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Contents

Federal Register

Vol. 87, No. 245

Thursday, December 22, 2022

Separate Parts In This Issue

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 87, No. 245
Thursday, December 22, 2022

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–TP–0031]

RIN 1904–AE06

Energy Conservation Program: Test Procedure for Air-Cooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h

Correction

In rule document 2022–26418, appearing on pages 77298 through 77328 in the issue of Friday, December 16, 2022, make the following correction:

Appendix F to Subpart F of Part 431 [Corrected]

■ On page 77327, in Appendix F to Subpart F of Part 431, in the first column, in amendatory instruction 13, the appendix head should read:

Appendix F to Subpart F of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Air-Cooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h

[FR Doc. C1–2022–26418 Filed 12–21–22; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0978; Project Identifier AD–2022–00460–E; Amendment 39–22276; AD 2022–25–20]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain General Electric Company (GE) GEnx–1B and GEnx–2B model turbofan engines. This AD was prompted by a manufacturer investigation that revealed that certain high-pressure turbine (HPT) stage 2 disks, forward seals, and stages 6–10 compressor rotor spools were manufactured from powder metal material suspected to contain iron inclusion. This AD requires replacement of the affected HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 26, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0978; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@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 GEnx–1B64, GEnx–1B64/P1, GEnx–1B64/P2, GEnx–1B67, GEnx–1B67/P1, GEnx–1B67/P2, GEnx–1B70, GEnx–1B70/75/P1, GEnx–1B70/75/P2, GEnx–1B70/P1, GEnx–1B70/P2, GEnx–1B70C/P1, GEnx–1B70C/P2, GEnx–1B74/75/P1, GEnx–1B74/75/P2, GEnx–1B76/P2, GEnx–1B76A/P2 (GEnx–1B), GEnx–2B67, GEnx–2B67B, and GEnx–2B67/P (GEnx–2B) model turbofan engines. The NPRM published in the **Federal Register** on September 9, 2022 (87 FR 55328). The NPRM was prompted by a manufacturer investigation that revealed that certain HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools were manufactured from powder metal material suspected to contain iron inclusion. Further investigation by the manufacturer determined that the iron inclusion is attributed to deficiencies in the manufacturing process. The investigation by the manufacturer also determined that certain GEnx–1B and GEnx–2B HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools made from billets manufactured using the same process may have reduced material properties and a lower fatigue life capability due to iron inclusion, which may cause premature fracture and uncontained failure. In the NPRM, the FAA proposed to require replacement of certain HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools with parts eligible for installation. 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 four commenters. The commenters were Air Line Pilots Association, International (ALPA), American Airlines, GE Aviation, and The Boeing Company (Boeing). ALPA, American Airlines, and Boeing supported the proposed AD without change. GE Aviation requested a change to the proposed AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Add Alternate Part Numbers to AD Applicability

GE Aviation requested that the FAA add alternate part numbers (P/Ns) to Table 1 to paragraph (c) of this AD. GE Aviation explained that the forward seal and stages 6–10 compressor rotor spool may have reworked P/Ns that occur after entry into service. While the P/Ns provided in the NPRM are the best information available as to current P/Ns, GE requested that the FAA add certain alternate P/Ns to Table 1 to paragraph (c), Applicability, of this final rule to ensure compliance.

The FAA agrees for the reasons provided and has revised Table 1 to paragraph (c), Applicability, of this AD as requested by GE Aviation.

Conclusion

The FAA reviewed the relevant data, considered any 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 these products. 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

The FAA reviewed GE GEnx–1B Service Bulletin 72–0505, Revision 02, dated April 5, 2022. The FAA also reviewed GE GEnx–2B Service Bulletin 72–0444, Revision 02, dated April 5, 2022. This service information describes procedures for removing the HPT stage 2 disk, forward seal, and stages 6–10 compressor rotor spool. These documents are distinct since they apply to different engine models.

Costs of Compliance

The FAA estimates that this AD affects 3 engines installed on airplanes of U.S. registry. The FAA estimates that 0 engines installed on airplanes of U.S. registry require replacement of the forward seal or HPT stage 2 disk.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace stages 6–10 compressor rotor spool.	8 work-hours × $85 per hour = $680	$846,519 (pro-rated)	$847,199	$2,541,597
Replace forward seal	8 work-hours × $85 per hour = $680	364,558 (pro-rated)	365,238	0
Replace HPT stage 2 disk	8 work-hours × $85 per hour = $680	363,424 (pro-rated)	364,104	0

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:

2022–25–20 General Electric Company: Amendment 39–22276; Docket No. FAA–2022–0978; Project Identifier AD–2022–00460–E.

