund chooses to include with the online version of its annual report (other than the shareholder report information that it files with the Commission on amended Form N–CSR). The supplemental information will also be subject to a record retention requirement.[355]

Finally, we are adopting as proposed a new instruction providing that if the shareholder report references other information that is available online, the report must include a link or some other means of immediately accessing that information.[356] Under these requirements, a fund must include a link specific enough to lead investors directly to a specific item or alternatively to a central site with prominent links to the referenced information. For example, a reference to a fund's prospectus could include a direct link to the prospectus or might include a link to the landing page that includes prominent links to several fund documents, such as the summary prospectus, SAI and annual reports. However, the link cannot lead investors to a home page or section of the fund's website other than on which the specified item is posted. This requirement is designed to permit the investor easily to locate (*i.e.,* without numerous clicks) the information in which the investor is interested.

While we did not receive comment on the specific instructions proposed, we did receive comments regarding the accessibility of information presented online. Commenters who addressed this aspect of the proposal generally favored the proposed instructions regarding electronic annual reports. One commenter encouraged the use of the interactive and user-friendly design features that the proposed instructions were designed to encourage.[357] A different commenter stated that the ability for electronic reports to be personalized could be a first step toward allowing presentation of personalized expense information.[358] One commenter encouraged the Commission to consider the role of compliance with the Americans with Disabilities Act (''ADA'') ''to ensure all investors, including individuals with vision issues or those lacking the dexterity to use a

[348] *See* Proposing Release, *supra* footnote 8, at section II.B.4.

[349] *See generally* Instructions to Item 27A(a) of amended Form N–1A.

[350] *See* Item 27A(b) of amended Form N–1A.

[351] This instruction specifies that information in an electronic report should be organized in a manner that gives each item similar prominence, and presents the information in the same order, as that provided by the order the instruction prescribes. For instance, an annual report available on a website could satisfy this requirement if each required disclosure item is presented with equal prominence in a separate tab and the order of the tabs follows the prescribed order, such as from left-to-right or top-to-bottom. Similarly, a mobile application could satisfy this requirement if the shareholder report navigation screen presents each shareholder report item with equal prominence and follows the prescribed order of information.

[352] *See generally* Instructions to Item 27A(a) of amended Form N–1A.

[353] The online tools that funds could use could include, for example: video or audio messages, mouse-over windows, pop-up definitions or explanations of difficult concepts, chat functionality, and expense calculators.

[354] *See* Instruction 10 to Item 27A(a) of amended Form N–1A.

[355] Rule 31a–1 under the Act [17 CFR 270.31a–1] provides the records that a registered investment company must maintain; current rule 31a–2 under the Act [17 CFR 270.31a–2] provides the retention period for those records. To address funds' retention of any supplemental information that a fund chooses to include in its online version of its annual report (other than the shareholder report information that the fund files with the Commission on Form N–CSR), we are adopting as proposed a conforming change to rule 31a-2 that requires that every investment company preserve for a period not less than six years, the first two years in an easily accessible place, any shareholder report required by § 270.30e-1 (including any version posted on a website or otherwise provided electronically) that is not filed with the Commission in the exact form in which it was used. *See* amended rule 31a–2(a)(7).

[356] The instruction states that, for example, the fund should provide hyperlinks to the fund's prospectus and financial statements if the information is available online. The instruction also states that, in an annual report that is delivered in paper format, funds may include website addresses, QR codes, or other means of providing access to such information.

[357] *See* Mutual Fund Directors Forum Comment Letter.

[358] *See* Consumer Federation of America II Comment Letter.

mouse, can review . . . financial disclosure in their preferred delivery channel.'' [359] We agree that accessibility is an important issue for investors. Funds are required to comply with all applicable accessibility-related requirements under the ADA or otherwise.[360]

Many commenters that discussed the benefits of providing regulatory materials electronically also commented on the need for increased flexibility in electronic delivery of these materials.[361] We address these comments and topics related to electronic delivery below.[362]

B. Semi-Annual Report

We are specifying the design and content of funds' semi-annual reports through Item 27A of amended Form N–1A. These design and content specifications are similar to those we are requiring for funds' annual reports.

The table below summarizes the content that funds must include in their semi-annual reports and compares the new requirements to current semi-annual report disclosure requirements.

TABLE 3—OUTLINE OF SEMI-ANNUAL REPORT REQUIREMENTS

	Description	Item of amended form N–1A	Item of current form N–1A containing similar requirements
Cover Page or Beginning of Report	Fund/Class Name	Item 27A(b).	
	Ticker Symbol	Item 27A(b).	
	Principal U.S. Market(s) for ETFs	Item 27A(b).	
	Statement Identifying as "Semi-Annual Shareholder Report".	Item 27A(b).	
	Legend	Item 27A(b).	
	Statement on Material Fund Changes in the Report.	Item 27A(b).	
Content [363]	Expense Example	Item 27A(c)	Item 27(d)(1).
	Management's Discussion of Fund Performance (optional).	Item 27A(d)	Item 27(b)(7).
	Fund Statistics	Item 27A(e).	
	Graphical Representation of Holdings	Item 27A(f)	Item 27(d)(2).
	Material Fund Changes (optional)	Item 27A(g).	
	Changes in and Disagreements with Accountants.	Item 27A(h)	Item 27(b)(4).
	Availability of Additional Information	Item 27A(i)	Item 27(d)(3) through(5).

1. Scope and Contents of the Semi-Annual Report

As with the annual report, we are limiting the scope of funds' semi-annual reports in several respects to reduce the overall length and complexity of these reports. The Commission received comment supporting the layered disclosure approach for semi-annual reports, with some commenters specifically noting their support for the design and content of the semi-annual report.[364] Comments specific to each design and content element of the semi-annual report are discussed below; on semi-annual report elements where no comments are discussed, we received no comments separate from the comments we received on the parallel aspect of the annual report that are discussed above.[365] We are adopting the scope and content requirements discussed in this section for semi-annual reports largely as proposed.

The scope and content requirements for semi-annual report that we are adopting today mirror the scope and content requirements for annual reports. For the reasons we discuss in section II.A.1, we are requiring that fund semi-annual reports be prepared for each series of a fund and for each class of a multi-class fund.[366] We are adopting the requirement to limit semi-annual reports to one series of the fund as proposed. Requiring a separate semi-annual report for each class of a multiple-class fund is a change from the proposal. Our consideration of comments received and our rationale for limiting the scope of semi-annual reports in this way is consistent with our analysis and rationale for why we are adopting a parallel scope limitation for annual reports.

As proposed, we are generally limiting the content a fund may include in its semi-annual report to the information that Item 27A of Form N–1A specifically permits or requires.[367] However, as with annual reports, the fund may add additional information that is necessary to make the required disclosure items not misleading. The final amendments to Form N–1A do not permit a fund to incorporate by reference any information into its semi-annual report.[368] Collectively, these restrictions parallel our scope and content limitations for annual reports.

As is the case today, the semi-annual report will not be subject to page or word limits. As noted above and in the Proposing Release, we believe a set limit could constrain appropriate disclosure or lead funds to omit material information. However, we believe that the limits on shareholder report contents should nonetheless limit

[359] *See* DFIN Comment Letter; *see also* ICI Comment Letter (discussing the need to ensure that funds' websites and disclosure templates, as modified to comply with any final rules the Commission adopts, are accessible, consistent with the ADA).

[360] *See, e.g.,* Americans with Disabilities Act of 1990, Public Law 101–336, 104 Stat. 328 (1990).

[361] *See, e.g.,* CFA Institute Comment Letter; Consumer Federation of America II Comment Letter; Better Markets Comment Letter.

[362] *See infra* sections II.E.2–3.

[363] *See infra* discussion in section II.D regarding disclosure items that are being removed from the shareholder report.

[364] *See, e.g.,* ICI Comment Letter; Morningstar Comment Letter.

[365] In these cases, *see generally* the discussion in section II.A above on why we adopted that particular design or content element.

[366] *See* Instruction 4 to Item 27A of amended Form N–1A; *see also* Instruction 3 to Item 27A of amended Form N–1A.

[367] *See* Instruction 3 to Item 27A of amended Form N–1A.

[368] *See* Instruction 5 to Item 27A of amended Form N–1A.

length in support of our goal of concise, readable disclosure.[369]

The cover page or beginning of the semi-annual report will essentially contain the same content as the annual report (with the only difference being references to a ''semi-annual report'' instead of an ''annual report'').[370] Consistent with the requirement for annual reports, the semi-annual report cover page must reflect the fact that the report includes a statement of material changes, if one was included. If the fund's semi-annual report includes a discussion of material fund changes, the final rules will require the cover page of the report to include a prominent statement, in bold-face type, explaining that the report describes certain changes to the fund that occurred during the reporting period.

Semi-annual reports currently include an expense example.[371] The semi-annual report will retain an expense example, which will be subject to the same content requirements as the expense example in the annual report, including the changes we are adopting to the proposed example discussed above.[372]

We do not currently require MDFP in semi-annual reports. Under the final rules, semi-annual reports similarly will not require MDFP, but funds may include this disclosure on an optional basis.[373] We understand that it is currently common for funds to include MDFP disclosure in their semi-annual reports, and we believe continuing to allow this disclosure will enable funds to identify factors that could help investors better contextualize other information disclosed in the semi-annual report.[374] One commenter supported this approach.[375] This commenter requested clarification that a fund electing to include MDFP in its semi-annual report may provide some, but not all, of the information required by the MDFP requirements for annual reports and may include total return performance for the six-month period between shareholder reports. While a fund is not required to include MDFP information in semi-annual reports under the final rules, if a fund includes any MDFP information in its semi-annual report, that disclosure should, like other disclosure in the semi-annual report, reflect the semi-annual reporting period and otherwise must comply with the content requirements for that MDFP information in annual reports.[376]

Semi-annual reports, like annual reports, will have to include certain fund statistics, including the fund's: (1) net assets, (2) total number of portfolio holdings, and (3) portfolio turnover rate.[377] As in annual reports, this disclosure requirement is intended to provide succinct fund disclosures in a format that investors may be more likely to review than long narratives, and is designed to help contextualize other disclosures required in semi-annual reports. In addition, a fund may disclose any additional statistics that it believes will help shareholders better understand the fund's activities and operations during its most recent fiscal half-year.

Semi-annual reports currently include a graphical representation of holdings.[378] As proposed, we are retaining the current requirements for the graphical representation of holdings in funds' semi-annual reports. The graphical representation of holdings in the semi-annual report will be subject to the same content requirements as in the annual report, including the changes to the proposed content requirements that are discussed above.

Currently, we do not require discussion of changes to the fund in semi-annual reports. As proposed, such disclosure still will not be required, but funds may include this disclosure on an optional basis.[379] We received one comment advocating we require funds to disclose material changes every six months in their shareholder reports to put investors on notice of these changes, if they do not actively review annual prospectus updates.[380] We continue to believe that requiring a discussion of fund changes in the semi-annual report could be duplicative in light of other notices of changes that investors receive throughout the year, such as prospectus stickers or notices that rule 35d–1 under the Investment Company Act (the ''names rule'') requires for certain changes in a fund's investment policy. However, we are permitting funds to include disclosure describing material fund changes in their semi-annual reports because we believe that there could be circumstances in which discussing these changes could help investors better contextualize other information in the semi-annual report. Any such disclosure would have to comply with the content requirements for the discussion of material changes in annual reports.[381]

As proposed, when a fund has a material disagreement with an accountant that has resigned or has been dismissed, the fund will be subject to the same requirement to include concise discussion of this in its semi-annual report as it includes in its annual report.[382] No commenters discussed this proposed requirement for semi-annual reports.

As discussed above for annual reports, we are adopting, as proposed, the requirement that a fund's semi-annual report must include a brief, plain English statement that certain additional fund information is available on the fund's website, including, as applicable the fund's prospectus, financial statements, quarterly portfolio schedule, and proxy voting record.[383] The statement also could reference other information on this website that the fund reasonably believes shareholders will view as important. This requirement builds on the current shareholder report requirements that funds must include statements regarding the availability of certain information not included in the semi-annual report, namely the fund's: (1) quarterly portfolio schedule; (2) proxy

[369] Because we estimate that the annual report would be approximately 3 to 4 pages in length, we similarly estimate that the semi-annual report (which will include fewer required disclosure items than the annual report) would be approximately 3 to 4 pages in length or shorter.

[370] For the specific text of each semi-annual report content requirement described in this section, *see generally* Item 27A of amended Form N–1A.

[371] *See* Item 27(d)(1) of current Form N–1A.

[372] The expense example in the semi-annual report would cover a 6-month reporting period.

[373] *See* Item 27A(a) of amended Form N–1A.

[374] *See, e.g.,* Comment Letter of the Investment Company Institute on the Investor Experience RFC (''We understand that some funds voluntarily include a MDFP in semi-annual shareholder reports but others do not.'').

[375] *See* ICI Comment Letter.

[376] *See* Item 27A(a) of amended Form N–1A (providing that information that a fund includes at its option must meet the requirements of the relevant paragraph, including any related instructions, and not be incomplete, inaccurate, or misleading).

[377] Semi-annual reports currently must disclose net assets and portfolio turnover rate as part of the requirement to disclose condensed financial information. *See* Item 27(c)(2) of current Form N–1A. We are adopting certain changes to the proposed fund statistics requirements for annual reports, and these changes generally likewise apply to the final rules' fund statistics requirements for semi-annual reports. *See supra* section II.A.2.d. We are not, however, requiring total expenses paid by the fund to the adviser to appear in the semi-annual report in addition to the annual report. Providing a ''stub'' figure showing semi-annual expenses could confuse investors by making this figure appear lower than it would be if it were annualized to show expenses paid during a one-year period. The statistics in the semi-annual report figures (*e.g.,* portfolio) will reflect the semi-annual reporting period, like the other figures that are disclosed in funds' semi-annual reports.

[378] *See* Item 27(d)(2) of amended Form N–1A.

[379] *See* Item 27A of amended Form N–1A.

[380] *See* NASAA Comment Letter.

[381] *See supra* section II.A.2.f (discussing the final rules' requirement for material fund change disclosure in funds' annual reports).

[382] *See supra* section II.A.2.g; *see also* Item 27A(h) of amended Form N–1A.

[383] *See supra* section II.A.2.h; *see also* Item 27A(i) of amended Form N–1A.

voting policies and procedures; and (3) proxy voting record.[384] In addition, if the shareholder report appears on a fund's website or otherwise is provided electronically, the fund must provide a means of facilitating access to that additional information (such as a hyperlink).[385] Collectively, these requirements will be the same as the requirements with regard to the availability of additional information in annual reports.

2. Format and Presentation of Semi-Annual Report

The semi-annual report generally will be subject to the same format and presentation requirements as the annual report. We did not receive any comments on format and presentation requirements specific to semi-annual reports, and we are adopting these requirements with the same changes discussed above applicable to the format and presentation of annual reports.

Information in semi-annual reports will be required to appear in the same order as the corresponding form items appear in the final amendments to Form N–1A.[386] Any information that a fund may choose to include in the semi-annual report will also be subject to this ordering requirement (that is, it will have to be presented in the same order as the parallel mandatory disclosures in annual reports). Like the parallel requirement for annual reports, this ordering requirement is designed to ensure that information we believe is most salient to shareholders would appear first in the report. The ordering requirement also is designed to promote consistency and comparison across funds and will place related report contents close together.

The other instructions for annual reports' format and presentation discussed above also apply to semi-annual reports. These include the ''plain English'' instructions for the organization, wording, and design of the report. They also include the instructions encouraging funds to consider using, as appropriate, question-and-answer format, charts, graphs, tables, bullet lists, and other graphics or text features as a way to help provide context for the information presented.

[384] *See* Items 27(d)(3) through (5) of amended Form N–1A.

[385] *See* Instruction 1 to Item 27A(i) of amended Form N–1A.

[386] *See* Instruction 2 to Item 27A(a) of amended Form N–1A. This instruction also includes provisions that are applicable to a semi-annual report that appears on a website or is otherwise provided electronically.

3. Electronic Semi-Annual Reports Instructions and Requirements

The final instructions for electronic annual reports that we are adopting, including those that promote the use of interactive, user-friendly electronic design features, will also apply to semi-annual reports. We did not receive comments specifically addressing the instructions for semi-annual reports and we are adopting these requirements as proposed. Among other things, these instructions (1) provide ordering and presentation requirements for semi-annual reports that appear on a website or are otherwise provided electronically; (2) provide flexibility for funds to add additional tools and features to semi-annual reports that appear on a website or are otherwise provided electronically; and (3) require a semi-annual report to include a link or some other means of immediately accessing information referenced in the report that is available online.

C. Form N–CSR and Website Availability Requirements

We are adopting amendments to Form N–CSR and rule 30e–1 to implement the final rules' layered disclosure framework for funds' shareholder reports. We are requiring funds to continue to file certain information, which is currently included in fund shareholder reports, on Form N–CSR.[387] Commenters were broadly supportive of the proposed amendments to Form N–CSR.[388] As discussed below, we received several comments suggesting clarification or technical modification to the proposed rules. Several commenters stated that they supported the layered disclosure approach that the proposed amendments to Form N–CSR would effectuate, specifically supporting the proposed allocation of information among shareholder reports and Form N–CSR.[389] We are adopting the amendments to Form N–CSR and rule 30e–1 substantially as proposed, with some modifications in response to comments raised, including technical changes and a change in the amount of time a fund will have to make information available online, in response to comments received.

[387] *See* Items 7 through 11 of amended Form N–CSR. Section 30 of the Investment Company Act requires funds to file their shareholder reports, including certain information that must appear in their reports, with the Commission. *See* Investment Company Act sections 30(a), 30(e); *see also infra* Table 4.

[388] *See, e.g.,* ICI Comment Letter; Comment Letter of CUSIP Global Services (Dec. 31, 2020) (''CUSIP Comment Letter''); Morningstar Comment Letter.

[389] *See, e.g.,* ICI Comment Letter; Morningstar Comment Letter; TIAA Comment Letter.

The Form N–CSR requirement is designed to continue to make available a broader set of fund information than what will appear in funds' annual and semi-annual reports. The Form N–CSR information is less retail-focused than the information that will appear in funds' annual and semi-annual reports, but as detailed below we believe that retaining the availability of this information is important for investors who desire more in-depth information, financial professionals, and other market participants.[390] This information will continue to provide shareholders and other market participants with access to historical, immutable data regarding the fund on EDGAR. This historical information also will facilitate the Commission's fund monitoring responsibilities and could create significant efficiencies in the location of information for data gathering, search, and alert functions used in those monitoring activities. A fund's principal executive and financial officer(s) are required to certify the financial and other information included on Form N–CSR, and these individuals are subject to liability for material misstatements or omissions on Form N–CSR.[391]

The amendments we are adopting to rule 30e–1, as proposed, will require funds to make available on a website the information that they will newly have to file on Form N–CSR, and to deliver such information upon request to shareholders, free of charge. These website availability requirements are designed to provide ready access to this information for shareholders who find this information pertinent. The requirements also should assist those investors who find it most convenient to locate fund materials on a website that is not EDGAR. We received several

[390] For example, filing on EDGAR facilitates the financial statement reviews that section 408 of the Sarbanes-Oxley Act of 2002 mandates. Additionally, because Form N–CSR is filed with the Commission on EDGAR, a fund can incorporate by reference information that is disclosed on Form N–CSR, including the fund's financial statements, into a fund's registration statement, subject to certain limitations. *See* 17 CFR 270.0–4 [rule 0–4 under the Investment Company Act] (additional rules on incorporation by reference for funds); 17 CFR 230.411 [rule 411 under the Securities Act] (general rules on incorporation by reference in a prospectus); 17 CFR 232.303 [rule 303 of Regulation S–T] (specific requirements for electronically filed documents); General Instruction D to Form N–1A.

[391] *See* 17 CFR 270.30a–2 [rule 30a–2 under the Investment Company Act], Item 13(a)(2) of current Form N–CSR, and Item 18(a)(2) of amended Form N–CSR; *see also* Certification of Disclosure in Companies' Quarterly and Annual Reports, Investment Company Act Release No. 25722 (Aug. 28, 2002) [67 FR 57275 (Sept. 09, 2002)]; Proposing Release, *supra* footnote 8, at n.395 (discussing the certification requirements of the Sarbanes-Oxley Act of 2002, Public Law 107–204, 116 Stat. 745 (2002)).

comments supporting the proposed website availability requirements.[392] One commenter supported allowing funds to delay the availability of materials by 60 instead of 70 days after the end of the relevant fiscal period or up to the date the annual report is sent to shareholders, whichever is sooner, and as discussed below we are incorporating a modification to the proposed rules that reflects this suggested shortened time frame.[393]

The following table outlines the contents that we proposed and are now requiring funds to include in their Form N–CSR filings and make available online. Except for the new items to Form N–CSR that the Commission is adding as a part of this rulemaking, the current requirements of Form N–CSR remain unchanged.[394]

TABLE 4—OUTLINE OF FINAL RULES' FORM N–CSR AND WEBSITE AVAILABILITY REQUIREMENTS

Description (and related statutory requirement)	Current rule and form requirement(s) for shareholder report disclosure (if any)	New disclosure items for filing on SEC forms, under final rules	New website availability requirements, under final rules
Financial statements for funds *(required by section 30(e) of the Investment Company Act)*.	Items 27(b)(1) and 27(c)(1) of Form N–1A	Item 7(a) of Form N–CSR.	Rule 30e–1(b)(2)(i).
Financial highlights for funds	Items 27(b)(2) and 27(c)(2) of Form N–1A	Item 7(b) of Form N–CSR.	Rule 30e–1(b)(2)(i).
Remuneration paid to directors, officers and others of funds *(required by section 30(e) of the Investment Company Act)*.	Items 27(b)(3) and 27(c)(3) of Form N–1A	Item 10 of Form N–CSR.	Rule 30e–1(b)(2)(i).
Changes in and disagreement with accountants for funds.	Items 27(b)(4) and 27(c)(4) of Form N–1A; Item 304 of Regulation S–K.	Item 8 of Form N–CSR.	Rule 30e–1(b)(2)(i).
Matters submitted to fund shareholders for a vote.	Rule 30e–1(b)	Item 9 of Form N–CSR.	Rule 30e–1(b)(2)(i).
Statement regarding the basis for the board's approval of investment advisory contract.	Item 27(d)(6) of Form N–1A	Item 11 of Form N–CSR.	Rule 30e–1(b)(2)(i).
Complete portfolio holdings as of the close of the fund's most recent first and third fiscal quarters.	Currently required in Part F of Form N–PORT. Also website availability of this information currently required for funds relying on rule 30e–3.	N/A (not currently required to be filed on Form N–CSR; will not be required to be filed on Form N–CSR under the final rules).	Rule 30e–1(b)(2)(ii).

1. New Form N–CSR Filing Requirements

a. Financial Statements

We are adopting as proposed the requirement for a fund to file its most recent complete annual or semi-annual financial statements on Form N–CSR, and provide certain data points from the financial statements in its annual and semi-annual reports, in lieu of including the fund's complete financial statements in its shareholder reports.[395] Consistent with current requirements, the fund's annual financial statements must be audited and accompanied by any associated accountant's report, while the semi-annual financial statements need not be audited.[396] We received comments requesting clarification regarding whether funds will be permitted to prepare and file combined financial statements that include multiple series or portfolios in a trust. These comments are discussed below.

Section 30(e) of the Investment Company Act provides that funds' annual and semi-annual reports include the fund's financial statements, which in turn must include a statement of assets and liabilities, a schedule of investments that shows the amount and value of each security owned by the fund on that date, a statement of operations, and a statement of changes in net assets.[397] The annual report must include audited financial statements accompanied by a certificate of an independent public accountant.[398] The financial statements (including the fund's schedule of portfolio investments) provide data regarding the values of the fund's portfolio investments as of the end of the reporting period. They provide a ''snapshot'' of data at a particular point in time, or, for example in the case of the statement of operations, historical data over a specified time period.[399]

The rules under Regulation S–X establish general requirements for portfolio holdings disclosures in fund financial statements. Information regarding a fund's schedule of portfolio investments is designed to enable shareholders to make more informed asset allocation decisions by allowing them to monitor better the extent to which their investment portfolios overlap. In addition, this information

[392] *See, e.g.,* ICI Comment Letter; CUSIP Comment Letter; and Morningstar Comment Letter.

[393] *See* Morningstar Comment Letter.

[394] The Proposing Release requested comment on the use of CUSIP numbers in Item 6.b of Form N–CSR (which requires information about divested securities and was not a form item for which we proposed amendments). The Commission received two comments supporting the continued use of CUSIP numbers in Form N–CSR. *See* CUSIP Comment Letter and ABA Comment Letter. We are not amending the requirements of Item 6.b, and Form N–CSR will continue to require that funds provide CUSIP numbers for divested securities that funds list in response to Item 6.b.

[395] *See* Item 7(a) of amended Form N–CSR; *see also supra* section II.A.2.e (discussing the requirement to include a graphical representation of a fund's holdings in the shareholder report).

[396] *See* Item 27(b)(1) and 27(c)(1) of current Form N–1A. A fund's audited financial statements must include, among other items: (1) an audited balance sheet, or statement of assets and liabilities, as of the end of the most recent fiscal year; (2) an audited statement of operations for the most recent fiscal year; (3) an audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles (''GAAP''); (4) audited changes in net assets for the two most recent fiscal years; and (5) a schedule of investments in securities of unaffiliated issuers. *See* 17 CFR 210.3–18 and 210.6–10 [rules 3–18 and 6–10 of Regulation S–X].

[397] *See* sections 30(e)(1) through (4) of the Investment Company Act [15 U.S.C. 80a–29(e)(1) through (4)], and section 30(e)(6) of the Investment Company Act [15 U.S.C. 80a–29(e)(6)].

[398] *See* section 30(g) of the Investment Company Act [15 U.S.C. 80a–29(g)].

[399] *See* Investment Company Reporting Modernization, Investment Company Act Release No. 31610 (May 20, 2015) [80 FR 33590 (June 12, 2015)], at text following n.55.

may provide shareholders—particularly those with facility in analyzing funds' individual portfolio holdings—with information about how a fund is complying with its stated investment objective and expose any deviation from the fund's investment objective (*i.e.,* style drift).[400] In lieu of providing a complete schedule of portfolio investments as part of the financial statements included in its shareholder report, a fund may provide a summary schedule of portfolio investments (''summary schedule'').[401]

The final rules that we are adopting will require funds to provide the complete financial statements on Form N–CSR, while retaining the graphical representation of holdings in the annual and semi-annual reports. We did not receive comment on this element of the proposal and are adopting it as proposed. We continue believe that this layered approach to disclosure will help shareholders understand how the fund invests its assets. This approach is also designed to permit all shareholders, including retail shareholders, to monitor and assess their ongoing investment in the fund in a concise, easy-to-understand pictorial format, while preserving access to the more complete financial statements for shareholders that find this broader information useful. We understand that investors may find the inclusion of a fund's complete financial statements in the annual and semi-annual reports to be complex and difficult to understand.[402]

We also are adopting amendments to Form N–1A that will eliminate a fund's ability to provide a summary schedule in lieu of providing a complete schedule of portfolio investments as part of the financial statements. We did not receive comment on this aspect of the proposal and are adopting it as proposed. We believe that this is appropriate because the annual and semi-annual reports will no longer include the complete financial statements (which include the schedule of portfolio investments). Therefore, because a fund's full schedule of investments will only be included on Form N–CSR and on a website as required under the final rules, continuing to allow funds to use the summary schedule is unnecessary. Furthermore, because the annual and semi-annual reports are designed to help investors focus on the most salient features of the fund to better evaluate their investment, we do not believe it would be useful to shareholders, and may even be confusing, to allow funds to provide a summary schedule alongside the complete schedule of portfolio investments online. We received comments requesting clarification confirming that a fund may prepare and file combined financial statements for separate series or portfolios to satisfy Item 7 of amended Form N–CSR.[403] Commenters stated that they would incur significant financial cost to prepare separate financial statements for each series or portfolio of a trust when filing Form N–CSR, without a perceived benefit.[404] As discussed above, funds will be required to prepare separate shareholder reports for each series or portfolio in a trust, as well as for each share class of a fund, and will no longer be permitted to prepare ''combined'' shareholder reports under the final rules. The requirement that funds prepare separate shareholder reports for each series or portfolio of a trust, as well as for each share class, is intended to simplify information for retail investors. This rationale is not the same for Form N–CSR filings. We recognize that information in Form N–CSR will be lengthier and more complex than the information that appears in a fund's shareholder report, and we do not believe that funds and their shareholders should be required to bear the costs associated with preparing separate financial statements for each series or portfolio in a trust. The amendments we are adopting to Form N–CSR do not prohibit funds from preparing and submitting multicolumn financial statements that include multiple series or portfolios, or that address multiple share classes of a fund, provided such financial statement presentation is consistent with Regulation S–X.[405]

b. Financial Highlights

We are adopting, as proposed, the requirement for funds to file their financial highlights information on Form N–CSR.[406] This information is identical to the information currently required in fund shareholder reports. Funds will not be required to include financial highlights information in their annual or semi-annual reports, with the exception of certain specific data points as discussed below. We received comments supporting the proposed requirement that funds file their financial highlights information on Form N–CSR instead of including this information in their shareholder reports.[407] We did not receive any comment letters opposing this proposal.

Currently, funds are required to disclose the condensed financial information that Item 13(a) of Form N–1A requires (*i.e.,* financial highlights) in their annual and semi-annual reports.[408] The financial highlights include a summary table of financial information covering the preceding five years (or since the fund's inception, if less than five years).[409] Under certain circumstances, a fund may incorporate by reference its financial highlights from the shareholder report into its prospectus.[410] The information contained in a fund's financial highlights generally is designed to help investors evaluate the fund's historical performance and the fund manager's investment management expertise.

While the final rules will require funds to file the entirety of their financial highlights on Form N–CSR, we also are retaining certain elements of the financial highlight information in funds'

[400] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)], at text accompanying n.32.

[401] *See* Instruction 1 to Item 27(b)(1) of current Form N–1A (permitting the inclusion of Schedule VI—summary schedule of investments in securities of unaffiliated issuers under 17 CFR 210.12–12C [Rule 12–12C of Regulation S–X] in lieu of Schedule 1—Investments of securities of unaffiliated issuers under 17 CFR 210.12–12 (Rule 12–12 of Regulation S–X)). The summary schedule must list, separately, the 50 largest issues and any other issue exceeding one percent of the net asset value of the fund at the close of the period.

[402] *See* Comment Letter of the Investment Company Institute on the Investor Experience RFC (stating that the streamlined shareholder report mockup that the comment letter included did not include certain items, including the fund's full financial statements, ''because we concluded that they were of a more technical nature that a typical retail investor would not read or understand''); *see also* Proposing Release, *supra* footnote 8, at n.421 and accompanying text (discussing an industry survey conducted by a commenter finding that the ''average retail shareholder'' finds most of the items from the financial highlights section difficult to understand).

[403] *See, e.g.,* ICI Comment Letter; Dechert Comment Letter; Fidelity Comment Letter. These commenters also requested this clarification with respect to the financial statements that they would make available online under the proposed amendments to rule 30e–1. *See infra* section II.C.2.

[404] *See, e.g.,* ICI Comment Letter.

[405] Likewise, the final website availability requirements that we are adopting as amendments to rule 30e–1 do not prohibit this.

[406] *See* Item 7(b) of amended Form N–CSR.

[407] *See, e.g.,* ICI Comment Letter; DFIN Comment Letter.

[408] *See* Items 27(b)(2) and 27(c)(2) of current Form N–1A; *see also* Item 13(a) of current and amended Form N–1A.

[409] The summary table contains information regarding changes in a fund's net asset value, total returns, portfolio turnover rate, and capital distributions, among other things, during the preceding five years. *See* Item 13(a) of current and amended Form N–1A.

[410] *See* Instruction 4(e) to Item 13 of current Form N–1A. *See also* Proposing Release, *supra* footnote 8, at n.416 (discussing the ability of a fund to currently incorporate the financial highlights from a shareholder report into the prospectus if the fund delivers the shareholder report simultaneously with the prospectus or if the shareholder report has been delivered to shareholders).

annual and semi-annual reports, as proposed. The final rules require that a fund must disclose its expense ratio in the ''Fund Expenses'' section of the annual and semi-annual reports. Also, while funds' shareholder reports will no longer include annual total returns for *each* of the preceding five years, the MDFP section of the annual report will continue to include certain information regarding a fund's annual total returns. We are also requiring that funds disclose their net assets and portfolio turnover rate (which are data elements from the fund's financial highlights) as some of the statistics that funds will be required to include in their annual and semi-annual reports.

Item 13 of current Form N–1A requires a fund to include financial highlights information in its prospectus, and an instruction to this item permits a fund to incorporate this information from a shareholder report under rule 30e–1 by reference into its prospectus.[411] Because funds' shareholder reports will no longer include financial highlights, we proposed amending the current instruction to instead allow a fund to incorporate by reference into its prospectus its financial highlights from Form N–CSR (as opposed to from the fund's shareholder report).[412] We received comments supporting funds being permitted, but not required to, incorporate financial highlight information by reference.[413] We did not receive any comments opposing this aspect of the proposal. We are adopting this aspect of the proposal as proposed. For existing shareholders that have received the fund's shareholder report, a fund will be permitted to incorporate the financial highlights by reference into the prospectus if the cover page includes the legend that Item 1(b)(1) of Form N–1A requires, describing additional information available about the fund in the fund's annual and semi-annual financial statements and in Form N–CSR.[414] For new investors in the fund, the fund will be required to provide the fund's most recent shareholder report along with its prospectus.[415]

c. Changes in and Disagreement With Accountants for Funds

We are adopting, as proposed, the requirement that a fund must file on Form N–CSR the disclosures that Item 304 of Regulation S–K currently requires, concerning changes in and disagreements with accountants.[416] We did not receive any comment on this aspect of the proposal. Funds must currently include the entirety of this information in their shareholder reports. The new Form N–CSR filing requirement complements the new requirement that funds must include a high-level summary of changes in and disagreements with accountants in their annual reports.

While the disclosure that we are requiring funds to include in their shareholder reports is designed to put shareholders on notice of the dismissal or resignation of an accountant and the existence of a material disagreement with that accountant, the information that funds will report on Form N–CSR will provide additional, more nuanced and technical disclosure that may be informative to some shareholders and other market participants. This disclosure could be meaningful as it indicates that the fund has especially challenging, subjective, and/or complex accounting policies and financial statement disclosures or the accountant could not resolve audit findings. We also believe that it is appropriate to retain this disclosure in Form N–CSR, a location that includes audited financial information, to provide those investors, financial professionals, and other market participants who review and analyze this disclosure with appropriate contextual information.

d. Matters Submitted for a Shareholder Vote

We are adopting, as proposed, the requirement that funds must include information about matters submitted for a shareholder vote on Form N–CSR, rather than in their shareholder reports.[417] This information is identical to the information currently included in fund shareholder reports.[418] We did not receive any comments on this aspect of the proposal.

The amendments to the disclosure requirements for matters submitted for a shareholder vote are designed to further our layered approach to shareholder report disclosure. Shareholder voting plays a valuable role in fund regulation, and this disclosure keeps shareholders and other parties informed and may operate as a deterrent to self-dealing by the fund's adviser.[419] The final rule balances the importance of continuing to make available information about shareholder voting, while focusing the content of funds' shareholder reports on concise, retail-focused information.

The Commission's approach of removing shareholder vote information from the shareholder report also reflects that shareholders will continue to receive information about these matters through other channels. Shareholders will continue to receive a detailed description of matters submitted for a shareholder vote in fund proxy statements, as they do today.[420]

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[411] *See* Instruction (4)(d) to Item 13 of current Form N–1A (allowing a fund to incorporate by reference its financial highlights from its shareholder report into the prospectus so long as the fund delivers the shareholder report with the prospectus (*i.e.,* for new shareholders)). If the shareholder report has been previously delivered (*e.g.,* to a current shareholder), the fund includes a statement clarifying that the financial highlights are being incorporated by reference pursuant to the requirements of Item 1(b)(1) of Form N–1A).

[412] *See* Instruction (4)(e) to Item 13 of proposed Form N–1A; *see also* discussion at Proposing Release, *supra* footnote 8, at text accompanying n.428.

[413] *See, e.g.,* ICI Comment Letter; DFIN Comment Letter.

[414] *See* Instruction (4)(e) to Item 13 of amended Form N–1A; *see also* Item 1(b)(1) of amended Form N–1A. The required legend will state (among other things) that: (1) additional information about the fund's investments is available in the fund's annual report to shareholders and in Form N–CSR; (2) the fund's annual report and Form N–CSR are available, without charge, upon request. A fund must also explain how shareholders may make inquiries to the fund, provide a telephone number for shareholders to call to request the fund's annual report and Form N–CSR, and state whether the fund makes available Form N–CSR, free of charge, on the fund's website. The requirement in Instruction 4(e) to Item 13 of amended Form N–1A is parallel to the current requirements for incorporation by reference in Instruction 4(d) to Item 13 of current Form N–1A. *See supra* footnote 411.

[415] *See* Instruction (4)(e) to Item 13 of amended Form N–1A

[416] *See* Item 8 of amended Form N–CSR.

[417] *See* Item 9 of amended Form N–CSR.

[418] *See* current rule 30e–1(b) (providing current shareholder report disclosure requirements regarding matters submitted for a shareholder vote). The disclosure that currently appears in shareholder reports includes: (1) the date of the meeting and whether it was an annual or special meeting; (2) if the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting; and (3) a brief description of each matter voted upon at the meeting and the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each matter or nominee for office. The final rules retain the requirement for registered investment companies that are not open-end funds to include this disclosure in their shareholder reports. *See* amended rule 30e–1(d).

[419] *See, e.g.,* Amendments to Proxy Rules for Registered Investment Companies, Investment Company Act Release No. 19957 (Dec. 16, 1993) [58 FR 67729 (Dec. 22, 1993)], at text following n.6.

[420] *See, e.g.* Schedule 14A [17 CFR 240.14a–101] under the Exchange Act (providing the content requirements for investment company proxy statements). Funds also are required to disclose on Form N–CEN whether the fund submitted any matters for a shareholder vote during the reporting period. The primary audience for Form N–CEN is not retail investors. This reporting item could, however, result in retail investors having access to additional information about shareholder votes to the extent that data aggregators or others include this data in their retail-investor-facing analysis.

Furthermore, because the annual report will require funds to describe certain material changes that have occurred in the fiscal year, shareholders will receive disclosure of certain material changes that have resulted from shareholder votes.

If it would be valuable to a shareholder to review additional information about the outcome of matters submitted for a shareholder vote, the shareholder will continue to have access to this more-detailed information, which the fund will file on Form N–CSR. For example, certain shareholders and other market participants may want to access shareholder vote information on matters such as changes in the fund's fundamental policies, investment advisory agreements, board of directors, and organizational documents. We also anticipate filing this information under a specific Item on Form N–CSR will help interested users locate it, as currently it is not required to appear in any particular location of funds' often-voluminous shareholder reports, and funds' practices with respect to the location and formatting of this information vary substantially.

e. Remuneration Paid to Directors, Officers, and Others

We are adopting, largely as proposed but with a technical change suggested by a commenter, the requirement for funds to file the aggregate remuneration the fund paid to its directors, officers, and certain affiliated persons on Form N–CSR instead of including this information in their shareholder reports.[421] This information is identical to the information currently required in fund shareholder reports. Funds currently provide this information in their annual reports under section 30(e) of the Investment Company Act.[422]

We continue to believe that availability of information about remuneration paid to the fund's directors and officers may help shareholders to analyze the use of corporate funds and assets, and to assess the value the fund's directors and officers bring to the fund. This approach also reflects that a fund currently is required to provide detailed disclosure regarding compensation paid to each of the directors, members of any advisory board, and certain officers and affiliates in the fund's SAI. Investors who desire more in-depth information, financial professionals, and other market participants who would find remuneration-related information valuable (for example, in monitoring fund management) will continue to be able to find it in the fund's SAI (where compensation information is disclosed for each director), as well as in Form N–CSR filings (where compensation information is aggregated, as it is in shareholder reports today).

We received one comment supporting this proposed requirement.[423] Another commenter opposed removing board compensation disclosure from shareholder reports and reporting it on Form N–CSR.[424] This commenter stated their concern that not including this information in shareholder reports may make it more difficult for investors to hold boards accountable as they would not receive a ''push'' communication of it through the shareholder report. We continue to believe that this type of information is not directly pertinent to a retail shareholder's understanding of the fund's operation and performance. We understand that this information may have less direct impact on an investor's returns than, for example, annual performance and fee information. We believe, however, that this type of information is important to retain publicly for those investors who want it because this information gives context to the fund's returns. We are therefore adopting the proposed approach employing layered disclosure principles, where current remuneration disclosure will remain available online but will not appear in funds' shareholder reports.

One commenter suggested a technical change to the proposed rule text language.[425] The commenter noted that, currently funds must disclose compensation paid to directors and officers in the annual report unless that information is disclosed as part of the financial statements. Accordingly, to avoid redundancy, this commenter recommended inserting the phrase ''unless the information is disclosed as part of the financial statements included in Item 7 [the Item requiring the filing of funds' financial statements]'' in the new Form N–CSR item addressing remuneration-related information. We agree with this commenter that it would be duplicative and unnecessary to require funds to disclose this information separately if it is included in funds' financial statements, and we have incorporated the requested technical change.[426]

f. Statement Regarding Basis for Approval of Investment Advisory Contract

Funds currently are required to provide a statement, in the annual and semi-annual reports, regarding the basis for the board's approval of the fund's investment advisory contract.[427] The final rules we are adopting, as proposed, instead require funds to provide this information on Form N–CSR.[428] We did not receive any comment opposing this recommendation and only received comment suggesting a technical correction addressing a faulty cross-reference.[429] We are adopting this requirement as proposed, with the suggested technical correction.[430]

Requiring funds to provide shareholders with information regarding the board's review of investment advisory contracts preserves transparency with respect to those contracts and fees paid for advisory services, assists investors in making informed investment decisions, and encourages fund boards to engage in vigorous and independent oversight of advisory contracts. The Commission proposed to remove this disclosure from the shareholder report because it does not pertain directly to a retail shareholder's understanding of the operations and performance of the fund, and the required information does not lend itself to the type of focused disclosure that the proposed annual report was designed to include. No commenters objected to the proposed approach. Because of the nature and

[421] *See* Item 10 of amended Form N–CSR.

[422] *See* section 30(e)(5) of the Investment Company Act [15 U.S.C. 80a–30(e)(5)] (permitting the Commission to require that funds transmit to shareholders, at least semi-annually, reports containing, among other things, a statement of aggregate remuneration paid by the fund during the period covered by the report to officers, directors, and certain affiliated persons); *see also* Items 27(b)(3) and 27(c)(3) of current Form N–1A. Funds are required to disclose aggregate remuneration paid to: (1) all directors and all members of any advisory board for regular compensation; (2) each director and each member of an advisory board for special compensation; (3) all officers; and (4) each person of whom any officer or director of the fund is an affiliated person.

[423] *See* ICI Comment Letter.

[424] Morningstar Trustees Comment Letter.

[425] ICI Comment Letter.

[426] *See* Item 10 of amended Form N–CSR.

[427] *See* Item 27(d)(6) of current Form N–1A.

[428] *See* Item 11 of amended Form N–CSR. We are also adopting a conforming amendment eliminating Item 10(a)(1)(iii) of amended Form N–1A, which requires funds to include, in the SAI, a statement noting that a discussion regarding the basis for the board's approval of any investment advisory contract is available in the fund's annual or semi-annual report, as applicable, and providing the period covered by the relevant report.

[429] ICI Comment Letter.

[430] The ICI Comment Letter noted that the instruction to proposed Item 11 of Form N–CSR inadvertently included a cross-reference to ''paragraph (d)(6)(i) of this Item.'' This cross-reference is a reference to Item 27 of current Form N–1A and was an inadvertent error. We are correcting this mistake by removing the cross-reference to Form N–1A from Item 11 in amended Form N–CSR.

quantity of information in this disclosure, we believe that it is better suited to appear in a different location that would continue to permit access to fund shareholders and other market participants who find this information to be particularly useful and meaningful. Providing this information on Form N–CSR will continue to allow these persons effectively to consider the costs and value of the services that the fund's investment adviser renders.[431]

2. Website Availability Requirements

a. Website Content Requirements

As proposed, we are requiring a fund to make available on a website all of the information that will be newly required on Form N–CSR and no longer included in a fund's shareholder reports. A fund must make the required disclosures publicly accessible, free of charge, and will be required to make this information available from 60 days after the end of the relevant fiscal period until 60 days following end of the next respective fiscal period.[432] This requirement represents a modification from the proposal, which would have required funds to make that same information available from 70 days after the end of the fiscal period until 70 days following the next fiscal period.

We received several comments supporting the proposed 70-day deadline for making information available on a website.[433] One commenter, however, supported allowing funds to delay the availability of materials by 60 instead of 70 days after the end of the relevant fiscal period or up to the date the annual report is sent to shareholders, whichever is sooner.[434] Funds are required to transmit shareholder reports to investors within 60 days after the close of the relevant period.[435] This commenter supported aligning the information that funds would newly have to make available online with the time in which funds must transmit their shareholder reports. This would help avoid a situation in which an investor has received a shareholder report that references the online availability of additional content, but the shareholder may not be able to access that content because the fund has not yet been required to make it available online. We are persuaded by the commenter and in order to facilitate the final rules' layered disclosure approach, the final rules require that the information on Form N–CSR should be made available on a website within 60 days—*e.g.,* the same time period that funds are required to transmit their shareholder reports.

The new website posting requirement therefore mandates that funds post the information contained in Items 7–11 of amended Form N–CSR within the suggested 60-day time period. The information contained in these items was previously required to be included in the fund's shareholder reports, and the time frame for transmitting shareholder reports to investors (that is, within 60 days of the end of the fiscal period) remains the same under the final rules as it did previously. Funds will continue to have 70 days to file the complete Form N–CSR with the Commission, as they do today.[436]

In addition, as proposed we are also requiring a fund (other than a money market fund) to make its complete portfolio holdings, as of the close of the fund's most recent first and third fiscal quarters, available on a website.[437] The Proposing Release would have required funds to make this information available within 70 days after the close of each such quarter. We did not receive comments on this aspect of the proposal. In light of the comment we received regarding the time period for making the other required information available online, we are similarly requiring that funds make the required portfolio holdings information available within 60 days after the close of each quarter. For the sake of clarity and consistency, requiring that funds post complete portfolio holdings within 60 days of the end of the fiscal quarter will ensure a uniform time period in which funds must make the required information available online and transmit shareholder reports. As proposed, fund's portfolio holdings information for its first and third fiscal quarters will have to remain publicly accessible online for a full fiscal year.[438]

This portfolio holdings information will complement the second and fourth fiscal quarter portfolio holdings information that we are also requiring funds to make available on a website (as part of the requirement to make their financial statements available online). The requirement to post first and third quarter portfolio holdings online is designed to provide investors and other market participants with easy access to a full year of complete portfolio holdings information in one location. The new requirement provides centralized access to this information, rather than requiring investors to access the fund's reports on Form N–PORT for each of those periods separately.[439] Also, we believe that this online portfolio holdings information will be in a more user-friendly presentation than the information that funds report on Form N–PORT in structured data format.

b. Accessibility and Presentation Requirements

Under the final rules, funds will have to comply with certain conditions designed to ensure the accessibility of information that is required to appear online.[440] We are adopting these rules as proposed.

First, the website address where the required information appears must be specified on the cover page or beginning of the shareholder report and cannot be the address of the Commission's electronic filing system.[441] The website address must be specific enough to lead investors directly to the particular information, but may be a central site with prominent links to the referenced

[431] Fund shareholders also will receive disclosure about the factors that form the basis for the board's approval of the advisory contract if a fund's advisory contract were to require a shareholder vote. In this case, the fund would be required to include in its proxy statement a discussion of the material factors the board considered as part of its decision to approve the fund's investment advisory contract. *See* Item 22(c)(11) of Schedule 14A.

[432] *See* amended rule 30e–1(b)(2)(i) (requiring a fund to disclose Items 7 through 11 of Form N–CSR on a website no later than 60 days after the end of the fiscal half-year or fiscal year of the fund until 60 days after the end of the next fiscal half-year or fiscal year of the fund, respectively).

[433] *See, e.g.,* ICI Comment Letter; T. Rowe Price Comment Letter; Comment Letter of Independent Directors Council (Dec. 22, 2020) (''Independent Directors Council Comment Letter'').

[434] Morningstar Comment Letter.

[435] *See* current rule 30e–1(c).

[436] Funds must file Form N–CSR with the Commission within 10 days of disseminating annual and semiannual reports to shareholders. *See* rule 30b2–1(a).

[437] *See* amended rule 30e–1(b)(2)(ii).

[438] Amended rule 30e–1(b)(2)(ii).

[439] Funds currently are required to disclose their holdings as of the end of each fiscal quarter in reports on Form N–PORT filed with the Commission (which are available on EDGAR). However, all open-end funds currently are not required to send holdings information as of the end of the first- and third-quarters to shareholders or to make that information accessible on a website other than EDGAR. *See* Part F of Form N–PORT (requiring N–PORT filers to provide, as exhibits to Form N–PORT, the fund's complete portfolio holdings for the end of the first and third quarters of the fund's fiscal year, as of the close of the period, no later than 60 days after the end of the reporting period).

[440] Amended rule 30e–1(b)(2). These requirements are similar to the accessibility requirements of rule 30e–3 and rule 498 under the Securities Act (permitting funds to use a summary prospectus to satisfy prospectus delivery obligations) and rule 14a–16 under the Exchange Act (requiring issuers and other soliciting persons to furnish proxy materials by posting these materials on a public website and notifying shareholders of the availability of these materials and how to access them).

[441] Amended rule 30e–1(b)(2)(i) through (iii). The Commission's electronic filing system for fund documents is EDGAR. Rule 498 under the Securities Act includes a similar requirement. *See* 17 CFR 230.498(b)(1)(v)(A).

information.[442] The website may not be the home page or section of the fund's website other than on which the information is posted. Thus, an investor must be able to navigate from the landing page to each of the required documents with a single click or tap.[443] These requirements are designed to ensure that investors are able to navigate websites with relative ease in order to locate the information that they are seeking quickly and easily.

Second, the required online materials must be presented in a format convenient for both reading online and printing on paper, and persons accessing the materials must be able to retain permanently (free of charge) an electronic copy of the materials in this format. These conditions are designed to ensure that this online information is user-friendly and allows shareholders the same ease of reference and retention abilities they would have with paper copies. We received several comments supporting our proposed amendments regarding accessibility of the required information and none opposing them.[444]

As proposed, funds will have the option to satisfy the website availability requirement for the information that the fund will newly have to file on Form N–CSR by posting its most recent Form N–CSR report in its entirety on the website the shareholder report specifies.[445] Funds may either post the online information separately for each series of the fund, or group the online information by types of materials and/or by series.[446] If a fund were to group the information on its website by type of materials and/or by series, the grouped information would have to meet certain presentation requirements, including that the grouped information: (1) is presented in a format designed to communicate the information effectively, (2) clearly distinguishes the different types of materials and/or each series (as applicable), and (3) provides a means of easily locating the relevant information (including, for example, a table of contents that includes hyperlinks to the specified materials and series). A fund generally should consider the terms it uses in its website presentation to describe the required materials, for example in a table of contents, to best facilitate shareholder understanding. Some funds may submit combined Form N–CSR filings that include multiple series, as discussed above.[447] The information contained in these combined Form N–CSR filings will also need to meet the presentation requirements of our rules. These requirements are designed to allow funds to tailor the website presentation of information to the unique aspects of their funds, while presenting the information in a manner that facilitates shareholder access. For example, for a fund complex that includes several funds, each with multiple classes, the fund complex's website could include a master table of contents that contains hyperlinks to the specific materials for each fund and each class.

Funds will have flexibility in how online information is presented, so long as that information is presented consistent with the requirements discussed above. One commenter suggested that we mandate the use of a table of contents, organized by topic, on the website where the newly required information will appear.[448] This commenter suggested that this presentation requirement could help shareholders access all of the relevant fund documents more easily. We agree that a table of contents organized by topic could, in certain circumstances, facilitate shareholder access to fund information. However, we are not adopting this requirement because we believe that funds should be able to present information online in an investor-friendly manner while also taking into account the unique structure and features of the fund. For example, the number of series or share classes may affect how a fund decides to present information online so that it is easily accessible by investors. We also are mindful that adopting prescriptive presentation requirements could prevent remaining ''evergreen'' in light of evolving technology.

As proposed, the final rule also will include a safe harbor providing that a fund shall have satisfied its obligations to transmit shareholder reports even if it did not meet the posting requirements of the rule for a temporary period of time.[449] In order to rely on this safe harbor, a fund will have to have reasonable procedures in place to help ensure that the required materials appear online in the manner required by the rule, and also must take prompt action to correct noncompliance with the rule's website availability requirements. The rule requires prompt action as soon as practicable following the earlier of the time at which the fund knows, or reasonably should have known, that the required documents are not available in the manner prescribed by the rule.

We received no comments on this safe harbor and are adopting it as proposed because we recognize that there may be times when, due to events beyond a fund's control, such as system outages or other technological issues or natural disasters, a fund may temporarily not be in compliance with the web posting requirements of the rule. Providing this safe harbor by rule may obviate the need to provide exemptive relief from the rule's conditions under these very limited and extenuating circumstances, as we have done from time to time.[450]

3. Delivery Upon Request Requirements

We are requiring funds to send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of any of the materials that will have to appear online to any person requesting such a copy within three business days after receiving a request for a paper copy.[451] A fund must also send, at no cost to the requestor by email or other reasonably prompt means, an electronic copy of any materials discussed above within three business days after receiving a request for an electronic copy.[452] These

[442] Instruction 2 to Item 27A(b) of amended Form N–1A (describing the requirements for the website address that must appear on the cover page or at the beginning of funds' shareholder reports).

[443] *See* Rule 30e–3 Adopting Release, *supra* footnote 20, at n.168 and accompanying text (discussing similar requirements for the website link that rule 30e–3 notices must include, including Commission guidance that the effect of this requirement is that an investor must be able to navigate to each of the documents that must appear on the linked website with a single click or tap).

[444] *See, e.g.,* ICI Comment Letter; Mutual Fund Directors Forum Comment Letter. Some commenters also addressed how electronically-presented materials may benefit individuals with vision issues or other individuals for whom disclosure accessibility raises particular challenges. *See supra* section II.A.4.

[445] *See* amended rule 30e–1(b)(2)(i).

[446] *See* amended rule 30e–1(b)(2)(vii). This provision (''The [online materials] . . . may either be separately available for each series of a fund, or the materials may be grouped by the types of materials and/or by series . . .'') incorporates a clarifying change from the proposed provision, which read ''The [online materials] . . . may be separately available for each series of a fund or grouped by the types of materials and/or by series . . . .'' This clarifying change is not intended to change the substance of the proposed provision.

[447] *See supra* footnotes 403–405 and accompanying text.

[448] Morningstar Comment Letter.

[449] *See* amended rule 30e–1(b)(2)(vi).

[450] *See, e.g.,* Exchange Act Release No. 81760 (Sept. 28, 2017) [82 FR 46335 (Oct. 4, 2017)] (exemptive relief for individuals and entities affected by Hurricanes Harvey, Irma, or Maria); Regulation Crowdfunding and Regulation A Relief and Assistance for Victims of Hurricane Harvey, Hurricane Irma, and Hurricane Maria, Securities Act Release No. 10416 (Sept. 27, 2017) [82 FR 45722 (Oct. 2, 2017)]; *see also* Rule 30e–3 Adopting Release, *supra* footnote 20, at n.135.

[451] *See* amended rule 30e–1(b)(3)(i) *see also supra* section II.C.II.C.2.

[452] *See* amended rule 30e–1(b)(3)(ii). The requirement to send an electronic copy of materials may be satisfied by sending a direct link to the online materials; provided that a current version of

Continued

requirements will also apply to any financial intermediary through which shares of the fund may be purchased or sold. We are adopting all of these requirements as proposed. We understand that some investors continue to prefer to receive information in paper format, and therefore our rules are designed to allow shareholders to have ready access to the fund information that appears online in print format, if they so prefer, or to receive electronic copies of this same information.[453]

The Commission received one comment recommending that the Commission replace the requirement that a fund deliver this information within three business days with an ''as soon as reasonably practicable but not later than fourteen business days'' requirement.[454] We continue to believe that investors would be better served by requiring the requested materials to be sent within three business days of the request. The three-business-day timeframe also appears in similar existing requirements with respect to requests for copies of other similar documents.[455] Based on experience with these other regulatory requirements, we believe that three business days generally is an appropriate time frame to send shareholders paper copies of information. A ''reasonably practicable'' requirement could extend the time frame in which certain investors receive requested materials, and conversely also could result in funds being required to send materials *more* quickly than within three business days, as funds and intermediaries may have the capability to send materials more quickly than this time frame.

One commenter suggested a technical change relating to the proposed delivery upon request requirement. This commenter noted the disparity that the prospectus cover page statement appears to require the entirety of Form N–CSR to be provided to shareholders, while rule 30e–1 would require only Items 7–11 to be provided.[456] In response, we are adopting a change to the prospectus cover page statement that Form N–1A requires. Instead of stating that ''the SAI, the Fund's annual and semi-annual reports to shareholders, and Form N–CSR are available, without charge, upon request,'' the statement we are adopting will require a fund to explain that ''the SAI, the Fund's annual and semi-annual reports to shareholders, and other information such as Fund financial statements are available, without charge, upon request.'' [457] An instruction to this prospectus disclosure requirement specifies that the delivery requirement for the information that the statement references applies to ''other information such as financial statements that the Fund files on Form N–CSR.'' [458] We believe that these changes clarify that funds (and intermediaries) must only provide the information in Item 7–11 of Form N–CSR to shareholders upon request.

D. Disclosure Items Removed From Shareholder Report and Not Filed on Form N–CSR

Our final rules will not require the following currently-required shareholder report contents to appear in funds' shareholder reports going forward, nor will they require this information to be filed on Form N–CSR:

TABLE 5—CURRENT SHAREHOLDER REPORT CONTENTS REMOVED FROM SHAREHOLDER REPORT, AND NOT FILED ON FORM N–CSR, UNDER THE FINAL RULES

Description	Current rule and form requirement(s) for shareholder report disclosure	Description of amendments under final rules
Management information and statement regarding availability of additional information about fund directors.	Form N–1A Item 27(b)(5) and (6)	Remove from shareholder reports, but identical information will remain available in a fund's SAI, which is available online or delivered upon request.
Statement regarding liquidity risk management program.	Form N–1A Item 27(d)(6)(ii)	Remove from shareholder reports, but information relevant to funds' liquidity risk and risk management will remain available on Form N–PORT, on Form N–CEN, and in funds' prospectuses.

As proposed, we are removing the information about a fund's directors and officers that currently appears in funds' annual reports (the ''management information table'') without requiring this disclosure to be filed on Form N–CSR. Currently, a fund is required to include the management information table both in the annual report and in the fund's SAI.[459] The Commission received one comment supporting the proposed removal of the management information table from the shareholder report, so long as the information remains disclosed in the fund's SAI, and no comments opposing the removal.[460] Several commenters, however, suggested that funds be required to provide different information about a fund's directors, including a statement on the role of the board, as well as information on board compensation, diversity, and board members' investments in the fund.[461]

We continue to believe that shareholders should have access to information regarding fund directors but

the materials is directly accessible through the link from the time that the email is sent through the date that is six months after the date that the email is sent and the email explains both how long the link will remain useable and that, if the recipient desires to retain a copy of the materials, the recipient should access and save the materials.

[453] *See* Proposing Release, *supra* note 8, at n.476; *see also, e.g.,* ICI Comment Letter; Vanguard Comment Letter; Fidelity Comment Letter; Dechert Comment Letter (each discussing investor preferences for electronic delivery.)

[454] ICI Comment Letter.

[455] *See, e.g.,* rule 498(f)(1) (parallel delivery upon request requirements for funds and intermediaries relying on rule 498); *see also* Instruction 3 to Item 1 of amended Form N–1A (requiring the SAI and shareholder reports to be sent within three business days of receipt of a request).

[456] ICI Comment Letter.

[457] *See* Item 1 of amended Form N–1A.

[458] *See* Instruction 2 to Item 1 of amended Form N–1A.

[459] *See* Item 27(b)(5) of current Form N–1A. For each director and officer, a fund must disclose: (1) name, address, and age; (2) position(s) held with the fund; (3) term of office and length of time served with the fund; (4) principal occupation(s) during the past five years; (5) number of portfolios in the fund complex overseen by the director; and (6) other directorships held by the director. *See* Item 17(a)(1) of current and amended Form N–1A (requiring the inclusion of the management information table in the fund's SAI).

[460] *See* ICI Comment Letter.

[461] Morningstar Comment Letter; Morningstar Trustees Comment Letter; Mutual Fund Directors Forum Comment Letter; Independent Directors Council Comment Letter (suggested allowing, but not requiring, this disclosure).

that it is unnecessary to include this disclosure in multiple regulatory documents. We also do not believe that including the management information table in the shareholder report is necessary for retail investors to understand a fund's performance and operations over the past reporting period. This disclosure—as well as the additional information about the board that some commenters requested—pertains less directly to retail shareholders' understanding of the operations and performance of the fund and does not lend itself to the type of focused disclosure that the annual report is designed to include. We therefore are not adopting requirements to include the additional information about funds' directors.

While the proposal would have required a fund to include a concise statement regarding its liquidity risk management program (''LRMP'') in the shareholder report, the final rules do not include this requirement.[462] The final rules also remove the currently-required statement regarding the operation and effectiveness of a fund's LRMP from the shareholder report. We are not requiring any of the shareholder report's currently-required LRMP narrative disclosure to appear elsewhere. We believe that other aspects of our disclosure and reporting rules require more specific information about funds' liquidity risk and risk management to be provided to the public and reported to the Commission and staff, and the currently-required narrative disclosure in practice does not augment these other requirements meaningfully.[463]

In the proposal, the Commission discussed the reforms that it has adopted over the past decade that are designed to promote effective liquidity risk management across the open-end fund industry and enhance disclosure regarding fund liquidity and redemption practices.[464] Based on a review of disclosures that funds are including in their shareholder reports as a result of these reforms, the Commission proposed modifications to the current disclosure requirements to emphasize that the disclosure must be tailored to each fund and be concise.[465]

Commenters generally opposed including a discussion of fund LRMPs in the shareholder report. Specifically, several individual shareholders opposed the inclusion of the LRMP disclosure in the shareholder report, as did many of the investors who responded to the Investor Feedback Flier, indicating that LRMP disclosure was not useful to them.[466]

Similarly, industry commenters generally opposed including this disclosure in the shareholder report, suggesting different alternatives to the proposed approached. Several commenters suggested that LRMP disclosure should be moved in its entirety to Form N–CSR for all funds.[467] Some commenters suggested that, as an alternative to *all* funds moving this disclosure to Form N–CSR, funds that meet the ''highly liquid fund'' and ''In-Kind ETF'' definitions in rule 22e–4 under the Investment Company Act should have to file this disclosure on Form N–CSR, and all other funds should retain this disclosure in the shareholder report.[468] Some commenters also stated that the proposed instructions that would modify the current LRMP disclosure requirements are complicated and likely to produce boilerplate language, particularly for highly liquid funds.[469]

The Commission has recognized, in considering disclosure related to funds' liquidity risks and risk management, that receiving relevant information about the operations of a fund and its principal investments is important to investors in choosing appropriate funds for their risk tolerances.[470] Historically, the Commission has modified the information funds are required to disclose and report about their liquidity risk and risk management to address developments in the market, funds' practices, and the Commission's evolving understanding about how to best convey salient and useful information to investors.[471] In the proposed amendments to funds' current LRMP disclosure, the Commission expressed that it preliminarily believed the disclosure in its current form is not well-suited to a concise shareholder report. We continue to believe this. After considering commenters' concerns, however, we are not adopting the proposed approach. The proposed approach, even if it would better tailor the disclosure currently appearing in funds' shareholder reports, may not result in disclosure that pertains directly to a retail shareholder's understanding of the operations and performance of the fund, and also may not result in the type of focused disclosure that the new shareholder report is designed to include. We highlight that funds will still be required to discuss in their MDFP the key factors that materially affects a fund's performance during the reporting period, including the relevant market conditions and the investment strategies and techniques used by the fund's investment adviser.[472]

We believe that helping shareholders to better understand how the fund is managing its liquidity risks, which in turn could inform the shareholders' ability to monitor their investments in the fund, merits further consideration.

E. Transmission of Shareholder Reports

1. Amendments Narrowing Scope of Rule 30e–3

Subject to conditions, current rule 30e–3 generally permits investment companies to satisfy shareholder report transmission requirements by making these reports and other materials available online and providing a notice of that availability instead of directly mailing the report to shareholders.[473]

[462] *See* Proposing Release, *supra* footnote 8, at text accompanying n.304 (proposing to replace the currently required LRMP disclosure with a brief summary of: (1) key factors or market events that materially affected the fund's liquidity risk during the reporting period; (2) key features of the fund's LRMP; and (3) effectiveness of the fund's liquidity risk management program over the past year).

[463] *See, e.g.,* Items B.7, B.8, C.7 of Form N–PORT; Item C.20 of Form N–CEN; Items 11(c)(7)–(8) of current and amended Form N–1A; *see also* Investment Company Liquidity Disclosure, Investment Company Act Release No. 33142 (June 28, 2018) [83 FR 31859 (July 10, 2018)] (''2018 Liquidity Reporting Adopting Release'') at n.59 and accompanying text (clarifying how funds should discuss liquidity events that materially affected performance in the MDFP section of the annual report).

[464] *See* Proposing Release, *supra* footnote 8, at text accompanying nn.300–302.

[465] *See id.* at nn.305–306 and accompanying text; *see also* Instruction 1 to Item 27A(i) of proposed Form N–1A.

[466] *See, e.g.,* Ubiquity Comment Letter; Williams Comment Letter; Tom and Mary Comment Letter. *See supra* footnote 47 and accompanying text.

[467] *See, e.g.,* Morningstar Trustees Comment Letter; ICI Comment Letter; SIFMA Comment Letter; Fidelity Comment Letter; Dechert Comment Letter; T. Rowe Price Comment Letter; *see also* Angel Comment Letter; Barker Comment Letter; Abdullah Comment Letter.

[468] *See, e.g.,* Morningstar Trustees Comment Letter; ICI Comment Letter; Vanguard Comment Letter; Sidley Austin Comment Letter; Federated Hermes Comment Letter; *see also* SIFMA Comment Letter and Barker Comment Letter (suggesting this disclosure should be included in the shareholder report only for funds that hold a certain percentage of investments that the fund classifies as ''less liquid'' under rule 22e–4).

[469] *See* ICI Comment Letter; Capital Group Comment Letter; Vanguard Comment Letter; T. Rowe Price Comment Letter. *But see* SIFMA Comment Letter (arguing that the LRMP disclosure should not be customized to individual funds in all cases because liquidity risk is managed at the complex level).

[470] *See* Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (Oct. 13, 2016) [81 FR 82142 (Nov. 18, 2016)] (''2016 Liquidity Adopting Release''), at text preceding n.893.

[471] *See* 2018 Liquidity Reporting Adopting Release, *supra* footnote 463.

[472] *See* Instruction 1 to Item 27A(d)(1) of amended Form N–1A.

[473] Rule 30e–3 Adopting Release, *supra* footnote 20.

We are amending the scope of rule 30e–3 to exclude investment companies registered on Form N–1A, which will be transmitting tailored annual and semi-annual reports to shareholders. We received many comments both supporting and opposing the proposed amendments to rule 30e–3. After considering these comments, we are adopting these amendments largely as proposed. We are adopting technical changes to the proposed amendments to clarify that the scope of rule 30e–3 is narrowed with respect to the shareholder reports of *all* funds registered on Form N–1A, including those funds that serve as underlying funds of insurance company separate accounts.

The Commission received several comments supporting the proposed amendments to 30e–3.[474] One commenter specifically stated that the proposed new concise shareholder report "offers a more-effective means of improving investors' ability to access and use fund information than continuing to permit open-end funds to rely on rule 30e–3, while also delivering significant cost savings over requiring delivery of 100+ page shareholder reports." [475] One commenter stated that the justification for rule 30e–3 is no longer warranted given that under the proposed new framework, the number of pages for a shareholder report would be reduced from hundreds of pages to a few pages.[476] This commenter stated that, under these changed circumstances, a return to the default of mail-based paper delivery of shareholder reports themselves is the best way to ensure that fund investors benefit from the new tailored disclosure framework.

However, the Commission also received many comments opposing the proposal, advocating for open-end funds to continue to be permitted to rely on rule 30e–3. Commenters stated that funds already have incurred the costs of complying with rule 30e–3, but because they could only rely on the rule starting in 2021, they have not fully realized the perceived benefits of the rule.[477] They stated that funds would be required to undo the processes that they have undergone to convert their current shareholder report transmission practices, which commenters noted were costly.[478] Specifically, some commenters stated that funds would need to re-implement legacy shareholder report transmission processes that were discontinued when they initially adjusted these processes in preparing to rely on rule 30e–3.[479]

Commenters also expressed concern that investors may be confused by the change to the transmission method of their shareholder reports as a result of our rule amendments because investors have been receiving notices identifying the upcoming transmission changes that went into effect in January 2021.[480] One commenter stated that the fund manager, as the investor's fiduciary, should be able to determine the most effective manner to distribute fund disclosure documents, while evaluating investor preference, costs, alternative transmission options, and other factors.[481] Commenters argued that investors have already received notification from funds that their shareholder reports will be available to access online, unless they request direct delivery, and the proposed amendments therefore would result in a change in transmission method for a number of investors' shareholder reports.[482]

Some commenters stated that the proposed amendments to 30e–3 may halt fund innovation to improve the effectiveness of electronic fund disclosure efforts.[483] Because funds will no longer be able to satisfy shareholder report transmission requirements by making these reports available online, these commenters stated that funds will no longer have an incentive to innovate the manner in which they present fund information online. For example, one commenter stated that electronic delivery incentivized funds to provide hyperlinked disclosures and interactive graphs, calculators and other materials that permit individual investors to understand fund performance.[484]

Finally, commenters expressed the view that the proposed amendments to rule 30e–3 would be contrary to investors' expressed preferences for electronic delivery.[485] Several fund commenters stated that investors have demonstrated a behavioral preference for digital engagement, noting that these funds have observed that most retail investors prefer to engage on fund-related issues through the fund's digital platform.[486] These commenters believe that the preference for digital engagement is best supported by the electronic delivery of fund documents, including rule 30e–3's notice and website access approach for delivering shareholder reports. The Commission received several comments indicating that the vast majority of fund investors have not indicated a preference for receiving paper copies of fund documents following the adoption of rule 30e–3.[487] One commenter discussed a survey this commenter conducted, finding that only ½ of one percent of direct-at-fund accounts requested paper shareholder reports in response to fund requests related to complying with rule 30e–3.[488] Another commenter likewise noted that less than 0.5% of investors have contacted the commenter to request the receipt of printed documents under rule 30e–3.[489] Similarly, another commenter stated that it has received requests for delivery of paper fund documents from 0.1% of shareholders who directly own shares in the fund.[490]

After considering commenters' input, we are adopting the amendments to rule 30e–3 substantially as proposed, with certain technical changes. As noted in the proposal, the new approach to funds' shareholder reports reflects the Commission's continuing efforts to search for better ways of providing investors with the disclosure that they

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[474] *See, e.g.,* CFA Institute Comment Letter; Consumer Federation of America II Comment Letter; Better Markets Comment Letter; Barker Comment Letter.

[475] *See* Consumer Federation of America II Comment Letter.

[476] *See* CFA Institute Comment Letter.

[477] *See, e.g.,* Stradley Ronan Comment Letter; Dechert Comment Letter; TIAA Comment Letter; Vanguard Comment Letter; SIFMA Comment Letter.

[478] *See, e.g.,* Vanguard Comment Letter; ICI Comment Letter; John Hancock Comment Letter.

[479] *See, e.g.,* Federated Hermes Comment Letter; Vanguard Comment Letter; Mutual Fund Directors Forum Comment Letter; SIFMA Comment Letter.

[480] *See, e.g.,* Vanguard Comment Letter; ICI Comment Letter; Independent Directors Council Comment Letter; John Hancock Comment Letter.

[481] *See* ICI Comment Letter.

[482] *See, e.g.,* John Hancock Comment Letter; Federated Hermes Comment Letter; Vanguard Comment Letter; ICI Comment Letter.

[483] *See, e.g.,* Mutual Fund Directors Forum Comment Letter; SIFMA Comment Letter; TIAA Comment Letter.

[484] *See* Mutual Fund Directors Forum Comment Letter.

[485] *See, e.g.,* Center for Capital Markets Competiveness Comment Letter; Dechert Comment Letter; Comment Letter of State Street Global Advisors (Jan. 4, 2021) ("State Street Comment Letter"); Capital Group Comment Letter; ICI Comment Letter; Vanguard Comment Letter.

[486] *See, e.g.,* Vanguard Comment Letter; T. Rowe Price Comment Letter.

[487] *See, e.g.,* ICI Comment Letter; Vanguard Comment Letter.

[488] *See* ICI Comment Letter. These ICI survey respondents manage approximately $18 trillion of mutual fund assets, representing approximately 85 percent of industry mutual fund assets at the end of June 2020. *See* Letter to Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission from the Investment Company Institute, (Sept. 10, 2020), *available at https://www.sec.gov/comments/265-33/26533-7964920-224992.pdf.*

[489] *See* Vanguard Comment Letter; *see also* Capital Group Comment Letter ("From our perspective, it is telling that following the adoption of Rule 30e–3, only 0.40% of all of our funds' shareholders opted in to receiving paper copies, signaling strong investor support for accessing information online.").

[490] *See* T. Rowe Price Comment Letter.

need. Rather than allowing fund managers to determine the transmission method for shareholder reports, the final rule ensures that all investors will receive the anticipated benefits of streamlined shareholder reports. We continue to believe that the new disclosure approach for shareholder reports represents a more-effective means of improving investors' ability to access and use fund information, and of preserving much of the expected cost savings to funds and investors that funds would experience by choosing to rely on rule 30e–3. Moreover, that investors will also receive annual prospectus updates under the final rules because we are not taking final action on proposed rule 498B does not diminish the centrality of fund shareholder reports. Providing information in shareholder reports directly to shareholders—as opposed to providing a notice of these reports' availability—will best effectuate the goals of the streamlined shareholder report.

We acknowledge, as commenters discussed, that many funds have already come into compliance with rule 30e–3 and have borne the costs associated with that rule. We also understand, as commenters stated, that investors may not be expecting to receive their shareholder reports in their mailbox in light of receiving notices of the upcoming transmission changes.[491] We continue to believe, however, that investors will benefit from receiving streamlined information delivered directly to them, rather than receiving that information indirectly via a rule 30e–3 notice with no substantive content and a hyperlink to the streamlined disclosure itself. Instead of receiving a one-page notice describing how investors may access their shareholder reports online, investors will now receive a streamlined shareholder report that may fit on a trifold self-mailer that is delivered directly to them. Fundamentally, under both rule 30e–3 and these final rules (to the extent an investor does not elect electronic delivery), a fund would transmit to investors a short paper document in the mail that provides a link to more information online. But under the final rules, this short document will contain key information that investors can use to monitor their fund investments, unlike a rule 30e–3 notice, which contains no substantive content. Now that we are adopting streamlined shareholder reports—as opposed to the lengthy and less reader-friendly versions in place at the time the Commission adopted rule 30e–3—we believe investors will benefit from receiving these reports directly, rather than receiving them indirectly via a rule 30e–3 notice with a hyperlink.

The final rules' approach reflects our continued understanding based on commenter feedback on the proposal, responses to the fund Investor Experience RFC, investor testing and surveys as discussed in section I.A.3 above, and other disclosure reform initiatives that shareholders strongly prefer layered disclosure, with summary information provided to them directly and more detailed information available elsewhere.[492] In assessing investor preferences, we understand—as commenters discussed—that few investors opted into continuing to receive the current, lengthy fund shareholder reports in paper after receiving 30e–3 notices. We do not, however, believe that this can be taken as evidence that investors would prefer to receive a rule 30e–3 notice instead of the new streamlined shareholder report, given the relative salience of the new reports versus the current reports, and the positive feedback the Commission has received about the proposed reports and the disclosure principles underlying these reports.[493]

As discussed above, many commenters supported a regulatory approach that would reflect investors' preferences around digital engagement with fund regulatory materials. We agree that the Commission should consider ways to streamline the information that is delivered in paper to fund investors and enhance fund information that is presented electronically. The new streamlined shareholder report shifts many of the lengthier, more technical aspects of fund disclosure from the shareholder report that is delivered directly to investors to be filed on Form N–CSR and made available on a website. We also do not believe that the final rules' approach with respect to rule 30e–3 will reduce funds' incentives or ability to offer innovative online regulatory disclosure. Many investors will review shareholder reports online, whether by opting into e-delivery or via links provided in the streamlined shareholder reports. And our final rules also encourage funds to continue to innovate the electronic presentation of fund information. Outside the scope of these amendments, funds have incentives to present shareholder reports on their websites—for example, because including more interactive, dynamic fund disclosure may be popular with investors and therefore could produce reputational benefits—which may also serve as a motivation for innovation.

Along with comments about the proposed narrowing of the scope of rule 30e–3, the Commission also received several comments requesting clarification regarding how the proposed amendments to rule 30e–3 would affect the shareholder report transmission requirements for variable contract separate accounts that are registered as UITs.[494] Rule 30e–2 requires these UITs to transmit the shareholder reports of the funds that serve as these contracts' underlying investments—which are registered on Form N–1A—to the UITs' investors.[495] These UITs currently may rely on rule 30e–3 to satisfy their shareholder report transmission requirements under rule 30e–2.[496]

Under the rules we are adopting and as was proposed, no shareholder report transmission requirements for funds that are registered on Form N–1A may be satisfied by relying on rule 30e–3.[497] We understand that the underlying funds of variable contract UITs are solely funds that are registered on Form N–1A. Therefore, in effect, variable contract UITs may no longer rely on rule 30e–3 to satisfy their shareholder report transmission requirements with respect to underlying funds registered on Form N–1A.[498]

[491] Funds will not be required to notify investors of the change in transmission method prior to the compliance date of the amendments to rule 30e–3, but are permitted to at the fund's discretion. Such a notice could, for example, be included along with a fund's shareholder report, provided that it meets the prominence requirements for materials that accompany the report. *See* Instruction 12 to Item 27A(a) of amended Form N–1A.

[492] *See* Fund Investor Experience RFC and comments received in response to the RFC, *supra* footnote 40; *see also* Consumer Federation of America I Comment Letter; Proposing Release, *supra* footnote 8, at section II.G; *supra* section I.A.2 (discussing the developments supporting layered disclosure approach to fund shareholder reports).

[493] Investor inertia also may make it less likely for investors to elect a change affirmatively with respect to the regulatory disclosure they receive. *See infra* footnote 504 (discussing that investor inertia makes it less likely for investors affirmatively to elect to change the default method of delivery of fund materials).

[494] *See, e.g.,* Comment Letter of the Committee of Annuity Insurers (Dec. 22, 2020) (''CAI Comment Letter''); ICI Comment Letter; Comment Letter of the Insured Retirement Institute (Jan. 4, 2021) (''IRI Comment Letter''); Stradley Ronon Comment Letter.

[495] *See* rule 30e–2.

[496] Current rule 30e–3(a).

[497] *See* amended rule 30e–3(h)(2) (defining ''fund'' as ''a management company registered on Form N–2 . . . or Form N–3 . . . and any separate series of the management company'').

[498] *See, e.g.,* Proposing Release, *supra* footnote 8, at section IV.I (Paperwork Reduction Act analysis for the proposed amendments to rule 30e–3, where the Commission's estimates of the burden of the

Continued

The commenters who requested clarification on this aspect of the proposal noted that the proposed rule text did not explicitly carve out variable contract separate account UITs from rule 30e–3, because the proposed amendments retained references to a fund being able to rely on rule 30e–3 to satisfy shareholder report transmission requirements under rule 30e–2.[499] The proposed amendments effectively would not permit UITs to satisfy shareholder report transmission obligations under rule 30e–2, however, because the amendments would exclude all Form N–1A-registered funds, including those that serve as variable contracts' underlying investments, from the scope of rule 30e–3. To clarify the scope of the amendments to rule 30e–3 and more clearly effectuate the Commission's regulatory intent as reflected in the proposed amendments, the amendments to rule 30e–3 that we are adopting remove current references to shareholder report transmission requirements under rule 30e–2.

2. Alternative Transmission Methods for Shareholder Reports and Other Regulatory Materials

Related to the comments on the proposed amendments to rule 30e–3, the Commission also received comments suggesting alternative methods of transmitting shareholder reports. Many of these comments were framed in terms of modernizing the Commission's guidance that governs electronic delivery.[500]

Some commenters suggested an ''access equals delivery'' framework.[501] Under this alternative, shareholder reports would be deemed to be delivered if they were made available online without the notice that rule 30e–3 currently requires. For example, one commenter stated that the Commission should reevaluate shareholder report disclosure and transmission requirements by first amending the format and substance of shareholder reports, and then adopting an ''access equals delivery'' standard for all fund disclosure documents.[502] Several commenters similarly suggested that the Commission permit funds to satisfy their transmission obligations, for both shareholder reports and prospectus updates, by filing them with the Commission, posting them on a website, and delivering them upon request to shareholders.[503] Commenters stated that investors have expressed a preference for accessing fund disclosures electronically, however there is inertia around shareholders affirmatively opting-in to electronic delivery.[504]

Rather than adopting an ''access equals delivery'' approach as discussed by commenters above, one commenter urged the Commission to reevaluate electronic delivery of fund documents, but to take up this issue in a separate rulemaking that takes a comprehensive review of the potential for electronic delivery.[505] This commenter asserted that investor engagement is not necessarily supported by switching the delivery of fund documents from paper to electronic, but instead encouraged the Commission to examine how to leverage electronic resources to enhance investor engagement as well as investor understanding of fund disclosures.

These commenters raise important considerations for any future initiative on the delivery of fund regulatory materials, and the Commission and staff are continuing to consider these issues. Rescinding rule 30e–3 in its entirety or reconsidering the Commission's electronic delivery regime for fund materials, however, merits further consideration.

3. Alternatives for Satisfying Transmission Requirements for Semi-Annual Reports

Funds will continue to be required to comply with the current requirements with regard to the frequency of transmitting shareholder reports, which are statutorily mandated to be transmitted on a semi-annual basis.[506] The Commission requested comment on alternative approaches to satisfy the statutory requirement to transmit semi-annual reports.[507] For example, the Commission stated that it considered proposing to allow funds to satisfy the semi-annual report transmission obligation by filing certain information on Form N–CSR and/or updating certain information on a website and requested comment on these approaches. We received feedback regarding these alternative approaches from commenters that both supported the current transmission requirements and those who preferred potential alternative approaches to satisfy these requirements.

Many commenters supported the alternatives that the Commission discussed in the Proposing Release.[508] Commenters also suggested different permutations of these alternatives, as well as ancillary requirements that could accompany these alternatives. For example, some commenters suggested that funds should have to include disclosure in the preceding annual report that the semi-annual report would be posted to a fund's website no later than a particular date and clarify that investors may obtain a paper copy of the report by contacting the fund.[509] Commenters cited a variety of reasons for favoring alternatives where semi-annual report transmission could be satisfied by Commission filing and/or website posting. For example, some commenters stated that the purpose of requiring direct transmission of the semi-annual report is not clear, opining that the content of the semi-annual report is duplicative of information that some funds already make available on fund websites, that the information funds choose to post online is more timely, and that monthly or quarterly fact sheets that are already made available online may be more useful.[510] Additionally, commenters cited cost savings for funds and investors as a basis for eliminating the direct transmission requirements for semi-annual reports.[511]

We also received comments supporting an approach that would continue to require the direct transmission of semi-annual reports to investors.[512] One commenter stated that there is no evidence that investors would see updated information posted on fund websites if it were no longer delivered to them.[513] Additionally, this

proposed amendments do not exclude investment companies registered on Form N–1A that serve as variable contracts' underlying investments).

[499] Current rule 30e–3(a) states that a company may satisfy its obligation to transmit a report required by rule 30e–1 or rule 30e–2 to a shareholder or record if all of the conditions set forth in paragraphs (b) through (e) of the rule are satisfied. The proposed rule amendments did not amend this provision of the current rule.

[500] *See, e.g.,* ICI Comment Letter; Dechert Comment Letter; Federated Hermes Comment Letter.

[501] *See, e.g.,* Dechert Comment Letter; Federated Hermes Comment Letter; ICI Comment Letter; *see also* discussion at *infra* footnotes 758–761 and accompanying text.

[502] *See* Federated Hermes Comment Letter.

[503] *See, e.g.,* ICI Comment Letter; T. Rowe Price Comment Letter; Charles Schwab Comment Letter; State Street Comment Letter; Capital Group Comment Letter.

[504] *See, e.g.,* T. Rowe Price Comment Letter; Charles Schwab Comment Letter; Capital Group Comment Letter.

[505] *See* CFA Institute Comment Letter.

[506] *See* section 30(e) of the Investment Company Act.

[507] *See* Proposing Release, *supra* footnote 8, at section II.C.3.b.

[508] *See, e.g.,* ICI Comment Letter; Dechert Comment Letter; Fidelity Comment Letter; Charles Schwab Comment Letter; Capital Group Comment Letter; T. Rowe Price Comment Letter.

[509] *See, e.g.,* ICI Comment Letter; T. Rowe Price Comment Letter.

[510] *See, e.g.,* Fidelity Comment Letter; Capital Group Comment Letter.

[511] *See, e.g.,* Capital Group Comment Letter; ICI Comment Letter; T. Rowe Price Comment Letter.

[512] *See, e.g.,* CFA Institute Comment Letter; DFIN Comment Letter.

[513] *See* CFA Institute Comment Letter.

commenter cited a study indicating that current shareholders prefer a twice-yearly delivery approach for shareholder reports.[514] Another commenter stated that elimination of the tailored shareholder report for semi-annual reports would reduce investor disclosure delivery and therefore reduce overall investor engagement and restrict information.[515]

After considering comments received, we are not adopting any of the alternative transmission requirements discussed in the proposal or suggested by commenters for semi-annual reports. Requiring investors to access a website to ''pull'' regulatory disclosures for their investments would place the burden on investors to seek out information without providing them any contemporaneous notification that updated disclosures are electronically available. The burden of accessing the semi-annual report would remain with the investor if notification of the date of the website publication of the semi-annual report is only included in the annual report. The timeliness of the ''push'' of information to the investor on a semi-annual basis is an important element of our current disclosure framework. The information that will be included in the semi-annual report has been streamlined to only include the information that we believe will be most useful and salient to investors in assessing and monitoring their fund investments. Thus, with respect to a transmission process that requires investors ''pull'' regulatory documents, the final rules do not incorporate any of the alternative approaches to semi-annual report transmission that commenters discussed.

F. Prospectuses and SAIs Transmitted Under Rule 30e–1(d)

We are adopting, as proposed, amendments that would rescind rule 30e–1(d). This rule provision permits a fund to transmit a copy of its prospectus or SAI in place of its shareholder report, if either or both of the prospectus or SAI includes all of the information that would otherwise be required to be contained in the shareholder report. We continue to believe that the consolidation of a fund's prospectus, SAI, and shareholder report disclosures into a single document is inconsistent with the layered disclosure framework we are adopting today, and we also understand that funds rarely rely on this rule provision in practice.[516] The Commission did not receive any comments directly addressing this aspect of the proposal.

G. Investment Company Advertising Rule Amendments

We are adopting amendments to the Commission's investment company advertising rules designed to promote transparent and balanced presentations of fees and expenses in investment company advertisements.[517] These amendments will apply to all investment companies that are subject to the Commission's advertising rules, including mutual funds, ETFs, registered closed-end funds, and BDCs.[518] We are adopting the amendments addressing investment company fee and expense presentations in advertisements largely as proposed.[519]

1. Requirements for Standardized Fee and Expense Figures

To promote more consistent and transparent presentations of investment costs in investment company advertisements, we are adopting amendments to rules 482, 433, and 34b–1 to require that investment company advertisements providing fee or expense figures for the investment company include certain standardized fee and expense figures, and that these figures must adhere to certain prominence and timeliness requirements.[520]

a. Inclusion of Required Fee and Expense Figures

The final amendments to rule 482 will require that investment company advertisements providing fee and expense figures include: (1) the maximum amount of any sales load, or any other nonrecurring fee; and (2) the total annual expenses without any fee waiver or expense reimbursement arrangement (collectively, the ''required fee and expense figures'') based on the methods of computation for a prospectus that the fund's Investment Company Act or Securities Act registration statement form prescribes for those figures.[521]

Because we believe these are important figures for assessing the fees and expenses of fund investments, any advertisement presenting fee and expenses figures must include these items. These requirements, however, would apply only to investment company advertisements that include fee and expense *figures,* and therefore an advertisement would not need to include the required fee and expense figures if it only included general, narrative information about fee and expense considerations and did not include any numerical fee or expense amounts.[522] Similarly, if an investment company does not present total annual expense figures in its prospectus, the final amendments addressing the required fee and expense figures would be inapplicable. For example, the registration statement forms for variable insurance contract separate accounts do not require that total annual expense

[514] *See supra* footnote 48 and accompanying text (discussing survey conducted by Broadridge); CFA Institute Comment Letter (discussing Broadridge survey). Asked about current shareholder reports, for example, more than 80% of survey respondents said the current twice-yearly delivery is ''about right.'' Specifically, 44% said they would prefer to receive the concise shareholder reports twice a year, 42% said they would like to receive them quarterly, and only 13% said they would like to receive them just once a year.

[515] *See* DFIN Comment Letter.

[516] *See* Proposing Release, *supra* footnote 8, at section II.H.3.

[517] For purposes of this release, we generally refer to the types of investment company communications covered by amended rules 482, 156, 433, and 34b–1 as ''advertisements,'' unless otherwise noted. The Commission's recently adopted rule amendments relating to investment adviser advertisements did not address investment company advertising rules. *See* Investment Adviser Marketing, Investment Advisers Act Release No. 5653 (Dec. 22, 2020) [86 FR 13024 (Mar. 5, 2021)] (''IA Marketing Release'').

[518] As a result, for purposes of this section II.G, the term ''fund'' is not limited to mutual funds and ETFs registered on Form N–1A. Instead, we use this term more broadly in this section to refer to any investment company that is subject to the Commission's investment company advertising rules, including registered closed-end funds and BDCs.