(a) Effective Date

This airworthiness directive (AD) is effective January 26, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company GEnx–1B64, GEnx–1B64/P1, GEnx–1B64/P2, GEnx–1B67, GEnx–1B67/P1, GEnx–1B67/P2, GEnx–1B70, GEnx–1B70/75/P1, GEnx–1B70/75/P2, GEnx–1B70/P1, GEnx–1B70/P2, GEnx–1B70C/P1, GEnx–1B70C/P2, GEnx–1B74/75/P1, GEnx–1B74/75/P2, GEnx–1B76/P2, GEnx–1B76A/P2, GEnx–2B67, GEnx–2B67B, and GEnx–2B67/P model turbofan engines with an installed high-pressure turbine (HPT) stage 2 disk, forward seal, or stages 6–10 compressor rotor spool with a part number (P/N) and serial number (S/N) identified in Table 1 to paragraph (c) of this AD.

TABLE 1 TO PARAGRAPH (c)—AFFECTED HPT STAGE 2 DISKS, FORWARD SEALS, AND STAGES 6–10 COMPRESSOR ROTOR SPOOLS

Part name	P/N	S/N
HPT stage 2 disk	2300M84P02	TMT4AF08 TMT4AF10 TMT4AF11 TMT4AF12
Forward seal	2417M60P02 or 2759M04P01	VOLF1931 VOLF1933 VOLF1942 VOLF1977 VOLF1993 VOLF2014
Stages 6–10 compressor rotor spool	2357M30G02 or 2340M36G01	GWN0R86N
Stages 6–10 compressor rotor spool	2439M35G01 or 2610M90G01	GWN0RCKT GWN0R62G GWN0R86J GWN0R5EK GWN0R6EH GWN0R7K1 GWN0R89A
Stages 6–10 compressor rotor spool	2439M35G02	GWN0RA89 GWN0R6K9 GWN0R7G9 GWN0R7K4 GWN0R752 GWN0R98P

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section; 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation that revealed that certain HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools were manufactured from powder metal material suspected to contain iron inclusion. The FAA is issuing this AD to prevent fracture and potential uncontained failure of certain HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) Before exceeding 600 flight cycles after the effective date of this AD, remove the affected HPT stage 2 disk, forward seal, and stages 6–10 compressor rotor spool from service and replace with a part eligible for installation.

(2) For affected engines not in service, before further flight, remove the affected HPT stage 2 disk, forward seal, and stages 6–10 compressor rotor spool and replace with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, a ''part eligible for installation'' is any HPT stage 2 disk, forward seal, or stages 6–10 compressor rotor spool with a P/N and S/N not identified in Table 1 to paragraph (c) of this AD.

(2) For the purpose of this AD, ''engines not in service'' are engines that are in long-term or short-term storage as of the effective date of this AD.

(i) Installation Prohibition

After the effective date of this AD, do not install an HPT stage 2 disk, forward seal, or stages 6–10 compressor rotor spool with a P/N and S/N identified in Table 1 to paragraph (c) of this AD onto any engine.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov.*

(l) Material Incorporated by Reference

None.

Issued on December 2, 2022.

Christina Underwood,

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

[FR Doc. 2022–27835 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1054; Project Identifier AD–2022–00278–T; Amendment 39–22255; AD 2022–24–15]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–18–05, which applied to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. AD 2017–18–05 required repetitive replacement or inspection of certain fuse pins, and applicable on-condition actions. This AD was prompted by a report of damage found at the lower trailing edge panels

of the left wing and a broken fuse pin of the landing gear beam end fitting. This AD was further prompted by the need for new inspections for cracking of the fuse pin, and the determination that additional airplanes are subject to the unsafe condition. This AD continues to require the actions in AD 2017–18–05 and also requires repetitive replacement of certain fuse pins, repetitive inspections for cracking of the fuse pin, and applicable on-condition actions. This AD also revises the applicability by adding airplanes. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 26, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 26, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1054; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–1054.

FOR FURTHER INFORMATION CONTACT: Stefanie Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: *Stefanie.N.Roesli@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–18–05, Amendment 39–19014 (82 FR 41331, August 31, 2017) (AD 2017–18–05). AD 2017–18–05 applied to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP airplanes. The NPRM published in the **Federal Register** on September 19, 2022 (87 FR 57155). The NPRM was prompted by a report of damage at the lower trailing edge panels of the left wing and a broken fuse pin of the landing gear beam end fitting. The NPRM was further prompted by the need for new ultrasonic testing (UT) inspections for cracking of the fuse pin, and the determination that additional airplanes are subject to the unsafe condition. In the NPRM, the FAA proposed to continue to require repetitive replacement, or repetitive magnetic particle or surface high frequency eddy current (HFEC) inspections, of certain fuse pins, and applicable on-condition actions. The NPRM also proposed the option for repetitive replacement of certain corrosion-resistant (stainless) steel (CRES) and steel alloy fuse pins at the wing landing gear beam end fitting; and repetitive magnetic particle inspections, or repetitive HFEC and UT inspections, for cracking of the fuse pin, and applicable on-condition actions. The NPRM also proposed to revise the applicability by adding Model 747–8F and 747–8 series airplanes.