[519] We are not adopting the proposed modifications to the disclosure legend that accompanies certain investment companies' advertisements of performance data. The proposal would have required the legend to state that past performance is ''not a good predictor'' of future results instead of, as is currently required, stating that past performance ''does not guarantee'' future results. *See* proposed rule 482(b)(3)(i) under the Securities Act [17 CFR 230.482(b)(3)(i)]. While no commenters specifically addressed this part of the proposal, we believe further consideration on amending this required legend in the context of performance disclosure in fund advertisements is merited, and we are not adopting this aspect of the proposed amendments to rule 482 at this time.

[520] *See* amended rule 482(i)(1) under the Securities Act [17 CFR 230.482(i)(1)]; *see also* amended rule 433 under the Securities Act [17 CFR 230.433(c)(3)] and amended rule 34b–1 under the Investment Company Act [17 CFR 270.34b–1(c)(1)].

[521] In an expense reimbursement arrangement, the adviser reimburses the fund for expenses incurred. In a fee waiver arrangement, the adviser agrees to waive a portion of its fee in order to limit fund expenses.

[522] Similar to associated prospectus requirements, if an advertisement covers only a subset of a fund's share classes, the advertisement could provide the required fee and expense information for those classes only. *See, e.g.,* Instruction 1(e) to Item 3 of current and amended Form N–1A. An advertisement might, for example, only refer to the fund's fees and expenses in the context of the disclosure required by amended rule 482(b)(1), which requires a statement advising an investor to consider the investment objectives, risks, and charges and expenses of the fund carefully before investing. Further, amended rule 482(i) would not apply to advertisements that provide the disclosure required by current rule 482(b)(3)(ii), but otherwise contain no other fee or expense figures.

figures be presented, and therefore, we understand that total annual expense figures are not presented in variable insurance contract prospectuses.[523]

We designed the requirements for standardized fee and expense figures to promote consistent fee and expense computations across investment company advertisements, particularly within the same fund category, and to facilitate investor comparisons. We are requiring consistency with prospectus requirements because, like a fund's summary or statutory prospectus, advertisements are often designed for prospective investors and may influence an investment decision.

The final amendments we are adopting to rules 34b–1 and 433 incorporate rule 482's requirements for required fee and expense figures.[524] These amendments will help ensure that the same fee and expense-related requirements are applied consistently across registered investment company and BDC advertisements and sales literature.[525] As a result, regardless of whether an advertisement is in the form of a rule 482 advertisement or rule 34b–1 supplemental sales literature, or whether a registered closed-end fund or BDC advertisement uses rule 482 or rule 433 for a free writing prospectus, the advertisement would be subject to the same requirements regarding fee and expense information.[526]

The comments that the Commission received about the proposed investment company advertising rule amendments were mixed. Some commenters provided some general reactions supporting the proposed advertising rule amendments, and others expressed concerns about the proposed rules' scope. Commenters also addressed the interaction between the proposed amendments and current FINRA requirements regarding communications with the public, as those requirements address fee and expense information in certain investment company advertisements.

Comments Expressing General Support for Proposed Inclusion of Required Fee and Expense Figures

Several commenters stated that the proposed investment company advertising rule amendments should help investors make more informed investment decisions by more easily comparing costs among various funds.[527] Certain commenters also supported the application of those proposed amendments to all types of registered investment companies and BDCs.[528]

Comments Addressing FINRA's Communications Rules

Some commenters expressed broad-based concerns about the scope of the proposed amendments. While these commenters shared the investor protection concerns that underlie the proposed advertising rule amendments, they supported narrowing of the scope of the proposed amendments, and also questioned the need for the proposed amendments in light of FINRA's current requirements that address communications with the public.[529]

Some commenters discussed the similarities between the requirements for standardized fee and expense figures in the proposed amendments and the requirements that FINRA rule 2210(d)(5) imposes on fee and expense presentations in retail communications and correspondence that present non-money market fund performance data.[530] Specifically, those commenters discussed that, like the FINRA rule, the Commission's proposed rules would require a fund whose advertisements include fee and expense figures to include in such advertisements: (1) the fund's maximum sales charge; and (2) the total annual fund operating expense ratio, gross of any fee waivers or expense reimbursements (*i.e.,* ongoing annual fees).[531] Those commenters, nevertheless, recognized that there were key differences in scope between the proposed amendments to the investment company advertising rules and FINRA rule 2210(d)(5).[532]

Commenters observed that the Commission's proposed amendments would apply to all investment company advertisements that include fee and expense figures, while FINRA's rule applies only to retail communications and correspondence that present the performance of non-money market funds.[533] These commenters maintained that the proposed advertising amendments' reach to institutional investors was neither necessary nor warranted. One commenter stated that after ''careful consideration and rulemaking,'' FINRA developed its rules governing communications with the public by creating differing standards for retail and institutional communications.[534] Another commenter asserted that FINRA has the more appropriate rule structure to govern investment company advertising, and also argued that FINRA rule 2210(d)(5) provides greater flexibility for communications aimed at institutions by distinguishing between sophisticated institutional investors and retail investors who require greater protection.[535] A commenter also observed that FINRA rule 2210(d)(5) has been in effect for many years and that the vast majority of advertisements concerning fee information are filed with and reviewed by FINRA staff.[536]

[523] *See, e.g.,* CAI Comment Letter; IRI Comment Letter; Comment Letter of Anonymous (Oct. 27, 2020) (''Anonymous Comment Letter'').

[524] *See* amended rule 34b–1(c). The amendments to rule 34b–1 will apply to any registered investment company or BDC advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors in connection with a public offering (collectively, ''sales literature'') that includes fee and expense figures (and where the investment company presents total annual expense figures in its prospectus). The current provisions of rule 34b–1, which largely relate to performance information, will continue to apply only to sales literature that is required to be filed with the Commission by section 24(b) of the Investment Company Act. *See also* amended rule 433(c)(3).

[525] The amendments to rule 34b–1 apply, for example, to sales literature that is excluded from the definition of ''prospectus'' in section 2(a)(10) of the Securities Act and thus is not subject to rule 482. *See also supra* section I.A.4 (discussing the scope of communications that amended rules 482, 34b–1, and 433 address).

[526] *See* Proposing Release, *supra* footnote 8, at paragraphs accompanying nn.679–681.

[527] *See* Better Markets Comment Letter; Consumer Federation of America II Comment Letter; John Hancock Comment Letter.

[528] *See* Consumer Federation of America II Comment Letter; John Hancock Comment Letter.

[529] *See supra* footnote 60 and accompanying text; *see also, e.g.,* Fidelity Comment Letter; ICI Comment Letter.

[530] *See* Fidelity Comment Letter and ICI Comment Letter; *see also supra* paragraph accompanying footnotes 59–60.

[531] FINRA rule 2210(d)(5). This provision only applies to retail communications and correspondence that present non-money market fund open-end management investment company performance data as permitted by rule 482 and rule 34b–1.

[532] *See* ICI Comment Letter.

[533] *See* Fidelity Comment Letter; ICI Comment Letter.

[534] Fidelity Comment Letter; FINRA Rule 2210(a)(3) defines an institutional communication as any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member's internal communications. FINRA Rule 2210(a)(5) defines a retail communication as a written communication (including electronic) that is distributed or made available to more than 25 retail investors within any 30-day calendar period. FINRA Rule 2210(a)(2) defines correspondence as any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

[535] *See* ICI Comment Letter; *see also* Fidelity Comment Letter.

[536] Fidelity Comment Letter; *see* rule 24b–3 under the Investment Company Act [17 CFR 270.24b–3] (deeming, in part, any advertisement or other sales literature intended for distribution to prospectus investors to be filed with the Commission for purposes of section 24(b) of the Investment Company Act [15 U.S.C. 80a–24(b)] upon filing with a national securities association that has rule providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising).

The commenter suggested that, if FINRA and the Commission agree such an approach would be appropriate, FINRA could expand coverage of its communications rules in more tailored ways that would recognize the ''fundamental'' differences between retail communications and institutional communications.[537]

Apart from the suggestion to narrow the scope of the proposed amendments to exclude institutional investors, commenters more fundamentally questioned the need for the proposed amendments. One commenter recommended that the Commission not adopt the proposed advertising rules because ''the robust SEC advertising rules and FINRA rule 2210 more than suffice to inform investors of the fees and costs of investing.'' [538]

After considering these comments, we are adopting the amendments as proposed. We agree FINRA has an important investor protection role that it accomplishes, in part, through its review and regulation of certain communications of its member broker-dealers.[539] For example, FINRA rule 2210(d)(5) references the Commission's investment company advertising rules, and the Commission's investment company advertising rules recognize FINRA's review of investment company advertisements.[540] Nonetheless, FINRA rule 2210(d)(5)'s requirements apply only to the disclosure of fees and expenses in retail communications and correspondence that present performance data of open-end funds that are not money market funds. By contrast, our advertising rule amendments will address the disclosure of fees and expenses in the advertisements not only for open-end funds that include fee and expense figures, but also for closed-end funds and BDCs that include these figures.[541]

Further, the Commission's investment company advertising rules are based, in part, on the Commission's broad investor protection statutory mandate to help ensure that an investor's evaluation of fund shares is based on adequate and accurate information that is fairly presented.[542] That statutory mandate applies to all investors regardless of the investor's level of investment sophistication, regardless of the distribution channel (*e.g.,* a broker-dealer does not have to be involved in the communication), and regardless of the type of registered investment company or BDC in which the investor invested. For example, our current investment company advertising rules' requirements with respect to performance disclosure do not distinguish between retail and institutional investors, and it would be inconsistent with our current approach to build in such a distinction with regard to the presentation of fees and expenses in investment company advertisements. Consistent with our statutory mandate, therefore, the amendments to our advertising rules generally apply to any registered investment company or BDC advertisement that presents fee and expense figures. This enhanced standardization of fee and expense presentations that will be promoted by the advertising amendments may assist investors and other market participants in comparing investment products, as the fees and expense presentation requirements will not vary among the type of registered investment company or BDC advertisement. In addition, the enhanced standardization may assist institutional investors, including institutional investors representing 401(k) retirement plans, with their understanding of the fees and charges assessed by the funds in which their plans may invest.

Furthermore, we disagree that our amendments are not necessary or warranted, in light of existing FINRA rules. As discussed above, the scope of the Commission's investment company advertising rules is broader than FINRA rule 2210(d)(5), and the Commission's rules would apply to issuer communications regardless of whether a broker-dealer is involved in the communication. In addition, the advertising rule amendments are not inconsistent with FINRA's rules. Under FINRA rules, all member communications—whether correspondence, retail communications, or institutional communications, and whether they apply to registered investment companies or BDCs—must be fair and balanced and not misleading.[543] FINRA has similarly published regulatory notices that provide guidance on fee-related discussion in communications with the public that may mislead investors.[544] Both the Commission's investment company advertising rules, which address consistency and clarity in investment company advertisements' fee and expense presentations, and FINRA's communication rules, further the goal of preventing misleading investment company fee and expense presentations by promoting transparent presentations of investment costs in investment company advertisements.[545]

b. Requirements Addressing Prominence, Fee Waivers and Expense Reimbursements, and Timeliness in Standardized Fee and Expense Figures

The final amendments, like the proposed amendments, also incorporate prominence requirements for fee and expense figures that appear in investment company advertisements.[546] The final amendments will permit investment company advertisements to include other figures regarding a fund's fees and expenses in addition to the required fee and expense figures that the final rules prescribe. Those advertisements, however, will have to present the required fee and expense figures at least as prominently as any other included fee and expense figures. For example, under the final amendments, an advertisement could include a fund's fees and expenses net of certain amounts, such as a fee waiver or expense reimbursement arrangement, as we understand some fund advertisements do today. An advertisement, however, could not present the net figure more prominently

[537] Fidelity Comment Letter.

[538] ICI Comment Letter.

[539] *See, e.g.,* Fidelity Comment Letter and ICI Comment Letter.

[540] *See, e.g.,* FINRA rule 2210(d)(5); amended rule 482 under the Securities Act [17 CFR 230.482] and rule 24b–3 under the Investment Company Act [17 CFR 270.24b–3]; *see also, e.g.,* rule 497(i) under the Securities Act [17 CFR 230.497(i)] (providing, in part, that an investment company advertisement deemed to be a section 10(b) prospectus under rule 482 is considered to be filed with the Commission upon the filing of that advertisement with FINRA).

[541] *See supra* footnotes 522–523.

[542] 15 U.S.C. 80a–1–1(b)(1).

[543] *See, e.g.,* FINRA rule 2210(d)(1)(A); *see supra* footnote 60 (regarding the application of FINRA rule 2210 to BDCs).

[544] FINRA Regulatory Notice 13–23; NASD Notice to Members 06–48 (discussing, in part, the requirement that certain mutual fund performance sales materials disclose (1) the standardized performance mandated by SEC rules and (2) to the extent applicable, the maximum deferred sales charge or the maximum deferred sales charge imposed on purchases and (3) the expense ratio, gross of any fee waivers and expense reimbursements); NASD Regulatory & Compliance Alert (Winter 2001) (interpreting NASD Rule 2210 (now, FINRA Rule 2210) as requiring member communications that present variable life insurance performance to prominently disclose the significant impact that fees have on such performance); and NASD Regulatory & Compliance Alert (Fall 1994) (alerting members that for investment companies that have a front-end sales load, that all advertisements and supplemental sales literature containing an investment company ranking must disclose, in part, whether the ranking takes sales charges into account).

[545] *See, e.g.,* Morningstar Comment Letter (applauding the Commission for better aligning the investment company advertising rules with FINRA rules 2210 and 2241).

[546] *See* amended rules 482(i)(1) and 433(c)(3) under the Securities Act; Proposing Release, *supra* footnote 8, at section II.I; *see also* amended rules 156 and 34b–1(c)(1)(i) under the Investment Company Act.

than the required fee and expense figures.

One commenter addressed the proposed prominence requirements. That commenter supported allowing investment company advertisements to include other figures regarding a fund's fees and expenses as long as the advertisement presents the required fee and expense figures at least as prominently as any other included fee and expense figures.[547]

We are adopting the prominence requirements for investment company fee and expense figures in advertisements, as proposed. The Commission continues to believe this requirement will protect investors by ensuring that standard fee and expense figures are prominently featured in the advertisement so the investor can understand better how other fee and expense presentations, including a presentation of the fund's net expenses, may relate to the investor's investment costs.

In addition, the final amendments require advertisements that include a fund's total annual expenses net of fee waiver or expense reimbursement arrangement amounts also to include the expected termination date of the arrangement.[548] We received no comments on this requirement, and we are adopting it as proposed. We believe this requirement will help investors better understand how a fee waiver or expense reimbursement arrangement may affect their investment costs by providing information about how long the arrangement will likely be in place (including that it may be terminated at any time).[549]

Finally, as proposed, the final amendments include a timeliness requirement for fee and expense information in investment company advertisements.[550] The timeliness requirement applies to fee and expense figures as well as to relevant narrative information. Fee and expense information will need to be as of the date of the fund's most recent prospectus or, if the fund no longer has an effective registration statement under the Securities Act, as of its most recent annual report.[551] A fund will, however, be able to provide more current information, if available. The Commission received two comments about the proposed timeliness requirement, and each commenter supported the proposed requirement so funds could not use stale or outdated information in their advertisements.[552]

We are adopting the timeliness requirement, as proposed. The Commission continues to believe it is appropriate to include a timeliness requirement designed to protect investors by preventing investment company advertisements from including stale, outdated information about a fund's fees and expenses. The final amendments will require, for instance, a registered open-end fund maintaining an effective Securities Act registration statement on Form N–1A to provide its maximum sales load (or other nonrecurring fee) and gross total annual expenses, as of the date of the fund's most recent prospectus. As another example, a registered closed-end fund including fee and expense figures in a rule 482 advertisement, which presents total annual expense figures in its prospectus but does not maintain an effective Securities Act registration statement, will need to provide its gross total annual expenses, as of the date of the fund's most recent annual report.[553] Each example demonstrates how the final amendments protect investors by helping to ensure that a fund presents fee and expense figures in its advertisements that are reasonably current, which in turn helps to ensure that these figures are not misleading.

2. Materially Misleading Statements About Fees and Expenses in Investment Company Sales Literature

The final amendments to rule 156 address statements and representations about a fund's fees and expenses that could be materially misleading.[554] Specifically, the final amendments provide that representations about fees or expenses associated with an investment in a fund could be misleading because of statements or omissions involving a material fact, including situations where portrayals of the fees and expenses associated with an investment in the fund omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading. We are adopting these amendments as proposed.[555]

Some commenters stated they share the Commission's expressed concern about funds that market themselves as ''zero expense'' or ''no expense funds'' without mentioning other costs investors would incur when investing in the fund.[556] These commenters expressed support for the proposed amendments to rule 156. Another commenter, however, suggested that the proposed amendments were ''unnecessary'' in light of FINRA rule 2210(d)(1)(A), which requires that communications be based on the principles of fair dealing and good faith and prohibits omissions of any material fact that, in light of the context of the material presented, would cause the communication to be misleading.[557] This commenter asserted that the proposed amendments would require funds to include even more fee and expense information in their sales literature than in their prospectuses (*e.g.,* securities lending costs). Alternatively, the commenter suggested that if the Commission were to adopt the proposed amendments, it should provide guidance that the amendments would not (1) preclude a fund from omitting non-material information relating to fees and expenses from sales literature; or (2) require that sales literature include disclosures that funds do not presently include their prospectus fee table presentations.[558]

We agree rule 156 broadly prohibits the use of materially misleading sales literature in connection with the offer or sale of security issued by an investment company, and FINRA rule 2210(d)(1)(A) requires that communications be based on the principles of fair dealing and good faith and not be misleading. The amendments to rule 156, however, are designed to protect investors by specifically addressing practices that could lead to materially misleading representations about fees and charges. As funds are increasingly marketed on the basis of costs, we remain concerned that investment companies and

[547] Consumer Federation of America II Comment Letter.

[548] *See* amended rule 482(i)(2); Proposing Release, *supra* footnote 8, at section II.1.

[549] This also is similar to information that funds generally must include in their prospectuses when including total annual expenses net of a fee waiver or expense reimbursement arrangement. *See* Instruction 3(e) to Item 3 of current and amended Form N–1A; Instruction 4(b) to Item 3 of current and amended Form N–1A; Instruction 15(e) to Item 4 of Form N–3; Instruction 17 to Item 4 of Form N–4.

[550] *See* amended rule 482(j); Proposing Release, *supra* footnote 8, at section II.I.

[551] In the case of a new fund that does not yet have an effective registration statement, fee and expense information will need to be as of the date of the fund's most recent prospectus filed with the Commission. *See* amended rule 482(j).

[552] Consumer Federation of America II Comment Letter; John Hancock Comment Letter.

[553] Under these circumstances, the registered closed-end fund will not have a maximum sales load to report in its advertisement because it does not have an effective Securities Act registration statement and cannot presently sell the fund's securities. The registered closed-end fund's gross total annual expenses will be computed using the method in Item 3 of Form N–2.

[554] Amended rule 156(b)(4).

[555] *See* Proposing Release, *supra* footnote 8, at section II.I.

[556] Consumer Federation of America II Comment Letter; CFA Institute Comment Letter.

[557] ICI Comment Letter.

[558] *Id.; see also infra* paragraph accompanying footnote 561.

intermediaries may, in some cases, be incentivized to understate or obscure the costs associated with a fund investment.[559] Rule 156 addresses the types of information in investment company sales literature that could be misleading for purposes of the federal securities laws, including section 17(a) of the Securities Act and section 10(b) of the Exchange Act and rule 10b–5 thereunder. The amendments to rule 156 will specify certain pertinent factors that could be considered to determine whether or not a particular representation is materially misleading, and are designed to address, for example, the Commission's concerns about funds that market themselves as ''zero expense'' or ''no expense funds'' without mentioning other costs investors would incur when investing in the fund.

The additional factors are designed to assist investment companies and their intermediaries, including FINRA members, when they consider whether a presentation of fee and expense information in investment company sales literature is materially misleading under Commission rules. The factors also could assist such intermediaries when they consider whether a presentation of fee and expense information in investment company sales literature is materially misleading under any other principles-based rule regarding investment company sales literature to which such intermediaries may be subject, such as FINRA rule 2210(d)(1)(A).

Consistent with the current framework in rule 156, whether a particular description, representation, illustration, or other statement involving a fund's fees and expenses is materially misleading depends on evaluation of the context in which it is made.[560] Under the amendments to rule 156 that we are adopting, a fund could, therefore, determine not to include certain information regarding fees and charges from sales literature if, based on an evaluation of the context of the fees and charges presentation, the omission of that information would not be materially misleading.[561] In such cases, a fund may determine not to include in its sales literature expenses that do not appear in the fund's prospectus fee table, such as expenses related to its securities lending activities or other non-material information regarding fees and expenses.

In addition, like current rule 156, the final amendments will apply to all investment company sales literature, regardless of whether the investment company's prospectus contains total annual expense figures.[562] We are not limiting the scope of the amendments to rule 156 to a subset of investment companies because our concerns regarding materially misleading statements about fees and expenses are not limited to certain types of investment companies. For example, depending on the facts and circumstances, it may be materially misleading for a variable contract advertisement to provide the current range of fees and charges that could be assessed without also indicating the maximum range of those fees and charges that may be assessed. Our investment company advertising rule amendments are designed to work together to promote balanced and transparent presentations of fees and expense information in all investment company sales literature.

3. Additional Suggested Amendments to Investment Company Advertising Rules

Some commenters suggested expansion of the proposed amendments to address other topics. One commenter recommended that the Commission expand the proposed amendments to require that the use of third-party ratings in an investment company advertisement not be misleading and be current.[563] That commenter suggested that the fund should specify the information on which the rating is based and that the rating should be representative of the fund and share class being advertised. In addition, the commenter recommended that the Commission address the illustration of synthetic performance before fund inception. The commenter stated that new funds seeking to illustrate synthetic performance should only be able to do so when these funds are related in specific ways to another registered fund.[564] Another commenter similarly requested, without discussion, that the Commission codify staff guidance regarding predecessor fund performance.[565] Further, a commenter suggested that the Commission require a single, all-inclusive number showing all the fees that an investor could expect to pay. That commenter, however, recognized that such a ''bottom-line'' number may not be feasible.[566] Finally, a different commenter suggested that the Commission amend the proposal to address AFFE disclosure in investment company advertisements.[567] These suggestions were generally beyond the scope of this rulemaking, which is focused on the presentation of fund fees and expenses in investment company advertisements. Because we continue to consider changes to open-end funds' prospectus fee table, including the proposed changes to AFFE disclosure, we are not addressing the commenter's suggestion regarding AFFE in investment company advertisements at this time.[568]

H. Inline XBRL Data Tagging

In a change from the proposal, we are adopting requirements for funds to tag the shareholder report contents in a structured, machine-readable data language, which will make shareholder report disclosure more readily available and easily accessible for aggregation, comparison, filtering, and other analysis. Specifically, our final rules require funds to tag the disclosures in Inline XBRL in accordance with rule 405 of Regulation S–T and the EDGAR Filer Manual.[569] The use of Inline XBRL will allow retail investors and other market participants to use automated analytical tools to extract the information sought wherever it may be located within a filing.[570]

Funds are currently subject to structured data requirements for certain aspects of their disclosure and reporting. In 2009, the Commission adopted rules requiring operating company financial statements and mutual fund risk/return summaries to

[559] *See* Proposing Release, *supra* footnote 8, at section II.I.

[560] *See* amended rule 156(b).

[561] *See supra* footnotes 557–558 and accompanying text.

[562] *See* amended rule 156(b).

[563] *See* Morningstar Comment Letter (suggesting further integration between the SEC's advertising rules and FINRA rule 2241, which addresses research analysts and research reports).

[564] Morningstar Comment Letter.

[565] Ubiquity Comment Letter.

[566] CFA Institute Comment Letter.

[567] Cornell Law School Comment Letter.

[568] *See supra* section I.B.2.

[569] *See* General Instruction C.4 to Form N–CSR; General Instructions C.3.(g)(iii) and (iv) to Form N–1A; 17 CFR 232.405(b)(2)(i).

[570] The Commission has an open source Inline XBRL Viewer that allows the user to make an Inline XBRL data human-readable and allows filers to more readily filter and identify errors. Anyone with a recent standard internet browser can view any Inline XBRL filing on EDGAR at no cost. More information about the Commission's Inline XBRL Viewer is available at *https://www.sec.gov/structureddata/osd-inline-xbrl.html.* Studies suggest XBRL requirements increase the information content of prices, reduce the informational advantages held by insiders over public investors, heighten the relevance, understandability, and comparability of financial information for non-professional investors, and enhance the reports and recommendations published by financial analysts, thereby indirectly benefitting retail investors for whom such analysts represent a significant source of investment information. *See* Proposing Release, *supra* footnote 8, at n.852.

be submitted in XBRL entirely within an exhibit to a filing.[571] In 2018, the Commission adopted modifications to these requirements by requiring issuers to use Inline XBRL to reduce the time and effort associated with preparing XBRL filings and improve the quality and usability of XBRL data for investors.[572] The Commission has also adopted requirements for most registered investment companies to file monthly reporting of portfolio securities on a quarterly basis, in a structured data language.[573] Much of this information is publicly available as structured data on the Commission's website at *www.sec.gov.*

In the Proposing Release, the Commission specifically discussed the alternative of requiring information filed on Form N–CSR to be tagged in Inline XBRL format and requested comment on this option.[574] The Commission discussed the potential benefits of tagging some or all of Form N–CSR—including the streamlined shareholder report—in Inline XBRL. The Commission stated such a requirement could, for example, benefit investors by enabling efficient retrieval, aggregation and analysis of information of information in Form N–CSR and by facilitating comparisons across funds and time periods. While an Inline XBRL tagging requirement was not proposed, the Commission sought comment on whether some or all of Form N–CSR should be tagged using Inline XBRL or some other structured machine-readable format and whether certain parts of the tailored shareholder report should be tagged.

Commenters who addressed this discussion generally supported tagging all or certain parts of the information filed on Form N–CSR using a structured data language.[575] Some commenters advocated an expansive tagging approach, either expressly or implicitly supporting all of the shareholder report contents, as well as all of the Form N–CSR disclosure items, to be tagged.[576] One commenter observed if information in the streamlined shareholder report were tagged, fund companies, broker-dealers, and others could create personalized and interactive experiences by, for example, using the tagged data to populate email templates with information that is ''ingested'' from filings made with the Commission.[577] Another commenter requested specific sections of funds' shareholder reports to be tagged, such as performance information.[578] In addition, some commenters addressed the particular structured machine-readable data language to be used to tag some or all of the information filed on Form N–CSR, specifically supporting the use of Inline XBRL.[579]

After considering these comments, we are requiring the contents of the shareholder report to be tagged using Inline XBRL. We believe the information in these reports is particularly salient to funds' largely retail shareholder base, and the benefits of tagging this information likewise will be beneficial in helping these investors, as well as other market participants, understand funds' performance and operations. The final rules, however, only will require that the streamlined shareholder reports—and not other information that funds file on Form N–CSR—to be tagged. Consistent with our objective of including in the shareholder report the information we believe is particularly important for retail shareholders to assess and monitor their fund investments on an ongoing basis, we believe that tagging this information in Inline XBRL format will provide a tool that helps these investors (through third parties that analyze tagged information) monitor their investments.[580]

While tagging other information filed on Form N–CSR also could be a useful tool for other fund investors and other market participants, we believe a broader tagging requirement merits further consideration. Form N–CSR is used by both open and closed-end management investment companies and some variable annuity separate accounts to file shareholder reports, as well as other information, with the Commission. Broader requirements to tag other content filed on Form N–CSR, could include further consideration of content filed by closed-end management investment companies and some variable annuity separate accounts that are not subject to our tailored shareholder report disclosure requirements.

In addition, we believe the use of Inline XBRL will promote the benefits of tagging information in the streamlined shareholder report more effectively than requiring a non-machine readable data language such as ASCII or HTML. The Inline XBRL tagging requirements will enable automated extraction and analysis of data in the shareholder reports for retail investors and other market participants who seek to access information about funds, both directly and through information that intermediaries such as data aggregators and financial analysts provide. Providing a standardized, structured data framework could facilitate more efficient investor large-scale analysis and comparisons across funds and across time periods.

An Inline XBRL requirement will facilitate other analytical benefits, such as the ability to compare/redline specific disclosures in a shareholder report automatically against the same disclosures in other periods, and to perform targeted assessments of specific narrative disclosures within the shareholder report rather than performing such assessments on an entire unstructured document. For retail investors and other market participants, requiring funds to tag their shareholder reports in a structured data language will both increase the availability, and reduce the cost, of collecting and analyzing such information, potentially increasing transparency and mitigating the potential informational costs as compared to unstructured disclosure.

[571] Interactive Data to Improve Financial Reporting, Securities Act Release No. 9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)] as corrected by Securities Act Release No. 9002A (Apr. 1, 2009) [74 FR 15666 (Apr. 7, 2009)]; Interactive Data for Mutual Fund Risk/Return Summary, Investment Company Act Release No. 28617 (Feb. 11, 2009) [74 FR 7748] (Feb. 19, 2009)]).

[572] Inline XBRL Filing of Tagged Data, Investment Company Act Release No. 33139 (June 28, 2018) [83 FR 40846, 40847 (Aug. 16, 2018)]. Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. *Id.* at 40851.

[573] *See* Investment Company Reporting Modernization Final Rules, *supra* footnote 9; *see also* Amendments to the Timing Requirements for Filing Reports on Form N–PORT, Investment Company Act Release No. 33384 (Feb. 27, 2019) [84 FR 7980 (Mar. 6, 2019)]. Money market funds must report portfolio information on Form N–MFP. *See* MMF Release, *supra* footnote 346.

[574] *See* Proposing Release, *supra* footnote 8, at sections III.E.8. and III.E.9; *see also* Proposing Release, *supra* footnote 8, at section II.B.2.B (requesting comment on whether the funds should be required to submit interactive data files to the Commission using XBRL containing their expense examples in fund annual reports).

[575] *See, e.g.,* Better Markets Comment Letter; Broadridge Comment Letter; Consumer Federation of America II Comment Letter; Morningstar Comment Letter; Comment Letter of XBRL US (Jan. 4, 2021) (''XBRL US Comment Letter'').

[576] *See, e.g.,* Better Markets Comment Letter; Consumer Federation of America II Comment Letter; Morningstar Comment Letter; XBRL US Comment Letter.

[577] Broadridge Comment Letter.

[578] Morningstar Comment Letter.

[579] *See, e.g.,* Broadridge Comment Letter, Morningstar Comment Letter, and XBRL US Comment Letter. *But see* Abdullah Comment Letter (suggesting that the Commission make Inline XBRL tagged data available in a more user-friendly format, and stating that the Commission's existing tagged data filings on EDGAR are difficult to use).

[580] *See, e.g.,* ICI Comment Letter (in the context of its discussion of the proposed delivery upon request requirements for Form N–CSR, stating that the ICI believes ''much of information in Form N–CSR is of little or no interest to shareholders (*e.g.,* audit fees paid, Sarbanes-Oxley certifications, etc.)).''

Further, for filers, Inline XBRL can enhance the efficiency of review, yield time and costs savings, and potentially enhance the quality of data compared to other machine-readable standards, as certain errors would be easier to correct because the data is also human readable.

This aspect of our final rules is in keeping with the Commission's ongoing efforts to implement reporting and disclosure reforms that take advantage of the benefits of advanced technology to modernize the fund reporting and disclosure regime and, among other things, to help investors and other market participants better assess different funds. The use of Inline XBRL to tag the streamlined shareholder reports also furthers the Commission's goal of making information more readily accessible and user-friendly in an electronic format to retail investors as well as promoting investor engagement online.

I. Technical and Conforming Amendments

We are adopting the proposed technical amendments to Form N–1A.[581] Specifically, the Commission proposed to update the current SAI requirement to provide the age and length of service for a fund's officers and directors to allow funds to instead disclose for each officer and director the birth year and the year their service began.[582] The Commission also proposed a similar instruction for the length of service for portfolio managers that must be disclosed in the prospectus to permit a fund to disclose the year the portfolio manager's service began.[583] The Commission stated that permitting a fund to use a static date rather than updating this information annually will reduce a burden on funds, while providing investors equivalent information, and we continue to believe this. The Commission also has observed that some funds already disclose each officer's and director's year of birth and the date the services of the officers, directors and portfolio managers began. No commenters addressed these proposed amendments, and we are adopting them as proposed.[584]

We are also adopting conforming edits to rule 30a–2 under the Investment Company Act to reflect numbering revisions to Form N–CSR are a result of the final rules we are adopting.

J. Compliance Date

We are adopting a transition period after the effective date of the amendments as proposed in order to allow funds adequate time to adjust their shareholder report disclosure and transmission practices, as the final rules will require. We received comments on this aspect of the proposal and after consideration of commenters' views, we continue to believe the 18-month transition period provides an appropriate amount of time for funds to comply with the new framework.

Certain commenters requested that we instead adopt a 24-month transition period to allow funds additional time to adjust their practices.[585] We continue to believe that the transition period we are adopting strikes the appropriate balance between allowing funds time to adjust their practices and allowing investors and shareholders to benefit from the new disclosure framework. We believe an 18-month transition period is adequate for these purposes. The transition period we are adopting is generally consistent with the transition periods associated with other disclosure- or advertising-based amendments the Commission has recently adopted.[586]

A summary of the transition periods for the various aspects of the framework follows.

- *Shareholder reports and related requirements.* All shareholder reports for funds registered on Form N–1A will have to comply with Item 27A of Form N–1A if they are transmitted to shareholders 18 months or more after the effective date. These funds also will have to comply with the amendments to rule 30e–1 and Form N–CSR no later than 18 months after the effective date by, among other things, meeting the website availability requirements for the new Form N–CSR items. Funds' registration statements and post-effective amendments to registration statements filed 18 months or more after the effective date that are required to include an appropriate broad-based securities market index must include an index that is consistent with the final rules' new definition of a ''broad-based'' index.
- *Rule 30e–3 amendments.* The amendments to the scope of rule 30e–3 are effective 18 months after the effective date in order to provide time for funds relying on rule 30e–3 to transition to the proposed disclosure framework.
- *Amended advertising rules.* There will be a transition period of 18 months after the effective date for investment company advertisements to comply with the amendments to rules 482, 433, and 34b–1. We have not provided an additional compliance period for the amendments to rule 156 after the amended rule is effective.
- *Inline XBRL data tagging.* There will be a transition period of 18 months after the effective date for funds to comply with the Inline XBRL data tagging amendments to rule 405 of Regulation S–T, Form N–1A, and Form N–CSR.
- *Technical amendments.* Funds' registration statements and post-effective amendments to registration statements filed following the effective date must reflect the requirements of Item 5(b) and 17(a)(1) of amended Form N–1A.

III. Other Matters

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these rules as a ''major rule'' as defined by 5 U.S.C. 804(2). If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

IV. Economic Analysis

A. Introduction

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Section 3(f) of the Exchange Act, section 2(b) of the Securities Act, and section 2(c) of the Investment Company Act state that when the Commission is engaging in rulemaking under such

[581] In addition to the proposed technical amendments discussed in this section, the Commission proposed certain conforming amendments relating to proposed rule 498B and the proposed amendments to funds' prospectus fee disclosure. *See* Proposing Release, *supra* footnote 8, at paragraphs accompanying nn.693–695. As we are not adopting these aspects of the proposal at this time, we are also not adopting the related proposed conforming amendments. The Commission also proposed conforming amendments to withdraw previously-adopted amendments to Form N–1A and rule 498 that became effective on January 1, 2021. Those proposed amendments related to rule 30e–3 legends that were required to be included in funds' summary and statutory prospectuses. We are not adopting those amendments because the requirement to include such legends in funds' summary and statutory prospectuses expired on January 1, 2022. *See* Rule 30e–3 Adopting Release, *supra* footnote 20, at amendatory instructions 5, 6, and 16.

[582] *See* Proposing Release, *supra* footnote 8; *see also* Item 17(a)(1) of proposed Form N–1A.

[583] *See* Proposing Release, *supra* footnote 8; *see also* Item 5(b) of proposed Form N–1A.

[584] *See* Item 17(a)(1) and Item 5(b) of amended Form N–1A.

[585] *See, e.g.,* ICI Comment Letter; Vanguard Comment Letter; Federated Hermes Comment Letter; John Hancock Comment Letter.

[586] *See, e.g.,* Derivatives Adopting Release, *supra* footnote 282, at section II.L; Good Faith Determinations of Fair Value, Investment Company Act Release No. 34128 (Dec. 3, 2020) [86 FR 748 (Feb. 10, 2021)], at section II.G.

titles and is required to consider or determine whether the action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, the Commission shall consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. Further, section 23(a)(2) of the Exchange Act requires the Commission to consider, among other matters, the impact such rules will have on competition and states that the Commission shall not adopt any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The following analysis considers, in detail, the potential economic effects that may result from the rule amendments, including the benefits and costs to investors and other market participants as well as the broader implications of the rule amendments for efficiency, competition, and capital formation.

The rule amendments will affect the provision of information by funds to investors. Under the rule amendments, funds will provide shareholders with more concise and visually engaging shareholder reports that highlight key information, including fund expenses, performance, and holdings.[587] The rule amendments will also affect how funds transmit shareholder reports. Under the rule amendments, funds registered on Form N–1A will not be permitted to send notices regarding the online availability of shareholder reports in reliance on rule 30e–3. Instead, funds will transmit the more concise shareholder report in full.[588] Through a layered disclosure approach, additional information that may be of more relevance to market professionals and some shareholders, such as fund financial statements, will be available online and delivered in paper or electronic format upon request, free of charge.[589] Accessibility-related requirements will help ensure that investors can easily reach and navigate the information that appears online.[590]

Also under the rule amendments, funds will prepare and transmit to each shareholder a separate shareholder report for each fund series and class. Many mutual funds and ETFs are organized as single registrants with several series (sometimes referred to as portfolios).[591] Currently, fund registrants may prepare a single shareholder report that covers multiple series and this contributes to the length and complexity of shareholder reports.[592] This rule amendment will enable shareholders to receive information that is more concise and salient using a consistent approach across funds in requiring that funds transmit a report to each investor that contains only information on the series and class of the fund in which the shareholder is invested.[593]

In addition, under the rule amendments, funds will tag their shareholder reports in the structured (*i.e.,* machine-readable) Inline XBRL data language. Currently, funds are not required to tag their shareholder reports in Inline XBRL or any other structured data language. This rule amendment will facilitate analysis of the disclosures included on funds' streamlined shareholder reports, providing informational benefits to investors.

Finally, to improve fee and expense information that is available to investors more generally, we are adopting amendments to the investment company advertising rules to require that investors receive more transparent and consistent fee and expense information.[594] These rule amendments will affect all registered investment company and BDC advertisements and are not limited to open-end fund advertisements.

We expect the rule amendments to benefit investors by permitting them to make more efficient use of their time and attention, and by facilitating informed investment decisions and choice among financial products. We expect some funds to experience lower costs of delivering materials under the rule amendments, which may be passed on to investors as a further benefit of the rule amendments, while other funds may experience increased costs of delivery and other aspects of the rule amendments, which will be a cost of the rule amendments to the shareholders of those funds.

B. Economic Baseline and Affected Parties

1. Descriptive Industry Statistics

The rule amendments will affect funds and investors who receive fund disclosure and fund advertising under the current rules.[595] Approximately 108.1 million individuals own shares of registered investment companies, representing 62.2 million (or 47.9%) of U.S. households. An estimated 102.6 million individuals own shares of mutual funds in particular, representing 59.0 million (or 45%) of U.S. households.[596] Changes in technology have led to changes in how investors obtain and use information from shareholder reports.[597] In 2021, approximately 95% of households owning mutual funds had internet access, while only 68% of these households had internet access in 2000.[598]

Based on staff analysis of Form N–CEN filings, we estimate that, as of December 2021, the number of funds that will be affected by the amendments to the disclosure and transmission requirements for shareholder reports is 11,840, including 9,396 mutual funds and 2,444 ETFs that register on Form N–1A.[599] As of December 2021, the 9,396 mutual funds (*i.e.,* series, or classes of series, of trusts registered on Form N–1A) had average total net assets of $26.3 trillion and 29,046 authorized share classes.[600] The 2,444 ETFs (*i.e.,* series,

[587] *See supra* sections II.A and II.B.

[588] *See supra* section II.E.

[589] *See supra* section II.C.

[590] *See supra* section II.C.2.b.

[591] *See* Proposing Release, *supra* footnote 8, at nn.108–110 and accompanying text (noting that each series has its own investment objectives, policies and restrictions and that the Federal securities laws and Commission rules often treat each series as a separate fund).

[592] *See id.* at text accompanying n.111 (providing examples of how the current presentation of multiple series within a single shareholder report may confuse shareholders); *see also supra* text accompanying footnotes 8 and 29.

[593] *See* Instruction 4 to Item 27A(a) of amended Form N–1A. As proposed, fund registrants could continue to include multiple shareholder reports that cover different series in a single Form N–CSR report filed on EDGAR under the final rules.

[594] *See supra* section II.G.

[595] The vast majority (88%) of mutual fund shares are estimated to be held through retail accounts. *See* 2022 ICI Fact Book, *supra* footnote 37. Based on staff analysis of Form 13F data, the mean institutional holding is estimated to be approximately 50% for exchange-traded funds. We calculated ''institutional holding'' as the sum of shares held by institutions (as reported on Form 13F filings) divided by shares outstanding (as reported in CRSP). Year-end 2021 Form 13F filings were used to estimate institutional ownership. We note that there are long-standing questions around the reliability of data obtained from Form 13F filings.] *See* Covered Investment Fund Research Reports, Investment Company Act Release No. 33311 (Nov. 30, 2018) [83 FR 64180, 64199 (Dec. 13, 2018), at n.223; *see also* Reporting Threshold for Institutional Investment Managers, Exchange Act Release No. 89290 (July 10, 2020) [85 FR 46016] (July 31, 2020), at n.63 (proposing certain technical amendments to Form 13F that the Commission believes may reduce filer mistakes and data inaccuracies).

[596] *See* 2022 ICI Fact Book, *supra* footnote 37. Among mutual fund-owning households, 66% held funds outside employer-sponsored retirement accounts, with 19% owning funds only outside such plans.

[597] *See supra* section I.A.1.

[598] *See* 2022 ICI Fact Book, *supra* footnote 37, at Figure 7.16.

[599] These estimates are based on staff analysis of Form N–CEN filings received through December 2021.

[600] The estimate of the number of authorized share classes is based on responses to Form N–CEN,

or classes of series, of trusts registered on Form N–1A) had average total net assets of $5.1 trillion and 2,577 authorized share classes as of December 2021.

The scope of the final advertising rule amendments is broader than that of the other elements of this rulemaking. The advertising rule amendments will apply to other registered investment companies and to BDCs, in addition to mutual funds and ETFs. As of December 2021, there were 1,338 other registered investment companies, including 656 registered closed-end funds, 20 funds that could file registration statements or amendments to registration statements on Form N–3, and 662 UITs.[601] As of December 2021, there were 103 BDCs with $209.4 billion in total assets.[602] The rule amendments will also affect financial intermediaries and other third parties that are involved in the distribution and use of shareholder reports and fund advertising. We understand that most fund investors are not direct shareholders of record, but instead engage an investment professional and hold their fund investments as beneficial owners through accounts with intermediaries such as broker-dealers.[603] As a result, intermediaries commonly distribute fund materials to beneficial owners, including shareholder reports and advertising materials. In the case of broker-dealers, self-regulatory organization (''SRO'') rules provide that broker-dealer member firms are required to distribute annual reports, as well as ''interim reports,'' to beneficial owners on behalf of issuers, so long as an issuer (*i.e.,* the fund) provides satisfactory assurance that the broker-dealer will be reimbursed for expenses (as defined in SRO rules) incurred by the broker-dealer for distributing the materials.[604] Based on information reported on Form BD, we estimate that 1,366 broker-dealers sell mutual funds' shares and may deliver shareholder reports and advertising materials that will be affected by the rule amendments.

2. Fund Shareholder Reports

Funds provide information about their past operations and activities to investors through periodic shareholder reports. Funds transmit shareholder reports to ongoing shareholders twice-annually. Thus, shareholders receive both a semi-annual and an annual report from the fund. Shareholder reports provide information about a fund's performance (in the case of an annual report), expenses, holdings, and other matters (*e.g.,* statements about the fund's liquidity management program, the basis for approval of an investment advisory contract, and the availability of additional information about the fund). The reports also include financial statements, which include audited financials (in the case of the annual report).

Many mutual funds and ETFs are organized as single registrants with several series (sometimes referred to as portfolios).[605] Currently, fund registrants may prepare a single shareholder report that covers multiple series, as well as multiple share classes of each series.

Shareholder reports can be quite long.[606] The average length of a shareholder report exceeds 100 pages.[607] Based on staff analysis of shareholder reports available on fund websites, we estimate that the average annual report length is 134 pages and the average semi-annual report length is 116 pages, or 87% of the average length of a fund's annual report.[608]

Funds must transmit the shareholder reports to shareholders and file them on EDGAR using Form N–CSR. In addition, funds often provide their shareholder reports on their websites. Commission rules affect the extent to which funds publish shareholder reports on public websites. All funds that rely on rule 498 to deliver summary prospectuses are required to make their shareholder reports available online at the website address identified at the beginning of the summary prospectus. We estimate that approximately 90% of funds currently provide their shareholder reports on their websites.[609] Under the current rules, the information in the Edgar N–CSR filings that is not in the fund shareholder report need not be delivered or otherwise made available to investors online.