The FAA is issuing this AD to address cracking in the fuse pin of the wing landing gear beam end fitting. A broken fuse pin will not support the wing landing gear beam, causing damage to the surrounding structure, including flight control cables and hydraulic systems, which could result in loss of controllability of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Air Line Pilots Association, International, who supported the NPRM without change.

Conclusion

The FAA reviewed the relevant data, considered any 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 these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin 747–57A2360, Revision 1, dated February 9, 2022. This service information specifies procedures for, depending on airplane configuration, the optional repetitive replacement of certain steel alloy fuse pins or CRES fuse pins with new or serviceable fuse pins at the wing landing gear beam end fitting; and repetitive magnetic particle inspections, or repetitive surface HFEC and UT inspections, for cracking and corrosion of the fuse pin of the wing landing gear beam end fitting, and applicable on-condition actions. On-condition actions include replacement with steel alloy or CRES fuse pins; and magnetic particle, surface HFEC, and UT testing inspections for cracks; and replacement of cracked fuse pins. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 207 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Fuse pin replacement [1] (retained actions from AD 2017–18–05).	Up to 46 work–hours × $85 per hour = Up to $3,910 per replacement cycle.	Up to $15,150	Up to $19,060 per replacement cycle.	Up to $3,945,420 per replacement cycle.
Magnetic particle inspection [1] (retained actions from AD 2017–18–05).	Up to 48 work-hours × $85 per hour = Up to $4,080 per inspection cycle.	$0	Up to $4,080 per inspection cycle.	Up to $844,560 per inspection cycle.
Surface inspection [1] (retained actions from AD 2017–18–05).	Up to 10 work-hours × $85 per hour = Up to $850 per inspection cycle.	$0	Up to $850 per inspection cycle	Up to $175,950 per inspection cycle.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
CRES fuse pin replacement [1] (new action).	Up to 46 work-hours × $85 per hour = Up to $3,910 per replacement cycle.	$9,007	Up to $12,917 per replacement cycle.	Up to $2,673,819 per replacement cycle.
Steel alloy fuse pin replacement [1] (new action).	Up to 46 work-hours × $85 per hour = Up to $3,910 per replacement cycle.	$9,693	Up to $13,603 per replacement cycle.	Up to $2,815,821 per replacement cycle.
Surface HFEC and UT inspections [1] (new action).	Up to 11 work-hours × $85 per hour = Up to $935 per inspection cycle.	$0	Up to $935 per inspection cycle	Up to $193,545 per inspection cycle.

[1] Operators may choose which action they want to use.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
CRES fuse pin replacement	46 work-hours × $85 per hour = $3,910	$9,007	$12,917
Steel alloy fuse pin replacement	46 work-hours × $85 per hour = $3,910	9,693	13,603
Magnetic particle inspection	48 work-hours × $85 per hour = $4,080	0	4,080
Surface HFEC and UT inspections	11 work-hours × $85 per hour = $935	0	35

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) 2017–18–05; Amendment 39–19014 (82 FR 41331, August 31, 2017); and

■ b. Adding the following new AD:

2022–24–15 The Boeing Company: Amendment 39–22255; Docket No. FAA–2022–1054; Project Identifier AD–2022–00278–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 26, 2023.

(b) Affected ADs

This AD replaces AD 2017–18–05; Amendment 39–19014 (82 FR 41331, August 31, 2017) (AD 2017–18–05).

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, 747SP, 747–8F, and 747–8 series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of damage found at the lower trailing edge panels of the left wing and a broken fuse pin of the landing gear beam end fitting, and the determination that repetitive ultrasonic testing inspections of the fuse pin for cracking and optional repetitive replacement of certain corrosion-resistant (stainless) steel (CRES) and steel alloy fuse pins are necessary to address the unsafe condition. The FAA is issuing this AD to detect and correct cracking in the fuse pin of the wing landing gear beam end fitting. A broken fuse pin will not support the wing landing gear beam, causing damage to the surrounding structure, including flight control cables and hydraulic systems, which could result in loss of controllability of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in

paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–57A2360, Revision 1, dated February 9, 2022, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2360, Revision 1, dated February 9, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Service Bulletin 747–57A2360, Revision 1, dated February 9, 2022, use the phrase ''the original issue date of this service bulletin,'' this AD requires using the date of October 5, 2017 (the effective date of AD 2017–18–05).

(2) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Service Bulletin 747–57A2360, Revision 1, dated February 9, 2022, use the phrase ''the Revision 1 date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) Except as specified by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

For more information about this AD, contact Stefanie Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: *Stefanie.N.Roesli@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 747–57A2360, Revision 1, dated February 9, 2022.