Our staff has observed varying practices with respect to the use of benchmarks by funds in disclosing their performance in the prospectus and annual reports. Some funds include the performance of a single benchmark index in their performance disclosure, while others include the performance of more than one benchmark index in this disclosure.[610] Index providers generally charge fees for the right to present the performance of benchmark indexes (the required appropriate broad-based securities market index, as well as any additional index(es) a fund chooses to include) in their disclosure documents. These fees are not generally disclosed to the public.[611]

Item C.2.a., and includes non-ETF share classes of multi-class ETFs. We estimate that the average number of classes per open-end fund series was 2.68 with a median of 2 and a maximum of 23 classes per series, based on staff analysis of March 2022 Form N–CEN data, with two thirds (66%) of the open-end fund series having more than one class.

[601] We estimate that all registered investment companies would be affected by the advertising rule amendments. Based on staff analysis of Form N–CEN filings received as of December 2021, this includes all mutual funds and ETFs; 656 closed-end funds registered on Form N–2, with average total net assets of $356 billion; 20 variable annuity separate accounts registered as management investment companies on Form N–3, with total assets of $277.6 billion; and 662 UITs, with total assets of $2.7 trillion (including 5 ETFs that are registered as UITs with total assets of $724 billion).

[602] To estimate the number of BDCs, we use data from Form 10–K and Form 10–Q filings as of the fourth quarter of 2021. Our estimates exclude BDCs that may be delinquent, wholly owned subsidiaries of other BDCs, and BDCs in master-feeder structures.

[603] By one estimate, approximately 75% of accounts are held through brokers and other intermediaries, excluding positions held in employer-sponsored plans. *See* Rule 30e–3 Adopting Release, *supra* footnote 20, at n.275.

[604] See, *e.g.,* NYSE rule 465(2); NYSE rules 451(a)(1) and (2); FINRA rule 2251(e)(1)(C); FINRA rule 2251.01.

[605] *See supra* section I.A.1.

[606] *See supra* section I.A.2.

[607] Under the current rules, funds are required to include the full financial statements and financial highlights in the shareholder report. This contributes to shareholder reports' length and limits the ability of funds to provide concise mailings. *See* Proposing Release, *supra* footnote 8 at n.16 and accompanying text.

[608] *See supra* footnote 34 and accompanying text.

[609] We base this estimate on the number of filings pursuant to rule 497(k) (''Summary prospectus filing requirements'') under the Investment Company Act [17 CFR 230.497(k)] filed from May 2021 to May 2022. In addition, a fund relying on rule 30e–3 is required to make its shareholder reports publicly accessible on a website. In the case of rule 30e–3, the shareholder report must be available at the website address specified in the notice the fund would send to shareholders under the rule. Funds that rely on rule 30e–3 are also required to make their complete portfolio holdings for each quarter available online. *See also* T. Rowe Price Comment Letter (expressing the view that retirement plan participants, specifically older participants, overwhelmingly prefer to engage electronically with their funds and presenting survey evidence in which the preference was held by 88 percent of Baby Boomers as well as 93 percent of Millennials) and Fidelity Comment Letter (''elements currently required (and that would continue to be required under the Proposal) are routinely available to shareholders on fund websites. Information related to performance, expenses, and graphical holdings are all updated frequently on the internet, providing more timely information to shareholders when making an investment decision'').

[610] The staff of the Office of the Investor Advocate also has observed these varying practices with respect to the use of benchmarks by funds. *See* OIAD Benchmark Study, *supra* footnote 53.

[611] Current rules do not require that funds disclose the licensing fees that they pay to index providers separately from other fund expenses. A 2021 study ''collect[s] the first data on the licensing fees between index providers and ETF sponsors by reading all ETF filings on [EDGAR]'' and found that the fees are disclosed by ETF sponsors on a voluntary basis and that only about 10% of the ETFs in the study disclose their licensing fees. The study presents a ''first analysis of ETF index

Continued

Funds are not currently required to structure their shareholder reports in Inline XBRL or any other structured, machine-readable data language. However, funds are subject to Inline XBRL tagging requirements for other Commission filings—specifically, for the risk/return summary disclosure in their prospectuses.[612]

3. Transmission of Shareholder Reports

Under Commission rules and guidance, transmission of shareholder reports occurs by paper or email, depending on the investor's expressed preference. The Commission has provided guidance permitting electronic delivery of required disclosure materials under certain circumstances.[613] Under this guidance, funds can transmit shareholder reports electronically in lieu of paper if they satisfy certain conditions relating to investor notice, access, and evidence of delivery. Funds (or intermediaries) acting consistently with this guidance typically obtain an investor's informed consent to electronic delivery to satisfy the ''evidence of delivery'' condition. Fund investors that have elected electronic delivery typically receive an email that contains a link or a notice with a link to where the materials are available online. One commenter on the proposal projected a rate of digital delivery of 80%–85% in 2023 for all mutual fund and ETF positions held in street name.[614] One commenter estimated that the vast majority (96 percent) of fund-company respondents to a survey offer e-deliver of investor materials.[615] The estimated proportion of shareholders who elect to receive fund disclosure by email has increased over time and varies among funds. By one earlier estimate provided as a comment to the Fund Investor Experience RFC, the average enrollment rate for electronic delivery was 19.35% for direct-held positions (*i.e.,* shares purchased directly through an account with the fund) and 55% for beneficial positions (*i.e.,* shares purchased through an account with an intermediary).[616] Based on a 2020 survey of fund companies, one commenter on the proposal estimated that e-delivery of shareholder reports and prospectuses to direct held accounts comprises approximately 34% of all deliveries to those accounts.[617] One commenter on the proposal estimated that 24 percent of respondents on a survey reported a positive spike in requests for e-delivery from direct-at-fund accounts since the beginning of the COVID–19.[618]

Funds are not permitted to provide electronic delivery unless the fund shareholder has requested (and thus opted into) electronic delivery.[619] Commenters on the proposal have argued that the enrollment rate for electronic delivery would be higher if funds were permitted to provide electronic delivery as the default and shareholders were permitted to opt into paper delivery on request.[620]

Starting in 2021, certain investment companies have been permitted under rule 30e–3 to send a short notice that a semi-annual or annual report is available online to shareholders instead of transmitting the shareholder report, in order to satisfy semi-annual report transmission requirements under rules 30e–1 and 30e–2.[621] For example, funds have been permitted to send a short paper notice instead of transmitting the shareholder report in paper. Rule 30e–3 does not modify the transmission method for shareholders who request receiving the reports in paper or who have elected to receive the reports in electronic form.[622] Funds that intended to rely on rule 30e–3 before 2022 were required to provide a notice to shareholders of this intent in their prospectuses and shareholder reports. Under rule 30e–3, what shareholders see when they access a shareholder report does not vary in substance or length according to whether they access the report online or by requesting a paper copy.[623] The funds that rely on rule 30e–3 to transmit their shareholder reports are required to make their shareholder reports available online (at the website address specified in the notice the fund sends to shareholders under the rule) and to make their complete portfolio holdings for each quarter available online. Transmission of the report is generally less costly for funds that choose to rely on rule 30e–3 than if they had not chosen to rely on rule 30e–3 because printing and mailing costs are lower for a short paper notice as opposed to a full-length report.[624] However, to implement the requirements of rule 30e–3, funds incurred costs to make adjustments to their shareholder report transmission practices.[625] We estimate that 89% percent of funds registered on Form N–1A currently rely on rule 30e–3, and that the same percentage of UITs

licensing fees,'' and despite ''this limitation and possible selection bias,'' estimates that index-tracking ETFs pay an index fee equal to one-third of their management fee and that ''estimated licensing fees were 4.4 bps of an ETF's AUM on average'' in 2019 (and, for example, State Street ''pays 3 bps of the ETF assets plus a flat fee of $600,000 per year to S&P Dow Jones'' and Invesco QQQ Trust paying ''9 bps . . . in the form of licensing fees to the index provider (NASDAQ), who owns the underlying NASDAQ–100 index''). *See* An, et al., *Index Providers: Whales Behind the Scenes of ETFs* (Jan. 28, 2022), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855836.* Because the funds in the study are equity funds and may include a disproportionate share of index-tracking funds (as the examples indicate), the licensing fee data it includes may not be representative of licensing fees that funds pay solely for purposes of performance disclosure. *See* Index Industry Association Comment Letter (stating that index providers typically charge proportionately low fees for the merely comparative uses of an index, such as publication of charts and graphs in a fund's shareholder reports).

[612] *See* General Instruction C.3.(g) to current and amended Form N–1A; rule 405(b)(2)(i) of Regulation S–T (17 CFR 232.405(b)(2)(i)).

[613] *See* Electronic Media 1995 Release, *supra* footnote 27 (providing Commission views on the use of electronic media to deliver information to investors, with a focus on electronic delivery of prospectuses, annual reports, and proxy solicitation materials); Electronic Media 1996 Release, *supra* footnote 27; Electronic Media 2000 Release, *supra* footnote 27.

[614] *See* Broadridge Comment Letter. This commenter estimated that 73% of the shareholder reports and prospectuses were digital at the time of the comment (inclusive of householding, e-delivery, and account consolidations) and that this was more than twice the level of digital delivery found among direct-held accounts.

[615] *See* ICI Comment Letter.

[616] *See* Proposing Release, *supra* footnote 8, at n.734 and accompanying text.

[617] *See* Broadridge Comment Letter (citing evidence from a 2020 ICI survey).

[618] *See* ICI Comment Letter.

[619] With respect to the transmission mechanism, fund shareholders currently receive shareholder reports in paper or electronically, depending on their preferences. *See supra* section I.A.1.

[620] *See, e.g.,* T. Rowe Price Comment Letter (inertia around shareholder requests for e-delivery when the default for electronic delivery is opt-in rather than opt-out) and Broadridge Comment Letter (''If the delivery default were switched from paper to electronic, we estimate that mutual fund companies would save between $30 million and $40 million by transmitting streamlined shareholder reports and annual summary prospectuses electronically, instead of by mail. This estimate assumes that a change in the default would raise the level of digital delivery from between 80% and 85% in 2023 to 90% instead (for all mutual fund and ETF positions held in street name).''); *see also* ICI Comment Letter; SIFMA Comment Letter; Charles Schwab Comment Letter; Federated Hermes Comment Letter; TIAA Comment Letter.

[621] For a discussion of UITs that currently may rely on rule 30e–3 to satisfy their shareholder report transmission requirements under rule 30e–2, and how the final rules address these UITs, *see supra* footnotes 495–499 and accompanying paragraphs.

[622] Rule 30e–3 requires the fund to deliver shareholder reports in paper to those shareholders who expressly opt in to paper delivery. For funds that rely on rule 30e–3, other shareholders who have not consented to electronic delivery receive a link to the shareholder report in a paper notice from the fund.

[623] *See supra* section IV.B.2.

[624] Shareholders of funds that rely on rule 30e–3 may request paper copies of the full report, which has the effect of reducing the cost savings to funds associated with rule 30e–3.

[625] *See, e.g.,* Vanguard Comment Letter; ICI Comment Letter; John Hancock Comment Letter *see also supra* footnote 479 and related text (discussing costs for funds to convert their current shareholder report transmission processes to comply with rule 30e–3).

currently rely on rule 30e–3 to satisfy shareholder report transmission obligations under rule 30e–2.[626]

A summary of the transmission scenarios that would occur without the rule amendments (in the baseline), along with typical transmission outcomes for semi-annual and annual shareholder reports (''reports''), appears in table 6 below. As indicated, the baseline transmission outcomes vary across funds and shareholders, according to their expressed preferences and circumstances:

TABLE 6—TRANSMISSION SCENARIOS FOR SHAREHOLDER REPORTS WITHOUT THE RULE AMENDMENTS (BASELINE)

Fund relies on rule 30e–3?	*Shareholder requests electronic delivery*	*Shareholder requests paper delivery*	*Shareholder makes no delivery election*
Yes	Email (with link to 100+ page report)	Paper mail (100+ page) report	Paper notice (1 page) with link to 100+ page report
No	Email (with link to 100+ page report)	N/A[1]	Paper mail (100+ page) report

Notes: 1. ''N/A'' reflects the fact that, if a fund does not rely on rule 30e–3, paper delivery of the full (semi-annual or annual) shareholder report is the default delivery mechanism. If the fund relies on rule 30e–3, however, delivery of a paper notice with a link to the online location of the shareholder report becomes the default, as the table indicates. As discussed above, we estimate that the report lengths for the semi-annual and annual reports are 116 and 134 pages, respectively.

4. Investor Use of Fund Disclosure

The Proposing Release discussed evidence that was available to the Commission at the time of the proposal showing that investors generally prefer concise, layered disclosure and supporting the conclusion that investors view funds' existing shareholder reports as too lengthy and complicated.[627] The feedback on investors' preferences that the Commission received in response to the Proposing Release was consistent with the Commission's understanding of investors' preferences that the Proposing Release described regarding the length, format, and content of the proposed streamlined annual report.[628]

5. Fund Advertisements

The Commission rules on investment company advertising apply to all registered investment companies and BDCs. These rules largely focus on how certain types of funds present their performance in advertisements. While investment company advertising rules limit how a fund may present its performance to promote comparability and prevent potentially misleading advertisements, these rules generally do not similarly prescribe the presentation of fees and expenses in advertisements.[629] This focus reflects the Commission's understanding that investors use information about performance to choose among funds and concern that, absent requirements to standardize how funds present performance in advertisements, investors may be susceptible to basing their investment decisions on information that is inaccurate or creates an inaccurate impression of the fund's performance.[630]

In addition to the Commission rules regarding the presentation of performance information, FINRA rules that govern member broker-dealers' communications with the public provide an important source of advertising requirements and guidance for investment companies.[631] As discussed in section I.A.4, FINRA rule 2210(d)(5), the specific requirements of the FINRA rules for the presentation of fee and expense information in non-money market open-end funds' communications with the public, do not apply to closed-end fund or BDC advertisements or to non-money market fund open-end investment company advertisements to institutional investors. FINRA rules do not apply to investment company advertisements where a broker-dealer is not involved in disseminating the particular communication.[632]

C. Benefits and Costs

Where possible, we have attempted to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the rule amendments. We are providing both a qualitative assessment and quantified estimates of the potential economic effects of the rule amendments where feasible. As explained in more detail below, because we do not have, and in certain cases do not believe we can reasonably obtain, reliable quantitative evidence to use as a basis for our analysis, we are unable to quantify certain economic effects. For example, because the rule amendments will provide fund investors with more tailored, concise disclosures than they currently receive, it is possible that readership of the fund disclosures will

[626] Our estimate reflects the percent of open-end funds registered on Form N–1A that included a statement notifying investors of their intent to rely on rule 30e–3 in annual or semi-annual reports filed on Form N–CSR in 2020. *See also* Proposing Release, *supra* footnote 8 at n.738 (stating that, in a June 2019 survey, the ICI found that 97 percent of member funds responding to the survey planned to rely on rule 30e–3). We apply this same percentage to estimate the number of UITs that rely on rule 30e–3 to satisfy their obligations under rule 30e–2, as the Commission has historically taken a similar estimation approach, and we have no reason to believe this estimation approach is inappropriate. *See* Rule 30e–3 Adopting Release, *supra* footnote 20, at section III.

[627] *See supra* section I.A.3 (Evidence of Investor Preferences Regarding Fund Disclosure). This feedback generally showed that retail investors prefer concise, layered disclosure and feel overwhelmed by the volume of information they currently receive, with some individual investors specifically addressing and supporting a more concise, summary shareholder report. *See* Proposing Release, *supra* footnote 8, at nn.28–30 and accompanying text.

[628] *See supra* footnotes 47–51 and accompanying text; *see also, e.g.,* CFA Institute Comment Letter; Fidelity Comment Letter; Mutual Fund Directors Forum Comment Letter; SIFMA Comment Letter; TIAA Comment Letter; FS Investments Comment Letter.

[629] *See supra* section I.A.4.

[630] *See* Mutual Fund Sales Literature Interpretive Rule, Investment Company Act Release No. 10915 (Oct. 26, 1979) [44 FR 64070 (Nov. 6, 1979)] (''Rule 156 Adopting Release''); Investment Company Sales Literature Interpretive Rule, Investment Company Act Release No. 10621 (Mar. 8, 1979) [44 FR 16935 (Mar. 20, 1979)], at paragraph accompanying n.5.

[631] FINRA rule 2210, ''Communications with the Public,'' includes both general and specific standards for communications with the public, and requires non-money market fund open-end funds' communications with the public that include performance information to include certain specified fee and expense information, as discussed in *supra* sections I.A.4 and II.G.1. *See also, e.g.,* Fidelity Comment Letter and ICI Comment Letter (discussing the scope of FINRA rule 2210).

[632] *See* paragraphs accompanying *supra* footnotes 530, 539–542.

increase. We do not have reliable quantitative estimates of the extent to which the use of more concise disclosure will enhance readership compared to the baseline scenario in which funds continue to transmit the materials that investors now receive.

Similarly, changes in the format and content of the annual and semi-annual reports under the rule amendments may reduce the amount of time and effort that shareholders allocate to monitoring their fund investments and making portfolio decisions (that is, whether to buy additional shares, or to continue to hold or sell a fund investment). We also do not have reliable quantitative estimates of the extent to which the transmission of the more concise, tailored reports will reduce the amount of time and effort investors allocate to monitoring their fund investments or to making portfolio decisions, or the value of that time and effort to investors. Nor do we have such estimates for the baseline conditions, without the rule amendments. The Commission did not receive public comment regarding the specific estimates of benefits and costs in the Proposing Release, although it did receive comments suggesting that certain aspects of the shareholder report requirements would be more burdensome than the Commission estimated at the proposal. We have adjusted the proposal's annual estimated costs to reflect such comments and changes from the proposal (for example, requiring class-specific shareholder reports), as well as to reflect updated estimates of the number of affected funds and the wage rates.[633] In addition, in those circumstances in which we do not have quantitative evidence, we have provided a qualitative analysis of the economic impact of the rule amendments relative to the baseline environment. Our inability to quantify these costs, benefits, or other effects does not imply these effects are less significant from an economic perspective.

1. Broad Economic Considerations

The economic analysis of the benefits and costs of the rule amendments is based on broad economic considerations regarding fund disclosure and fund advertising.

a. Fund Disclosure

The rule amendments will provide fund shareholders with more concise and more readily usable disclosures that are consistent across funds and that highlight information that is key to retail shareholders for the purpose of monitoring fund investments and informing portfolio decisions, while providing layered access to other information that shareholders now receive that may be of more relevance to market professionals and some fund shareholders.

Under the new approach, funds will provide shareholders with annual and semi-annual reports that highlight key information, including fund expenses, performance, and portfolio holdings in a format that is consistent across funds.[634] Funds will tag their shareholder reports in Inline XBRL and will have flexibility to make electronic versions of their shareholder reports more user-friendly and interactive. Funds will be required to make other information, such as the schedule of investments and other financial statement elements, available to shareholders online and to deliver the information free of charge in paper or electronically upon request in addition to providing it on a semi-annual basis with the Commission on Form N–CSR. Shareholder reports will contain cover page legends directing investors to websites containing this information. Accessibility-related requirements that we are adopting will help ensure that investors can easily reach and navigate the information that appears online. The new shareholder report will replace the notice that some shareholders currently receive from open-end funds in reliance on rule 30e–3.

In addition, under the new approach, funds will be required to provide a separate shareholder report for each series and share class of a fund. This is a change from the proposal, which would not have required a separate shareholder report for each share class of a fund. The effect is to provide shareholders with information that is more concise and narrowly tailored to their specific investments in the funds and to reduce the complexity of the disclosures that shareholders receive. For example, shareholders who hold more than one class of a fund will receive separate reports, instead of a single report, although the reports may be provided in a single mailing or delivery under the final rule.[635]

Under the rule amendments, funds also will provide investors with disclosures that better enable them to make performance comparisons among funds and between funds and other investments.

The economic analysis of the effects of these amendments is based in part on the comments and evidence the Commission received in response to the Proposing Release and the Fund Investor Experience RFC and the investor testing and surveys that are discussed in section I.A.3 above.[636] It is also based in part on the evidence from academic studies that have documented potential benefits of providing more concise and tailored disclosure.

Recent academic studies have produced findings and conclusions that are consistent with our belief that investors will benefit from more concise and tailored disclosures under the rule amendments. Some of these studies were the subject of comments on the Proposing Release. For example, one commenter identified a study consistent with the conclusion that ''high-fee funds attempt to obfuscate their high fees.'' [637] Another commenter identified a study of fee disclosure reforms in Australia concluding that ''salient fee disclosure has a material impact on investors' decisions.'' [638]

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[633] *See infra* footnote 724*; see also infra* section V for details on the adjustments to the cost estimates that we have made though adjustments to the PRA cost estimates, which are expressed as changes from the estimates in the Proposing Release in the estimated burden hours (and related costs) associated with relevant rule amendments.

[634] As discussed in section II.A, *supra,* the final rule amendments incorporate certain changes from the proposal to address commenters' feedback. These changes are discussed in more detail above. However, the final rules' layered disclosure approach mirrors the layered disclosure approach that the proposal incorporated, and (except as noted in section II.D *supra*) the content items that would appear in the proposed shareholder report cover the same topics as the contents that the final rules require.

[635] *See* Instruction 12 to Item 27A(a) of amended Form N–1A.

[636] For more discussion of the comments on the Proposing Release, *see supra* sections II.A–II.G.

[637] *See* Wharton Comment Letter (citing paper by Ed deHaan, et. al, *Obfuscation in Mutual Funds* 72 J. Acct. & Econ. No. 2/3 (Mar. 13, 2020, revised Jul. 12, 2021), *available at https://ssrn.com/abstract=3540215; see also* Bruce I. Carlin, *Strategic Price Complexity in Retail Financial Markets,* 91 J. Fin. Econ., 278–287 (March 2009).

[638] *See* Comment Letter of Kingsley Fong (Jan. 4, 2021) (citing abstract by Roger M. Edelen et. al., *Disclosure, Inattention and Conflicted Remuneration in Financial Advice* (citation omitted)). Edelen et al. present a study of the effects a 2012 Australian law known as the Future of Financial Advice (FOFA). They find that the law's required disclosure of an ''advice fee'' in a stand-alone Fee Disclosure Statement led to an ''economically and statistically significant'' change in client (investor) behavior. In addition, they find evidence of further changes in investor behavior from the law's requirement that investors must ''opt into'' financial advice. The evidence of an effect of an opt-in requirement, even in the presence of the Fee Disclosure Statement, indicates that investors can benefit from reforms that go beyond enhanced salience to address investor inattention. (''Our evidence confirms the literature view that salient fee disclosure has a material impact on investors' decisions. But our evidence on the FOFA opt-in requirement is more novel and arguably more important.'')

In the proposal, we considered studies that applied to certain elements of the rule amendments in addition to studies that applied more broadly to the framing of our analysis of the economic impact. Some of the research that we considered identified characteristics that may increase the effectiveness of a disclosure document to consumers, as discussed below.[639]

Specifically, the research we considered suggests that, because individuals can exhibit limited ability to absorb and understand the implications of the disclosed information, for example due to limited attention or low level of financial sophistication,[640] more targeted and simpler disclosures may be more effective in communicating information to investors than more complex disclosures. Specifically, the academic studies that we considered suggest that costs, such as from increased investor confusion or reduced understanding of the key elements of the disclosure, are likely to increase as disclosure documents become longer, more complex, or more reliant on narrative text.[641] Consistent with such findings, other empirical evidence suggests that disclosure simplification may benefit consumers of disclosed information.[642] This research supports the notion that shorter and more focused disclosures could be more effective at increasing investor understanding than longer, more complex disclosures. For example, a concise shareholder report could more effectively communicate information to investors than current shareholder reports.

Another characteristic of effective disclosures documented in the academic research that we considered is disclosure salience.[643] Salience detection is a key feature of human cognition allowing individuals to focus their limited time and attention on a subset of the available information and causing them to place relatively greater weight on this information in their decision-making processes.[644] Within the context of disclosures, information disclosed more saliently, such as information presented in bold text, or at the top of a page, tends to be more effective in attracting attention than less saliently disclosed information, such as information presented in a footnote. Some research finds that more visible disclosure signals are associated with stronger stakeholder responses to these signals.[645] Moreover, some research suggests that increasing signal salience is particularly helpful to consumers with lower education levels and lower financial literacy.[646] There is also empirical evidence that visualization improves individual perception of information.[647] For example, one experimental study shows that tabular reports lead to better decision making and graphical reports lead to faster decision making (when people are subject to time constraints).[648] Overall, these findings suggest that problems such as limited attention may be alleviated if key information in shareholder reports is emphasized, is reported closer to the beginning of the document, and is visualized in some manner (*e.g.,* tables, graphs, bullet lists). However, it is also important to note that, given a choice, registrants may opt to emphasize elements of the disclosure that are most beneficial to themselves rather than investors, while deemphasizing elements of the disclosure that they regard as least beneficial.

There is also a trade-off between allowing more disclosure flexibility and ensuring more disclosure comparability (*e.g.,* through a more consistent approach to disclosure across funds). Greater disclosure flexibility potentially allows the disclosure to reflect more relevant information, as disclosure providers can tailor the information to firms' own specific circumstances. Although disclosure flexibility allows for disclosure of more decision-relevant information, it also allows registrants to emphasize information that is most beneficial to themselves rather than investors, while deemphasizing information that is least beneficial to the registrants.[649] Economic incentives to present one's operations and performance in a better light may drive funds to deemphasize information that may be relevant to retail investors. Moreover, although the requirement for a consistent approach across funds can make it harder to tailor disclosed information to a fund's specific circumstances, it also comes with some benefits. For example, people are generally able to make more coherent and rational decisions when they have comparative information that allows them to assess relevant trade-offs.[650]

In addition, studies have found that changes in the structure or format of disclosure can improve (or decrease) investor understanding of the disclosures being made. Every disclosure document not only presents new information to retail investors but also provides a particular structure or format for this information that affects investors' evaluation of the

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[639] *See* George Loewenstein et al., *Disclosure: Psychology Changes Everything,* Harv. Pub. L. (working paper no. 13–30, Aug. 18, 2013) (''Loewenstein Paper''), *available at https://ssrn.com/abstract=2312708* (retrieved from SSRN Elsevier database). The paper provides a survey of the literature regarding disclosure regulation.

[640] *See, e.g.,* David Hirshleifer & Siew Hong Teoh, *Limited Attention, Information Disclosure, and Financial Reporting* (Sept. 2003) (''Hirshleifer & Teoh Study'') *available at https://ssrn.com/abstract=334940;* Lauren E. Willis, *Decision Making and the Limits of Disclosure: The Problem of Predatory Lending: Price,* 65 MD. L. REV. 707 (2006).

[641] *See, e.g.,* Samuel B. Bonsall & Brian P. Miller, *The Impact of Narrative Disclosure Readability on Bond Ratings and the Cost of Debt,* 22 Rev. Acct. Stud. 608 (2017) and Alistair Lawrence, *Individual Investors and Financial Disclosure,* 56 J. ACCT. & ECON. 130 (2013).

[642] *See, e.g.,* Sumit Agarwal, *et al., Regulating Consumer Financial Products: Evidence from Credit Cards* Nat'l Bureau of Econ. Rsch (working paper no. 19484, Sept. 28, 2013, last revised Mar. 28, 2022), *available at https://ssrn.com/abstract=2332556* (finding that a series of requirements in the Credit Card Accountability Responsibility and Disclosure Act (CARD Act), including several provisions designed to promote simplified disclosure, have produced substantial decreases in both over-limit fees and late fees, thus saving U.S. credit card users $12.6 billion annually).

[643] *See, e.g.,* Pedro Bordalo *et al., Salience,* 14 Ann. Rev. Econ. (2022) (reviewing the growing economics literature on salience and economic behavior).

[644] *See* Daniel Kahneman, *Thinking Fast And Slow,* Farrar, Straus and Giroux, 1st ed. (Apr. 2, 2013) and Shelley E. Taylor, *Social Cognition: From Brains To Culture* SAGE Publ'n Ltd., 3d ed. (Mar. 15, 2017).

[645] *See* Hirshleifer & Teoh Study, *supra* footnote 640.

[646] *See, e.g.,* Victor Stango & Jonathan Zinman, *Limited and Varying Consumer Attention: Evidence from Shocks to the Salience of Bank Overdraft Fees,* 27 REV. FIN. STUD. 990 (2014).

[647] *See* John Hattie, *Visible Learning: A Synthesis Of Over 800 Meta-Analyses Relating To Achievement,* Routledge; 1st ed. (Nov. 18, 2008).

[648] *See* Izak Benbasat & Albert Dexter, *An Investigation of the Effectiveness of Color and Graphical Information Presentation Under Varying Time Constraints,* 10 Mgmt. Info. Sys. Q. no. 1 (Mar. 1986).

[649] This flexibility, however, operates within a statutory and regulatory framework that addresses materially misleading statements and omissions by issuers. *See, e.g.,* section 10(b) of the Exchange Act; rule 10b–5 under the Exchange Act; *see also supra* footnote 543 and accompanying text (discussing FINRA rules that require all member communications to be fair and balanced and not misleading).

[650] *See, e.g.,* Jeffrey R. Kling, et al., *Comparison Friction: Experimental Evidence from Medicare Drug Plans,* 127 Q. J. Econ. 199 (2012) (finding that in a randomized field experiment, in which some senior citizens choosing between Medicare drug plans that were randomly selected to receive a letter with personalized, standardized, comparative cost information (''the intervention group'') while another group (''the comparison group'') received a general letter referring them to the Medicare website, plan switching was 28% in the intervention group, but only 17% in the comparison group, and the intervention caused an average decline in predicted consumer cost of about $100 a year among letter recipients); Christopher K. Hsee, et al., *Preference Reversals Between Joint and Separate Evaluations of Options: A Review and Theoretical Analysis,* 125 Psychol. Bull. 576 (1999).

disclosure.[651] This ''framing effect'' could lead investors to draw different conclusions depending on how information is presented. Because of such framing effects, it is important that the structure of a disclosure document supports the intended purpose of the disclosure.

b. Advertising

The final advertising rule amendments will enhance the transparency of the fees and expenses that are associated with investing in a particular investment company.[652] To obtain this improvement in transparency, the amendments will require that presentations of fund fees and expenses in registered investment company and BDC advertisements and sales literature be consistent with the relevant prospectus fee table presentations and be reasonably current.[653] These rule amendments will require that funds use a consistent approach to the presentation of the fee and expense information that appears in fund advertisements and add to the pertinent factors that should be considered to determine whether or not a particular representation is materially misleading.[654]

Regarding the presentation of fees and expenses, the amendments to rules 482, 433 and 34b–1 will require that investment company advertisements providing fee or expense figures for the investment company include certain standardized fee and expense figures, and that these figures must adhere to certain prominence and timeliness requirements.[655] The amendments will apply to advertisements of any registered investment company or BDC. The amendments will require that the fee and expense presentations prominently include timely information about a fund's maximum sales load (or any other nonrecurring fee) and gross total annual expenses, computed in a manner that is consistent with relevant prospectus requirements. Further, if an advertisement includes an investment company's total annual expenses net of a fee waiver or expense reimbursement amount in addition to the required gross annual expense figure, the advertisement will need to disclose the expected termination date of that arrangement.

Regarding materially misleading statements, the amendments to rule 156 will add to the pertinent factors that should be considered to determine whether or not a particular representation is materially misleading. The rule amendments provide that, when considering whether a particular statement involving a material fact is or might be misleading, weight should be given to representations about the fees or expenses associated with an investment in the fund that could be misleading because of statements or omissions involving a material fact.

By enhancing the transparency and salience of the fees and expenses in fund advertising materials, we expect that the rule amendments will reduce investor search costs and reduce the risk of a mismatch between investor preferences and investor choice while also introducing certain new costs in the production and delivery of fund advertising to investors. Costs could include costs to funds (and their intermediaries) of assessing compliance with the new requirements we are adopting in relation to the requirements of FINRA's rules on communications with the public, to the extent that a communication could be subject to both sets of requirements.[656] These effects may vary across investors and funds according to the conditions of their participation in the market for financial products.[657]

The economic analysis of the effects of the final advertising rule amendments is based in part on the observation that, in recent years, many funds have reduced the fees they charge to investors and on comments that the Commission received on the Proposing Release.[658] The staff has observed that some funds have highlighted low fees in their advertising materials as a salient factor for investors to consider when choosing among funds.[659] For example, we understand that some funds are advertised as ''zero expense'' or ''no expense'' funds based on the information included in their prospectus fee tables, potentially leading investors to believe these funds impose no costs even though the adviser or an affiliate may be collecting fees or incurring money otherwise from the investor's fund investment. As a result, investors may be more likely today to consider a fund's fees when making their investment choices than they were when the Commission last updated the investment company advertising rules.[660] Also as a result, funds may face increased incentives to understate or obscure fees in their advertising materials. This is distinct from the incentives of funds to incur marketing costs to influence the likelihood of being observed by investors.[661]

Advertising can benefit investors by reducing information asymmetries and thereby lowering investor search costs, leading to more efficient matches between investor preferences and choices. The effectiveness of advertising in lowering search costs and improving match efficiency depends on the accuracy of the information and on the investor's ability to understand the information.[662] Indeed, it is possible for

[651] *See* Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice,* 211 Sci. 453 (1981).

[652] As detailed in section I.A.4 *supra,* investment company advertisements typically are prospectuses for purposes of the Securities Act. Rule 34b–1 under the Investment Company Act is designed to help prevent performance claims in supplemental sales literature from being misleading and to promote comparability and uniformity among supplemental sales literature and covered advertisements.

[653] *See supra* section II.G.1 (discussion of final rule amendments regarding fund advertisements).

[654] *See supra* sections II.G.1–II.G.2.

[655] *See supra* section II.G.1.

[656] *See also infra* text following footnote 666.

[657] For example, we understand that the registration statement forms for variable insurance product separate accounts do not require that total annual expense figures be presented, and therefore, we understand that total annual expense figures are not presented in these separate accounts' prospectuses. *See supra* footnote 523 and accompanying text. The final amendments addressing the required fee and expense figures are inapplicable if an investment company does not present total annual expense figures in its prospectus, and therefore these amendments would be inapplicable to advertisements for such variable insurance contracts. *See* section II.G.1 *supra. But see supra* paragraph accompanying footnote 562 (discussing variable contract advertisements that could be materially misleading under rule 156).

[658] *See supra* section II.G for discussion of comments on the advertising rule amendments. Some commenters stated that the advertising rule amendments should help investors make more informed investment decisions by more easily comparing costs among various funds. *See* Better Markets Comment Letter; Consumer Federation of America II Comment Letter; John Hancock Comment Letter. In addition, some commenters stated that the proposed amendments were not necessary in light of FINRA rules addressing fee and expense information in retail communications. *See* Fidelity Comment Letter; ICI Comment Letter.

[659] Comments that the Commission received on the Proposing Release similarly recognized ''the trend for some funds to market their investment products based on claims of low or no fees.'' *See* CFA Institute Comment Letter; *see also* Consumer Federation of America II Comment Letter (discussing concerns that accompany funds being ''increasingly marketed on the basis of costs'').

[660] *See, e.g.,* Michael Goldstein, *Issues Facing the U.S. Money Management Industry: Presentation to SEC Asset Management Advisory Committee* (Jan. 2020), at 27–28, *available at https://www.sec.gov/files/Empirical-Research-Issues-Facing-US-MM.pdf;* Ben Phillips, *Remarks and Discussion: U.S. Securities and Exchange Commission, Asset Management Advisory Committee* (Jan. 14, 2020), at 2, 8, and 15, *available at https://www.sec.gov/files/BenPhillips-CaseyQuirk-Deloitte.pdf.*

[661] *See, e.g.,* Nikolai Roussanov, et al., *Marketing Mutual Funds,* Nat'l Bureau Econ. Rsch.(working paper no. 25056, Jan. 3 2018, last revised Sep. 11, 2020), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3093438* (''Roussanov, et al.'') (developing and estimating a structural model of the effects of mutual fund marketing with costly investor search).

[662] For example, Edelen et al. (2021) study a regulatory change for financial advisers that

investors to be made worse off by fund marketing efforts. For example, a positive relation between funds' marketing efforts and investor flows (cash investment from investors) is well-documented among mutual funds.[663] In that context, the adviser to the fund bears marketing expenses as part of its total operating cost, and fund shareholders are found to bear some of that cost in the form of fund expenses—unless shareholders react by switching to a similar fund that has lower expenses. One study observed that funds charge higher fees to cover the marketing cost as they engage in an ''arms race'' for similar pools of investors.[664] Some of this cost is passed on to investors according to their abilities to distinguish among funds and thus ultimately their costs of searching across funds. The authors suggest that as fees increase, investors with a high search cost would be more likely to be made worse off by the increase in fees and related marketing expenditures than those with low search costs.[665] This is because the investors with the high search costs would be more likely to match with asset managers of poor ability, and because the higher fees would reduce returns.

The effects of the advertising rule amendments will be relatively greater for advertising materials that are not currently covered by the FINRA advertising rules. Specifically, as discussed in section II.G.1.a, the objectives of some of the FINRA advertising rules are similar to those of the rule amendments, even while the scope of the FINRA advertising rules is narrower than that of the final advertising rule amendments.[666] To the extent that a fund's advertisements that include fee and expense information already reflect the requirements of FINRA rule 2210(d)(5), which includes specific requirements for the presentation of fee and expense information, the beneficial effects of the advertising rule amendments will be relatively smaller than for the advertising materials of a fund that is not currently subject to the FINRA rule's requirements (*e.g.,* because it is not an open-end fund, because it is intended for non-retail audiences, or because a broker-dealer is not involved in disseminating the particular communication).

2. New Approach for Funds' Shareholder Reports

The following sections discuss the potential costs and benefits of the rule amendments' approach to funds' shareholder reports. Table 7 provides an overview comparison of the shareholder content and transmission outcomes with the rule amendments versus without the rule amendments.

TABLE 7—SHAREHOLDER REPORT CONTENT AND TRANSMISSION WITH AND WITHOUT THE RULE AMENDMENTS

Fund relies on rule 30e–3?	Shareholder requests electronic delivery	Fund relies on rule 30e–3, and Shareholder requests paper delivery	Shareholder makes no delivery election
Yes	With rule: Email with link to streamlined 3–4 page report. Without rule: Email with link to 100+ page report.	With rule: Paper mail with streamlined 3–4 page report.. Without rule: paper mail with 100+ page report. (Printing and mailing cost decrease and processing fee decrease).	With rule: Paper mail with streamlined 3–4 page report. Without rule: Paper mail with 1 page notice including link to 100+ page online report. (Printing and mailing cost increase and processing fee decrease).[667]
No	With rule: Email with link to streamlined 3–4 page report. Without rule: email with link to 100+ page report.	N/A	With rule: Paper mail with streamlined 3–4 page report. Without rule: Paper mail with 100+ page report. (Printing and mailing cost decrease).

Notes: Page lengths are illustrative and likely to vary across funds.[668] The costs and benefits of the required modification to shareholder report transmission under the rule amendments will vary across the baseline transmission scenarios—*i.e.,* the scenario that would be in place at the time of the rule implementation if the current rules had remained in place—that are shown in the table. Some of the costs and benefits will be transitional and others will be sustained. Each will depend on factors beyond what appears in the table, as discussed below. In addition, under the rule amendments, shareholders may request delivery of paper or electronic copies of the documents that funds will be required to make available online. As discussed above, we estimate that the report lengths for the semi-annual and annual reports are 116 and 134 pages, respectively, and that the streamlined shareholder report is a trifold (3–4 pages).

required salient annual fee disclosure and biennial opt-in (unresponsive clients default out of advice), and banned conflicted remuneration. They conclude that requiring salient disclosure has a material impact on investors' decisions and that other factors including investor attention play a role in determining investor choice. *See supra* footnote 638.

[663] *See, e.g.,* Prem Jain & Joanna Wu, *Truth in Mutual Fund Advertising: Evidence on Future Performance and Fund Flows,* 2 J. FIN 937 (Apr. 2000) (finding that advertising in funds increases flows (comparing advertised funds with non-advertised funds closest in returns and with the same investment objective)); Steven Gallaher, Ron Kaniel & Laura T. Starks, *Madison Avenue Meets Wall Street: Mutual Fund Families, Competition and Advertising* (Jan. 31, 2006), *available at https://ssrn.com/abstract=879775;* Ron Kaniel & Robert Parham, *WSJ Category Kings—The Impact of Media Attention on Consumer and Mutual Fund Investment,* Simon Bus. Sch. (working paper no. FR–15–07, Nov. 18, 2015), *available at https://ssrn.com/abstract=2556627* (finding a significant and positive impact of advertising expenditures and the resulting media prominence of the funds on fund inflows).

[664] *See* Roussanov, et al., *supra* footnote 661.

[665] *See id.* (''Heterogeneity in search costs faced by investors captures the wide variation in financial sophistication (and perhaps even cognitive ability) required to consider and analyze the different investment alternatives.'').

[666] *See, e.g.,* Fidelity Comment Letter; ICI Comment Letter. Commenters questioned the need for the proposed amendments in light of FINRA's current requirements that address communications with the public, as discussed in section *II.G.1.a.*

[667] According to one comment on the Proposing Release, the mailing of streamlined shareholder reports instead of rule 30e–3 notices would provide estimated savings to fund companies of between $15 million and $20 million in calendar year 2023, primarily from the elimination of the regulated incremental notice & access fee with a slight offset in higher print costs for streamlined shareholder reports (assuming 80% of streamlined shareholder reports will be distributed digitally). According to this comment, streamlined shareholder reports would not entail regulated incremental notice & access fees for fund report notice & access mailings. *See* Broadridge Comment Letter (''Delivery Cost Savings of Streamlined Shareholder Reports: Mailing streamlined shareholder reports instead of notices would provide modest additional savings to fund companies. We estimate the extra savings would be between $15 million and $20 million in calendar year 2023. Much of the added savings is from reduced processing fees.'').

[668] *See supra* footnote 34 and accompanying text (discussing the average page length of shareholder report based on staff analysis).

a. Benefits

The benefits of the rule amendments include benefits from the introduction of the new streamlined shareholder reports, savings in the cost of transmission, and benefits from the Form N–CSR amendments.

i. Streamlined Shareholder Reports

The transmission of more concise and visually engaging shareholder reports by funds under the approach of the rule amendments is likely to reduce the investor effort required to monitor existing fund investments and to make subsequent portfolio decisions.[669] Key information provided in a concise, user-friendly presentation could allow investors to understand information about a fund's operations and activities and to compare information across products more easily or efficiently. This may lead investors to make decisions that better align with their investment goals.[670]

The amendments to the definition of the broad-based index will require that funds provide investors with more reliable and consistent access to information about the performance of the fund relative to the performance of a broad market portfolio of securities than under current rules. Some investors in funds that do not currently benchmark their performance against an index that would qualify as an ''appropriate broad-based securities market index'' under the definition in the final rules will gain access to information about the fund's performance against an index that represents that overall applicable debt or equity markets under the rule amendments.[671] Funds that currently present performance relative to an index that would not qualify as an ''appropriate broad-based securities market index'' under the definition in the final rules may continue to provide this information to investors alongside information about the performance of the broad-based index.[672] All investors will therefore have, and may benefit from, reliable access to information about the performance of the fund relative to the required broad-based benchmark, either as the only benchmark or in addition to another benchmark, under the rule amendment.[673] To the extent that some investors already have easy access to information about the performance of commonly recognized indexes of broad market performance, from sources other than fund disclosure documents, some commenters suggested that those investors may not realize benefits from the new definition.[674]

Some commenters on the proposal suggested that the required benchmarking of fund performance against a broad-based index could affect the level of confusion that investors may face when interpreting fund performance disclosures.[675] The potential effects may vary across funds and investors. The views of commenters on the effect on investor confusion were mixed. For some investors, the required use of a broad-based index as a benchmark will reduce the level of confusion by requiring consistency across funds in the reporting of fund performance relative to a benchmark. Currently, confusion can arise from the practice of some funds using a broad-based index as a benchmark and others using another, narrower index. This creates the potential for investors to confuse the two benchmarks when comparing the performance reports of different funds. The rule amendment would reduce this source of potential confusion. However, for investors who prefer or anticipate fund disclosure relative to a narrower benchmark, the rule amendments would introduce potential for confusing the broad-based index for a narrow index by requiring funds to disclose performance relative to the broad-based index. The requirement to report performance relative to both broad and narrow indexes for those funds that prefer to retain the narrow index will limit the potential for such confusion, which will decline over time as investors gain experience with the new disclosure framework.

By limiting each shareholder report to information about a single series and share class of a fund, the rule amendments will further reduce the complexity of the shareholder report by focusing it more narrowly on the shareholder's fund investment.[676] Shareholders will then be able to identify information more quickly the series and class in which they invest, instead of having to find their fund in a long report that covers multiple series, funds and classes.

The rule amendments require funds to distill certain key information—such as expenses, performance, and holdings—and use graphs, tables, and other more visually engaging presentations using the approach of the rule amendments in their shareholder reports.[677] By

[669] Many commenters have expressed support for the new approach to funds' shareholder reports with layered disclosure, as detailed in section I.A.3. *See, e.g.,* Mutual Fund Directors Forum Letter; SIFMA Comment Letter; CFA Institute Comment Letter; Fidelity Comment Letter.

[670] Research suggests that individuals are generally able to make more efficient decisions when they have comparative information that allows them to assess relevant trade-offs. *See, e.g., supra* footnote 650.

[671] This release discusses the anticipated benefits of this disclosure approach above. *See supra* paragraph accompanying footnotes 221–226.

[672] As under current rules, funds will be required to present their performance relative to the performance of an ''appropriate broad-based securities market index'' under the final rules. The amended instructions to the form requirements, however, include a new definition of ''broad-based'' index, which defines this term as ''an index that represents the overall applicable domestic or international equity or debt markets, as appropriate.'' As under current rules, the final rules the Commission is adopting continue to allow funds to present performance relative to narrower, tailored indexes. *See supra* section II.A.2. Commenters indicated that the two types of benchmark disclosures benefit investors in different ways. First, by including a broad-based index, consistent with the new definition, funds will provide investors with easier access to information about the fund performance relative to the performance of the entire market. *See, e.g.,* NASAA Comment Letter (regarding the purpose of this benchmarking as ensuring investors of a simple readily-accessible window into the performance of a specific investment fund against the broader performance of the securities markets). *See also* Mary and Tom Comment Letter and Ubiquity Comment Letter. Second, by including information about performance relative to a second, narrower benchmark, funds may provide investors with information about how the fund performance tracks that of funds with similar strategies. *See, e.g.,* Capital Group Comment Letter (helpful for investors to compare with a blend of indexes representing the typical asset allocation of the fund is more appropriate for certain types of funds that invest in multiple asset classes); Dimensional Comment Letter (a more precise comparison allows investors to better evaluate how effectively the fund has pursued its stated strategy); ICI Comment Letter (providing examples of the use of appropriate tailored benchmarks for setting advisers' performance-based fees and for other purposes that include evaluating the performance of a technology fund *as a technology fund*); John Hancock Comment Letter (fund performance comparisons to indexes are commonly used during the annual review of advisory agreements performance by a fund's board of trustees); Morningstar Comment Letter (the appropriate benchmark needs to be matched to the investment strategy of the fund, such as a value fund should be matched to an index of value stocks); T. Rowe Price Comment Letter (the appropriate index for evaluating the performance of a technology fund as a technology fund is not a broad-based index); TIAA Comment Letter (the most relevant comparison for investors is the index—with a similar investment strategy or level of exposure—against which the fund (and its board) benchmarks for performance purposes).

[673] The individuals who participated in the OIAD Benchmark Study ''overwhelming expressed a preference for a graph with both narrow and broad benchmarks.'' This study focused on benchmarks for actively managed equity funds. *See supra* footnote 53.

[674] *See, e.g.,* ICI Comment Letter (performance information for commonly recognized indexes may be free to investors and easily accessible through different widely available channels (*e.g.,* online news or financial websites).

[675] *See, e.g.,* Capital Group Comment Letter, ICI Comment Letter, SIFMA Comment Letter, T. Rowe Price Comment Letter.

[676] *See supra* sections II.A.1.a–b.

[677] *See supra* footnotes 647 and 648 and accompanying text (discussing studies suggesting that visualization improves an individual's perception of information).

providing conditions under which funds have flexibility in using technology to provide interactive or user-friendly features in electronic versions of their shareholder reports, the rule amendments may provide shareholders with access to information that is more tailored to their individual needs and circumstances (*e.g.,* performance or expense information based on their individual investment amounts), which may facilitate better monitoring of fund investments or more informed investment decisions.

There is evidence to suggest that consumers benefit from disclosures that highlight key information.[678] Some studies have found that the benefit occurs from the ability of investors to spend less time making their investment decisions. For example, one study finds that the use of summary prospectuses helps investors spend less time and effort to make investment decisions.[679] This research is consistent with the 2012 Financial Literacy Study, which showed that at least certain investors favor a layered approach to disclosure with the use, wherever possible, of tailored disclosures containing key information about an investment product or service.[680] We understand that investors may prefer a layered approach to save time in reaching similar investment decisions, although the enhanced salience of the information that investors receive through the layered approach also could lead to better decisions. [681]

Further, investors allocate their attention selectively,[682] and the sheer volume of disclosure that investors receive about funds may discourage investors from reading the materials that are currently delivered to them. For example, in connection with the development of the summary prospectus, the observations of a 2008 telephone survey conducted on behalf of the Commission with respect to mutual fund statutory prospectuses are consistent with the view that the volume of disclosure may discourage investors from reading disclosures.[683] That survey observed that many mutual fund investors did not read statutory prospectuses because they are long, complicated, and hard to understand. Responses to investor surveys, based on the feedback fliers addressing the Proposing Release, and on the Fund Investor Experience RFC, similarly suggest that shareholders may be more likely to read more concise shareholder reports.[684] If the rule amendments increase readership of fund shareholder reports, they could improve the efficiency of portfolio allocations made on the basis of disclosed information for shareholders who otherwise would not have read the fund disclosures.

Other information that shareholders currently receive under the baseline, including financial statements and financial highlights, will be available online and delivered upon request to those shareholders who are interested in more detailed information.[685] As a result, shareholders who use this information to monitor their fund investments or inform portfolio decisions could continue to access and use this information.

By tailoring the information that funds provide to meet the needs of retail shareholders, the rule amendments could facilitate better or more efficient monitoring of fund investments and overall investment decision-making.[686] The magnitude of this effect will depend on the extent to which investors review the disclosures directly as a basis for their choices.

The requirement that funds tag their shareholder reports in Inline XBRL, a structured (*i.e.,* machine-readable) data language, could provide further informational benefits to fund shareholders by making the reports more readily available for aggregation, comparison, filtering, and other analysis. Retail investors may derive particular benefit from the assembly and analysis of fund disclosures by third parties (such as financial analysts and data aggregators) that make the disclosures more informative and understandable.[687] For example, XBRL requirements for public operating company financial statement disclosures have been observed to improve investor understanding of the disclosed information.[688] While those observations are specific to operating company financial statement

[678] *See, e.g., supra* footnote 642; *see also* Robert Clark, et al., *Can Simple Informational Nudges Increase Employee Participation in a 401(k) Plan?,* Nat'l Bureau Econ. Rsch. (working paper no. 19591, Oct. 2013), *available at https://www.nber.org/papers/w19591.* The authors find that a flyer with simplified information about an employer's 401(k) plan, and about the value of contributions compounding over a career, had a significant effect on participation rates.

[679] *See* John Beshears, et al., *How Does Simplified Disclosure Affect Individuals' Mutual Fund Choices?* Nat'l Bureau Econ. Rsch. (working paper no. 14859, Apr. 2009, revised Dec. 2011), *available at https://www.nber.org/papers/w14859.*

[680] *See* SEC Staff, *Study Regarding Financial Literacy Among Investors: As Required by Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Aug. 2012) (''Financial Literacy Study''), *available at https://www.sec.gov/files/917-financial-literacy-study-part1.pdf.*

[681] The evidence from academic studies of whether and how salient disclosure affects investor choice is mixed. For example, Edelen et al, *supra* footnote 638, reports (in a study finding that ''increased salience helps nudge clients toward better decisions'') that the effects of salience on investor attention are limited relative to other factors (including client literacy, gender and behavioral biases); Beshears, et al., *supra* footnote 679, conclude (in a study finding that investors spend less time making investment decisions when they are able to use summary prospectuses) that the use of the summary prospectus does not affect investors' portfolio investor choices (in particular, ''On the positive side, the Summary Prospectus reduces the amount of time spent on the investment decision without adversely affecting portfolio quality. On the negative side, the Summary Prospectus does not change, let alone improve, portfolio choices. Hence, simpler disclosure does not appear to be a useful channel for making mutual fund investors more sophisticated . . . .'').

[682] *See, e.g.,* Loewenstein Paper, *supra* footnote 639; Hirshleifer and Teoh Study, *supra* footnote 640.

[683] Prior to the Commission's 2009 adoption of mutual fund summary prospectus rules, the Commission engaged a consultant to conduct focus group interviews and a telephone survey concerning investors' views and opinions about various disclosure documents filed by companies, including mutual funds. During this process, investors participating in focus groups were asked questions about a hypothetical summary prospectus. Investors participating in the telephone survey were asked questions relating to several disclosure documents, including mutual fund prospectuses. *See* Abt SRBI, Inc., *Final Report: Focus Groups on a Summary Mutual Fund Prospectus* (May 2008), *available at https://www.sec.gov/comments/s7-28-07/s72807-142.pdf.*

[684] *See, e.g., supra* section I.A.3 (describing survey findings presented in Broadridge Comment Letter); *see also, e.g.,* Proposing Release, *supra* footnote 7, at n.44 (discussing: (1) the results of a quantitative survey related to fund disclosure in which approximately 39% of investors said they would be more likely to look at or review a summary format of a fund's annual and semi-annual reports, as well as (2) an investor survey of a summary shareholder report prototype, in which more than 90% of participants indicated that they would be more likely to read the summary prototype than a full-length shareholder report).

[685] *See supra* section II.C.

[686] *See infra* section IV.D regarding effects on competition.

[687] *See infra* footnote 689. Retail investors in operating companies have been observed to rely heavily on analyst interpretation of financial information. *See, e.g.,* Alastair Lawrence, James P. Ryans, & Estelle Y. Sun, *Investor Demand for Sell-Side Research,* 92 Acct. Rev. 2 (2017).

[688] *See, e.g.,* Jacqueline L. Birt, Kala Muthusamy & Poonam Bir, *XBRL and the Qualitative Characteristics of Useful Financial Information,* 30 Account. Res. J. 107 (2017) *available at https://econpapers.repec.org/RePEc:eme:arjpps:arj-11-2014-0105* (finding ''financial information presented with XBRL tagging is significantly more relevant, understandable and comparable to non-professional investors''); Steven F. Cahan, et al., *The roles of XBRL and Processed XBRL in 10–K Readability,* J. Bus. Fin. Acct. (2021), *available at https://ssrn.com/abstract=4030204* (finding 10–K file size reduces readability before XBRL's adoption since 2012, but increases readability after XBRL adoption, indicating ''more XBRL data improves users' understanding of the financial statements''); Jap Efendi, et. al., *Does the XBRL Reporting Format Provide Incremental Information Value? A Study Using XBRL Disclosures During the Voluntary Filing Program,* 52 ABACUS 259 (2016), *available at https://ssrn.com/abstract=2795334* (retrieved from SSRN Elsevier database) (finding XBRL filings have larger relative informational value than HTML filings).

disclosures (including footnotes), and not to disclosures from funds outside the financial statements, they indicate that the proposed Inline XBRL requirements could provide fund investors with increased insight into key fund information (*e.g.,* expenses, performance, and holdings) at specific funds and across funds, asset managers, and time periods.[689]

In addition, the rule amendments that exclude funds from rule 30e–3 will have the effect of enabling some fund shareholders to receive key information to monitor their fund investments or inform their investment decisions more directly as compared to the baseline. This may lead to more efficient allocation of capital across funds and other investments.[690]

The magnitude of these effects of the rule amendments will generally depend on how many shareholders rely on the reports that are the subject of the rule amendments to monitor their funds.[691] In addition, it will depend on whether and how the current users of the reports change the way they monitor their investments in response to the tailored disclosures and, for other shareholders, how many will choose to rely on the reports under the rule amendments.

ii. Transmission Cost Savings

The rule amendments will reduce some of the costs to funds of providing information to shareholders. As the owners of the fund assets, shareholders could benefit from this cost reduction in proportion to their holdings of those assets. The amount of the cost savings will vary across funds, depending on the expressed preferences of the fund and its shareholders for paper versus electronic delivery consistent with the Commission guidance on electronic delivery and, with respect to shareholder reports, rule 30e–3 notices. The scenarios where transmission costs may decline under the rule amendments, relative to the baseline scenario, are indicated in Table 7 and discussed below. The rule amendments will reduce the cost of transmitting a shareholder report by a larger per-fund amount for funds that do not rely on rule 30e–3 (transmit the full report) than for funds that rely on rule 30e–3 (transmit a notice).[692] Thus, we consider separately the transmission-cost savings from the rule amendments for funds under each of these two baseline transmission scenarios.

For funds that do not rely on rule 30e–3, the rule amendments will reduce transmission costs by replacing the cost of transmitting current annual and semi-annual reports with the lower cost of transmitting the concise reports to those shareholders who do not request e–delivery. The transmission cost includes the cost of printing, mailing and processing fees. We estimate that funds will transmit annual and semi-annual reports as trifold mailings (3–4 pages) under the rule amendments instead of the annual reports that are approximately 134 pages on average and the semi-annual reports that are approximately 116 pages on average. One commenter on the Fund Investor Experience RFC estimated that transmitting a concise shareholder report instead of the current shareholder reports will reduce the per unit cost of transmission from $0.50 to $0.33 annually, which is a reduction of $0.17 per unit or 34 percent.[693] The commenter's per unit transmission cost estimates assume that 3 out of 10 fund shareholders receive a shareholder report by mail.[694] We understand that these costs may or may not be representative of the costs for all funds. For example, the commenter's estimates are based on costs for delivering shareholder reports to shareholders who hold their shares in beneficial accounts and may not reflect any differences in costs for directly held accounts.[695] Nevertheless, we believe that the estimate of 34 percent is a reasonable estimate of the likely decline in the per-unit cost of delivering the concise report for funds that do not rely on rule 30e–3 under the rule amendments.[696] Thus, for these funds, we estimate that the rule amendments will reduce their current shareholder report transmission costs by 34 percent on average, resulting in an average annual cost savings of approximately $7,040 per fund that does not rely on rule 30e–3.[697]

For funds that rely on rule 30e–3, the rule amendments will reduce costs because it will be less costly to mail and process the concise report than the rule 30e–3 notice. Specifically, while the cost of printing the concise report may be greater than the cost of printing the notice (see table 7), the processing fees will be lower.[698] The overall cost of transmission, which includes the costs of printing, mailing, and processing fees, will likely be lower for the concise report.[699] One commenter estimated that transmitting (delivering) a concise shareholder report instead of a rule 30e–

[689] Investors could benefit from their direct use of the Inline XBRL data, or through indirect use of the data (*i.e.,* through information intermediaries such as financial media, data aggregators, academic researchers, et al.). *See, e.g.,* Nina Trentmann, *Companies Adjust Earnings for Covid-19 Costs, But Are They Still a One-Time Expense?* Wall St. J. (Sept. 24, 2020) (citing an XBRL research software provider as a source for the analysis described in the article), *available at https://www.wsj.com/articles/companies-adjust-earnings-for-covid-19-costs-but-are-they-still-a-one-time-expense-11600939813* (retrieved from Factiva database); *Bloomberg Lists BSE XBRL Data,* XBRL.org (2018); Rani Hoitash & Udi Hoitash, *Measuring Accounting Reporting Complexity With XBRL.* 93 Account. Rev. 259–287 (2018).

[690] *See supra* section I.A.3 (discussing investor preferences for concise, layered disclosure).

[691] *See infra* section IV.D regarding effects on capital formation.

[692] *But see supra* section II.E.1 and footnotes 477–480 and accompanying text (noting that some commenters stated that funds already have incurred the costs of complying with current rule 30e–3, but because they could only rely on the rule starting in 2021, they have not fully realized the perceived benefits of the rule. Additionally funds stated that they will incur costs associated with undoing the processes that they have undergone to convert their current shareholder report transmission processes, which commenters noted were costly. Specifically, some commenters stated that funds would need to re-implement legacy shareholder report transmission processes that were discontinued when they initially adjusted these processes in preparing to rely on rule 30e–3).

[693] *See* Proposing Release, *supra* footnote 8, at n.782.

[694] *See id.* We understand that the commenter's cost estimates are not limited to shareholder reports that are delivered by mail and, instead, the cost per unit averages the costs of different transmission mechanisms (including paper and electronic delivery). *See, e.g.,* Comment Letter of Broadridge Financial Solutions, Inc. (Oct. 31, 2018) on File No. S7–13–18, *available at https://www.sec.gov/comments/s7-13-18/s71318-4593946-176328.pdf* (estimating that the average cost of paper, printing, and postage of a mailed shareholder report is $0.94).

[695] For instance, we understand that the average enrollment rate for electronic delivery may be lower for direct-held accounts, which would result in higher per unit costs for delivering current shareholder reports than the commenter provided. *See supra* footnote 616 and accompanying text. In addition, the cost of delivering shareholder reports currently, and the costs we estimate for shareholder reports under the final rules, vary by individual funds based on a number of factors. For example, we understand that printing and mailing costs vary depending on the length of the fund's shareholder reports and the number of reports it delivers by mail.

[696] $0.17 estimated reduction in shareholder report transmission costs associated with summary shareholder reports/$0.50 estimated costs of transmitting current shareholder reports = 34 percent.

[697] *See* Proposing Release, *supra* footnote 8, at n. 786 and accompanying text (noting that the Commission estimated annual printing and mailing costs (inclusive of processing fees) of $20,707.33 absent rule 30e–3 per fund). $20,707.33 × 34 percent = $7,040.49.

[698] According to one commenter on the proposal, much of the incremental savings is from reduced processing fees. Specifically, the streamlined reports would not entail regulated incremental notice & access fees for fund report notice & access mailings. *See* Broadridge Comment Letter.

[699] *See* Proposing Release, *supra* footnote 8, at n.787 (noting that one commenter on the Fund Investor Experience RFC stated that processing fees on average would be $0.20 for rule 30e–3 notices and $0.15 for concise shareholder reports); *see also* Broadridge Comment Letter (explaining that processing fees will be lower under the proposed rule amendments, thereby causing the total amount to be lower; this commenter did not provide any updated estimates of average processing fees for notices or for concise shareholder reports).

3 notice will reduce the transmission cost from $0.36 to $0.33 annually, which is a decrease of $0.03 per unit or approximately 8 percent.[700] This is assuming that 3 out of 10 fund shareholders receive a shareholder report by mail and is based on the commenter's experience processing shares held in beneficial accounts.[701] We understand that this estimate may or may not be representative of the average costs for all funds. For example, the average enrollment rate for electronic delivery may be lower for direct-held accounts, which will result in higher per unit costs than the commenter provided.[702] As another example, to the extent a fund currently shares a single, consolidated rule 30e–3 notice with other funds to notify a shareholder of the website address(es) for each fund's report, and the fund has many shareholders who are invested in those other funds, the fund may not experience the same extent of cost savings under the rule amendments.[703] This estimate also does not take into account the final rules' requirement to transmit shareholder reports that cover only one share class; to the extent that delivery costs would increase if delivery processes needed to be updated to reflect this requirement, this would increase the estimate for these funds. Nevertheless, we believe that the estimate of approximately 8 percent is a reasonable estimate of the likely average decline in the per-unit cost of transmitting the concise report rather than rule 30e–3 notices.[704] Thus, for funds that rely on rule 30e–3, we estimate that the rule amendments will reduce their current shareholder report transmission costs by approximately 8 percent, on average, and that the average annual cost savings will be approximately $1,243 per fund that relies on rule 30e–3.[705]

The total shareholder report transmission cost savings from the rule amendments will be a weighted combination of the savings in transmission costs for funds that rely on rule 30e–3 and the savings for funds that do not rely on rule 30e–3. For example, if 89 percent of funds send rule 30e–3 notices before the rule amendments are in effect, the transmission cost savings from the rule amendments will be an estimated $13.1 million from those funds.[706] In addition, if 11 percent of funds do not rely on rule 30e–3 before any rule amendments are in effect, the transmission cost savings will be $9.2 million from those funds.[707] Thus, the aggregate transmission costs savings for shareholder reports from the rule amendments will be $22.3 million.[708]

We understand that the estimated cost savings for shareholder reports will depend on factors in addition to those discussed above. These include the extent to which funds that send notices under rule 30e–3 actually experience a transmission cost savings under the rule amendments. For example, if the cost of transmitting a concise shareholder report were about the same as the cost of sending a notice under rule 30e–3, then our estimated cost savings would decline from $22.3 million to $9.2 million. As another example, if fewer than 89 percent of funds send notices under rule 30e–3, then our estimated aggregate cost savings would be greater than $22.3 million because a larger number of funds would experience the higher transmission cost savings.

iii. Amendments to the Form N–CSR Requirements

There also are benefits associated with the requirement of the rule amendments that funds continue to file on Form N–CSR certain information, such as financial statements and financial highlights, which will no longer appear in shareholder reports, relative to the alternative of not continuing to require such filings. The continued availability of this information, including on a historical basis on EDGAR, will allow investors and other market participants to continue to analyze this information over time. This historical information also may facilitate the Commission's efforts in administering the regulation of funds to benefit investors. Finally, a fund's principal executive and financial officer(s) will continue to be required to certify the financial and other information included on Form N–CSR and will continue to be subject to liability for material misstatements or omissions on Form N–CSR.

b. Costs

We expect funds and fund shareholders to incur transition costs of adapting to the new approach to funds' shareholder reports. Some shareholders also could incur ongoing costs due to a mismatch between their preferences and the design of the rule amendments. Finally, we expect costs to arise from implementing the rule amendments.

i. Transition to New Approach

Fund shareholders could experience certain transition costs under the rule amendments, and some shareholders may experience ongoing costs. Transition costs will include the costs of the inconvenience to some shareholders of adapting to the new materials and to the changes in the presentation of information. While the more concise shareholder reports required by the rule amendments will likely reduce investor comprehension costs, investors will nevertheless bear a one-time cost of the inconvenience of adjusting to the changes in the disclosures they receive. These costs are likely to be relatively lower for less experienced shareholders and relatively greater for the more seasoned shareholders who are accustomed to existing fund practices.

Shareholders in funds that rely on rule 30e–3 to send paper notices to notify shareholders that a shareholder report is available online—including investors in UITs that rely on rule 30e–3 to satisfy shareholder report transmission requirements under rule 30e–2—may experience greater transition costs than shareholders in funds that are not relying on rule 30e–3. For example, those shareholders who currently receive rule 30e–3 notices may experience some confusion when a fund begins to transmit concise shareholder reports.[709] However, shareholders

[700] *See* Proposing Release, *supra* footnote 8, at n.788 and accompanying text. We did not receive comments on this estimate in response to the proposal.

[701] *See id.*

[702] *See supra* footnote 616 and accompanying text.

[703] *See* Rule 30e–3 Adopting Release, *supra* footnote 20, at paragraph accompanying n.211 (discussing consolidated rule 30e–3 notices).

[704] $0.03 average reduction in transmission costs for summary shareholder reports/$0.36 average cost of delivering rule 30e–3 notices = 8.33 percent.

[705] Based on one estimate from a commenter on the Fund Investor Experience RFC, delivering the concise report instead of the rule 30e–3 notice would reduce the per-unit transmission cost from $0.36 to $0.33, or $0.03 per unit. *See* Proposing Release, *supra* footnote 8, at n.788 and accompanying text. This is $0.03/$0.17 or approximately 17.65 percent of estimated per-unit reduction in the shareholder report transmission costs for funds that do not rely on rule 30e–3. We thus estimate that the savings from delivering the concise report instead of the notice is 17.65 percent of the estimated $7,040.49 cost savings from delivering the concise report instead of the full report, or 17.65 percent × $7,040.49 = $1,242.65.

[706] 11,840 funds × 89 percent × $1,242.64 estimated savings in transmission costs per fund that delivers a rule 30e–3 notice = $13.1 million.

[707] 11,840 funds × 11 percent × $7,040.49 estimated savings per fund that delivers the full report (and does not rely on rule 30e–3) = $9.2 million.

[708] The weighted average savings in transmission cost per fund is (89 percent × $1,242.64) + (11 percent × $7,040.49) = $1,105.95 + $774.45 = $1,880.4. Multiplying this across all 11,840 funds yields an estimated transmission cost savings from the proposal of 11,840 funds × $1,880.4 per fund = $22.3 million. That is, the aggregate cost savings is $13.1 million + $ 9.2 million = $22.3 million.

[709] *See supra* paragraph accompanying footnotes 480–482.

receiving the annual and semi-annual reports as required under the rule amendments will be receiving tailored information more directly than through the rule 30e–3 notice, and a fund that relies on rule 30e–3 will be able to communicate to investors about these shareholder report changes.

In addition, shareholders may face initial costs in addressing any confusion that might arise during the transition to the new ''broad-based'' index definition.[710] For example, for shareholders who currently receive fund disclosures that are relative to a benchmark that is inconsistent with the final rules' definition of a ''broad-based'' index, the inclusion of a new index could cause confusion.[711] The potential for this confusion will be greatest during the transition and diminish over time as shareholders become more familiar with the newly required disclosure practice.

ii. Costs to Shareholders After the Transition

Beyond transition costs, the rule amendments will impose costs on shareholders who prefer to receive the baseline disclosure as opposed to the more concise and tailored disclosure they will receive under the rule amendments. These shareholders may experience costs associated with locating additional information online or requesting delivery of materials they will no longer automatically receive. Some shareholders may rely on information that is currently included in the annual and semi-annual report but will, under the rule amendments, be located in other documents, such as Form N–CSR or the SAI. Those shareholders will incur the cost of reviewing multiple disclosure documents to locate the information that was previously located in a single document. The significance of this cost will likely depend on several factors, including the delivery method and relative importance of each piece of information to the individual shareholder. For those shareholders who prefer to receive disclosures in paper, the rule amendments provide an option for the shareholder to request the mailing of a paper copy of the new Form N–CSR items, such as financial statements, that will no longer appear in shareholder reports.

For some shareholders, the cost of making requests for additional information will be small and therefore, the cost of losing their preferred option as the default under the rule amendments will be small. Those shareholders will likely react to the rule amendments by making the effort to request continued mailing of more-detailed semi-annual information. For those shareholders, the cost of the rule amendments will include the cost of the inconvenience from having to make the request. Shareholders who find it relatively burdensome to make a request for continued mailing, however, will be migrated over to the new approach for funds' shareholder reports and face disutility from migrating to the new tailored disclosures. By providing a mechanism for shareholders to continue to receive the more-detailed information, the rule amendments will limit this disutility. Thus, the overall cost of inconvenience or disutility to those shareholders who prefer the approach to delivery of fund's shareholder reports under the current rules to the approach that is being adopted through the rule amendments will depend on how difficult it is for shareholders to request continued mailings of more-detailed semi-annual information by funds after the rule amendments go into effect.

In addition, the requirement for funds to provide a separate shareholder report for each series and share class of a fund could limit the usefulness of the shareholder report as a means for shareholders to compare their current fund investment with alternative investments in other series and share classes of the fund.[712] Because information about multiple series and multiple share classes will no longer be consolidated in a single shareholder report, an investor wishing to use shareholder reports to compare information would need to use multiple reports to do so. Any burden associated with the use of multiple reports, however, could be mitigated through the increase in comparability among shareholder reports, as a result of the reduced complexity of shareholder reports, significantly shorter report length, and the content and formatting requirements that are designed to promote comparability across funds by causing reports to highlight the most relevant information for shareholders.

If investors do make fewer comparisons among series and/or share classes using the shareholder report, shareholders could turn to other methods for comparing their current investment with alternatives. One such method could be to use the web tools provided under the rule amendments.[713] We believe these tools could be particularly useful for investors who wish to compare series and share classes within a report, and would permit investors who wish to do so to retain the ability to make effective series and share class comparisons while receiving a separate report for each series and share class. Investors also could continue to consult prospectus disclosure for certain information about available share classes, as investors will continue to receive annual prospectus updates, and the prospectus includes class-specific information (for example, about fund fees, performance, and various classes' respective sales loads). Investors who make fewer comparisons among series and/or share classes using the shareholder report, and who do not turn to the tools or existing disclosure described in this paragraph, could be made worse off by the elimination of the single shareholder report for multiple series and share classes of funds under the rule amendments.[714]

In addition, some shareholders may incur costs of continued inconvenience from the new definition of a ''broad-based'' index.[715] Specifically, the new definition will cause a fund that currently reports its performance alongside one or more indexes that are inconsistent with the new definition (and no index that meets the new definition) instead to report its performance alongside an index that meets the required ''broad-based'' index definition, and any optional more narrowly based index(es). To the extent that any shareholders would prefer a performance presentation that solely includes one or more indexes that do not meet the new definition, these shareholders would be made worse off

[710] *See* ICI Comment Letter on the OIAD Benchmark Study.

[711] A fund that selects an index for its prospectus performance disclosure that is different from the index used for the immediately preceding period must explain the reason(s) for the selection of a different index and provide information for both the newly selected and the former index. *See* Instruction 2(c) to Item 4 of amended Form N–1A.

[712] *But see* discussion in *supra* section II.A.1.a (discussing the relative benefit of such comparisons to existing investors who use shareholder reports to monitor their investments on an ongoing basis, as opposed to prospective investors making initial investment decisions and using the fund prospectuses to inform these decisions).

[713] *See supra* section II.A.4.

[714] To assist with shareholders' and other market participants' analysis of those share classes, the rule amendments will require website posting of fund documents that will enable a shareholder or other market participants to easily obtain information about those other share classes. The interactive data requirements of the rule amendments also will enable shareholders and other market participants to conduct efficient comparisons of those share classes. *See supra* sections II.C.2 and II.H.

[715] *See* ICI Comment Letter on the OIAD Benchmark Study.

on an ongoing basis by the new definition in the final rule amendments.

Finally, fund shareholders will bear some costs of the new approach for funds' shareholder reports through the increased expenses that funds will incur to implement the rule amendments and passed through to shareholders in the form of fund expenses. We discuss these costs of implementing the rule amendments next.

iii. Expenses of Implementation

The costs of transmitting shareholder reports, including preparing the reports, and printing and mailing costs and processing fees, are generally fund expenses borne by shareholders. The cost of preparing the reports under the rule amendments will include new costs to funds, and thus fund investors, associated with the payment of licensing fees to index providers, as we explain in this section.

Some of the changes in transmission from the rule amendments will cause fund shareholders to face greater fund expenses than they otherwise would. In addition to the transition costs associated with preparing the new streamlined shareholder report, with new scope and content requirements (discussed in more detail below), the likelihood and extent of these increases will depend on the fund's baseline transmission scenario, as follows. For funds that rely on rule 30e–3, including UITs that rely on the rule to satisfy shareholder report transmission requirements under rule 30e–2, the costs of printing and mailing shareholder reports will be higher under the final rule amendments.[716] We generally believe these additional printing and mailing costs will be small. For example, funds may be able to transmit the shareholder reports under the final rule amendments as a trifold mailing, which will only incrementally increase the printing and mailing costs of a rule 30e–3 notice. One commenter on the Fund Investor Experience RFC estimated that a concise shareholder report will be approximately $0.01 more expensive to print than a rule 30e–3 notice.[717] We estimate that this cost increase will be less than the estimated decline in the cost of processing fees. Moreover, to the extent a fund shareholder invests in multiple of a registrant's funds or multiple series and/or share classes of a fund, and the funds would otherwise have used a single shareholder report, the final rule amendments may increase printing and mailing costs in some instances if certain disclosures across the funds otherwise are the same (and taking into account multiple streamlined shareholder reports under the final rules, compared to a single, potentially significantly lengthier report under the baseline). The ability to send multiple reports to a shareholder in a single mailing or transmission limits the cost of the requirement to send multiple reports rather than a single report to shareholders who hold more than one class or series of a fund. These costs are distinct from the processing fees that will be lower under the rule amendment.[718]

As a further transmission-related cost, funds will incur costs under the rule amendments in rule 30e–1 to deliver certain materials to shareholders upon request. The extent of these costs will depend on how many shareholders prefer the current transmission approach in which they receive additional shareholder report information, how many of these shareholders will prefer to request these materials directly (*e.g.,* in paper) instead of accessing them online, and whether the shareholders request paper or electronic copies of these materials. We estimate that a fund will incur an average annual printing and mailing cost of $500 to deliver the materials that will be available online and that will be required to be delivered in paper to investors upon request under the adopted amendments to rule 30e–1.[719] We are unable to quantify the number of shareholders who will request these materials or the amount of mailings that a fund will have to make each year under the final rules. However, based on our understanding of fund shareholders' internet usage, and of the prevalence of fund shareholders requesting paper documents upon request (for example, in the context of rule 498), we anticipate that very few shareholders will request these materials in paper and therefore that funds will have to make few paper mailings under the final rules.[720]

In addition to transmission-related costs, funds will experience other costs as a result of the rule amendments, including both transition costs and ongoing costs. These other costs will result from the required changes to the scope and contents of shareholder reports (including requiring separate reports for each fund series, and for each share class of a fund), new Form N–CSR items, new website availability requirements, and amendments to the scope of rule 30e–3. The compliance costs associated with the amendments to rule 30e–3 will only affect funds that rely on that rule. The other categories of compliance costs will affect all funds. These different categories of costs could be reflected in fund expenditures that funds could pass on to shareholders. The expenditures could be to procure the services of third parties for the purpose of implementing the changes to fund disclosure and shareholder report transmission practices under the rule amendments, as we understand some funds utilize outside providers for these compliance responsibilities.

Funds will experience transition costs to modify their current shareholder report disclosures. Specifically, funds will incur costs to modify their shareholder reports to comply with the scope and content requirements of the rule amendments. While the Commission did not receive comments on the proposed estimated costs associated with these amendments, it did receive comments suggesting that certain aspects of the new shareholder report requirements may be more burdensome than the Commission estimated at proposal.[721] We have adjusted our estimates to reflect these comments, as well as to reflect modifications to the proposal (for example, requiring multi-class funds to prepare separate shareholder reports for each class).

[716] As discussed below, funds that rely on rule 30e–3 or plan to rely on rule 30e–3 will also incur transition costs under the rule amendments; *see also supra* footnote 625 and accompanying text.

[717] *See* Proposing Release, *supra* footnote 8, at n.801 and accompanying text.

[718] *See, e.g.,* Broadridge Comment Letter (regarding transmission costs); *see also* John Hancock Comment Letter (suggesting that for funds not offered to retail investors, the funds would incur additional costs associated with preparing separate reports with no associated benefit).

[719] *See infra* section V.B. Because we do not have specific data regarding the cost of printing and mailing the materials that must be provided on request, or the number of requests for printed materials that funds will receive annually, for purposes of our analysis we estimate $500 per year for each fund to collectively print and mail such materials upon request. Investors could also request to receive these materials electronically. We estimate that there will be negligible external costs associated with emailing electronic copies of these documents.

[720] *See supra* footnote 37 and accompanying text.

[721] *See, e.g.,* Capital Group Comment Letter (suggesting that any additional length and complexity in reports resulting from multi-series presentations may be outweighed by the benefits to shareholders, such as target date fund shareholders, where it may be more beneficial to see multiple fund options and how each fund's asset mix will shift over time); Federated Hermes Comment Letter (suggesting that the proposal would significantly burden fund complexes without a corresponding proportional benefit to shareholders; and stating that the proposal would require significant costs to open-end funds, investment advisers, financial intermediaries, fund administrators, printers and other fund service providers to make all of the formatting, system programming, website development, and other changes that would be necessary to comply with the proposal); John Hancock Comment Letter.

We estimate that the initial aggregate costs to funds of modifying their annual report disclosure and complying with the new requirements for annual reports will be $324.8 million, and $45.1 million annually thereafter.[722] We estimate that the initial aggregate costs to funds of modifying their semi-annual report disclosure and complying with the new requirements for semi-annual reports will be $162.4 million, and $22.6 million annually thereafter.[723] Initial costs will include costs associated with designing the concise shareholder reports, amending the scope of shareholder reports to cover a single fund series and share class, implementing any operational changes needed to prepare and transmit separate shareholder reports for different fund series and share classes, revising existing disclosure practices for shareholder report items as required by the adopted rule amendments (*e.g.,* management's discussion of fund performance, including the definition of the term ''appropriate broad-based securities market index,'' as well as the expense presentation), and developing disclosures for the required new shareholder report items (*i.e.,* fund statistics and material fund changes). The ongoing costs will largely be attributable to the costs of preparing new shareholder report disclosure items under the rule amendments, since funds already incur the costs of preparing the other shareholder report disclosures today.

Funds also will incur costs from the requirement of the rule amendment to transmit a separate shareholder report for each series and share class of each fund. These costs will be borne by fund shareholders as a fund expense. The aggregate costs—which are incorporated in the estimates for complying with the new requirements for annual and semi-annual reports discussed above—will depend on the number of shareholders who currently hold shares of multiple series of a fund, and multiple share classes of a fund.[724] Because such shareholders will, under the final rules, receive a separate shareholder report for each series and share class, costs to provide shareholder reports to these shareholders will increase under the final rules compared to the baseline (under which they receive a single, combined shareholder report). We do not have information about how many fund shareholders currently hold shares of multiple series, or multiple share classes of a fund, and so we are not able to quantify these costs. Aggregate costs also will depend on the costs of updating processes of delivering fund materials to reflect that a shareholder will receive a series- and share-class-specific shareholder report. Because funds, intermediaries, and service providers already have processes in place to transmit series-specific regulatory materials (for example, summary prospectuses, which cover only one series), we believe that current processes may be modified and entirely new processes will not need to be developed. We do not, however, have the cost data associated with these current processes to be able to estimate what the incremental cost increase would be.

In addition, funds could incur costs from the final rules' changes to the definition of a ''broad-based'' index to one that represents the overall applicable domestic or international equity or debt markets, as appropriate. This aspect of the final rules would affect those funds that change the index that they include in their performance disclosure in response to this new definition. These costs will be borne by the fund shareholders. The cost per fund will include the cost of a licensing fee, paid to the index provider, and the cost of updating the disclosures. The aggregate cost of the licensing fees to fund shareholders will depend on the per-fund cost and on the number of funds that change their benchmarks in response to the final rules. In addition, funds will incur costs related to attaining any necessary board approvals and costs of updating their disclosures to reflect the change, in addition to costs of updating marketing and other materials where fund indexes are used.

We believe that the cost of the final rules' change to the definition of ''broad-based'' index could be significant for those funds that change their indexes in response to the final rules. This belief is based on comments we received on the proposal.[725] The cost is difficult to quantify. We did not provide a cost estimate in the proposal. The cost depends on the index licensing fees, which vary across funds, and on the number of funds that determine that a change in their benchmark is necessary as a result of the rule amendments. Commenters who expressed concerns about the cost of the requirement did not provide any estimates of the costs in their comments on the proposal. Some comments, however, expressed the view that the cost of the new licensing fee payments would be economically significant.[726] In

[722] The estimated initial cost for the final rules' annual reports is based on the following calculations: 72 hours × $381 (blended wage rate for compliance attorney and senior programmer) = $27,432 per fund. 11,840 funds × $27,432 = $324,794,880. The estimated annual cost for the final rules' annual reports is based on the following calculations: 10 hours × $381 (blended wage rate for compliance attorney and senior programmer) = $3,810 per fund. 11,840 funds × $3,810 = $45,110,400. *See infra* section V.B.

[723] The estimated initial cost of the final rules' semi-annual reports is based on the following calculation: 36 hours × $381 (blended wage rate for compliance attorney and senior programmer) = $13,716 per fund. 11,840 funds × $13,716 = $162,397,440. The estimated annual cost for the final rules' semi-annual reports is based on the following calculations: 5 hours × $381 (blended wage rate for compliance attorney and senior programmer) = $1,905 per fund. 11,840 funds × $1,905 = $22,555,200. *See infra* section V.B.

[724] The effect of the addition of the requirement to transmit a separate report for each class, in addition to for each series, is to increase the burden of the rule by an amount no greater than the increase in the overall burden that is estimated below at *infra* section V.B, table 8. Specifically, we assume that funds would incur costs of the requirement to transmit a separate report for each share class as initial costs rather than ongoing costs, and that the upper bound of these initial costs would be no greater than $20,574 per fund. This estimate is based on the increase in final rules' PRA burden hours estimates compared to estimates in the proposal. This increase recognizes that comments suggested that certain aspects of the new shareholder report requirements may be more burdensome than the Commission estimated at proposal, as well as to reflect changes from the proposal such as requiring class-specific shareholder reports. Because this estimate increase takes into account elements in addition to the requirement for class-specific shareholder reports, the estimate increase should be viewed as an upper bound estimate. The estimate is based on the following calculations: ($13,716 estimate for annual reports ((72 initial hours estimate in final rules—36 hours estimate in proposed rules) × $381 blended rate for compliance attorney and senior programmer)) + ($6,858 estimate for semi-annual reports ((36 initial hours estimate in final rules—18 hours estimate in proposed rules) × $381 blended rate for compliance attorney and senior programmer)) = $20,574.

[725] *See, e.g.,* SIFMA Comment Letter, regarding the non-trivial costs of the rule amendment; *see also infra* footnote 726.

[726] *See, e.g.,* Vanguard Comment Letter (the potential licensing cost increases, which would be borne by shareholders, outweigh the benefit to shareholders from requiring funds to utilize broad-based indexes in their disclosure documents), Dimensional Comment Letter (requirement would result in duplicative licensing fees from index providers and higher costs to fund shareholders); Fidelity Comment Letter (if all funds are required to benchmark against an index like the S&P Index, there would be an increase in licensing costs to the funds that use that index, which ultimately will be borne by the investors); ICI Comment Letter (if a new fund wishes to use as its broad-based index one that is not included in the fund complex's current licensing agreements, the fund typically will incur additional costs to do so. Smaller fund complexes with fewer (or more limited) licensing agreement in place may be more likely to incur costs when these events occur); SIFMA Comment Letter (the operational and index licensing costs to funds, and ultimately shareholders, to implement the required changes in order to comply with the changed definition would not be trivial. These costs may include licensing fees charged by index providers, the cost related to attaining any necessary board approvals, the cost of updating fund disclosure for these changes, and the cost of associated updates to marketing and other materials where fund indexes are used).

addition, some comments stated that more than half of funds may need to change the index that they include in their performance disclosures, and face new licensing fees.[727] The OIAD Benchmark Study found that there is a relatively large number of benchmarks in use among funds with all strategies, and that ''the definitions of broad and narrow benchmarks appear to be the subject of some interpretation.'' These comments indicate that the final rules' changes to the definition of ''broad-based'' index may affect the index choices and related performance disclosures of a significant number of funds.[728]

In addition, under the rule amendments, funds will incur costs associated with tagging the streamlined shareholder reports in Inline XBRL. Various XBRL and Inline XBRL preparation solutions have been developed and used by operating companies and investment companies to fulfill their structuring requirements, and some evidence suggests that, for smaller operating companies, XBRL compliance costs have decreased over time.[729] Based in part on our considerable experience with XBRL implementation in connection with the Commission's other XBRL requirements, we estimate that the initial aggregate costs to funds of tagging their streamlined shareholder reports will be $81.2 million.[730]

Funds also will incur costs of complying with the new Form N–CSR disclosure items. As funds already prepare the disclosure that the required N–CSR items will cover for purposes of current shareholder reports and disclose that information on Form N–CSR as part of their shareholder reports, we do not believe the costs of the new N–CSR disclosure will be significant. Commenters on the proposal suggested these costs could be significant if they were required to prepare separate financial statements for each series or portfolio of a trust when filing Form N–CSR, but the final rules do not prohibit funds from preparing and submitting multicolumn financial statements that include multiple series or portfolios, or that address multiple share classes of a fund in ways that would mitigate these costs.[731] However, we recognize that funds may face some costs of rearranging their disclosures within Form N–CSR. We estimate that the costs of the required new Form N–CSR items will initially be $162.4 million and $45.1 million annually thereafter.[732]

In addition, funds will be required to provide additional information online under the rule amendments to rule 30e–1, and deliver the additional information in paper or electronically upon request. With respect to rule 30e–1, this will include online availability (and delivery upon request) of the disclosure that the rule amendments will remove from shareholder reports, including financial statements and financial highlights, as well as quarterly portfolio holdings.

For instance, under the adopted amendments to rule 30e–1, funds will likely incur costs associated with providing online access to the new Form N–CSR disclosure items (*i.e.,* the information that the adopted rule amendments will remove from shareholder reports). Funds that do not currently rely on rule 30e–3 will also incur costs to provide their quarterly portfolio holdings online. We estimate that the initial costs of complying with the website availability requirements in rule 30e–1 will be $38.6 million, with ongoing annual costs of $12.9 million.[733] We also estimate that the ongoing annual cost of the rule's requirement to deliver these materials in paper or electronically to shareholders on request will be $5.9 million.[734]

Finally, to the extent that affected funds, including UITs that rely on rule 30e–3 to satisfy shareholder report transmission requirements under rule 30e–2, have changed their operations for the purpose of relying on rule 30e–3, those funds would bear the costs associated with the adopted rule amendment's prohibition on open-end funds relying on rule 30e–3. These costs could include, among others, changes to internal systems and adjustments to agreements with third-party vendors contracted to provide relevant services.[735] Moreover, funds may choose to take additional steps to inform their shareholders about the modified approach to delivering shareholder reports under the adopted rule amendment, and these funds would

[727] *See* Mary and Tom Comment Letter (a majority of funds may need to change their primary index in response).

[728] *See* Chin, *et al.* (2022).

[729] An AICPA survey of 1,032 public operating companies with $75 million or less in market capitalization in 2018 found an average cost of $5,850 per year, a median cost of $2,500 per year, and a maximum cost of $51,500 per year for fully outsourced XBRL creation and filing, representing a 45% decline in average cost and a 69% decline in median cost since 2014. *See* Michael Cohn, *AICPA Sees 45% Drop in XBRL Costs for Small Companies,* Acct. Today (Aug. 15, 2018), *available at https://www.accountingtoday.com/news/aicpa-sees-45-drop-iSn-xbrl-costs-for-small-reporting-companies* (retrieved from Factiva database). Note that this survey was limited to small operating companies; investment companies have substantively different tagging requirements, and may have different tagging processes as well. For example, compared to smaller operating companies, smaller investment companies are more likely to outsource their tagging infrastructure to large third-party service providers. As a result, it may be less likely that economies of scale arise with respect to Inline XBRL compliance costs for investment companies than for operating companies. Additionally, a NASDAQ survey of 151 listed issuers in 2018 found an average XBRL compliance cost of $20,000 per quarter, a median XBRL compliance cost of $7,500 per quarter, and a maximum XBRL compliance cost of $350,000 per quarter in XBRL costs per quarter. *See* Letter from Nasdaq, Inc. (Mar. 21, 2019), *available at https://listingcenter.nasdaq.com/assets/Letter%20from%20John%20Zecca%20to%20Ms.%20Vanessa%20Countryman%20re%20File%20No.%20S7-26-18%20(March%2021,%202019).pdf;* Request for Comment on Earnings Releases and Quarterly Reports, Release No. 33–10588 (Dec. 18, 2018) [83 FR 65601 (Dec. 21, 2018)]. Like the aforementioned AICPA survey, this survey was limited to operating companies.