(ii) [Reserved]

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

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

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

Issued on November 18, 2022.

Christina Underwood,

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

[FR Doc. 2022–27803 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1570; Project Identifier MCAI–2022–01269–T; Amendment 39–22268; AD 2022–25–12]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A310 series airplanes. This AD was prompted by a determination that new or more restrictive maintenance requirements and airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate 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 becomes effective January 6, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 6, 2023.

The FAA must receive comments on this AD by February 6, 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–2022–1570; 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 street address for Docket Operations is listed above.

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 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–2022–1570.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1570; Project Identifier MCAI–2022–01269–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule 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 final rule.

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 AD 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 AD, 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 AD. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone (206) 231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0195, dated September 23, 2022 (EASA AD 2022–0195) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A310–203, –203C, –204, –221, –222, –304, –308, –322, –324, and –325 airplanes. Model A310–203C and –308 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 MCAI states that new or more restrictive airworthiness limitations tasks related to the trimmable horizontal stabilizer actuators (THSA) are necessary to address fatigue cracking, damage, or corrosion in principal structural elements. EASA AD 2022–0195 specifies that it requires tasks (limitations) already in Airbus A310 Airworthiness Limitations Section (ALS), Part 4, System Equipment Maintenance Requirements (SEMR), Revision 03, dated August 28, 2017, that is required by EASA AD 2017–0202, dated October 12, 2017 (which corresponds to FAA AD 2018–18–21, Amendment 39–19400 (83 FR 47054, September 18, 2018) (AD 2018–18–21)), and that incorporation of EASA AD 2022–0195 invalidates (terminates) prior instructions for that task. This AD therefore terminates the limitations for the corresponding tasks, as required by paragraph (g) of AD 2018–18–21.

This AD also terminates all actions for AD 2016–15–01, Amendment 39–18592 (81 FR 47696, July 22, 2016) (AD 2016–15–01) (which corresponds to EASA AD 2015–0081, dated May 7, 2015), for Model A310 series airplanes only. AD 2016–15–01 requires inspecting THSA part numbers, serial numbers, and flight cycles on certain THSAs; and repetitive replacement of certain THSAs. Since that AD was issued, Airbus published Airbus A310 ALS Part 4 SEMR, Revision 03, and incorporated the tasks and limitations of the AD.

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the effects of aging on airplane systems. Such effects could change system characteristics, leading to an increased potential for failure of certain life-limited parts. See the MCAI for additional background information.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1570.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0195 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits. 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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2022–0195 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k)(1) of this 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, EASA AD 2022–0195 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022–0195 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA

AD 2022–0195 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 2022–0195. Service information required by EASA AD 2022–0195 for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1570 after this AD is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action, or interval.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

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

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, and

(2) Will not affect intrastate aviation in Alaska.

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:

2022–25–12 Airbus SAS: Amendment 39–22268; Docket No. FAA–2022–1570; Project Identifier MCAI–2022–01269–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 6, 2023.

(b) Affected ADs

(1) This AD affects AD 2018–18–21, Amendment 39–19400 (83 FR 47054, September 18, 2018) (AD 2018–18–21).

(2) This AD affects AD 2016–15–01, Amendment 39–18592 (81 FR 47696, July 22, 2016) (AD 2016–15–01).

(c) Applicability

This AD applies to all Airbus SAS Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category.

(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 maintenance requirements and airworthiness limitations are necessary. The FAA is issuing this AD to address the risks associated with the effects of aging on airplane systems. Such effects could change system characteristics, leading to an increased potential for failure of certain life-limited parts.

(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 2022–0195, dated September 23, 2022 (EASA AD 2022–0195).

(h) Exceptions to EASA AD 2022–0195

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0195 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0195 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.

(3) The initial compliance time for doing the tasks specified in paragraph (1) of EASA AD 2022–0195 is on or before the applicable ''limitations'' as incorporated by the requirements of paragraph (2) of EASA AD 2022–0195, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraph (4) of EASA AD 2022–0195 do not apply to this AD.

(5) This AD does not adopt the Remarks paragraph of EASA AD 2020–0195.

(i) Provisions for Alternative Actions and Intervals

After the existing 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 unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0195.

(j) Terminating Action for AD 2018–18–21 and AD 2016–15–01

(1) Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2018–18–21, for the tasks identified in the service information referenced in EASA AD 2022–0195 only for Airbus SAS Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(2) Accomplishing the actions required by this AD terminates all requirements of AD 2016–15–01 for the inspections and limitations of the trimmable horizontal stabilizer actuator (THSA) only for Airbus SAS Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(k) Additional AD Provisions

The following provisions also apply to this AD:

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

(l) Additional Information

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

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0195, dated September 23, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0195, 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 November 29, 2022.

Christina Underwood,

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

[FR Doc. 2022–27685 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1568; Project Identifier MCAI–2022–00910–T; Amendment 39–22266; AD 2022–25–10]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 190–300 and –400 airplanes. This AD was prompted by reports of friction marks on the engine fire extinguishing system tube, in the region of the aft fairing of the left-hand (LH) pylon. This AD requires rework of the retainer of the LH pylon access panel, inspection and replacement, as applicable, of the LH engine fire extinguishing system tube, and installation of a support, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective January 6, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 6, 2023.

The FAA must receive comments on this AD by February 6, 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–2022–1568; 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 street address for Docket Operations is listed above.

Material Incorporated by Reference:

• For ANAC material incorporated by reference in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

• 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–2022–1568.

FOR FURTHER INFORMATION CONTACT: Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email *Hassan.M.Ibrahim@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1568; Project Identifier MCAI–2022–00910–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule 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 final rule.

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 AD 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 AD, 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 AD. Submissions containing CBI should be sent to Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email *Hassan.M.Ibrahim@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

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2022–07–01, effective July 11, 2022 (ANAC AD 2022–07–01) (also referred to as the MCAI), to correct an unsafe condition for certain Embraer S.A. Model ERJ 190–300 and –400 airplanes. The MCAI states that the manufacturer has received reports of friction marks on the engine fire extinguishing system tube, in the region of the aft fairing of the LH pylon, caused by a small clearance between parts and the displacement of the engine fire extinguishing tube and LH pylon access panel. The damage on the engine fire extinguishing system tube is a latent failure, which may prevent the LH engine fire extinguishing system of the airplane from performing correctly. The MCAI specifies rework of the retainer of the LH pylon access panel, inspection and replacement, as applicable, of the LH engine fire extinguishing system tube, and installation of a support.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1568.

Related Service Information Under 1 CFR Part 51

ANAC AD 2022–07–01 specifies procedures for rework of the retainer of the LH pylon access panel, general visual inspection for existing damage (friction marks) and replacement, as applicable, of the LH engine fire extinguishing system tube, and installation of a support. 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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in ANAC AD 2022–07–01 described previously, except for any differences identified as exceptions in the regulatory text of this 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, ANAC AD 2022–07–01 is incorporated by reference in this AD. This AD requires compliance with ANAC AD 2022–07–01 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Service information required by ANAC AD 2022–07–01 for compliance will be available at *regulations.gov* under

Docket No. FAA–2022–1568 after this AD is published.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the forgoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
5 work-hours × $85 per hour = $425	$20	$445

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2.5 work-hours × $85 per hour = $212.50	$337	$549.50

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, and

(2) Will not affect intrastate aviation in Alaska.

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:

2022–25–10 Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.): Amendment 39–22266; Docket No. FAA–2022–1568; Project Identifier MCAI–2022–00910–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 6, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model ERJ 190–300 and –400 airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2022–07–01, effective July 11, 2022 (ANAC AD 2022–07–01).

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Unsafe Condition

This AD was prompted by reports of friction marks on the engine fire extinguishing system tube, in the region of the aft fairing of the left-hand (LH) pylon, caused by a small clearance between parts and the displacement of the engine fire extinguishing system tube and LH pylon access panel. The FAA is issuing this AD to address friction marks on the LH engine fire extinguishing system tube. The unsafe condition, if not addressed, could prevent the LH engine fire extinguishing system of the airplane from performing correctly.

(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, ANAC AD 2022–07–01.

(h) Exceptions to ANAC AD 2022–07–01

(1) Where ANAC AD 2022–07–01 refers to its effective date, this AD requires using the effective date of this AD.

(2) Paragraph (d) ''Alternative methods of compliance (AMOCs)'' of ANAC AD 2022–07–01 is not adopted by this AD.

(3) ANAC AD 2022–07–01 does not specify a compliance time for the action specified in paragraph (b)(2)(i) of ANAC AD 2022–07–01. For this AD, after accomplishing the inspection required by paragraph (b)(2) of ANAC AD 2022–07–01, the action required by paragraph (b)(2)(i) of ANAC AD 2022–07–01 must be done before further flight, if there is any sign of friction marks on the tube.

(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 ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information referenced in MCAI AD 2022–07–01 contains steps in the Accomplishment Instructions or figures that are labeled as RC, the instructions in RC steps, including subparagraphs under an RC step and any figures identified in an RC step, must be done to comply with this AD; any steps including substeps under those steps, that are not identified as RC are recommended. The instructions in steps, including substeps under those steps, 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. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep.

(j) Additional Information

For more information about this AD, contact Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email *Hassan.M.Ibrahim@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) Agência Nacional de Aviação Civil (ANAC) AD 2022–07–01, effective July 11, 2022.

(ii) [Reserved]

(3) For ANAC AD 2022–07–01, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email: *pac@anac.gov.br;* internet *anac.gov.br/en/.* You may find this ANAC AD material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

(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 November 29, 2022.