[730] The estimated aggregate initial cost for the final rules' Inline XBRL requirements is based on the following calculations: 18 hours × $381 (blended wage rate for compliance attorney and senior programmer) = $6,858 per fund. 11,840 funds × $6,858 = $81,198,720. *See infra* section V.H. Consistent with similar Inline XBRL estimates for current XBRL filers, we estimate no ongoing burden, as this is already incorporated into the current burden estimate for funds that are complying with requirements to tag disclosures using Inline XBRL. *See id.; see also, e.g.,* Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Investment Company Act Release No. 34594 (May 25, 2022) [87 FR 36654 (June 17, 2022)], at section IV.E. The Commission's prior experience with XBRL implementation includes its implementation of XBRL and Inline XBRL requirements for operating company financial statement disclosures and mutual fund prospectus risk/return summary disclosures. *See supra* footnotes 571–572 and accompanying text.

[731] *See supra* footnotes 408–409 and accompanying text.

[732] The initial costs of the final rules' new Form N–CSR requirements are based on the following calculations: 18 hours per filing × 2 filings per year per fund × $381 (blended wage rate for compliance attorney and senior programmer) = $13,716 per fund. 11,840 funds × $13,716 = $162,397,440. The annual cost of the final rules' new Form N–CSR requirements are based on the following calculations: 5 hours per filing × 2 filings per fund × $381 (blended wage rate for compliance attorney and senior programmer) = $3,810 per fund. 11,840 funds × $3,810 = $45,110,400. *See infra* section V.C. These PRA burden estimates do not account for the fact that funds are currently required to prepare the same general disclosure for purposes of their shareholder reports. Thus, these PRA-related estimates may over-estimate the costs of the final rules' Form N–CSR disclosure items, particularly the transition costs.

[733] *See infra* section V.B. The estimated initial cost of complying with rule 30e–1's website availability requirements is based on the following calculations: 12 hours × $272 (wage rate for webmaster) = $3,264 per fund. 11,840 funds × $3,264 = $38,645,760. The estimated ongoing annual cost is based on the following calculations: 4 hours × $272 (wage rate for webmaster) = $1,088 per fund. 11,840 funds × $1,088 = $12,881,920.

[734] *See id.* The estimated ongoing annual cost of complying with rule 30e–1's delivery upon request requirements is based on the following calculation: $500 per fund × 11,840 funds = $5,920,000.

[735] *See supra* footnotes 483–484 and accompanying text; *see also supra* footnote 625 and accompanying text.

likely incur additional transition costs. We lack data to quantify these costs because we do not have information about how many funds would choose to provide discretionary notices or other information to their shareholders to explain the required changes to shareholder report transmission.

3. Advertising Rule Amendments

a. Benefits

The rule amendments that require standardized fee and expense figures [736] will benefit investors by providing more consistent fee and expense presentations across investment company advertisements relative to the baseline and thereby facilitate investor comparisons of those fee and expense figures across advertisements.[737] The benefits to investors will depend on the extent to which funds' advertisements already reflect the requirements of FINRA for the presentation of fee and expense information in member communications with the public.[738]

By reducing the chance of misleading information being presented to investors—*e.g.,* so that useful information faces less competition for investor attention from other information—the rule amendments may increase the salience of relevant fee and expense figures to investors and reduce the chance of a mismatch between the investors' preferences and their choices of investment products among the various alternatives, thereby increasing the efficiency of investors' investment decisions. The extent to which increasing the salience of fee and expense information in advertisements benefits an investor considering an investment in a fund depends on the importance of the information contained in fund advertising materials relative to the other information that is available to the investor for the purpose of monitoring fund investments and choosing between the fund and other financial products.

The rule amendments may reduce the likelihood of investors misinterpreting investment company advertisements. For example, the recent experience of the Commission is that funds sometimes market themselves as ''zero expense'' or ''no expense'' funds based solely on information in their prospectus fee tables.[739] In some cases a fund's prospectus fee table may show no transaction costs and no ongoing charges only because the fund adviser, the adviser's affiliates, or others are collecting fees elsewhere from these investors. An advertisement for such a ''zero expense'' fund that shows only fund costs, based on the prospectus fee table, could be materially misleading if it omitted material facts regarding other costs that investor would incur when investing in the fund.[740] Absent appropriate explanations or limitations, referring to such a fund as a ''zero expense'' fund can materially mislead investors and cause them to believe incorrectly that there are no expenses associated with investing in the fund.[741]

To the extent that the advertising rule amendments reduce fund incentives to understate or obscure their fees, the rule amendments may enable investors more easily to distinguish funds according to their actual fees, enabling some investors to obtain lower fees, such as by altering their choices among available investment alternatives.[742] In addition, funds may respond to the greater ability of investors to distinguish among funds according to their actual fees by lowering their fees, thereby further benefiting investors. We also discuss this effect on the incentives of funds to compete based on fees and implications for capital formation in section IV.D below.

b. Costs

Investment companies and third parties involved in preparing or disseminating investment company advertisements will incur costs to comply with the final advertising rule amendments. The expenses that funds incur to implement the rule amendments will be a cost to investors. We discuss those expenses below.

i. Modifying Advertising Materials

The cost of our amendments to the advertising rules will include the direct cost of modifying advertising materials to bring them into compliance with the final advertising rule amendments. This may require internal review and approval of advertisements beyond what occurs under the current rule, particularly where an advertisement is not already required to present certain fee and expense figures under existing FINRA rules (for example, advertisements by funds other than open-end funds, advertisements intended for non-retail audiences, or advertisements where a broker-dealer is not involved in disseminating the particular communication).[743] For example, while many investment company advertisements are subject to timeliness requirements related to the presentation of performance information, they currently are not subject to similar timeliness requirements for fee and expense information. With respect to advertisements that are currently subject to FINRA requirements addressing the presentation of fee and expense information, funds and their intermediaries may incur costs to assess compliance with, and any overlap between, the requirements we are adopting and existing FINRA rules. We expect some of these costs to be borne in the first year after the rule amendments go into effect. That is, they will be transition costs and not sustained beyond the first year. We estimate that the initial costs associated with the final advertising rule amendments will be $274.3 million.[744] These costs will be borne by funds and thus by their shareholders.

The ongoing costs of the advertising rule amendments will be greater for some types of fund advertisements than others. For example, the amendments will require the fee and expense figures in advertisements to be calculated in the

[736] *See supra* section II.G.1.

[737] Several commenters indicated that the proposed advertising rule amendments would enable investors to make more informed investment decisions by more easily comparing costs across various funds in response to the proposed rule. *See, e.g.,* Better Markets Comment Letter; Consumer Federation of America II Comment Letter; John Hancock Comment Letter (all as discussed in section II.G.1.a, *supra*).

[738] *See supra* text following footnote 666.

[739] The Commission received comments on the trend for some funds to market their investment products based on claims of low costs or no fees. *See, e.g.,* CFA Institute Comment Letter; *see also* Consumer Federation of America II Comment Letter.

[740] *See* section I.A.4 for discussion of the Commission's experience and related concerns regarding practices in which investors may believe incorrectly that there are no expenses associated with investing in the fund.

[741] *See id.*

[742] Some comments on the Proposing Release stated that the proposed investment company advertising rule amendments would help investors make more informed investment decisions by more easily comparing costs among various funds. *See* Better Markets Comment Letter; Consumer Federation of America II Comment Letter; John Hancock Comment Letter.

[743] *See supra* sections I.A.4, II.G.

[744] *See infra* sections V.D through V.F. We estimate that approximately 48,000 investment company advertisements (including supplemental sales literature) each year would be subject to the final amendments to rules 482, 34b–1, and 433. This includes 36,492 communications that are advertisements subject to rule 482, 7,209 communications that are supplemental sales literature subject to rule 34b–1, and 4,300 communications that are registered closed-end fund or BDC free writing prospectuses under rule 433. We estimate an initial burden of 15 hours per communication associated with the amendments to each of these rules. The estimated initial costs of the final advertising rule amendments is based on the following calculation: 15 hours × $381 (blended wage rate for compliance attorney and senior programmer) × 48,000 communications = $274,320,000.

manner the registrant's Investment Company Act or Securities Act registration form prescribes for a prospectus. This requirement could make it more burdensome to prepare advertisements for some types of registrants, such as closed-end funds that do not maintain updated prospectuses and, thus, may not calculate current fees and expenses in the manner the amendments will require. It will be more costly to prepare these advertisements (if they include fee and expense information) because of the need to develop new procedures for annually calculating these registrants' fees and expenses in accordance with prospectus fee table requirements. In addition, the cost of compliance will be relatively greater for funds that react to the advertising rule amendments by initiating or enhancing a compliance program after previously having no such program or only a very limited program in place. We estimate that the ongoing annual costs of the advertising rule amendments will be $91.4 million.[745] The costs of the advertising rule amendments will be smaller for some types of fund advertisements than others. For example, the advertising rule amendments requiring standardized fee and expense figures will affect only those fund advertisements that include fee and expense figures. As another example, if an investment company does not present total annual expense figures in its prospectus, the final amendments addressing the required fee and expense figures would be inapplicable.

ii. Potential for Loss of Information

Finally, some investors could experience the loss of information about fees and expenses as a cost of the advertising rule amendments. Specifically, some funds might cease advertising (or cease including fee and expense figures or total annual expense figures in their advertising) rather than incur the extra compliance costs. In such instance, investors who rely on the advertisements to make investment decisions or to compare funds might have less complete information for these purposes under the rule amendments than they do currently. Anticipating that investors have less complete information, funds might then have weaker incentives to differentiate themselves from other funds in ways that are designed to attract and benefit informed investors. However, we believe this is unlikely because we do not anticipate that the compliance costs will be great enough to cause funds to cease advertising (or to cease including fee and expense figures or total annual expense figures in their advertising). Moreover, such loss of information would be mitigated to the extent that the information that investors receive is more accurate and salient than they would receive in the absence of the rule, and because other avenues exist for investors to obtain information about funds (for example, fund prospectuses or information provided by third parties that analyze fund information).

D. Effects on Efficiency, Competition, and Capital Formation

This section describes the effects we expect the rule amendments to have on efficiency, competition, and capital formation.

Efficiency. Key to this analysis are the concepts of efficiency in the use of investor time and attention and in the use of fund resources from the real economy to meet shareholder report transmission obligations. We regard changes and amendments that reduce these costs as increasing economic efficiency, with changes and amendments that increase these costs having the opposite effect. Also key is the concept of "information asymmetry"—in this case, the lack of information that investors may have about funds and other investment products and the related difficulties that some investors may face in understanding and using the information that is available to them.

The rule amendments will enable investors to use their time and attention more efficiently. To investors, the costs of investing in a fund are more than just the dollar cost, and include the value of an individual's time and attention that is spent gaining an understanding of the fund. Further, for those investors who do not gain a full understanding of the fund, there could be a cost stemming from a potential mismatch between the investor's goals and the fund risk profile and fee structure. Depending on the size of an individual's position in a fund, certain of these additional costs could be considerable in comparison to the monetary costs associated with the investment and could discourage investors from gathering information about different investment alternatives and evaluating existing investments even in circumstances where reviewing available shareholder reports could be beneficial.

The overall efficiency gains from the effect of the rule amendments on how investors allocate their time and attention will depend on the ease with which investors are able to transition to the new approach to fund shareholder reports and find the disclosures and other materials of that new approach easier to use. Some individuals may prefer the current approach. Their time and attention may be used less efficiently under the rule amendments, which will require them to go to the trouble of requesting their preferred materials rather than receiving them automatically as will occur in the current approach. However, despite these potential limitations, we expect the efficiency gain and cost reduction from changes in the use of investor time and attention resulting from the rule amendments will tend to be positive, because the new approach under the amendments is specifically designed to make the disclosures easier for retail investors to use while continuing to provide access to more detailed information for the market professionals and other investors who wish to access them.[746]

In addition, the rule amendments may affect economic efficiency through changes in disclosure and advertising content. The rule amendments to the content of shareholder report disclosure and the presentation of advertising materials will increase the consistency of the presentation of their contents across funds (and, in the advertising rule amendment, across a wider range of investment opportunities) and thereby promote their comparability. This may make it easier for investors to make comparisons across funds, and between funds and other investment products. As a result, investors may face lower search costs in choosing among funds, and among investment opportunities more generally. In addition, investors and other market participants may be more easily able to monitor their fund and other investments.

Some of the rule amendments would unbundle the provision of information on funds and across classes and series of a fund. Apart from other effects of those rule amendments, the effect of unbundling could increase the cost to some investors of accessing information or of using information to compare their current fund investments with alternatives. Under rule 30e–1, funds

[745] *See infra* sections V.D through V.F; *see also supra* footnote 744. We estimate an annual burden of 5 hours per communication associated with the final amendments to rules 482, 34b–1, and 433. The estimated annual costs of the final advertising rule amendments is based on the following calculation: 5 hours × $381 (blended wage rate for compliance attorney and senior programmer) × 48,000 communications = $91,440,000.

[746] These provisions would thus not have efficiency effects for financial professionals and other investors who currently rely on more detailed information online that will continue to be accessible.

would make information available online that is currently provided in the shareholder report. To the extent that some investors who would have used this information under the current rules respond to the rule amendment by no longer using this information, the effect may be to reduce the efficiency of their search across investments. Under the rule amendment requiring separate transmission of information about fund series and reports, funds would no longer make information about fund series and funds available on a single transmission. Investors who would have relied on that information to make comparisons between their current investment and investments in other classes and series of the fund will likely face greater difficulty accessing this information under the rule amendments than currently. In each instance, the effect would be to reduce the efficiency of search across alternative investments on the part of those investors.

The rule amendments that reduce information asymmetry and search costs may reduce barriers that funds and intermediaries face in supplying investment opportunities to investors, and that investors may face in comparing and evaluating the suitability of the investments initially and, as fund shareholders, over the period of the investment.[747] These effects of the rule amendments may be reduced to the extent that shareholders currently rely on the bundled transmission of reports on fund series and classes that would be transmitted separately under the rule amendments.

These increases in efficiency and related cost reductions could manifest as a higher likelihood that investors make use of the disclosures that funds provide through their shareholder reports and advertising materials, and thus lead to investment decisions that are more informationally efficient. First, these efficiencies may increase the likelihood that investors choose a mix and level of fund investments that are consistent with their overall financial preferences and objectives—a level that may be higher or lower than will occur presently. Second, making it easier for investors to use the information that is disclosed under the rule amendments that require concise, tailored shareholder report disclosures and more consistent fee and expense presentations across investment company advertisements relative to the baseline could facilitate more efficient investor allocation of assets across funds. These effects on efficiency will be limited, however, to the extent that investors rely on third parties for advice in selecting among financial products and those third parties use more information than what shareholders receive under the rule amendments.[748]

Competition. The rule amendments that affect information asymmetry between investors and funds may, by reducing investor search costs, affect competition. Specifically, the rule amendments that require changes to shareholder reports (including the newly required tagging of shareholder reports in Inline XBRL) and fund advertising will enable investors to compare fees and expenses and other information more easily across funds, and between funds and other financial products, and could therefore affect competition among funds by making it easier for lower-fee funds to distinguish themselves from other funds.[749] This could lead investors to shift their assets from higher-fee funds to lower-fee funds. It also could lead funds, in anticipation of this, to lower their fees or otherwise take steps to draw investor flows away from competing funds or avoid outflows to competing funds under the new approach to funds' shareholder reports. It could lead funds to exit that are not as easily able to compete on the basis of fees and expenses as a result of the new approach, and other funds to enter and compete for investor assets more efficiently than is currently occurring. The effect on competition among funds may be limited, however, to the extent that investors rely on third parties who are not affected by the rule amendments for advice in selecting among financial products.[750]

In addition, the rule amendments that affect the definition of a ''broad-based'' index will affect competition among providers of the index information that funds include in their performance disclosure. Specifically, the amendments will define a ''broad-based'' index in a way that will likely reduce the number of indexes that qualify as an ''appropriate broad-based securities market index'' (and reduce the number of suppliers of qualifying index licenses to funds) for disclosure purposes. To the extent that the final rules' change to the definition affects the index choices of funds, the final rules will increase the demand for qualifying index licenses. Funds incur costs of the use of indexes under their licensing agreements with index providers and a new fund that wishes to use as its broad-based index one that is not included in the fund complex's current licensing agreements, or that wishes to change indexes, would incur additional costs under the licensing agreement.[751] The amount of these costs will depend, among other things, on market competition among index providers.

Index-licensing fees could increase if the rule amendment results in a reduction in the number of index providers producing indexes that are ''appropriate broad-based securities market indexes'' that is large enough to permit those index providers to increase their fees or, alternatively, if the change increases demand by funds to license indexes and there is limited competition among index providers producing indexes that are ''appropriate broad-based securities market indexes.'' For example, one commenter suggested that the market for indexes is concentrated and that a definition that strongly favors existing and widely recognized indexes could inhibit entry into the market for indexes that are acceptable under the regulations, thereby limiting competition in ways that may lead funds to incur higher index costs.[752]

[747] As noted above, there may be investors who would prefer the approach to disclosure that is now in place and who would under the approach under the final rule amendments need to take extra steps to continue to use the disclosures that they use in making investment decisions currently. To the extent this occurs, the final rule amendments could lead to additional costs and reduced efficiency for such investors in their evaluation of fund investments.

[749] With respect to Inline XBRL tagging, this anticipated effect would be analogous to the observed effect whereby XBRL requirements for public operating company financial statements have infused company-specific financial characteristics into competitive public markets. *See* Yu Cong, et al., *The Impact of XBRL Reporting on Market Efficiency,* 28 J. Info Sys. 181 (2014) (finding ''XBRL reporting facilitates the generation and infusion of idiosyncratic information into the market'').

[750] For example, one investor survey found that 24% of surveyed mutual fund investors agreed with the statement, ''I rely on a financial adviser or broker to look at these sorts of [fund] documents.'' *See* Inv. Co. Inst., *Mutual Fund Investors' Views on Shareholder Reports: Reactions to a Summary Shareholder Report Prototype* (Oct. 2018), *available at https://www.ici.org/pdf/ppr_18_summary_shareholder.pdf,* at 20. Within subsets of the surveyed investors, 57% of mutual fund investors aged 65 and older, and 58% of mutual fund investors with household incomes less than $50,000, agreed with this statement. *See id.* at nn.19 and 20. A third party adviser, for example, may prefer to access all information that is available about a fund online rather than rely solely on the information in the prospectus and shareholder report that is the subject of the proposal. Such an adviser would not change its information or advice under the proposal. Funds would not anticipate such a change, and there would be a lesser effect on competition among funds accordingly.

[751] *See, e.g.,* ICI Comment Letter (discussing competition among index providers in relation to the fund index licensing agreement). According to this commenter, smaller fund complexes with fewer (or more limited) licensing agreements in place may be more likely to incur costs of changing indexes or adding an index.

[752] *See, e.g., supra* footnote 751. According to this commenter, the index market is concentrated, and

However, we believe there will be many providers of indexes that qualify as ''broad-based'' under the final rules, which will prevent funds from incurring such higher index costs.[753]

Finally, we noted earlier in section IV.C.3.b that certain funds may respond to the final advertising rule amendments by limiting their advertising of certain fee and expense information. Reduced advertising of fees and expenses could affect the way in which funds compete for investor assets, causing funds to focus competition on other dimensions. At the same time, a reduction in fund advertising could limit the benefit of competition to investors by reducing the efficiency with which they are able to make comparisons across funds and identify the funds that best match their preferences.

Capital Formation. The rule amendments could lead to an increase in capital formation. First, to the extent they increase the efficiency of exchange in markets for funds and other financial products, the rule amendments could lead to changes in fund investment in these products. Greater investment in ETFs, mutual funds, and other products, for example, could lead to increased demand for their underlying securities. The increased demand for those securities could, in turn, facilitate capital formation.

We further note that, to the extent that increased or decreased investment in these financial products reflects substitution from other investment vehicles, the effect on capital formation will be attenuated because this will reduce the net change in the overall amount of investment in the capital markets.

The rule amendments may, by lowering the cost of delivering disclosures to fund shareholders, attract new investors to funds and increase the amount of capital that is invested through those funds. If so, the rule amendments could promote capital formation. We are unable to estimate precisely the magnitude of capital formation effects that may result from our projected cost savings under the rule amendments because the magnitude of such effects may be affected by the extent of pass-through cost savings and by other factors that affect the flow of investor capital into mutual funds and ETFs, including other components of fund returns, overall market returns, and returns on investments other than funds. To the extent that any rule amendments will increase the transmission cost, we expect the opposite effect to occur.

The rule amendments are designed to make shareholder reports easier for shareholders to use and to help investors better understand fees and expenses through fund advertisements. To the extent that it becomes easier for investors to use fund disclosures or to understand investment fees and expenses, the effect may improve retail investors' understanding about, and confidence in, the market for funds and other investment products, which may increase participation in this market by investors that previously avoided it. Such additional entry by new investors could increase the level of total capital across markets and increase the demand for new investment products and securities, which could lower the cost of capital for operating companies, precipitate capital formation in aggregate across the economy, and facilitate economic growth. These effects on capital formation will be limited, however, to the extent that investors rely on sources that are not affected by the rule amendments for advice in selecting among financial products. [754] To the extent that there are any effects on capital formation, we do not have reason to believe that they will be significant.

E. Reasonable Alternatives

1. More or Less Frequent Disclosure

The rule amendments will maintain a fund's obligation to transmit an annual and a semi-annual report to shareholders without affecting their frequency. Alternatively, we could have required an increase or reduction in the frequency of reports that funds are required to transmit to shareholders.

As one alternative, the Commission could have increased the required frequency of transmission of reports to shareholders beyond what will occur under the rule amendments. For example, the Commission could have required funds to transmit shareholder reports on a quarterly basis, rather than on a semi-annual basis as would continue to be the case under the rule amendments. To the extent shareholders review these additional reports, receiving the reports more frequently could have kept shareholders better informed about their fund investments and could have enhanced shareholders' familiarity and comfort with reviewing shareholder report disclosures, since they would have encountered such disclosures more frequently. As a result, investors may have made more informed investment decisions. However, increasing the frequency of reports would have required greater allocation of fund resources to preparing and delivering shareholder reports, which would have increased fund (and shareholder) costs. In addition, receiving more frequent shareholder reports would have placed greater demands on shareholder time and attention compared to the proposal, which could have decreased the likelihood of shareholders reviewing the reports and relying on them to inform their investment decisions.[755]

The Commission could also have adopted rule amendments that provide funds with alternatives to transmitting the semi-annual report, such as by permitting the requirement to transmit semi-annual reports to be satisfied by a fund filing certain information on Form N–CSR or by making information available on a website (either semi-annually or more frequently). Relative to the rule amendments, funds would have benefitted from the cost savings associated with no longer being required to transmit the semi-annual report. Funds also could have experienced lower costs associated with preparing disclosures, particularly if the information they were required to provide on websites largely replicated information that many funds already provide online in monthly or quarterly fact sheets.[756] Shareholders could have benefitted from these cost savings to the extent funds pass them through. However, shareholders who prefer to receive information more frequently than annually, as they currently do, would have incurred costs associated with the reduced frequency of transmission, such as costs of locating information online instead of in the delivered semi-annual report. In addition, to the extent we permitted this approach to be optional for the fund (*e.g.,* funds could either provide certain information online or transmit semi-annual reports), the alternative may have led to shareholders in some funds

the top three players are estimated to have a 71 percent share.

[753] *See supra* paragraphs accompanying footnotes 230–232. Under the definition of a ''broad-based'' index in the final rules, we anticipate that funds could use multiple currently extant indexes as the appropriate broad-based securities market index that appears in their performance disclosure. *See also supra* footnotes 725–727 and accompanying text (discussing the costs that will be incurred by funds that will be required to change their indexes in response to the final rules).

[754] *See also supra* footnote 748.

[755] Existing research notes that individuals exhibit limited ability to absorb and process information. *See supra* section IV.C.1; Richard E. Nisbett & Lee Ross, *Human Inference: Strategies and Shortcomings of Social,* Nisbett & Ross (Prentice Hall 1980); Hirshleifer and Teoh Study, *supra* footnote 640.

[756] *See generally supra* section *II.E.3.*

receiving less direct information than those in other funds.

2. More or Less Information in Shareholder Reports

The rule amendments will make the disclosures that funds transmit to shareholders more concise, without materially changing the overall amount or scope of information that funds provide to their shareholders (either in shareholder reports or separately online). The Commission could have required more (or less) information in fund shareholder reports and less (or more) information online or upon request only than under the amendments. We could have further reduced the overall amount of disclosure that funds are required to prepare and provide, *e.g.,* by no longer requiring funds to provide disclosure regarding the basis for the board's approval of investment advisory contracts.

The benefits of requiring more information to be included in shareholder reports (with less information online or upon request only) would have been that fewer investors would need to take any additional steps needed to access the information online, which would have reduced the burdens on those investors. However, this alternative also would have had certain costs. For example, requiring more information in shareholder reports may have reduced the likelihood that shareholders review the reports because they may have been more likely to feel overwhelmed by the length of the reports. Shareholder reports that include more information than under the rule amendments may also have made it harder for shareholders to find key information within the report. Moreover, increasing the length of shareholder reports by requiring additional content could also have increased the transmission costs for funds (which could also be passed on to shareholders), particularly with respect to printing and mailing costs.

As another alternative, we could have further limited the content of shareholder reports. This alternative could have resulted in shareholder reports that are easier for shareholders to review and could have reduced costs associated with the preparation and transmission of shareholder reports. However, this alternative may have reduced the utility of shareholder reports for many if not most shareholders if the reports did not include the key information those shareholders have tended to use for the purpose of monitoring their fund investments or making portfolio decisions. If, as part of this alternative, we had required funds to provide the information removed from shareholder reports to shareholders upon request or online, those shareholders would have faced the burden of requesting the information or locating it online. If we had instead removed certain disclosure requirements entirely, the costs to funds of preparing disclosure would have declined. This approach would, however, have reduced access to information for all market participants, which may have resulted in less informed monitoring or investment decisions by shareholders or by the market professionals they rely on for investment advice.

3. Retaining Rule 30e–3 Flexibility or Implementing Access Equals Delivery for Open-End Funds Registered on Form N–1A

The rule amendments will exclude funds registered on Form N–1A from current rule 30e–3. Under the rule amendments, affected funds will be required to transmit concise shareholder reports directly to shareholders in order to meet their transmission obligations. Funds will not have the flexibility instead to send a notice with information about the online location of the shareholder report, as is the case under current rule 30e–3.

As an alternative, the Commission could have continued to permit the affected funds to rely on rule 30e–3 to satisfy their shareholder report transmission obligations (whether by retaining rule 30e–3 or allowing a fund to choose either to send a rule 30e–3 notice or streamlined shareholder report). This alternative would have provided optionality to funds to determine their preferred method for delivering shareholder reports where shareholders have not expressed a clear preference for electronic delivery or paper delivery of the report and could have reduced costs of delivery for some funds compared to the proposal, such as for those funds that have already begun to prepare to rely on rule 30e–3. It also could have reduced any shareholder confusion where funds have notified shareholders of their intent to rely on rule 30e–3 and of the associated upcoming changes to shareholder report transmission. However, given that we do not expect the shareholder reports under the rule amendments to be of a length that would result in significant delivery cost disparities compared to the notice that funds must deliver under rule 30e–3, we do not believe that excluding relevant funds from rule 30e–3 would have significantly changed the costs of delivery relative to the baseline.[757] For instance, the amendments may reduce processing fees associated with delivering shareholder reports through intermediaries and should not significantly increase printing and mailing costs. Moreover, we believe that delivering a concise shareholder report to shareholders may help them more efficiently monitor their fund investments. This is because the rule amendments will enable shareholders who would otherwise have received paper notices under rule 30e–3 (those who have not elected electronic delivery) to avoid the additional step of finding the report online.

In addition, the Commission could have adopted an access equals delivery approach as an alternative to the shareholder report delivery approach we are adopting.[758] The effect of an access equals delivery approach would be that funds would post their streamlined shareholder reports online, without the notice that rule 30e–3 currently requires, rather than delivering them by email or postal mail to fund shareholders and their households. One benefit of this approach that commenters raised involved the potential for a cost reduction (which would be passed on to fund shareholders).[759] As discussed above, commenters discussing this approach raise considerations for any future initiative on the delivery of fund regulatory materials.[760] We anticipate that any further initiative on the delivery of fund regulatory materials would address these considerations.[761]

4. Limiting the Advertising Rule Amendments to ETFs and Mutual Funds

The final amendments to the advertising rule will apply to all registered investment companies and BDCs. The scope of entities affected by these amendments will therefore be broader than affected by the other rule

[757] *See supra* sections IV.C.2.a.ii and IV.C.2.b.iii (discussing our belief that the proposed shareholder reports could be trifold self-mailers).

[758] *See, e.g.,* Capital Group Comment Letter (urging adoption of an access equals delivery approach for shareholder reports and annual prospectus updates); TIAA Comment Letter (urging an incremental approach, focusing first on the format and substance of shareholder reports, urging the adoption of access equals delivery with respect to all disclosure documents); T. Rowe Price Comment Letter (recommending access equals delivery for semi-annual shareholder reports).

[759] *See, e.g.,* Capital Group Comment Letter, Federated Hermes Comment Letter, TIAA Comment Letter, T. Rowe Price Comment Letter.

[760] *See supra* section II.E.2.

[761] *See, e.g.,* Marlboro Comment Letter and CFA Comment Letter (discussing considerations regarding an access equals delivery approach).

amendments, which apply only to open-end funds, such as mutual funds, and to ETFs. As an alternative, we could also have limited the scope of the advertising rule amendments to apply only to open-end funds.

Under this alternative, the advertising rule amendments would have applied to a narrower class of entities than under the amendments being adopted. The effect would have been to reduce both the cost and benefits of the advertising amendments that are discussed in section IV.C.3, as these costs and benefits would then accrue only to shareholders and issuers of the narrowed class of entities, and not to shareholders and issuers of any entities that would be excluded under the alternative. In addition, the alternative could have led to a disparity in the quality of the information that is available to market participants about funds that would be covered by the advertising rule amendments under the alternative and the entities that would be outside its scope. This could have led to reduced comparability and distortions in investor choice across registered investment companies and BDCs, relative to the approach the Commission is adopting, which would apply the standards across all of these entities evenly.

5. Amending Shareholder Report Requirements To Include Variable Insurance Contracts or Registered Closed-End Funds

The new approach to funds' shareholder reports under the rule amendments applies only to funds registered on Form N–1A. Those rule amendments do not apply to other registered management investment companies that transmit annual and semi-annual reports under rule 30e–1.[762] Alternatively, we could have extended the new approach to shareholder reports and related rule amendments to other registered management investment companies, including closed-end funds that register on Form N–2 and variable annuity separate accounts that register on Form N–3. Like shareholders in open-end funds registered on Form N–1A, shareholders in these other funds could have benefitted from more concise shareholder reports. Several comments on the Proposing Release suggested that the shareholders of these other funds would benefit from the layered approach to disclosure under the rule amendments.[763] However, the Commission has recently amended the disclosures that shareholders in these funds receive, as we explained above and in the proposing release. Specifically, for example, the recently adopted changes to closed-end fund disclosures include multiple changes to these funds' shareholder report disclosure.[764] In addition, while the recently-adopted changes to the variable contract disclosure framework are focused more on prospectus disclosure and not shareholder report disclosure, we anticipate that these amendments would significantly change investors' experience with variable contract disclosure.[765] Before considering any additional or different disclosure amendments for closed-end funds and variable contracts, we believe it is necessary to understand funds' and investors' experience with these new disclosure frameworks for closed-end funds and variable contracts and assess their impact.

6. Requiring All Form N–CSR Disclosures To Be Tagged in Inline XBRL

Under the rule amendments, the shareholder reports will be required to be tagged in Inline XBRL, but the remainder of Form N–CSR will not. Alternatively, we could have required all of Form N–CSR to be tagged in Inline XBRL. Some of the comments on the Proposing Release that discussed Inline XBRL advocated for this more expansive approach.[766] Requiring funds to also tag the remaining disclosures on Form N–CSR would enable more efficient retrieval, aggregation, and analysis of those disclosures compared to the final rule amendments, under which the disclosures will remain untagged.[767] Such a requirement would also have imposed additional filing preparation costs (specifically, the costs of applying additional Inline XBRL tags to Form N–CSR) on funds compared to the final rule amendments.[768] Because Form N–CSR is used by both open and closed-end management investment companies to file shareholder reports, as well as other information, we have determined to limit the tagging requirements under the final rule amendments to the content that is the focus of the final rule amendments (namely, the shareholder reports filed by open-end management investment companies). We believe the information in these reports is particularly salient to funds' largely retail shareholder base, and the benefits of tagging this information likewise will be beneficial in helping these investors, as well as other market participants, understand funds' performance and operations. We believe adding requirements to tag other content filed on Form N–CSR, including content filed by closed-end management investment companies, merits further consideration.

V. Paperwork Reduction Act Analysis

A. Introduction

Certain provisions of the final rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[769] We are submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[770] The titles for the existing collections of information are: (1) ''Rule 30e–1 under the Investment Company Act, Reports to Stockholders of Management Companies'' (OMB Control No. 3235–0025) (2) ''Form N–CSR, Certified Shareholder Report under the Exchange Act and under the Investment Company Act for Registered Management Investment Companies''(OMB Control No. 3235–0570); (3) ''Rule 482 under the Securities Act of 1933 Advertising by an Investment Company as Satisfying Requirements of Section 10'' (OMB Control No. 3235–0565); (4) ''Rule 34b–1 under the Investment Company Act, Sales Literature Deemed to be Misleading'' (OMB Control No. 3235–0346); (5) ''Rule 433 under the Securities Act of 1933'' (OMB Control No. 3235–0617); (6) ''Rule 30e–3 under the Investment Company Act, internet Availability of Reports to Shareholders''

[762] Although all registered management investment companies are subject to rule 30e–1, the information a registered management investment company must include in its shareholder report is specified in the relevant Investment Company Act registration statement form (*i.e.,* Form N–1A, Form N–2, or Form N–3).

[763] Several commenters suggested that shareholders across fund types (*e.g.,* closed-end funds and UITs, as well as open-end funds) have similar informational needs and thus would all likely benefit from the layered approach to disclosure of the rule amendments. *See, e.g.,* Tom and Mary Comment Letter; Dechert Comment Letter; CFA Institute Comment Letter; Donald Comment Letter.

[764] *See* Closed-End Fund Offering Reform Adopting Release, *supra* footnote 143, at section II.I.2.a (discussing new annual report requirements for funds that file a short-form registration statement), section II.I.2.b (discussing MDFP disclosure that would appear in registered closed-end funds' annual reports), and section II.I.5 (discussing enhancements to certain registered closed-end funds' annual report disclosure).

[765] *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 9.

[766] *See, e.g.,* Better Markets Comment Letter; Consumer Federation of America II Comment Letter; Morningstar Comment Letter; XBRL US Comment Letter.

[767] *See supra* section IV.C.2.a.i.

[768] *See supra* section IV.C.2.b.iii.

[769] 44 U.S.C. 3501 through 3521.

[770] 44 U.S.C. 3507(d); 5 CFR 1320.11.

(OMB Control No. 3235–0758); and (7) ''Investment Company Interactive Data'' (OMB Control No. 3235–0642). 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 Commission published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted the proposed collections of information to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. While the Commission received no comments specifically addressing the estimated PRA burdens and costs that the Proposing Release described, it did receive comments discussing the burdens of implementing certain aspects of the proposal, including the associated collections of information as defined in the PRA. We discuss these comments below, along with discussing updated estimates of the collection of information burdens associated with the amendments to rule 30e–1 under the Investment Company Act and Form N–CSR. We also discuss the amendments to rule 482 under the Securities Act, rule 34b–1 under the Investment Company Act, rule 433 under the Securities Act, and rule 30e–3 under the Investment Company Act, as well as amendments that would affect the existing Investment Company Interactive Data collection of information.[771]

B. New Shareholder Report Requirements Under Rule 30e–1

We have previously estimated that it takes a total of 1,039,868 hours, and involves a total external cost burden of $149,244,791 to comply with the collection of information associated with rule 30e–1.[772] Compliance with the disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements are not kept confidential.

The Commission did not receive public comment regarding the PRA estimates for rule 30e–1 in the Proposing Release, although it did receive comments suggesting that certain aspects of the new shareholder report requirements may be more burdensome than the Commission estimated at proposal. We have adjusted the proposal's estimated annual burden hours and total time costs to reflect these comments, to reflect changes from the proposal (for example, requiring class-specific shareholder reports), as well as to reflect updated wage rates.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the amendments to rule 30e–1.

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[771] In the Proposing Release, we included estimated PRA burdens and costs associated with the proposed amendments to Form N–1A. Those proposed amendments addressed fee and risk disclosure as well as removing a rule 30e–3 legend, which since has been removed from Form N–1A. *See supra* section I.B. Because we are not adopting our proposed amendments to Form N–1A, we have not included PRA burdens and costs associated with that registration form.

[772] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2020. The estimates in the Proposing Release were based on earlier approved estimates (1,028,658 hours and $147,750,391 external cost burden), and these earlier approved estimates are reflected in the ''Proposed Estimates'' section of Table 9 below.

TABLE 8: RULE 30E-1 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours[1]		Wage rate[2]	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES						
Prepare annual report pursuant to Item 27A of amended Form N-1A	36 hours	22 hours[3]	×	$336 (blended rate for compliance attorney and senior programmer)	$7,392	
Prepare semi-annual report pursuant to Item 27A of amended Form N-1A	18 hours	11 hours[4]		$336 (blended rate for compliance attorney and senior programmer)	$3,696	
Website availability requirements	12	8 hours[5]		$239 (webmaster)	$1,912	
Delivery upon request requirements						$500
Total additional burden per fund		41 hours			$13,000	
Number of funds		× 12,410 funds[6]			× 12,410 funds	× 12,410 funds
Total annual burden		508,810 hours			$161,330,000	$6,205,000
TOTAL PROPOSED ESTIMATED BURDENS INCLUDING AMENDMENTS						
Current burden estimates		+1,028,658				+$147,750,391
Revised burden estimates		1,537,468				$153,955,391
FINAL ESTIMATED BURDENS						
Prepare annual report pursuant to Item 27A of amended Form N-1A	72 hours	34 hours[7]	×	$381 (blended rate for compliance attorney and senior programmer)	$12,954	
Prepare semi-annual report pursuant to Item 27A of amended Form N-1A	36 hours	17 hours[8]		$381 (blended rate for compliance attorney and senior programmer)	$6,477	
Website availability requirements	12	8 hours[9]		$272 (webmaster)	$2,176	
Delivery upon request requirements						$500
Total additional burden per fund		59 hours			$21,607	
Number of funds		× 11,840 funds[10]			× 11,840 funds	× 11,840 funds
Total annual burden		698,560 hours			$255,826,880	$5,920,000
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS						
Current burden estimates		1,039,868				$149,244,791
Revised burden estimates		1,738,428				$155,164,791

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed and final reporting requirements that we believe otherwise would be involved in preparing and filing shareholder reports. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
3. This estimate assumed that, after the initial 36 hours that a fund would spend preparing an annual report, which the Commission annualized over a 3-year period, the fund would incur 10 additional burden hours associated with ongoing preparation of the annual report per year. The estimate of 22 hours was based on the following calculation: ((36 initial hours /3) + 10 hours of additional ongoing burden hours) = 22 hours.
4. This estimate assumed that, after the initial 18 hours that a fund would spend preparing a semi-annual report, which the Commission annualized over a 3-year period, the fund would incur 5 additional burden hours associated with ongoing preparation of the semi-annual report per year. The estimate of 11 hours was based on the following calculation: ((18 initial hours /3) + 5 hours of additional ongoing burden hours) = 11 hours.
5. This estimate assumed that, after the initial 12 hours that a fund would spend complying with these website availability requirements, which the Commission annualized over a 3-year period, the fund would incur 4 additional burden hours associated with ongoing compliance with these website availability requirements per year. The estimate of 8 hours was based on the following calculation: ((12 initial hours /3) + 4 hours of additional ongoing burden hours) = 8 hours.
6. Includes all open-end funds, including ETFs, registered on Form N-1A (estimated at proposal).
7. This estimate assumes that, after the initial 72 hours that a fund would spend preparing an annual report, which we annualize over a 3-year period, the fund would incur 10 additional burden hours associated with ongoing preparation of the annual report per year. The estimate of 34 hours is based on the following calculation: ((72 initial hours /3) + 10 hours of additional ongoing burden hours) = 34 hours.
8. This estimate assumes that, after the initial 36 hours that a fund would spend preparing a semi-annual report, which we annualize over a 3-year period, the fund would incur 5 additional burden hours associated with ongoing preparation of the semi-annual report per year. The estimate of 17 hours is based on the following calculation: ((36 initial hours /3) + 5 hours of additional ongoing burden hours) = 17 hours.
9. This estimate assumes that, after the initial 12 hours that a fund would spend complying with these website availability requirements, which we annualize over a 3-year period, the fund would incur 4 additional burden hours associated with ongoing compliance with these website availability requirements per year. The estimate of 8 hours is based on the following calculation: ((12 initial hours /3) + 4 hours of additional ongoing burden hours) = 8 hours.
10. Includes all open-end funds, including ETFs, registered on Form N-1A (updated estimate).

C. Form N–CSR

In our most recent PRA submission for Form N–CSR, we estimated the annual compliance burden to comply with the collection of information requirement of Form N–CSR is 227,137 burden hours with an internal cost burden of $80,860,772, and an external cost burden estimate of $5,949,924.[773] Compliance with the disclosure requirements of Form N–CSR is mandatory, and the responses to the disclosure requirements are not kept confidential.

The Commission did not receive public comment regarding the PRA estimates for Form N–CSR in the Proposing Release. We have adjusted the proposal's estimated annual burden hours and total time costs, however, to reflect updated wage rates.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the amendments to Form N–CSR.

[773] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2022. The estimates in the Proposing Release were based on earlier approved estimates (179,443 hours and $3,129,984 external cost burden), and these earlier approved estimates are reflected in the ''Proposed Estimates'' section of Table 10 below.

TABLE 9: FORM N-CSR PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours[1]		Wage Rate[2]	Internal Time Costs	Annual external cost burden
PROPOSED ESTIMATES FOR INITIAL N-CSR FILINGS						
Total additional burden per filing (proposed new Items 7-11 of Form N-CSR)	18 hours	11 hours[3]	×	$336 (blended rate for compliance attorney and senior programmer)	$3,696	–
Number of filings		×24,820[4]			× 24,820	
Total additional burden for Form N-CSR		273,020 hours			$91,743,720	–
TOTAL PROPOSED ESTIMATED BURDENS INCLUDING AMENDMENTS						
Current burden estimates		+179,443 hours				$3,129,984
Revised burden estimates		452,463 hours				$3,129,984
FINAL ESTIMATES FOR INITIAL N-CSR FILINGS						
Total additional burden per filing (new Items 7-11 of Form N-CSR)	18 hours	11 hours[5]	×	$381 (blended rate for compliance attorney and senior programmer)	$4,191	–
Number of filings		×23,680[6]			× 23,680	
Total additional burden for Form N-CSR		260,480 hours			$99,242,880	–
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS						
Current burden estimates		227,137 hours				$5,949,924
Revised burden estimates		487,617 hours				$5,949,924

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed and final reporting requirements that we believe otherwise would be involved in preparing and filing Form N-CSR. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
3. This estimate assumed that, after the initial 18 hours that a fund would spend preparing the new items on Form N-CSR, which the Commission annualized over a 3-year period, the fund would incur 5 additional burden hours associated with ongoing preparation of these items per year. The estimate of 11 hours was based on the following calculation: ((18 initial hours / 3) + 5 hours of additional ongoing burden hours) = 11 hours.
4. Funds make two filings on Form N-CSR annually. Therefore, this proposed estimate was based on the following calculation: 12,410 funds x 2 = 24,820 filings.
5. This estimate assumes that, after the initial 18 hours that a fund would spend preparing the new items on Form N-CSR, which we annualize over a 3-year period, the fund would incur 5 additional burden hours associated with ongoing preparation of these items per year. The estimate of 11 hours is based on the following calculation: ((18 initial hours / 3) + 5 hours of additional ongoing burden hours) = 11 hours.
6. Funds make two filings on Form N-CSR annually. Therefore, this updated estimate is based on the following calculation: 11,840 funds x 2 = 23,680 filings.

D. Rule 482

In our most recent Paperwork Reduction Act submission for rule 482, the Commission estimated the annual burden to comply with rule 482's information collection requirements to be 212,927 hours, with a time cost of $74,098,735, and with no annual

external cost burden.[774] Compliance with the requirements of rule 482 is mandatory, and responses to the information collections are not kept confidential.