Christina Underwood,

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

[FR Doc. 2022–27683 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1569; Project Identifier MCAI–2022–01267–T; Amendment 39–22267; AD 2022–25–11]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A310 series airplanes. This AD was prompted by a determination that new or more restrictive maintenance requirements and airworthiness tasks are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness tasks, 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 becomes effective January 6, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 6, 2023.

The FAA must receive comments on this AD by February 6, 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–2022–1569; 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 street address for Docket Operations is listed above.

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 material on the EASA website at *ad.easa.europa.eu.*

• 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–2022–1569.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1569; Project Identifier MCAI–2022–01267–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule 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 final rule.

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 AD 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 AD, 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 AD. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone (206) 231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0193, dated September 23, 2022 (EASA AD 2022–0193) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A310–203, –203C, –204, –221, –222, –304, –308, –322, –324, and –325 airplanes. Model A310–203C and –308 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 MCAI states that new or more restrictive airworthiness limitations tasks related to the center fuselage are necessary to address fatigue cracking, damage, or corrosion in principal structural elements. EASA AD 2022–0193 specifies that it requires tasks (limitations) already in Airbus A310 Airworthiness Limitations Section (ALS), Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, dated December 14, 2018, that is required by EASA AD 2019–0091 (which corresponds to FAA AD 2019–20–06, Amendment 39–19759 (84 FR 55859, October 18, 2019) (AD 2019–20–06)), and that incorporation of EASA AD 2022–0193 invalidates (terminates) prior instructions for those tasks. This AD therefore terminates the limitations for the corresponding tasks, as required by paragraph (g) of AD 2019–20–06.

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the effects of aging on airplane systems. Such effects could change system characteristics, leading to an increased potential for failure of certain life-limited parts. See the MCAI for additional background information.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1569.

Related Service Information Under 1 CFR part 51

EASA AD 2022–0193 describes new or more restrictive airworthiness tasks for airplane structure (center fuselage). 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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness tasks, which are specified in EASA AD 2022–0193 described previously, as incorporated by reference. Any differences with EASA AD 2022–0193 are identified as exceptions in the regulatory text of this AD.

This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k)(1) of this 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, EASA AD 2022–0193

is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022–0193 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0193 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 2022–0193. Service information required by EASA AD 2022–0193 for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1569 after this AD is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

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

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, and

(2) Will not affect intrastate aviation in Alaska.

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:

2022–25–11 Airbus SAS: Amendment 39–22267; Docket No. FAA–2022–1569; Project Identifier MCAI–2022–01267–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 6, 2023.

(b) Affected ADs

This AD affects AD 2019–20–06, Amendment 39–19759 (84 FR 55859, October 18, 2019) (AD 2019–20–06).

(c) Applicability

This AD applies to all Airbus SAS Model A310–203, –204, –221, –222, –304, –322, –324 and –325 airplanes, certificated in any category.

(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 tasks are necessary. The FAA is issuing this AD to address fatigue cracking, damage, or corrosion in principal structural elements. The unsafe condition, if not addressed, 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, European Union Aviation Safety Agency (EASA) AD 2022–0193, dated September 23, 2022 (EASA AD 2022–0193).

(h) Exceptions to EASA AD 2022–0193

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0193 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0193 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.

(3) The initial compliance time for doing the tasks specified in paragraph (1) of EASA AD 2022–0193 is at the applicable ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0193, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraph (4) of EASA AD 2022–0193 do not apply to this AD.

(5) This AD does not adopt the ''Remarks'' paragraph of EASA AD 2022–0193.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) 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 2022–0193.

(j) Terminating Action for AD 2019–20–06

Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2019–20–06 only for the tasks identified in the service information referenced in EASA AD 2022–0193.

(k) Additional AD Provisions

The following provisions also apply to this AD:

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

(l) 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.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0193, dated September 23, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0193, 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 November 29, 2022.

Christina Underwood,

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

[FR Doc. 2022–27686 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1571; Project Identifier MCAI–2022–01359–T; Amendment 39–22270; AD 2022–25–14]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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 a computer software error leading to the rudder oscillatory failure case not being calculated properly. This AD requires updating certain computer software, 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 becomes effective January 6, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 6, 2023.

The FAA must receive comments on this AD by February 6, 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–2022–1571; 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 street address for Docket Operations is listed above.

Material Incorporated by Reference:

• For EASA 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 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–2022–1571.

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 data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1571; Project Identifier MCAI–2022–01359–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule 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 final rule.

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 AD 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 AD, 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 AD. 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 2022–0211, dated October 17, 2022 (EASA AD 2022–0211) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–1041 airplanes. The MCAI states that during the A350–1041 type certification follow-up activity, it was determined that the loads for the rudder oscillatory failure case were not calculated properly. This condition, if not corrected, could result in rudder oscillations leading to unacceptably high loads on the fuselage, which could compromise the structural integrity of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1571.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0211, dated October 17, 2022, specifies procedures for installing the software integrated modular avionics, core processing input output modules, avionics Batch 7A—Part 1 (SW1) and PRIMary flight control computers (PRIM) SW standard P13.1.2 (SW2) updates. 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 AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2022–0211 described previously, except for any differences identified as exceptions in the regulatory text of this 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, EASA AD 2022–0211 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022–0211 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0211 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 2022–0211. Service information required by EASA AD 2022–0211 for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1571 after this AD is published.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency,

for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

There are currently no domestic operators of these products.

Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the forgoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
Up to 12.5 work-hours × $85 per hour = $1,063	$5,400	$6,463

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

Authority for This Rulemaking

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

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

Regulatory Findings

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, and

(2) Will not affect intrastate aviation in Alaska.

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:

2022–25–14 Airbus SAS: Amendment 39–22270; Docket No. FAA–2022–1571; Project Identifier MCAI–2022–01359–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 6, 2023.

(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 2022–0211, dated October 17, 2022 (EASA AD 2022–0211).

(d) Subject

Air Transport Association (ATA) of America Code: 27, Flight Controls; Code 42, Flight Control and Guidance System.

(e) Unsafe Condition

This AD was prompted by a report of a computer software error leading to the rudder oscillatory failure case not being calculated properly. The FAA is issuing this AD to address the computer software error. The unsafe condition, if not corrected, could result in rudder oscillations leading to unacceptable high loads on the fuselage, possibly affecting the structural integrity of the airplane and consequent loss 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 2022–0211.

(h) Exceptions to EASA AD 2022–0211

(1) Where EASA AD 2022–0211 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' paragraph of EASA AD 2022–0211.

(3) This AD only requires the concurrent requirements as specified in EASA AD 2022–0211, paragraph (1). The service information referenced in EASA AD 2022–0211 specifies additional concurrent requirements that are not required by 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 Airplane'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 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 2022–0211, dated October 17, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0211, 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 November 30, 2022.

Christina Underwood,

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

[FR Doc. 2022–27687 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1061; Project Identifier AD–2022–00441–T; Amendment 39–22271; AD 2022–25–15]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by a report indicating that a crack was found in one of the holes of the wing rear spar lower chord at the main landing gear (MLG) aft fitting at a certain wing buttock line (WBL). This AD requires repetitive open hole high frequency eddy current (HFEC) inspections or surface HFEC and ultrasonic (UT) inspections for cracking of the wing rear spar lower chord at the MLG aft fitting at a certain WBL, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 26, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 26, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1061; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet myboeingfleet.com.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–1061.

FOR FURTHER INFORMATION CONTACT: Wayne Ha, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5238; email: *wayne.ha@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 all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on September 8, 2022 (87 FR 54922). The NPRM was prompted by a report indicating that a crack was found in one of the holes of the wing rear spar lower chord at the MLG aft fitting at WBL 157 on a Model 737–400 airplane. In the NPRM, the FAA proposed to require repetitive open hole HFEC inspections or surface HFEC and UT inspections for cracking of the wing rear spar lower chord at the MLG aft fitting at a certain WBL, and applicable on-condition actions. The FAA is issuing this AD to address cracking in the rear spar lower chord at a fastener common to the MLG aft support fitting. This condition, if not addressed, could result in the inability of the rear spar lower chord to sustain limit loads, resulting in reduced structural integrity of the airplane and possible loss of control of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from The Air Line Pilots Association, International (ALPA), who supported the NPRM without change. The FAA received comments from an individual that were outside the scope of this rulemaking.

The FAA received an additional comment from Boeing. The following

presents the comment received on the NPRM and the FAA's response.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing Supplemental Type Certificate (STC) ST01219SE does not affect the actions specified in the proposed AD.

The FAA concurs with the commenter. The FAA has redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request for a Correction to Paragraph (h) of This AD

Boeing requested that a reference to ''paragraph (h) of this AD'' within paragraph (h) of this AD be corrected to read ''paragraph (i) of this AD.'' Boeing noted that the reference should be to the exceptions stated in paragraph (i) of this AD.

The FAA agrees with the request to correct the error. The reference to ''paragraph (h) of this AD'' within paragraph (h) of this AD has been corrected to read ''paragraph (i) of this AD.''

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. 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

The FAA reviewed Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022. This service information specifies procedures for repetitive open hole HFEC inspections or surface HFEC and UT inspections for cracking, and applicable on-condition actions. On-condition actions include installing fasteners and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD would affect 69 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Open hole HFEC inspection ..	30 work-hours × $85 per hour = $2,550 per inspection cycle.	$0	$2,550 per inspection cycle ...	Up to $175,950 per inspection cycle.
Surface HFEC/UT inspections	4 work-hours × $85 per hour = $340 per inspection cycle.	0	$340 per inspection cycle	Up to $23,460 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Install fasteners	1 work-hour × $85 per hour = $85	* $0	$85

* The FAA has no definitive data on the parts costs for fasteners.