For purposes of estimating the burden of the final rules amendments, we estimate that 38,013 responses to rule 482 are filed annually.[775] We estimate that approximately 96% of these rule 482 responses provide fee and expense figures in qualifying advertisements and would, therefore, be required to comply with the final rule amendments regarding such information (for example, ensuring that the fee and expense figures are presented in accordance with the prominence and timeliness requirements in the amendments to rule 482). Similarly, we estimate that 96% of the responses to rule 482 (*i.e.,* 36,492 responses) provide advertisements that include information regarding a fund's total annual expenses and would, therefore, have to comply with the final rule amendments regarding such information.

The Commission did not receive public comment regarding the PRA estimates for rule 482 in the Proposing Release. We have adjusted the proposal's estimated annual burden hours and total time costs, however, to reflect updated wage rates and adjustments to our estimates of the number of responses that would be affected by the final rule amendments.

The table below summarizes our PRA initial and ongoing estimates for the internal burdens associated with the amendments to rule 482:

[774] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2020. The estimates in the Proposing Release were based on earlier approved estimates (278,161 hours, with internal time costs of $76,702,896 and no external cost burden), and these earlier approved estimates are reflected in the ''Proposed Estimates'' section of Table 11 below.

[775] The Commission estimates that there was a total of 41,953 responses to rule 482 that either were filed with FINRA or with the Commission in 2021. Of those, the Commission estimates that 1,124 were responses from closed-end funds and BDCs, and that 2,816 were responses from variable insurance contracts. The number of responses filed with the SEC is based on the average number of responses filed with the Commission from 2019–2021. The Commission assumes that, moving forward, closed-end funds and BDCs will choose to use free writing prospectuses under rule 433, and also that variable insurance contracts will not be subject to the amendments to rule 482. Therefore, we exclude closed-end funds, BDCs, and variable insurance contracts from the total responses to rule 482 for purposes of this estimate. The exclusion of variable insurance contracts represents a change from the PRA estimate at proposal.

TABLE 10: RULE 482 PRA ESTIMATES

	Internal initial hour burdens	Internal annual burden[1]	Wage Rate[2]	Internal Time Costs
PROPOSED ESTIMATES FOR RULE 482				
New general requirements re: fee and expense figure disclosure	9 hours	6 hours[3]	$336 (blended rate for compliance attorney and senior programmer)	$2,016
Number of responses to rule 482 that include fee/expense figure disclosure		x 35,514 responses		x 35,514 responses
Total burden of new requirements for fee and expense disclosure		213,084 hours		$71,596,224
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hours	4 hours[4]	$336 (blended rate for compliance attorney and senior programmer) -	$1,344
Number of responses to rule 482 that disclose fee waivers/expense reimbursement arrangements		x 35,514 responses		x 35,514 responses
Total burden of annual requirements for disclosure of fee waivers/expense reimbursement arrangements		142,056 hours		$47,730,816
Total annual burden		355,140 hours		$119,327,040
TOTAL PROPOSED ESTIMATED BURDENS INCLUDING AMENDMENTS				
Current burden estimates		278,161 hours		$76,702,896
Revised burden estimate		633,301 hours		$196,029,936
FINAL ESTIMATES FOR RULE 482				
New general requirements re: fee and expense figure disclosure	9 hours	6 hours	$381 (blended rate for compliance attorney and senior programmer)	$2,286
Number of responses to rule 482 that include fee/expense figure disclosure		x 36,492 responses		x 36,492 responses
Total burden of new requirements for fee and expense disclosure		218,952 hours		$83,420,712
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hours	4 hours	$381 (blended rate for compliance attorney and senior programmer) -	$1,524
Number of responses to rule 482 that disclose fee waivers/expense reimbursement arrangements		x 36,492 responses		x36,492 responses
Total burden of annual requirements for disclosure of fee waivers/expense reimbursement arrangements		145,968 hours		$55,613,808
Total annual burden		364,920 hours		$139,034,520
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS				
Current burden estimates		212,927 hours		$74,098,735
Revised burden estimate		577,847 hours		$213,133,255

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in preparing advertisements (reflecting the proposed and final amendments to rule 482) that we believe otherwise would be involved in preparing a fund's advertisements. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
3. This estimate assumed that, after the initial 9 hours that an entity would spend on the proposed fee and expense disclosure, which we annualize over a 3-year period, the entity would incur 3 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 6 hours is based on the following calculation: ((9 initial hours /3) + 3 hours of additional ongoing burden hours) = 6 hours.
4. This estimate assumed that, after the initial 6 hours that an entity would spend on the proposed fee waiver and expense reimbursement requirements, which we annualized over a 3-year period, the entity would incur 2 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 4 hours is based on the following calculation ((6 initial hours/ 3) + 2 hours of additional ongoing burden hours) = 4 hours.

E. Rule 34b–1

To apply the same fee and expense-related requirements consistently across all registered investment company and BDC advertisements and supplemental sales literature, we are amending rule 34b–1 in a manner that mirrors our amendments to rule 482.[776]

For purposes of estimating the burden of the final rules amendments, we estimate that 7,509 responses to rule 34b–1 are filed annually.[777] We estimate that approximately 96% of the rule 34b–1 responses provide fee and expense figures in qualifying advertisements and would, therefore, be required to comply with the final rule amendments regarding such information. Similarly, we estimate that 96% of the responses to rule 34b–1 (*i.e.,* 7,209 responses) provide advertisements that include information regarding a fund's total annual expenses and would, therefore, have to comply with the final rule amendments regarding such information. Compliance with the requirements of rule 34b–1 is mandatory, and the responses to the information collections are not kept confidential.

In our most recent Paperwork Reduction Act submission for rule 34b–1, we estimated the annual compliance burden to comply with the collection of information requirement in rule 34b–1 is 46,278 hours, with an internal cost burden of $13.8 million.[778] There is no annual external cost burden attributed to rule 34b–1.

The Commission did not receive public comment regarding the PRA estimates for rule 34b–1 in the Proposing Release. We have adjusted the proposal's estimated annual burden hours and total time costs, however, to reflect updated wage rates and adjustments to our estimates of the number of responses that would be affected by the final rule amendments.

The table below summarizes the estimates for internal burdens associated with the new requirements under the final amendments to rule 34b–1.

[776] *See supra* section II.G.

[777] The Commission estimates that there was a total of 8,227 total responses to rule 34b–1 that either were filed with FINRA or with the Commission in 2021. (The estimated number of responses in the Proposing Release was significantly lower because the responses filed with FINRA were inadvertently omitted.) Of those, the Commission estimates that 718 were responses from variable insurance contracts. The number of responses filed with the SEC is based on the average number of responses filed with the Commission from 2019–2021. The Commission assumes that variable insurance contracts will not be subject to the amendments to rule 34b–1. Therefore, we exclude variable insurance contracts from the total responses to rule 34b–1 for purposes of this estimate. We have subtracted these 718 responses from the estimate of 8,227 total responses to estimate the responses to rule 34b–1 for purposes of calculating the burden estimate of the final rule amendments (8,227 − 718 = 7,509). The exclusion of variable insurance contracts also represents a change from the PRA estimate at proposal.

[778] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2021. The estimates in the Proposing Release were based on earlier approved estimates (26,008 hours, with internal time costs of $73,000,000 and no external cost burden), and these earlier approved estimates are reflected in the ''Proposed Estimates'' section of Table 12 below.

TABLE 11: RULE 34B-1 PRA ESTIMATES

	Internal initial burden hours	Internal annual hour burden[1]	Wage Rate[2]	Internal Time Costs
PROPOSED ESTIMATES FOR RULE 34B-1				
New general requirements re: fee and expense figure disclosure	9 hours	6 hours[3]	$336 (blended rate for compliance attorney and senior programmer)	$2,016
Number of responses to rule 34b-1 that include fee/expense figure disclosure		x 337 responses		x 337 responses
Total annual burden of new requirements for fee and expense disclosure		2,022 hours		$679,392
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hours	4 hours[4]	$336 (blended rate for compliance attorney and senior programmer)	$1,344
Number of responses to rule 34b-1 that disclose fee waivers/expense reimbursement arrangements		x 337 responses		x 337 responses
Total annual burden of requirements for disclosure of fee waivers/expense reimbursement arrangements		1,348 hours		$452,928
Total annual burden		3,370 hours		$1,132,320
TOTAL PROPOSED ESTIMATED BURDENS INCLUDING AMENDMENTS				
Current burden estimates		26,008 hours		$7,300,000
Revised burden estimate		29,378		$8,432,320
FINAL ESTIMATES FOR RULE 34B-1				
New general requirements re: fee and expense figure disclosure	9 hours	6 hours	$381 (blended rate for compliance attorney and senior programmer)	$2,286
Number of responses to rule 34b-1 that include fee/expense figure disclosure		x 7,209 responses		x 7,209 responses
Total annual burden of new requirements for fee and expense disclosure		43,254 hours		$16,479,774
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hours	4 hours	$381 (blended rate for compliance attorney and senior programmer)	$1,524
Number of responses to rule 34b-1 that disclose fee waivers/expense reimbursement arrangements		x 7,209 responses		x 7,209 responses
Total annual burden of requirements for disclosure of fee waivers/expense reimbursement arrangements		28,836 hours		$10,986,516
Total annual burden		72,090 hours		$27,466,290
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS				
Current burden estimates		46,278 hours		$13,813,983
Revised burden estimate		118,368 hours		$41,280,273

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in supplemental sales literature (reflecting the proposed and final amendments to rule 34b-1) that we believe otherwise would be involved in preparing a fund's advertisements. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
3. This estimate assumed that, after the initial 9 hours that an entity would spend on the proposed fee and expense disclosure, which we annualize over a 3-year period, the entity would incur 3 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 6 hours is based on the following calculation: ((9 initial hours /3) + 3 hours of additional ongoing burden hours) = 6 hours.
4. This estimate assumed that, after the initial 6 hours that an entity would spend on the proposed fee waiver and expense reimbursement requirements, which we annualized over a 3-year period, the entity would incur 2 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 4 hours is based on the following calculation ((6 initial hours/ 3) + 2 hours of additional ongoing burden hours) = 4 hours.

F. Rule 433

We are amending rule 433 to require a registered closed-end fund or BDC free writing prospectus to comply with the content, presentation, and timeliness requirements of the final amendments to rule 482, as applicable, if the free writing prospectus includes fee and expense information.[779] As a result, regardless of whether a registered closed-end fund or BDC advertisement uses rule 482 or rule 433, the advertisement will be subject to the same requirements regarding fee and expense information.[780] Compliance with the requirements of rule 433 is mandatory, and the responses to the information collections are not kept confidential.

In our most recent Paperwork Reduction Act submission for rule 433, we estimated the annual compliance burden to comply with the collection of information requirement rule 433 is 6,391 hours, at a time cost of $7,668,800, and an external cost burden estimate of $7,669,017. As part of the rulemaking that accompanied that Paperwork Reduction Act submission, we also estimated that there will be 791 closed-end funds and BDCs filing approximately 4,271 free writing prospectuses.

For purposes of this PRA analysis, we estimate that there will be 791 closed-end funds and BDCs filing approximately 4,479 free writing prospectuses annually. We estimate that approximately 96% of the 4,479 responses provide fee and expense figures in free writing prospectuses and will, therefore, be required to comply with the final rule amendments regarding such information.[781] Similarly, we estimate that 96% of these responses (*i.e.,* 4,300 responses) will include information regarding a fund's total annual expenses and will, therefore, have to comply with the final rule amendments regarding such information.

The Commission did not receive public comment regarding the PRA estimates for rule 433 in the Proposing Release. We have adjusted the proposal's estimated annual burden hours and total time costs, however, to reflect updated wage rates and adjustments to our estimates of the number of responses that would be affected by the final rule amendments.

The table below summarizes the estimated ongoing internal burdens associated with this new requirement under rule 433:

[779] *See supra* section II.G.

[780] *See supra* footnote 775 (noting that, for purposes of the PRA for rule 482, we excluded responses from closed-end funds, BDCs, and variable contracts).

[781] Our estimate of the internal ongoing burdens is based on our most recent PRA submission. *See* Closed-End Fund Offering Reform Adopting Release, *supra* footnote 143. We are assuming, however, that the rule and rule and form amendments that the Commission adopted in that release will increase the prevalence of the use of free writing prospectuses by BDCs and registered closed-end funds. The transition to the rule and rule and forms amendments adopted in that release is continuing to occur because although certain of the closed-end fund offering reform rule and rule and form amendments became effective on August 1, 2021, their compliance dates are not until 2023.

TABLE 12: RULE 433 PRA ESTIMATES

	Internal initial burden hours[1]	Internal annual hour burden	Wage rate[2]	Internal time costs	External costs
PROPOSED ESTIMATES FOR RULE 433					
New general requirements re: fee and expense figure disclosure	9 hours	6 hours[3]	$336 (blended rate for compliance attorney and senior programmer)	$2,016	
Number of responses to rule 433 that include fee/expense figure disclosure		x 4,100 responses		x 4,100 responses	
Total burden of new requirements for fee and expense disclosure		24,600 hours		.$8,265,600	
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hours	4 hours[4]	$336 (blended rate for compliance attorney and senior programmer)	$1,344	
Number of responses to rule 433 that disclose fee waivers/expense reimbursement arrangements		x 4,100 responses	-	x 4,100 responses	
Total burden of annual requirements for disclosure of fee waivers/expense reimbursement arrangements		16,400 hours		$5,510,400	
Total annual burden		41,000 hours		$13,776,000	
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current burden estimates		6,391 hours		$7,668,800[5]	$7,668,800[5]
Revised burden estimate		47,391 hours		$21,444,800	$7,668,800
FINAL ESTIMATES FOR RULE 433					
New general requirements re: fee and expense figure disclosure	9 hours	6 hours[3]	$381 (blended rate for compliance attorney and senior programmer)	$2,286	
Number of responses to rule 433 that include fee/expense figure disclosure		x 4,300 responses		x 4,300 responses	
Total burden of new requirements for fee and expense disclosure		25,800 hours		$9,829,800	
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hours	4 hours[4]	$381 (blended rate for compliance attorney and senior programmer)	$1,524	
Number of responses to rule 433 that disclose fee waivers/expense reimbursement arrangements		x 4,300 responses	-	x 4,300 responses	
Total burden of annual requirements for disclosure of fee waivers/expense reimbursement arrangements		17,200 hours		$6,553,200	
Total annual burden		43,000 hours		$16,383,000	
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current burden estimates		6,391 hours		$7,668,800	$7,668,800
Revised burden estimate		49,391 hours		$24,051,800	$7,668,800

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in preparing free writing prospectuses that we believe otherwise would be involved in preparing a fund's advertisements. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
3. This estimate assumed that, after the initial 9 hours that an entity would spend on the proposed fee and expense disclosure, which we annualize over a 3-year period, the entity would incur 3 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 6 hours is based on the following calculation: ((9 initial hours /3) + 3 hours of additional ongoing burden hours) = 6 hours.
4. This estimate assumed that, after the initial 6 hours that an entity would spend on the proposed fee waiver and expense reimbursement requirements, which we annualized over a 3-year period, the entity would incur 2 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 4 hours is based on the following calculation ((6 initial hours/ 3) + 2 hour of additional ongoing burden hours) = 4 hours.
5. We understand that the entirety of the internal burden costs are external burden costs.

G. Rule 30e–3

We are amending the scope of rule 30e–3 to exclude investment companies registered on Form N–1A.[782] Because this amendment would decrease the number of funds that would be able to rely on rule 30e–3, we are updating the PRA analysis for rule 30e–3 to account for any burden decrease that would result from this decrease in respondents. We are not updating the rule 30e–3 PRA analysis in any other respect. Reliance on the rule is voluntary; however, compliance with the rule's conditions is mandatory for funds relying on the rule. Responses to the information collections are not kept confidential.

In our most recent PRA submission for rule 30e–3, we estimated for this rule a total hour burden of 24,719 hours, with a total annual external cost burden of $81,926,160.[783] The table below summarizes our PRA estimates associated with the final amendments to the scope of rule 30e–3. The Commission did not receive public comment regarding the PRA estimates for the proposed amendments to rule 30e–3 in the Proposing Release. We have adjusted the proposal's estimated annual burden hours and total time costs, however, to reflect updated wage rates.

TABLE 13: RULE 30E-3 PRA ESTIMATES

	Currently approved annual internal hour burden[1]	Updated estimated annual internal hour burden	Previously estimated annual internal burden time cost	Updated estimated annual internal time burden cost	Previously estimated annual external cost burden	Updated estimated annual external cost burden
Total annual burden	24,719 hours	1,298 hours[2]	approx. $8.9 million	approx. $452,145[3]	approx. $82 million	approx. $4.2 million[4]

Notes:
1. The estimated current burdens and costs in this table are based on the PRA renewal submitted in 2022. This PRA renewal includes an estimate of 11,771 funds relying on rule 30e-3, of which approximately 10,547 are open-end investment companies registered on Form N-1A and 626 UITs.
2. This estimate is calculated as follows: ((11,771 funds relying on rule 30e-3 - 10,547 open-end funds relying on rule 30e-3 – 626 UITs relying on 30e-3= 618) / 11,771) x 24,719 hours = approximately 1,298 hours.
3. This estimate is calculated as follows: ((11,771 - 11,173= 598) / 11,771) x $8.9 million = approximately $452,145.
4. This estimate is calculated as follows: ((11,771 – 11,173 = 598) / 11,771) x $82 million = approximately $4.2 million.

H. Investment Company Interactive Data

We are adopting new requirements for funds to tag shareholder report contents required by Item 27A of amended Form N–1A in Inline XBRL. While the requirement to tag the contents of a fund's shareholder report is new, funds subject to this new requirement are otherwise currently required to tag certain disclosures in Inline XBRL.[784] Our PRA estimates reflect the fact that the funds affected by this amendment are familiar with Inline XBRL and will have more limited implementation costs than would be estimated for funds tagging disclosure for the first time.

In our most recent PRA submission for Investment Company Interactive Data, we estimated a total aggregate annual hour burden of 252,684 hours, and a total aggregate annual external cost burden of $15,449,450.[785] Compliance with the interactive data requirements is mandatory, and the responses will not be kept confidential.

The table below summarizes our PRA estimates for the initial and ongoing annual burdens associated with the amendments to require tagging shareholder reports, as well as Regulation S–T.

[782] *See supra* section II.E.

[783] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2022. The estimates in the Proposing Release were based on earlier approved estimates (28,758 hours and $79,031,220 external cost burden). Of those costs, at proposal the Commission estimated that 24,459.4 hours, at a time cost of $8,674,306, and an external cost of $69,965,020, were attributed to the compliance costs of open-end funds registered on Form N–1A.

[784] *See supra* footnotes 571 and 572 and accompanying text discussing current Inline XBRL requirements for funds.

[785] This estimate is based on the last time this information collection was approved in 2022.

TABLE 14: INVESTMENT COMPANY INTERACTIVE DATA

	Internal initial burden hours	Internal annual burden hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
Shareholder report pursuant to Item 27A of amended Form N-1A for current XBRL filers	18 hours	6 hours[3]	$381 (blended rate for compliance attorney and senior programmer)	$2,286	**$50**[4]
Number of funds		× 11,840 funds[5]		× 11,840 funds	× 11,840 funds
Total new aggregate annual burden		71,040 hours[6]		$27,066,240[7]	$592,000[8]
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current aggregate annual burden estimates		+ 252,684 hours			+ $15,449,450
Revised aggregate annual burden estimates		323,724 hours			$16,041,450

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume the same types of professionals would be involved in satisfying the final rules' interactive data requirements that we believe otherwise would be involved in complying with similar requirements. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
3. Includes initial burden estimates annualized over a three-year period. The estimate is based on 18 initial hours (12 hours for the annual report + 6 hours for the semi-annual report) The estimate of 6 hours is based on the following calculation: ((18 initial hours /3) = 6 hours.
4. We estimate an incremental external cost for filers on Form N-1A, as they already submit certain information using Inline XBRL.
5. Includes all open-end funds, including ETFs, registered on Form N-1A.
6. 71,040 hours = (11,840 funds x 6 hours). We estimate no ongoing burden, as this is already incorporated into the current burden estimate for funds that are complying with requirements to tag disclosures using Inline XBRL, and this estimation approach is consistent with other similar PRA estimates. *See supra* footnote 730.
7. $27,066,240 internal time cost = (11,840 funds x $2,286).
8. $592,000 annual external cost = (11,840 funds x $50).

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VI. Final Regulatory Flexibility Act Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') in accordance with section 604 of the Regulatory Flexibility Act (''RFA'').[786] It relates to: the final amendments to funds' annual and semi-annual report requirements, new Form N–CSR requirements, and new website availability requirements; the final investment company advertising rule amendments; final amendments to require that funds tag their shareholder reports in Inline XBRL; and the final technical and conforming amendments. An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the RFA and included in the Proposing Release.[787]

[786] 5 U.S.C. 604.

[787] *See* Proposing Release, *supra* footnote 8, at section V.

A. Need for and Objectives of the Rule and Form Amendments

The Commission is adopting new rule, rule amendments, and form amendments that create a simplified disclosure framework for mutual funds and exchange-traded funds to highlight key information for investors. Under the final rules, fund investors will continue to receive fund prospectuses in connection with their initial investment in a fund, as they do today. On an ongoing basis thereafter, the investors will receive more concise and visually engaging annual and semi-annual reports designed to highlight information that we believe is particularly important for retail shareholders to assess and monitor their ongoing fund investments. The final rule amendments promotes a layered disclosure framework that complements the shareholder report by continuing to make available additional information that may be of interest to some investors, including the fund's financial statements. The information will be available online, reported on Form N–CSR, and delivered to an investor on request, free of charge. The final rules would also provide funds the flexibility to make electronic versions of their shareholder reports more user-friendly and interactive. We are also requiring that funds tag their reports to shareholders using Inline XBRL to provide machine-readable data that retail investors could use to more efficiently access and evaluate their investments.

We are also adopting rule amendments that no longer permit mutual funds and exchange-traded funds required to register on Form N–1A to rely on rule 30e–3 to satisfy shareholder report transmittal requirements, in order to promote the provision of consistent disclosure that we believe is best tailored to investors' informational needs. To improve fee- and expense-related information more broadly, we are amending investment company advertising rules to promote more transparent and balanced statements about investment costs. The advertising rule amendments affect all

registered investment companies and BDCs.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on every aspect of the IRFA, including the number of small entities that would be affected by the proposed rule and form amendments, the existence or nature of the potential impact of the proposals on small entities discussed in the analysis, and how to quantify the impact of the proposed amendments. We also requested comment on the proposed compliance burdens and the effect these burdens would have on smaller entities.

Although we did not receive comments specifically addressing the IRFA, one commenter noted the potential impact of an aspect of proposed rule where funds would be required to include in their annual reports comparing performance of $10,000 in investment in the fund and in an appropriate broad-based securities market index over a 10 year period. The commenter stated that the cost for smaller fund complexes to change or add an additional index may be higher than for other funds.[788] Smaller funds may have fewer licensing agreements and thus may incur costs associated with this requirement, which may hinder competition for smaller funds.[789] As discussed above, the definition of the term ''appropriate broad-based securities market index'' in the management's discussion of fund performance section of the shareholder report could result in additional costs to funds, in the form of index-licensing fees and the costs of updating disclosure for funds that change the broad-based index they include in their performance disclosure in response to this requirement.

C. Small Entities Subject to the Rule

For purposes of Commission rulemaking in connection with the Regulatory Flexibility Act, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[790] Commission staff estimates that, as of June 2022, approximately 43 open-end funds (including 11 ETFs), 31 closed-end funds, and 11 BDCs are small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The new rule and form amendments will impact current reporting, recordkeeping, and other compliance requirements for funds, including those considered to be small entities.

1. Annual and Semi-Annual Reports

We are adopting tailored disclosure requirements for funds' annual and semi-annual reports to help shareholders focus on key information that we believe is most useful for assessing and monitoring fund investments on an ongoing basis, including information about a fund's expenses, portfolio holdings, and performance. Among other things, shareholder reports will be revised to include new disclosures (such as material changes and fund statistics in annual reports), simplify certain disclosures (such as MDFP in annual reports), and remove certain disclosures (such as financial statements currently found in semi-annual and annual reports).[791] We also are adopting amendments to improve the design of funds' shareholder reports by encouraging funds to use features that promote effective communications (*e.g.,* tables, charts, bullet lists, question-and-answer formats) and permitting funds to use technology to enhance an investor's understanding of material in electronic versions of shareholder reports.

We estimate that approximately 43 funds are small entities that are required to prepare and transmit shareholder reports under the final rules.[792] We expect the final rules to result in some initial implementation costs but, going forward, will reduce the burdens associated with these existing disclosure requirements related to shareholder reports. We estimate that preparing amended annual report disclosure will cost $27,432 for each fund, including small entities in its first year of compliance, and $3,810 for each subsequent year.[793] We further estimate that preparing amended semi-annual report disclosure will cost $13,716 for each fund, including small entities, in its first year of compliance, and $1,905 for each subsequent year.[794]

2. New Form N–CSR and Website Availability Requirements

We are adopting a layered disclosure framework that complements the amended shareholder report requirements by continuing to make available to investors' additional, less retail-focused information, including the fund's financial statements. This additional information, which we believe will primarily benefit financial professionals and other investors who desire more in-depth information, will be available online, reported on Form N–CSR, and delivered to an investor on request, free of charge.[795] This new Form N–CSR disclosure also will need to be available on the website specified on the cover page or at the beginning of the fund's annual report and delivered in paper or electronically upon request, free of charge.[796]

We estimate that approximately 43 funds are small entities will be required to comply with the new Form N–CSR and website availability requirements.[797] We further estimate that complying with the new Form N–CSR and website availability requirements will cost $6,858 for each fund, including small entities, in its first year of compliance, and $1,905 for each subsequent year.[798]

3. Amendments to Scope of Rule 30e–3

Subject to conditions, rule 30e–3 generally permits investment companies to satisfy shareholder report transmission requirements by making these reports and other materials available online and providing a notice of the reports' online availability instead of directly mailing the report (or emailing an electronic version of the report) to shareholders. We are amending the scope of rule 30e–3 to exclude investment companies registered on Form N–1A, which will be transmitting tailored shareholder reports under the final rules. This amendment to the scope of the rule is designed to help ensure that all investors in these funds experience the anticipated benefits of the new disclosure framework.[799]

[788] *See* ICI Comment Letter.

[789] *See supra* footnote 215 (discussing commenters arguing that the proposed broad-based index requirement would impose additional licensing fees on funds, with one commenter (ICI) stating that smaller funds with fewer (or more limited) licensing agreements in place may be more likely to incur these costs).

[790] 17 CFR 270.0–10(a). Recognizing the growth in assets under management in investment companies since rule 0–10(a) was adopted, the Commission plans to revisit the definition of a small entity in rule 0–10(a).

[791] *See supra* section II.A.2.

[792] *See* text following *supra* footnote 790.

[793] *See supra* footnote 722 and accompanying text.

[794] *See supra* footnote 723 and accompanying text.

[795] *See supra* section II.C.3.

[796] *See supra* section II.C.3.

[797] *See supra* footnote 790 and accompanying text.

[798] *See supra* footnote 732 and accompanying text.

[799] *See supra* section II.E.

4. Investment Company Advertising Rules

We are amending the Commission's investment company advertising rules (for purposes of this release, Securities Act rules 482, 156, and 433 and Investment Company Act rule 34b–1) to promote transparent and balanced presentations of fees and expenses in investment company advertisements.[800] As investment companies increasingly compete and market themselves on the basis of costs, we are concerned that investment company advertisements may mislead investors by creating an inaccurate impression of the costs associated with an investment.[801] The advertising rule amendments generally apply to any investment company, including mutual funds, ETFs, registered closed-end funds, and BDCs.

Specifically, we are amending Securities Act rules 433 and 482 and Investment Company Act rule 34b–1 to promote transparent and balanced presentations of fees and expenses in investment company advertisements. We also are amending Securities Act rule 156 to provide factors an investment company should consider to determine whether representations about the fees and expenses associated with an investment in the fund could be materially misleading.

We estimate that 43 open-end funds (including 11 ETFs), 31 closed-end funds, and 11 BDCs are small entities that will be affected by our final amendments to investment company advertising rules. As discussed above, we estimate that compliance with these final amendments will cost $5,715 for each advertisement, including small entities, in the first year, and $1,905 per year for each subsequent year.[802]

5. Inline XBRL Data Tagging

We are adopting requirements for funds to tag the shareholder report contents in Inline XBRL, which will make shareholder report disclosure more readily available and easily accessible for aggregation, comparison, filtering, and other analysis.[803] This requirement is a change from the proposed rule, which did not propose to require funds to tag the shareholder reports or other aspects of Form N–CSR in Inline XBRL. This aspect of our final rules is in keeping with the Commission's ongoing efforts to implement reporting and disclosure reforms that take advantage of the benefits of advanced technology to modernize the fund reporting and disclosure regime and, among other things, to help investors and other market participants better assess different funds. The Inline XBRL data tagging requirement generally apply to any investment company, including mutual funds, ETFs, registered closed-end funds, and BDCs.

We estimate that 43 open-end funds (including 11 ETFs), 31 closed-end funds, and 11 BDCs are small entities are small entities that will be affected by our final rule requiring the tagging of shareholder report information. As discussed above, we estimate that compliance with these final rules will cost $6,858 for each shareholder report, including small entities, in the first year.[804] Consistent with similar tagging requirements, we estimate no ongoing burden, as this is already incorporated into the current burden estimate for funds that are complying with requirements to tag disclosures using Inline XBRL.[805]

E. Agency Action To Minimize Effect on Small Entities

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic impact on small entities. We considered the following alternatives for small entities in relation to our proposal: (1) establishing different reporting, recordkeeping, and other compliance requirements or frequency, to account for resources available to small entities; (2) exempting funds that are small entities from the proposed reporting, recordkeeping, and other compliance requirements, to account for resources available to small entities; (3) clarifying, consolidating, or simplifying the compliance requirements under the final rules for small entities; and (4) using performance rather than design standards.

As discussed above, our final rules: (1) amend the shareholder report content and disclosure requirements; (2) amend to the scope of rule 30e–3 to exclude UIT separate accounts and funds registered on Form N–1A; (3) rescind rule 30e–1(d) (which currently permits a fund to transmit a copy of its prospectus or SAI in place of its shareholder report under certain conditions); (4) require that funds tag their reports in Inline XBRL; (5) amends the advertising rules for funds, including BDCs; and (6) amends Form N–CSR. Collectively, these amendments are designed to tailor the disclosures that funds provide by using layered disclosure principles to create a new disclosure framework designed to meet the informational needs of different investors (*i.e.,* initial investors versus existing shareholders, and retail investors versus those who desire more information). The final amendments are designed to focus on key information different investors must to make informed investment decisions and, for existing shareholders, to assess and monitor their fund investments. In addition, our final rules amend investment company advertising rules to promote transparent and balanced presentations of fees and expenses in investment company advertisements. We are also adopting final rules requiring funds to tag their shareholder reports using Inline XBRL to provide machine-readable data that retail investors could use to more efficiently access and evaluate their investments.

We do not believe it would be appropriate to establish different reporting, recordkeeping, and other compliance requirements or frequency, to account for resources available to small entities. Small entities currently follow the same requirements that large entities do when preparing, transmitting, and filing shareholder reports; preparing and sending or giving prospectuses to investors; and preparing investment company advertisements and supplemental sales literature. If the final rules included different requirements for small funds, it could raise investor protection concerns for investors in small funds to the extent that investors in small funds would not receive the same disclosures as investors in larger funds.

For example, to the extent that small funds may have fewer resources to invest in investor education or marketing materials, investors in small funds may have fewer opportunities outside of regulatory disclosures to obtain key information needed to make informed investment decisions and assess and monitor their fund investments. For this reason, it is important that the regulatory disclosures that small funds provide to investors are consistent in terms of content and frequency with the disclosures that larger funds provide to investors, so that all investors have the tools they need to meet their informational needs. More generally, the disclosure requirements we are adopting are tailored to meet the informational needs of different groups of investors, and to implement a layered disclosure framework that would benefit all

[800] *See supra* section II.G.

[801] *See id.*

[802] *See supra* footnote 744 and 745 and accompanying text.

[803] *See supra* section II.H.

[804] *See supra* footnote 730 and accompanying text.

[805] *See id.*

investors. Permitting different disclosure requirements for small funds would result in small fund investors not experiencing the anticipated benefits of the new tailored disclosure framework. Furthermore, uniform prospectus fee and risk disclosure requirements allow all investors to compare funds reporting the same information on the same frequency, and help all investors to make informed investment decisions based upon those comparisons.

Similarly, we do not believe it would be appropriate to exempt small funds from the final amendments. As discussed above, our contemplated disclosure framework will be disrupted if investors in smaller funds received different disclosures than investors in larger funds. We believe that investors in all funds should benefit from the Commission's disclosure amendments, not just investors in large funds.

We do not believe that clarifying, consolidating, or simplifying the compliance requirements under the final amendments for small funds would permit us to achieve our stated objectives. Many of the amendments we are adopting are based on existing rules or disclosure frameworks. We anticipate that building on existing regulatory frameworks and concepts should help to ease certain compliance burdens for funds, including small funds. For example, many of our amendments to fund shareholder reports and Form N–CSR largely reframe existing disclosure requirements to tailor disclosures to the informational needs of different investors, as opposed to requiring new disclosures for which funds would need to generate and develop reporting and compliance procedures for the first time.

Finally, we do not believe it would be appropriate to use performance rather than design standards. As discussed above, we believe the regulatory disclosures that small funds provide to investors should be consistent with the disclosures provided to investors in larger entities. Our disclosure requirements are tailored to meet the informational needs of different investors, and to implement a layered disclosure framework. We believe all fund investors should experience the anticipated benefits of the new tailored disclosure framework.

VII. Statutory Authority

The Commission is adopting the rules and forms contained in this document under the authority set forth in the Securities Act, particularly, section 19 thereof [15 U.S.C. *77a et seq.*], the Exchange Act, particularly, sections 13, 23, and 35A thereof [15 U.S.C. 78a *et seq.*], the Investment Company Act, particularly, sections 8, 24, 30, and 38 thereof [15 U.S.C. 80a *et seq.*], and 44 U.S.C. 3506, 3507.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Organization and functions (Government agencies).

17 CFR Parts 230, 232 and 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270, 274, and 249

Investment companies, Reporting and recordkeeping requirements, Securities.

VIII. Text of Proposed Rules and Form Amendments

For reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

■ 1. The authority citation for subpart N of part 200 continues to read as follows:

Authority: 44 U.S.C. 3506; 44 U.S.C. 3507.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 2. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 3. Amend § 230.156 by adding paragraph (b)(4) to read as follows:

§ 230.156 Investment company sales literature.

* * * * *

(b) * * *

(4) Representations about the fees or expenses associated with an investment in the fund could be misleading because of statements or omissions made involving a material fact, including situations where portrayals of the fees and expenses associated with an investment in the fund omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading.

* * * * *

■ 4. Amend § 230.433 by adding paragraph (c)(3) to read as follows:

§ 230.433 Conditions to permissible post-filing free writing prospectuses.

* * * * *

(c) * * *

(3) A free writing prospectus with respect to securities of a registered closed-end investment company or a business development company that includes fee or expense information must comply with paragraphs (i) and (j) of § 230.482 (Rule 482), as applicable.

* * * * *

■ 5. Amend § 230.482 by adding paragraphs (i) and (j) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(i) *Advertisements including fee or expense figures.* An advertisement that provides fee or expense figures for an investment company must include the following:

(1) The maximum amount of any sales load, or any other nonrecurring fee, and the total annual expenses without any fee waiver or expense reimbursement arrangement, based on the methods of computation prescribed by the investment company's registration statement form under the 1940 Act or under the Act for a prospectus and presented at least as prominently as any other fee or expense figure included in the advertisement; and

(2) The expected termination date of a fee waiver or expense reimbursement arrangement, if the advertisement provides total annual expenses net of fee waiver or expense reimbursement arrangement amounts.

(j) *Timeliness of fee and expense information.* Fee and expense information contained in an advertisement must be as of the date of the investment company's most recent prospectus or, if the company no longer has an effective registration statement under the Act, as of the date of its most recent annual shareholder report, except that a company may provide more current information if available.

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

■ 6. The general authority citation for part 232 continues to read, in part, as follows:

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

* * * * *

■ 7. Amend § 232.405 by revising (b)(2)(i) as follows:

(b) * * *

(2) * * *

(i) Items 2, 3, and 4 of §§ 239.15A and 274.11A of this chapter (Form N–1A), as well as any information provided in response to Item 27A(b)–(h) of Form N–1A included in any report to shareholders filed on §§ 249.331 and 274.128 of this chapter (Form N–CSR);

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 8. The general authority citation for part 239 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78*o*(d), 78*o*–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37, and sec. 71003 and sec. 84001, Pub. L. 114–94, 129 Stat. 1321, unless otherwise noted.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 9. The authority for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

Section 270.30e–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78l, 78m, 78n, 78o(d), 78w(a), 80a–8, 80a–29, and 80a–37.

* * * * *

■ 10. Amend § 270.30a–2 by:

■ a. In paragraph (a), removing the reference to ‘‘the form specified in Item 12(a)(2) of Form N–CSR’’ and adding in its place the reference ‘‘the form specified in Item 18(a)(2) of Form N–CSR’’; and

■ b. In paragraph (b), removing the reference to ‘‘Item 12(b) of Form N–CSR’’ and adding in its place the reference to ‘‘Item 18(b) of Form N–CSR.’’

■ 11. Amend § 270.30e–1 by:

■ a. Removing paragraph (d);

■ b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d);

■ c. Adding a new paragraph (b); and

■ d. Revising newly redesignated paragraphs (c) and (d) and paragraph (f)(2)(ii)(F).

The addition and revisions read as follows:

§ 270.30e–1 Reports to stockholders of management companies.

* * * * *

(b)(1) To satisfy its obligations under section 30(e) of the 1940 Act, an open-end management investment company registered on Form N–1A (§§ 239.15A and 274.11A of this chapter) also must:

(i) Make certain materials available on a website, as described under paragraph (b)(2) of this section; and

(ii) Deliver certain materials upon request, as described under paragraph (b)(3) of this section.

(2) The following website availability requirements are applicable to an open-end management investment company registered on Form N–1A (§§ 239.15A and 274.11A of this chapter).

(i) The company must make the disclosures required by Items 7 through 11 of Form N–CSR (§§ 249.331 and 274.128 of this chapter) publicly accessible, free of charge, at the website address specified at the beginning of the report to stockholders under paragraph (a) of this section, no later than 60 days after the end of the fiscal half-year or fiscal year of the company until 60 days after the end of the next fiscal half-year or fiscal year of the company, respectively. The company may satisfy the requirement in this paragraph (b)(2)(i) by making its most recent report on Form N–CSR publicly accessible, free of charge, at the specified website address for the time period that this paragraph (b)(2)(i) specifies.

(ii) Unless the company is a money market fund under § 270.2a–7, the company must make the company's complete portfolio holdings, if any, as of the close of the company's most recent first and third fiscal quarters, after the date on which the company's registration statement became effective, presented in accordance with the schedules set forth in §§ 210.12–12 through 210.12–14 of this chapter (Regulation S–X), which need not be audited. The complete portfolio holdings required by this paragraph (b)(2)(ii) must be made publicly accessible, free of charge, at the website address specified at the beginning of the report to stockholders under paragraph (a) of this section, not later than 60 days after the close of the of the first and third fiscal quarters until 60 days after the end of the next first and third fiscal quarters of the company, respectively.

(iii) The website address relied upon for compliance with this section may not be the address of the Commission's electronic filing system.

(iv) The materials that are accessible in accordance with paragraph (b)(2)(i) or (ii) of this section must be presented on the website in a format, or formats, that are convenient for both reading online and printing on paper.

(v) Persons accessing the materials specified in paragraph (b)(2)(i) or (ii) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that meet the requirements of paragraph (b)(2)(iv) of this section.

(vi) The requirements set forth in paragraphs (b)(2)(i) through (v) of this section will be deemed to be met, notwithstanding the fact that the materials specified in paragraphs (b)(2)(i) and (ii) of this section are not available for a time in the manner required by paragraphs (b)(2)(i) through (v) of this section, provided that:

(A) The company has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (b)(2)(i) through (v) of this section; and

(B) The company takes prompt action to ensure that the specified materials become available in the manner required by paragraphs (b)(2)(i) through (v) of this section, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the materials are not available in the manner required by paragraphs (b)(2)(i) through (v) of this section.

(vii) The materials specified in paragraph (b)(2)(i) or (ii) of this section may either be separately available for each series of a fund, or the materials may be grouped by the types of materials and/or by series, so long as the grouped information:

(A) Is presented in a format designed to communicate the information effectively;

(B) Clearly distinguishes the different types of materials and/or each series (as applicable); and

(C) Provides a means of easily locating the relevant information (including, for example, a table of contents that includes hyperlinks to the specific materials and series).

(3) The following requirements to deliver certain materials upon request are applicable to an open-end management investment company registered on Form N–1A (§§ 239.15A and 274.11A of this chapter).

(i) The company (or a financial intermediary through which shares of the company may be purchased or sold) must send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of any of the materials specified in paragraph (b)(2)(i) or (ii) of this section, to any person requesting such a copy within three business days after receiving a request for a paper copy.

(ii) The company (or a financial intermediary through which shares of the company may be purchased or sold) must send, at no cost to the requestor, and by email or other reasonably prompt means, an electronic copy of any of the materials specified in paragraph (b)(2)(i) or (ii) of this section, to any person requesting such a copy within three business days after receiving a request for an electronic copy. The requirement to send an electronic copy of the requested materials may be satisfied by sending a direct link to the online location of the materials; provided that a current version of the materials is directly accessible through the link from the time that the email is sent through the date that is six months after the date that the email is sent and the email explains both how long the link will remain useable and that, if recipients desire to retain a copy of the materials, they should access and save the materials.

(c) For registered management companies other than open-end management investment companies registered on Form N–1A, if any matter was submitted during the period covered by the shareholder report to a vote of shareholders, through the solicitation of proxies or otherwise, furnish the following information:

(1) The date of the meeting and whether it was an annual or special meeting.

(2) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(3) A brief description of each matter voted upon at the meeting and the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each matter or nominee for office.

(i) *Instruction 1 to paragraph (c).* The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of shareholders within the meaning of this paragraph (c).

(ii) [Reserved]

(d) Each report shall be transmitted within 60 days after the close of the period for which such report is being made.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(F) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: ''Important Notice Regarding Delivery of Shareholder Materials''. This statement also must appear on the envelope in which the notice is delivered. Alternatively, if the notice is delivered separately from other communications to investors, this statement may appear either on the notice or on the envelope in which the notice is delivered;

* * * * *

■ 12. Revise § 270.30e–3 to read as follows:

§ 270.30e–3 Internet availability of reports to shareholders.

(a) *General.* A Fund may satisfy its obligation to transmit a report required by § 270.30e–1 (''Report'') to a shareholder of record if all of the conditions set forth in paragraphs (b) through (e) of this section are satisfied.

(b) *Availability of report to shareholders and other materials.* (1) The following materials are publicly accessible, free of charge, at the website address specified in the Notice from the date the Fund transmits the Report as required by § 270.30e–1 until the Fund next transmits a report required by § 270.30e–1 with respect to the Fund:

(i) *Current report to shareholders.* The Report.

(ii) *Prior report to shareholders.* Any report with respect to the Fund for the prior reporting period that was transmitted to shareholders of record pursuant to § 270.30e–1.

(iii) *Complete portfolio holdings from reports containing a summary schedule of investments.* If a report specified in paragraph (b)(1)(i) or (ii) of this section includes a summary schedule of investments (§ 210.12–12B of this chapter) in lieu of Schedule I—Investments in securities of unaffiliated issuers (§ 210.12–12 of this chapter), the Fund's complete portfolio holdings as of the close of the period covered by the report, presented in accordance with the schedules set forth in §§ 210.12–12 through 210.12–14 of Regulation S–X (§§ 210.12–12 through 210.12–14 of this chapter), which need not be audited.

(iv) *Portfolio holdings for most recent first and third fiscal quarters.* The Fund's complete portfolio holdings as of the close of the Fund's most recent first and third fiscal quarters, if any, after the date on which the Fund's registration statement became effective, presented in accordance with the schedules set forth in §§ 210.12–12 through 210.12–14 of Regulation S–X [§§ 210.12–12 through 210.12–14 of this chapter], which need not be audited. The complete portfolio holdings required by this paragraph (b)(1)(iv) must be made publicly available not later than 60 days after the close of the fiscal quarter.

(2) The website address relied upon for compliance with this section may not be the address of the Commission's electronic filing system.

(3) The materials that are accessible in accordance with paragraph (b)(1) of this section must be presented on the website in a format, or formats, that are convenient for both reading online and printing on paper.

(4) Persons accessing the materials specified in paragraph (b)(1) of this section must be able to retain permanently, free of charge, an electronic version of such materials in a format, or formats, that meet the conditions of paragraph (b)(3) of this section.

(5) The conditions set forth in paragraphs (b)(1) through (4) of this section shall be deemed to be met, notwithstanding the fact that the materials specified in paragraph (b)(1) of this section are not available for a time in the manner required by paragraphs (b)(1) through (4) of this section, provided that:

(i) The Fund has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (b)(1) through (4) of this section; and

(ii) The Fund takes prompt action to ensure that the specified documents become available in the manner required by paragraphs (b)(1) through (4) of this section, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the documents are not available in the manner required by paragraphs (b)(1) through (4) of this section.

(c) *Notice.* A paper notice (''Notice'') meeting the conditions of this paragraph (c) must be sent to the shareholder within 70 days after the close of the period for which the Report is being made. The Notice may contain only the information specified by paragraphs (c)(1), (2), and (3) of this section, and may include pictures, logos, or similar design elements so long as the design is

not misleading and the information is clear.

(1) The Notice must be written using plain English principles pursuant to paragraph (d) of this section and:

(i) Contain a prominent legend in bold-face type that states ''[An] Important Report[s] to [Shareholders] of [Fund] [is/are] Now Available Online and In Print by Request.'' The Notice may also include information identifying the Fund, the Fund's sponsor (including any investment adviser or sub-adviser to the Fund), a variable annuity or variable life insurance contract or insurance company issuer thereof, or a financial intermediary through which shares of the Fund are held.

(ii) State that the Report contains important information about the Fund, including its portfolio holdings and financial statements. The statement may also include a brief listing of other types of information contained in the Report.

(iii) State that the Report is available at the website address specified in the Notice or, upon request, by mail, and encourage the shareholder to access and review the Report.

(iv) Include a website address where the Report and other materials specified in paragraph (b)(1) of this section are available. The website address must be specific enough to lead investors directly to the documents that are required to be accessible under paragraph (b)(1) of this section, rather than to the home page or a section of the website other than on which the documents are posted. The website may be a central site with prominent links to each document. In addition to the website address, the Notice may contain any other equivalent method or means to access the Report or other materials specified in paragraph (b)(1) of this section.

(v) Provide a toll-free (or collect) telephone number to contact the Fund or the shareholder's financial intermediary, and:

(A) Provide instructions describing how a shareholder may request a paper or email copy of the Report and other materials specified in paragraph (b)(1) of this section at no charge, and an indication that the shareholder will not otherwise receive a paper or email copy;

(B) Explain that the shareholder can at any time elect to receive print reports in the future and provide instructions describing how a shareholder may make that election (*e.g.,* by contacting the Fund or by contacting the shareholder's financial intermediary); and

(C) If applicable, provide instructions describing how a shareholder can elect to receive shareholder reports or other documents and communications by electronic delivery.

(2) The Notice may include additional methods by which a shareholder can contact the Fund or the shareholder's financial intermediary (*e.g.,* by email or through a website), which may include any information needed to identify the shareholder.

(3) A Notice may include content from the Report if such content is set forth after the information required by paragraph (c)(1) of this section.

(4) The Notice may not be incorporated into, or combined with, another document, except that the Notice may incorporate or combine one or more other Notices.

(5) The Notice must be sent separately from other types of shareholder communications and may not accompany any other document or materials; provided, however, that the Notice may accompany:

(i) One or more other Notices;

(ii) A current Statutory Prospectus, Statement of Additional Information, or Notice of internet Availability of Proxy Materials under § 240.14a–16 of this chapter;

(iii) In the case of a Fund held in a separate account funding a variable annuity or variable life insurance contract, such contract or the Statutory Prospectus and Statement of Additional Information for such contract; or

(iv) The shareholder's account statement.

(6) A Notice required by this paragraph (c) will be considered transmitted to a shareholder of record if the conditions set forth in § 270.30e–1(f), § 240.14a–3(e), or § 240.14c–3(c) of this chapter are satisfied with respect to that shareholder.

(d) *Plain English requirements.* (1) To enhance the readability of the Notice, plain English principles must be used in the organization, language, and design of the Notice.

(2) The Notice must be drafted so that, at a minimum, it substantially complies with each of the following plain English writing principles:

(i) Short sentences;

(ii) Definite, concrete, everyday words;

(iii) Active voice;

(iv) Tabular presentation or bullet lists for complex material, whenever possible;

(v) No legal jargon or highly technical business terms; and

(vi) No multiple negatives.

(e) *Delivery of paper copy upon request.* A paper copy of any of the materials specified in paragraph (b)(1) of this section must be transmitted to any person requesting such a copy, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, within three business days after a request for a paper copy is received.

(f) *Investor elections to receive future reports in paper.* (1) This section may not be relied upon to transmit a Report to a shareholder if the shareholder has notified the Fund (or the shareholder's financial intermediary) that the shareholder wishes to receive paper copies of shareholder reports at any time after the Fund has first notified the shareholder of its intent to rely on the rule or provided a Notice to the shareholder.

(2) A shareholder who has notified the Fund (or the shareholder's financial intermediary) that the shareholder wishes to receive paper copies of shareholder reports with respect to a Fund will be deemed to have requested paper copies of shareholder reports with respect to:

(i) Any and all current and future Funds held through an account or accounts with:

(A) The Fund's transfer agent or principal underwriter or agent thereof for the same ''group of related investment companies'' as such term is defined in § 270.0–10; or

(B) A financial intermediary; and

(ii) Any and all Funds held currently and in the future in a separate account funding a variable annuity or variable life insurance contract.

(g) *Delivery of other documents.* This section may not be relied upon to transmit a copy of a Fund's currently effective Statutory Prospectus or Statement of Additional Information, or both, under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) as otherwise permitted by paragraph (d) of § 270.30e–1.

(h) *Definitions.* For purposes of this section:

(1) Fund means a management company registered on Form N–2 (§§ 239.14 and 274.11a of this chapter) or Form N–3 (§§ 239.17a and 274.11b of this chapter) and any separate series of the management company that is required to transmit a report to shareholders pursuant to 270.30e–1.

(2) Statement of Additional Information means the statement of additional information required by Part B of the applicable registration form.

(3) Statutory Prospectus means a prospectus that satisfies the requirements of section 10(a) of the Securities Act of 1933 (15 U.S.C. 77(j)(a)).

Note 1 to § 270.30.e–3. For a discussion of how the conditions and requirements of this rule may apply in the context of investors holding Fund shares through financial

intermediaries, see Investment Company Release No. 33115 (June 5, 2018).

■ 13. Amend § 270.31a–2 by:
■ a. Removing the word ''and'' at the end of paragraph (a)(5);
■ b. In paragraph (a)(6), removing the period and adding ''; and'' in its place; and
■ c. Adding paragraph (a)(7).

The addition reads as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) * * *

(7) Preserve for a period not less than six years, the first two years in an easily accessible place, any shareholder report required by § 270.30e–1 (including any version posted on a website or otherwise provided electronically) that is not filed with the Commission in the exact form in which it was used.

* * * * *

■ 14. Amend § 270.34b–1 by:
■ a. Revising the introductory text and paragraph (b)(3); and
■ b. Adding paragraph (c).

The revisions and addition read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

Any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act [15 U.S.C. 80a–24(b)] (for purposes of paragraph (a) and (b) of this section, ''sales literature'') will have omitted to state a fact necessary in order to make the statements made therein not materially misleading unless the sales literature includes the information specified in paragraphs (a) and (b) of this section. Any registered investment company or business development company advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors in connection with a public offering (for purposes of paragraph (c) of this section, ''sales literature'') will have omitted to state a fact necessary in order to make the statements therein not materially misleading unless the sales literature includes the information specified in paragraph (c) of this section.

Note 1 to § 270.34b–1 Introductory Text: The fact that the sales literature includes the information specified in paragraphs (a) and (b) of this section does not relieve the investment company, underwriter, or dealer of any obligations with respect to the sales literature under the antifraud provisions of the Federal securities laws. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in investment company sales literature are misleading, *see* § 230.156 of this chapter.

* * * * *

(b) * * *

(3) The requirements specified in paragraph (b)(1) of this section do not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act [15 U.S.C. 80a–29] containing performance data for a period commencing no earlier than the first day of the period covered by the report; nor do the requirements of paragraphs (d)(3)(ii), (d)(4)(ii), and (g) of § 230.482 of this chapter apply to any such periodic report containing any other performance data.

(c)(1) Except as provided in paragraph (c)(2) of this section:

(i) In any sales literature that contains fee and expense figures for a registered investment company or business development company, include the disclosure required by paragraph (i) of § 230.482 of this chapter.

(ii) Any fee and expense information included in sales literature must meet the timeliness requirements of paragraph (j) of § 230.482 of this chapter.

(2) The requirements specified in paragraph (c)(1) of this section do not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act [15 U.S.C. 80a–29] or to other reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 79m or 78o(d)) containing fee and expense information; nor do the requirements of paragraphs (i) and (j) of § 230.482 of this chapter or paragraph (c)(3) of § 230.433 of this chapter apply to any such report containing fee and expense information.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 15. The authority for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78*o*(d), 80a–8, 80a–24, 80a–26, 80a–29, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

Note: The text of Form N–1A does not, and these amendments will not, appear in the Code of Federal Regulations.

■ 16. Revise the General Instructions of Form N–1A, and Items 1, 4, 5, 13, 17, and 27 of Form N–1A, and add new Item 27A of Form N–1A (referenced in §§ 239.15A and 274.11A) to read as follows:

* * * * *

General Instructions

* * * * *

C. Preparation of the Registration Statement

* * * * *

(g) Interactive Data File

* * * * *

(iii) An Interactive Data File is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T for any information provided in response to Item 27A(b)–(h) of Form N–1A that is included in any report to shareholders filed on Form N–CSR.

(iv) The Interactive Data File must be submitted in accordance with the specifications in the EDGAR Filer Manual, and in such a manner that will permit the information for each Series and, for any information that does not relate to all of the Classes in a filing, each Class of the Fund to be separately identified.

* * * * *

Part A—Information Required in a Prospectus

Item 1. Front and Back Cover Pages

(a) Front Cover Page. Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside front cover page of the prospectus:

(1) The Fund's name and the Class or Classes, if any, to which the prospectus relates.

(2) The exchange ticker symbol of the Fund's shares or, if the prospectus relates to one or more Classes of the Fund's shares, adjacent to each such Class, the exchange ticker symbol of such Class of the Fund's shares. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund shares are traded.

(3) The date of the prospectus.

(4) The statement required by rule 481(b)(1) under the Securities Act.

Instruction. A Fund may include on the front cover page a statement of its investment objectives, a brief (*e.g.,* one sentence) description of its operations, or any additional information, subject to the requirement set out in General Instruction C.3(b).

(b) Back Cover Page. Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside back cover page of the prospectus:

(1) A statement that the SAI includes additional information about the Fund, and a statement to the following effect:

Additional information about the Fund's investments is available in the Fund's annual and semi-annual reports to shareholders and in Form N–CSR. In the Fund's annual report, you will find a discussion of the market conditions and investment strategies that significantly affected the Fund's performance during its last fiscal year. In Form N–CSR, you will find the Fund's annual and semi-annual financial statements.

Explain that the SAI, the Fund's annual and semi-annual reports to shareholders, and other information such as Fund financial statements are available, without charge, upon request, and explain how shareholders in the Fund may make inquiries to the Fund. Provide a toll-free telephone number for investors to call: to request the SAI; to request the Fund's annual or semi-annual report; to request the Fund's financial statements; to request other information about the Fund; and to make shareholder inquiries. Also, state that the Fund makes available its SAI, annual and semi- annual reports, and other information such as Fund financial statements, free of charge, on or through the Fund's website at a specified address. If the Fund does not make its SAI and shareholder reports available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Fund does not have a website).

Instructions

1. A Fund may indicate, if applicable, that the SAI, annual and semi-annual report, Fund financial statements, and other information are available by email request.

2. A Fund may indicate, if applicable, that the SAI and other information are available from a financial intermediary (such as a broker-dealer or bank) through which shares of the Fund may be purchased or sold. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the SAI, the annual report, the semi-annual report, or other information such as financial statements that the Fund files on Form N–CSR, the Fund (or financial intermediary) must send the requested document within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. A Fund that has not yet been required to deliver an annual or semi-annual report to shareholders under rule 30e–1 [17 CFR 270.30e–1] or to file a Form N–CSR report may omit the statements required by this paragraph regarding the report.

4. A Money Market Fund may omit the sentence indicating that a reader will find in the Fund's annual report a discussion of the market conditions and investment strategies that significantly affect the Fund's performance during its last fiscal year.

(2) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D. Unless the information is delivered with the prospectus, explain that the Fund will provide the information without charge, upon request (referring to the telephone number provided in response to paragraph (b)(1)).

Instruction. The Fund may combine the information about incorporation by reference with the statements required under paragraph (b)(1).

(3) State that reports and other information about the Fund are available on the EDGAR Database on the Commission's website at *http://www.sec.gov,* and that copies of this information may be obtained, after paying a duplicating fee, by electronic request at the following email address: *publicinfo@sec.gov.*

(4) The Fund's Investment Company Act file number on the bottom of the back cover page in type size smaller than that generally used in the prospectus (*e.g.,* 8-point modern type).

* * * * *

Item 4. Risk/Return Summary: Investments, Risks, and Performance

* * * * *

(2) Risk/Return Bar Chart and Table.

* * * * *

(iii) If the Fund has annual returns for at least one calendar year, provide a table showing the Fund's (A) average annual total return; (B) average annual total return (after taxes on distributions); and (C) average annual total return (after taxes on distributions and redemptions). A Money Market Fund should show only the returns described in clause (A) of the preceding sentence. All returns should be shown for 1-, 5-, and 10-calendar year periods ending on the date of the most recently completed calendar year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. The table also should show the returns of an appropriate broad-based securities market index as defined in Instruction 6 to Item 27A(d)(2) for the same periods. A Fund that has been in existence for more than 10 years also may include returns for the life of the Fund. A Money Market Fund may provide the Fund's 7-day yield ending on the date of the most recent calendar year or disclose a toll-free telephone number that investors can use to obtain the Fund's current 7-day yield. For a Fund (other than a Money Market Fund or a Fund described in General Instruction C.3.(d)(iii)), provide the information in the following table with the specified captions:

AVERAGE ANNUAL TOTAL RETURNS

(For the periods ended December 31,_____)

	1 year	5 years (*or life of fund*)	10 years (*or life of fund*)
Return Before Taxes	__%	__%	__%
Return After Taxes on Distributions	__%	__%	__%
Return After Taxes on Distributions and Sale of Fund Shares	__%	__%	__%
Index (*reflects no deduction for [fees, expenses, or taxes]*)	__%	__%	__%

* * * * *

Instructions

* * * * *

2. *Table.*

* * * * *

(b) A Fund may include, in addition to the required broad-based securities market index, information for one or more other indexes as permitted by Instruction 7 to Item 27A(d)(2). If an additional index is included, disclose information about the additional index in the narrative explanation accompanying the bar chart and table (*e.g.,* by stating that the information shows how the Fund's performance compares with the returns of an index

of funds with similar investment objectives).

* * * * *

4. *Change in Investment Adviser.* If the Fund has not had the same investment adviser during the last 10 calendar years, the Fund may begin the bar chart and the performance information in the table on the date that the current adviser began to provide advisory services to the Fund subject to the conditions in Instruction 13 of Item 27A(d)(2).

* * * * *

Item 5. Management

* * * * *

(b) *Portfolio Manager(s).* State the name, title, and length of service (or year service began) of the person or persons employed by or associated with the Fund or an investment adviser of the Fund who are primarily responsible for the day-to-day management of the Fund's portfolio (''Portfolio Manager'').

* * * * *

Item 13. Financial Highlights Information

* * * * *

4. *Ratios/Supplemental Data.*

(a) Calculate ''average net assets'' based on the value of the net assets determined no less frequently than the end of each month.

(b) Calculate the Ratio of Expenses to average Net Assets using the amount of expenses shown in the Fund's statement of operations for the relevant fiscal period, including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X and reductions resulting from complying with paragraphs 2(a) and (f) of rule 6–07 regarding fee waivers and reimbursements.

(c) A Fund that is a Money Market Fund may omit the Portfolio Turnover Rate.

(d) Calculate the Portfolio Turnover Rate as follows:

(i) Divide the lesser amounts of purchases or sales of portfolio securities for the fiscal year by the monthly average of the value of the portfolio securities owned by the Fund during the fiscal year. Calculate the monthly average by totaling the values of portfolio securities as of the beginning and end of the first month of the fiscal year and as of the end of each of the succeeding 11 months and dividing the sum by 13.

(ii) Exclude from both the numerator and the denominator amounts relating to all securities, including options, whose maturities or expiration dates at the time of acquisition were one year or less. Include all long-term securities, including long-term U.S. Government securities. Purchases include any cash paid upon the conversion of one portfolio security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights and warrants and net proceeds of portfolio securities that have been called or for which payment has been made through redemption or maturity.

(iii) If the Fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares during the fiscal year in a purchase-of-assets transaction, exclude the value of securities acquired from purchases and securities sold from sales to realign the Fund's portfolio. Adjust the denominator of the portfolio turnover computation to reflect these excluded purchases and sales and disclose them in a footnote.

(iv) Include in purchases and sales any short sales that the Fund intends to maintain for more than one year and put and call options with expiration dates more than one year from the date of acquisition. Include proceeds from a short sale in the value of the portfolio securities sold during the period; include the cost of covering a short sale in the value of portfolio securities purchased during the period. Include premiums paid to purchase options in the value of portfolio securities purchased during the reporting period; include premiums received from the sale of options in the value of the portfolio securities sold during the period.

(e) A fund may incorporate by reference the Financial Highlights Information from Form N–CSR into the prospectus in response to this Item if the Fund transmits the annual report required by rule 30e–1(b) with the prospectus or, if the report has been previously delivered (*e.g.,* to a current shareholder), the Fund includes the statement required by Item 1(b)(1).

* * * * *

Item 17. Management of the Fund

Instructions

* * * * *

(a) *Management Information.*

(1) Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age (or Year of Birth)	Position(s) Held with Fund	Term of Office and Length of Time Served (or Year Service Began)	Principal Occupation(s) During Past 5 Years	Number of Portfolios in Fund Complex Overseen by Director	Other Directorships Held by Director

* * * * *

Item 27. Financial Statements

Include, in a separate section following the responses to the preceding Items, the financial statements and schedules required by Regulation S–X. The specimen price-make-up sheet required by Instruction 4 to Item 23(c) may be provided as a continuation of the balance sheet specified by Regulation S–X.

Instructions

1. The statements of any subsidiary that is not a majority-owned subsidiary required by Regulation S–X may be omitted from Part B and included in Part C.

2. In addition to the requirements of rule 3–18 of Regulation S–X [17 CFR 210.3–18], any Fund registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act must include in its initial registration statement under the Securities Act any additional financial statements and condensed financial information (which need not be audited) necessary to make the financial statements and condensed financial information included in the registration statement current as of a date within 90 days prior to the date of filing.

Item 27A. Annual and Semi-Annual Shareholder Report

(a) *Annual and Semi-Annual Reports.* Every annual shareholder report required by rule 30e–1 must contain the

information required by paragraphs (b) through (i) of this Item and may contain the information permitted by paragraph (j) of this Item. Every semi-annual shareholder report required by rule 30e–1 must contain the information required by paragraphs (b), (c), (e), (f), (h), and (i) of this Item, except as otherwise specified in these paragraphs, and may contain other information permitted or required in annual shareholder reports (so long as the information that the fund includes at its option meets the requirements of the relevant paragraph, including any related instructions, and is not incomplete, inaccurate, or misleading).

Instructions

1. For annual shareholder reports, disclose the information required or permitted by paragraphs (b) through (i) of this Item in the same order as these items appear below. In an annual shareholder report that appears on a website or is otherwise provided electronically, organize the information in a manner that gives each item similar prominence as that provided by the order prescribed in this Instruction.

2. For semi-annual shareholder reports, disclose the information that must appear in the report pursuant to paragraph (a) of this Item in the same order as these items appear below. Any other information permitted in annual shareholder reports, which the Fund chooses to include in its semi-annual shareholder report pursuant to this Item, must also be included in the same order as these items appear below. For example, if a Fund chooses to include the information described in paragraph (g) in its semi-annual shareholder report, the information in the Fund's semi-annual report must appear in the following order: paragraphs (b), (c), (e), (f), (g), (h), and (i). In a semi-annual shareholder report that appears on a website or electronically, organize the information in a manner that gives each item similar prominence as that provided by the order prescribed in this Instruction.

3. Do not include information in an annual or semi-annual shareholder report other than disclosure that Item 27A and its Instructions require or permit in annual or semi-annual shareholder reports, as applicable, or as provided by rule 8b–20 under the Investment Company Act [17 CFR 270.8b–20].

4. Prepare a separate annual or semi-annual shareholder report for each Series of a Fund, and if a Series has multiple Classes, prepare a separate annual or semi-annual shareholder report for each Class within the Series.

5. A Fund may not incorporate by reference any information into its annual or semi-annual shareholder report.

6. The plain English requirements of rule 421 under the Securities Act [17 CFR 230.421] apply to the annual and semi-annual shareholder report. Provide the disclosure in an annual or semi-annual shareholder report in plain English under rule 421(d) under the Securities Act. Include white space and use other design features to make the annual or semi-annual shareholder report easy to read. The annual or semi-annual shareholder report should be concise and direct. Specifically: (i) use short sentences and paragraphs; (ii) use definite, concrete, everyday words; (iii) use active voice; (iv) avoid legal jargon or highly technical business terms unless clearly explained; (v) avoid multiple negatives; (vi) use ''you,'' ''we,'' etc. to speak directly to shareholders; and (vii) use descriptive headers and sub-headers. Do not use vague or imprecise ''boilerplate.''

7. If a required disclosure is inapplicable, a Fund may omit the disclosure from an annual or semi-annual shareholder report. A Fund may modify a required legend or narrative information if the modified language contains comparable information.

8. Funds should use design techniques that promote effective communication. Funds are encouraged to use, as appropriate, question-and-answer formats, charts, graphs, tables, bullet lists, and other graphics or text features to respond to the required disclosures.

For an annual or semi-annual shareholder report that appears on a website or is otherwise provided electronically, funds are encouraged to use online tools (for example, tools that populate discrete sets of information based on investor selections—*e.g.,* Class-specific information, performance information over different time horizons, or the dollar value used to illustrate the Fund's expenses or to populate the performance line graph, as applicable). The default presentation must use the value that the applicable form requirement prescribes. Funds also may include: (i) a means of facilitating electronic access to video or audio messages, or other forms of information (*e.g.,* hyperlink, website address, Quick Response Code (''QR code''), or other equivalent methods or technologies); (ii) mouse-over windows; (iii) pop-up boxes; (iv) chat functionality; (v) expense calculators; or (vi) other forms of electronic media, communications, or tools designed to enhance an investor's understanding of material in the annual or semi-annual shareholder report. Any information that is not included in the annual or semi-annual shareholder report filed on Form N–CSR shall have the same status, under the Federal securities laws, as any other website or electronic content that the Fund produces or disseminates.

9. In an annual or semi-annual shareholder report posted on a website or otherwise provided electronically, Funds must provide a means of facilitating access to any information that is referenced in the annual or semi-annual shareholder report if the information is available online, including, for example, hyperlinks to the Fund's prospectus and financial statements. In an annual or semi-annual shareholder report that is delivered in paper format, Funds may include website addresses, QR codes, or other means of facilitating access to such information. Funds must provide a link specific enough to lead investors directly to the particular information, rather than to the home page or a section of the fund's website other than on which the information is posted. The link may be to a central site with prominent links to the referenced information.

10. Explanatory or supplemental information included in an annual or semi-annual shareholder report under Instruction 8 or 9 may not, because of the nature, quantity, or manner of presentation, obscure or impede understanding of the information that must be included. When using interactive graphics or tools, Funds may include instructions on their use and interpretation.

11. Unless otherwise indicated, the reporting period for an annual shareholder report is the Fund's most recent fiscal year, and the reporting period for a semi-annual shareholder report is the Fund's most recent fiscal half-year.

12. The Fund's annual or semi-annual shareholder report may be accompanied by other materials, but the annual or semi-annual shareholder report must be given greater prominence than other materials that accompany the report, with the exception of other shareholder reports, summary prospectuses or statutory prospectuses (both as defined in rule 498 under the Securities Act [17 CFR 230.498]), or a notice of internet availability of proxy materials under rule 14a–6 under the Securities Exchange Act [17 CFR 240.14a–6].

13. In an annual or semi-annual shareholder report posted on a website or otherwise provided electronically, Funds may satisfy legibility requirements applicable to printed

documents by presenting all required information in a format that promotes effective communication as described in Instruction 8. The body of every printed annual or semi-annual shareholder report and other tabular data included therein shall comply with the applicable legibility of prospectus requirements set forth in rule 420 under the Securities Act of 1933.

(b) *Cover Page or Beginning of Annual or Semi-Annual Shareholder Report.* Include on the cover page or at the beginning of the annual or semi-annual shareholder report:

(1) The Fund's name and the Class, if relevant.

(2) The exchange ticker symbol of the Fund's shares or, if the annual or semi-annual shareholder report relates to a Class of the Fund's shares, its exchange ticker symbol. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund's shares are traded.

(3) A statement identifying the document as an ''annual shareholder report'' or a ''semi-annual shareholder report,'' as applicable.

(4) The following statement:

This [annual or semi-annual] shareholder report contains important information about [the Fund] for the period of [beginning date] to [end date]. You can find additional information about the Fund at [__]. You can also request this information by contacting us at [__].

(5) If the annual or semi-annual report includes Material Fund Changes, as described in paragraph (g) of this Item, include the following prominent statement, or similar clear and understandable statement, in bold-face type: ''This report describes changes to the Fund that occurred during the reporting period.''

Instructions

1. A Fund may include graphics, logos, and other design or text features on the cover page or at the beginning of its annual or semi-annual shareholder report to help shareholders identify the materials as the Fund's annual or semi-annual shareholder report.

2. In the statement required under paragraph (b)(5), provide the toll-free telephone number and, as applicable, email address that shareholders can use to request additional information about the Fund. Provide a website address where information about the Fund is available. The website address must be specific enough to lead shareholders directly to the materials that are required to be accessible under rule 30e–1, rather than to the home page or a section of the website other than on which the materials are posted. The website may be a central site with prominent links to the materials that must be accessible under rule 30e–1. In addition to the website address, a Fund may include other ways an investor can find or request additional information about the Fund (*e.g.,* QR code, mobile application).

(c) *Fund Expenses.*

In a table, provide the expenses of an ongoing $10,000 investment in the Fund during the reporting period. The table must show: (i) the [Fund or Class Name]; (ii) expenses in dollars paid on a $10,000 investment during the period; and (iii) expenses as a percent of an investor's investment in the Fund (*i.e.* expense ratio).

What were the Fund costs for the last [year/six months]?

(based on a hypothetical $10,000 investment)

[Fund or Class Name]	Costs of a $10,000 investment	Costs paid as a percentage of a $10,000 investment
	$	%

Instructions

1. General.

(a) Round all percentages in the table to the nearest hundredth of one percent and round all dollar figures in the table to the nearest dollar.

(b) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund. In a footnote to the expense table, state that the expense table reflects the expenses of both the Feeder and Master Funds.

(c) If the Fund's annual or semi-annual shareholder report covers a period of time that is less than the full reporting period of the annual or semi-annual report, the Fund must include a footnote to the table to briefly explain that expenses for the full reporting period would be higher.

(d) If the disclosed expenses include extraordinary expenses, the Fund may include a brief footnote to the ''Costs paid as a percentage of your investment'' column disclosing what actual costs would have been if extraordinary expenses were not included. ''Extraordinary expenses'' refers to expenses that are distinguished by their unusual nature and by the infrequency of their occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the Fund, taking into account the environment in which the Fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the Fund operates. The environment of a Fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of government regulation.

2. *Computation.*

(a) To determine ''Costs of a $10,000 investment,'' multiply the figure in the ''Cost paid as a percentage of your investment'' column by the average account value over the period based on an investment of $10,000 at the beginning of the period.

(b) Assume reinvestment of all dividends and distributions.

(c) In the annual shareholder report, disclose the expense ratio in the ''Costs paid as a percentage of your investment'' column as it appears in the Fund's most recent audited financial statements or financial highlights. In the semi-annual shareholder report, the Fund's expense ratio in the ''Costs paid as a percentage of your investment column'' should be calculated in the manner required by Instruction 4(b) to Item 13(a) using the expenses for the Fund's most recent fiscal half-year. Express the expense ratio on an annualized basis.

(d) *Management's Discussion of Fund Performance.* Disclose the following information unless the Fund is a Money Market Fund. A Money Market Fund is permitted but not required to disclose some or all of the following information, so long as the information the Money Market Fund chooses to disclose meets the requirements of the relevant paragraph, including any related instructions, and is not incomplete, inaccurate, or misleading.

(1) Briefly summarize the key factors that materially affected the Fund's performance during the reporting period, including the relevant market conditions and the investment strategies and techniques used by the Fund's investment adviser.

Instruction

1. As appropriate, use graphics or text features, such as bullet lists or tables, to present the key factors. Do not include a lengthy, generic, or overly broad discussion of the factors that generally affected market performance during the reporting period.

(2) Line graph and table.

(i) Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently

completed 10 fiscal years of the Fund (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Assume a $10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

(ii) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10-year periods as of the end of the reporting period (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Separately provide the average annual total returns with and without sales charges, as applicable. Also provide the average annual total returns of an appropriate broad-based securities market index for the same periods.

(iii) Include a statement accompanying the graph and table to the effect that:

(A) The Fund's past performance is not a good predictor of the Fund's future performance. Use text features to make the statement noticeable and prominent through, for example: graphics, larger font size, or different colors or font styles.

(B) The graph and table do not reflect the deduction of taxes that a shareholder would pay on fund distributions or redemption of fund shares.

Instructions

1. *Line Graph Computation.*

(a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

(b) Base subsequent account values on the net asset value of the Fund last calculated on the last business day of the first and each subsequent fiscal year.

(c) Calculate the final account value by assuming the account was closed and redemption was at the price last calculated on the last business day of the reporting period.

(d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds $10,000.

2. *Sales Load.* Reflect any sales load (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (*i.e.,* assume that the maximum sales load, and other charges deducted from payments, is deducted from the initial $10,000 investment). For a Fund whose shares are subject to a contingent deferred sales load, assume the deduction of the maximum deferred sales load (or other charges) that would apply for a complete redemption that received the price last calculated on the last business day of the reporting period. For any other deferred sales load, assume that the deduction is in the amount(s) and at the time(s) that the sales load actually would have been deducted.

3. *Dividends and Distributions.* Assume reinvestment of all of the Fund's dividends and distributions on the reinvestment dates during the period, and reflect any sales load imposed upon reinvestment of dividends or distributions or both.

4. *Account Fees.* Reflect recurring fees that are charged to all accounts.

(a) For any account fees that vary with the size of the account, assume a $10,000 account size.

(b) Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

(c) Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: divide the total amount of account fees collected during the year by the Funds' total average net assets, multiply the resulting percentage by the average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

5. *Table Computation.* Compute average annual total returns in accordance with Item 26(b)(1). To calculate average annual total returns without sales charges, do not deduct sales charges, as applicable, as otherwise described in the instructions to Item 26(b)(1). For the Fund's 1-year annual total return without sales charges in an annual shareholder report, use the 1-year total return in the Fund's most recent audited financial highlights.

6. *Appropriate Broad-Based Securities Market Index.* For purposes of this Item, an ''appropriate broad-based securities market index'' is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser, or principal underwriter, unless the index is widely recognized and used. A ''broad-based'' index is an index that represents the overall applicable domestic or international equity or debt markets, as appropriate. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

7. *Additional Indexes.* A Fund is encouraged to compare its performance not only to the required broad-based index, but also to other more narrowly based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (*e.g.,* the Consumer Price Index), so long as the comparison is not misleading.

8. *Change in Index.* If the Fund uses an index that is different from the one used for the immediately preceding reporting period, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

9. *Interim Periods.* The line graph may compare the ending values of interim periods (*e.g.,* monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

10. *Scale.* The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

11. *New Funds.* A New Fund (as defined in Instruction 6 to Item 3) is not required to include the information specified by this Item in its annual shareholder report, unless Form N–1A (or the Fund's annual Form N–CSR report) contains audited financial statements covering a period of at least 6 months.

12. *Change in Investment Adviser.* If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date that the current adviser began to provide advisory services to the Fund so long as:

(a) Neither the current adviser nor any affiliate is or has been in ''control'' of the previous adviser under section 2(a)(9) [15 U.S.C. 80a–2(a)(9)];

(b) The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

(c) The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

13. *Multiple Class Funds.*

(a) Provide information about account values in the line graph under Item 27A(d)(2)(i) for the Class of the Fund to which the report relates.

(b) Provide information about the average annual total returns for Class of the Fund to which the report relates in the table under Item 27A(d)(2)(ii).

14. *Material Changes.* If a material change to the Fund has occurred during the period covered by the line graph and table, such as a change in investment adviser or a change to the Fund's

investment strategies, the Fund may include a brief legend or footnote to describe the relevant change and when it occurred.

15. *Availability of Updated Performance Information.* If the Fund provides updated performance information on its website or through other widely accessible mechanisms, direct shareholders to where they can find this information.

(3) If the Fund has a policy or practice of maintaining a specified level of distributions to shareholders, disclose if the Fund was unable to meet the specified level of distributions during the reporting period. Also discuss the extent to which the Fund's distribution policy resulted in distributions of capital.

(4) For an Exchange-Traded Fund, provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (*i.e.,* premium or discount) for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of the Fund, if shorter). The Fund may omit the information required by this paragraph if it satisfies the requirements of paragraphs (c)(1)(ii)–(iv) and (c)(1)(vi) of Rule 6c–11 [17 CFR 270.6c–11(c)(1)(ii)–(iv) and (c)(1)(vi)] under the Investment Company Act.

Instructions

1. Provide the information in tabular form.

2. Express the information as a percentage of the net asset value of the Exchange-Traded Fund, using separate columns for the number of days the Market Price was greater than the Fund's net asset value and the number of days the Market Price was less than the Fund's net asset value. Round all percentages to the nearest hundredth of one percent.

3. Adjacent to the table, provide a brief explanation that: shareholders may pay more than net asset value when they buy Fund shares and receive less than net asset value when they sell those shares, because shares are bought and sold at current market prices.

4. Include a statement that the data presented represents past performance and cannot be used to predict future results.

(e) *Fund Statistics.* Disclose the Fund's net assets, total number of portfolio holdings, the total advisory fees paid, and, if the Fund is not a Money Market Fund, portfolio turnover rate as of the end of the reporting period. The total advisory fees paid by the Fund is only required to be disclosed in the annual shareholder report. Following these required statistics, the Fund may provide additional statistics that the Fund believes would help shareholders better understand the Fund's activities and operations during the reporting period (*e.g.,* tracking error, maturity, duration, average credit quality, or yield).

Instructions

1. Fund statistics that are required to be disclosed under this paragraph must precede any additional permitted statistics that the Fund chooses to include.

2. The total advisory fees paid is the total amount of investment advisory fees as disclosed in the Fund's statement of operations as required by paragraph 2(a) of rule 6–07 of Regulation S–X [17 CFR 210.6–07]). The total investment advisory fees should include any reductions or reimbursements of such fees.

3. If the Fund provides a statistic that is otherwise described in this form, it must follow any associated instructions describing the calculation method for the relevant statistic.

4. As appropriate, use graphics or text features, such as bullet lists or tables, to present the fund statistics.

5. If the Fund provides a statistic in a shareholder report that is otherwise included in, or could be derived from, the Fund's financial statements or financial highlights, the fund must use or derive such statistic from the Fund's most recent financial statements or financial highlights.

6. A Fund may briefly describe the significance or limitations of any disclosed statistics in a parenthetical or similar presentation.

7. If a Fund that is a Multiple Class Fund provides a statistic that is calculated based on the Fund's performance or fees (*e.g.,* yield or tracking error), show the statistic for the Class of the Fund to which the report relates. A Fund can provide a statistic regarding Class performance only if such Class has one year of performance.

8. A Fund may include additional statistics only if they are reasonably related to the Fund's investment strategy.

(f) *Graphical Representation of Holdings.* One or more tables, charts, or graphs depicting the portfolio holdings of the Fund, as of the end of the reporting period, by reasonably identifiable categories (*e.g.,* type of security, industry sector, geographic regions, credit quality, or maturity) showing the percentage of (i) net asset value, (ii) total investments, or (iii) total exposure (depicting long and short exposures to each category, to the extent applicable) attributable to each. The categories and the basis of the presentation should be disclosed in a manner reasonably designed to depict clearly the types of investments made by the Fund, given its investment objectives. A Fund that uses "total exposure" as a basis for representing its holdings may also include a "net exposure" presentation as well as a brief explanation of these presentations. If the Fund depicts portfolio holdings according to the credit quality, it should include a brief description of how the credit quality of the holdings were determined, and if credit ratings, as defined in section 3(a)(60) of the Securities Exchange Act [15 U.S.C. 78(c)(a)(60)], assigned by a credit rating agency, as defined in section 3(a)(61) of the Securities Exchange Act [15 U.S.C. 78(c)(a)(61)], are used, concisely explain how they were identified and selected. This description should be included near, or as part of, the graphical representation. The Fund may also list, in a table or chart that appears near the graphical representation of holdings, the Fund's 10 largest portfolio holdings. A Fund that includes a list of its 10 largest portfolio holdings may also show, as part of this presentation, the percentage of the Fund's (i) net asset value, (ii) total investments, or (iii) total exposure, as applicable, attributable to each of the holdings listed.

(g) *Material Fund Changes.* Briefly describe any material change, with respect to any of the following items, that has occurred since the beginning of the reporting period. The Fund may also disclose, but is not required to disclose, material changes it plans to make in connection with updating its prospectus under section 10(a)(3) of the Securities Act for the current fiscal year. The Fund also may describe other material changes that it would like to disclose to its shareholders or changes that may be helpful for investors to understand the fund's operations and/or performance over the reporting period.

(1) The Fund's name (as described in Item 1(a)(1));

(2) The Fund's investment objectives or goals (as described in Item 2);

(3) The Fund's annual operating expenses, shareholder fees, or maximum account fee (as described in Item 3), including the termination or introduction of an expense reimbursement or fee waiver arrangement;

(4) The Fund's principal investment strategies (as described in Item 4(a));

(5) The principal risks of investing in the Fund (as described in Item 4(b)(1)); and

(6) The Fund's investment adviser(s) (as described in Item 5(a)).

Instructions

1. Provide a concise description of each material change that the fund describes as specified in this Item 27A(g). Provide enough detail to allow shareholders to understand each change and how each change may affect shareholders.

2. Include a legend to the effect of the following: ''This is a summary of certain changes [and planned changes] to the Fund since [date]. For more complete information, you may review the Fund's next prospectus, which we expect to be available by [date] at [______] or upon request at [______].'' Provide the toll-free telephone number and, as applicable, email address that shareholders can use to request copies of the Fund's prospectus. If the updated prospectus will be made available on a website, provide the address of the central site where a link to the prospectus will be available.

3. A Fund is not required to disclose a material change that occurred during the reporting period and otherwise would be required to be disclosed if the Fund already disclosed this change in its last annual shareholder report because, for example, the change occurred before the last annual shareholder report was transmitted to shareholders or the Fund planned to make the change in connection with updating its prospectus under section 10(a)(3) of the Securities Act at that time (and chose to disclose it in the last annual report).

(h) *Changes in and Disagreements with Accountants.* If the Fund is required to disclose on Form N–CSR the information that Item 304(a)(1) of Regulation S–K [17 CFR 229.304] requires, provide:

(1) A statement of whether the former accountant resigned, declined to stand for re-election, or was dismissed and the date thereof; and

(2) A brief, plain English description of disagreements(s) with the former accountant during the Fund's two most recent fiscal years and any subsequent interim period that the Fund discloses on Form N–CSR.

(i) *Availability of Additional Information.* Provide a brief, plain English statement that certain additional Fund information is available on [the Fund's] website. Include plain English references to, as applicable, the fund's prospectus, financial information, holdings, and proxy voting information. A Fund also may refer to other information available on this website if it reasonably believes that shareholders likely would view the information as important.

Instructions

1. Provide means of facilitating shareholders' access to the additional information in accordance with Instruction 10 to Item 27A(a).

2. If the Fund provides prominent links to the additional information to which it refers under this Item 27A(i) on the same central site the Fund discloses under Item 27A(b), the Fund may state that materials are available at the website address included at the beginning of its annual or semi-annual shareholder report. The Fund would not need to provide other means of facilitating shareholders' access to the relevant additional information under these circumstances.

(j) *Householding.* A Fund may include disclosure required under rule 30e–1(e)(3) [17 CFR 270.30e–1(e)(3)] under the Securities Act to explain how shareholders who have consented to receive a single annual or semi-annual shareholder report at a shared address may revoke this consent.

* * * * *

Note: The text of Form N–CSR does not, and these amendments will not, appear in the Code of Federal Regulations.

■ 17. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by:

■ a. In the third sentence of the second paragraph on the cover page of Form N–CSR, removing ''450 Fifth Street NW, Washington, DC 20549–0609'' and adding in its place ''100 F Street NE, Washington, DC 20549–1090'';

■ b. Revising Instruction C.4;

■ c. In the first sentence of General Instruction D, removing ''Items 4, 5, and 13(a)(1)'' and adding in its place ''Items 4, 5, and 18(a)(1)'';

■ d. In the second sentence of Item 2(c), removing ''Item 13(a)(1)'' and adding in its place ''Item 18(a)(1)'';

■ e. In the first sentence of Item 2(f), removing ''Item 13(a)(1)'' and adding in its place ''Item 18(a)(1)'';

■ f. Revising Item 6(a);

■ g. Redesignating Items 7 through 13 as Items 12 through 18, respectively;

■ h. Adding Items 7 through 11; and

■ i. In the first sentence of the instruction to paragraph (a)(2) of current Item 13, removing ''Item 13(a)(2)'' and adding in its place ''Item 18(a)(2)''.

The additions read as follows:

Form N–CSR

* * * * *

General Instructions

* * * * *

*C. * * **

4. *Interactive Data File.* An Interactive Data File as defined in Rule 11 of Regulation S–T [17 CFR 232.11] is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T [17 CFR 232.405] by a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) to the extent required by Rule 405 of Regulation S–T.

* * * * *

* * * * *

Item 6. Investments.

File Schedule I—Investments in securities of unaffiliated issuers as of the close of the reporting period as set forth in § 210.12–12 of Regulation S–X [17 CFR 210.12–12], unless the schedule is included as part of the report to shareholders filed under Item 1 of this Form or is included in the financial statements filed under Item 7 of this Form'';

* * * * *

Item 7. Financial Statements and Financial Highlights for Open-End Management Investment Companies.

(a) An open-end management investment company registered on Form N–1A [17 CFR 239.15A and 17 CFR 274.11A] must file its most recent annual or semi-annual financial statements required, and for the periods specified, by Regulation S–X.

(b) An open-end management investment company registered on Form N–1A [17 CFR 239.15A and 17 CFR 274.11A] must file the information required by Item 13 of Form N–1A.

Instruction to paragraph (a) and (b).

The financial statements and financial highlights filed under this Item must be audited and be accompanied by any associated accountant's report, as defined in rule 1–02(a) of Regulation S–X [17 CFR 210.1–02(a)], except that in the case of a report on this Form N–CSR as of the end of a fiscal half-year, the financial statements and financial highlights need not be audited.

Item 8. Changes in and Disagreements with Accountants for Open-End Management Investment Companies.

An open-end management investment company registered on Form N–1A [17 CFR 239.15A and 17 CFR 274.11A] must disclose the information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K [17 CFR 229.304].

Item 9. Proxy Disclosures for Open-End Management Investment Companies.

If any matter was submitted during the period covered by the report to a vote of shareholders of an open-end management investment company registered on Form N–1A [17 CFR 239.15A and 17 CFR 274.11A], through the solicitation of proxies or otherwise, the company must furnish the following information:

(1) The date of the meeting and whether it was an annual or special meeting.

(2) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(3) A brief description of each matter voted upon at the meeting and the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each matter or nominee for office.

Instruction. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of shareholders within the meaning of this Item.

Item 10. Remuneration Paid to Directors, Officers, and Others of Open-End Management Investment Companies.

Unless the following information is disclosed as part of the financial statements included in Item 7, an open-end management investment company registered on Form N–1A [17 CFR 239.15A and 17 CFR 274.11A] must disclose the aggregate remuneration paid by the company during the period covered by the report to:

(1) All directors and all members of any advisory board for regular compensation;

(2) Each director and each member of an advisory board for special compensation;

(3) All officers; and

(4) Each person of whom any officer or director of the Fund is an affiliated person.

Item 11. Statement Regarding Basis for Approval of Investment Advisory Contract.

If the board of directors approved any investment advisory contract during the Fund's most recent fiscal half-year, discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's approval. Include the following in the discussion:

(1) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Fund under the contract. These factors would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Fund and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Fund; the extent to which economies of scale would be realized as the Fund grows; and whether fee levels reflect these economies of scale for the benefit of Fund investors. Also indicate in the discussion whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.,* pension funds and other institutional investors). If the board relied upon such comparisons, describe the comparisons and how they assisted the board in concluding that the contract should be approved; and

(2) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating Fund brokerage.

Instructions.

(1) Board approvals covered by this Item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by this Item include subadvisory contracts.

(2) Conclusory statements or a list of factors will not be considered sufficient disclosure. Relate the factors to the specific circumstances of the Fund and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that conclusion affected its decision to approve the contract.

(3) If any factor enumerated in this Item is not relevant to the board's evaluation of an investment advisory contract, explain the reasons why that factor is not relevant;

* * * * *

By the Commission.

Dated: October 26, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–23756 Filed 11–23–22; 8:45 am]

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