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 adding the following new airworthiness directive:

2022–25–15 The Boeing Company: Amendment 39–22271; Docket No. FAA–2022–1061; Project Identifier AD–2022–00441–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 26, 2023.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report indicating that a crack was found in one of the holes of the wing rear spar lower chord at the main landing gear (MLG) aft fitting at wing buttock line (WBL) 157. The FAA is issuing this AD to address cracking in the rear spar lower chord at a fastener common to the MLG aft support fitting. This condition, if not addressed, could result in the inability of the rear spar lower chord to sustain limit loads, resulting in reduced structural integrity of the airplane and possible loss of control of the airplane.

(f) Compliance

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

(g) Required Actions for Group 1 Airplanes

For airplanes identified as Group 1 in Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022: Within 120 days after the effective date of this AD, inspect the airplane and do all applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Required Actions for Group 2 and Group 3 Airplanes

For airplanes identified as Group 2 and Group 3 in Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022: Except as specified by paragraph (i) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022.

Note 1 to paragraph (h): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–57A1353, dated February 10, 2022, which is referred to in Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022.

(i) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022, use the phrase ''the original issue date of Requirements Bulletin 737–57A1353 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles 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 (k) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

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

(k) Related Information

For more information about this AD, contact Wayne Ha, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5238; email: *wayne.ha@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 the AD specifies otherwise.

(i) Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022.

(ii) [Reserved]

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

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

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

Issued on November 30, 2022.

Christina Underwood,

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

[FR Doc. 2022–27751 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1239; Project Identifier MCAI–2022–00301–E; Amendment 39–22279; AD 2022–26–01]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This AD is effective January 26, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 26, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1239; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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 GEAC service information identified in this final rule, contact GE Aviation Czech s.r.o., Beranových 65, 199 02 Praha 9, Letňany, Czech Republic; phone: +420 222 538 111.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2022–1239.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

SUPPLEMENTARY INFORMATION:

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 GEAC M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, M601F, H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85 200 model turboprop engines. The NPRM published in the **Federal Register** on September 27, 2022 (87 FR 58466). The NPRM was prompted by AD 2022–0034, dated March 4, 2022, issued by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union (referred to after this as ''the MCAI''). The MCAI states that occurrences of cracks in dilution tube weld areas of the combustion chamber outer liner have been reported. These cracks can lead to crack propagation, possibly resulting in part separation, loss of engine power, and reduced control of the aircraft.

In the NPRM, the FAA proposed to require initial and repetitive BSIs of the dilution tube weld areas of the combustion chamber outer liner and, depending on the results of the inspections, corrective action in accordance with the service information. 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–2022–1239.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI 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 these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

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

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

Costs of Compliance

The FAA estimates that this AD affects 33 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

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

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

ON-CONDITION COSTS

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

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this 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:

2022–26–01 GE Aviation Czech s.r.o (Type Certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.): Amendment 39–22279; Docket No. FAA–2022–1239; Project Identifier MCAI–2022–00301–E.

(a) Effective Date

This airworthiness directive (AD) is effective January 26, 2023.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

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

(e) Unsafe Condition

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

(f) Compliance

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

(g) Required Actions

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

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

(h) Terminating Action

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

(i) Conditional Part Installation

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

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

(j) Definitions

For the purpose of this AD, a ''part eligible for installation'' is an affected combustion chamber outer liner, which was not previously installed on an engine, or an affected combustion chamber outer liner that,

before installation, has passed an inspection (no defects found) in accordance with the Accomplishment Instructions, paragraphs 2.2 and 2.3 of the ASB, or a combustion chamber outer liner that does not have P/Ns M601–229.3, M601–229.3A, M601–229.3B, M601–229.31A, or M601–229.31B.

(k) Alternative Methods of Compliance (AMOCs)

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

(l) Additional Information

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

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

(m) Material Incorporated by Reference

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

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

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

(ii) [Reserved]

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

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

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

Issued on December 7, 2022.

Christina Underwood,

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

[FR Doc. 2022–27670 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1567; Project Identifier MCAI–2022–00099–T; Amendment 39–22265; AD 2022–25–09]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and A350–1041 airplanes. This AD was prompted by a report that Heavy Expanded Copper Foil (HECF) patches may not have been installed at all required locations of the upper and lower wing covers. This AD requires a one-time detailed inspection of the affected areas and, depending on findings, accomplishment of applicable corrective actions, 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 becomes effective January 6, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 6, 2023.

The FAA must receive comments on this AD by February 6, 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–2022–1567; 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 street address for Docket Operations is listed above.

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 material on the EASA website at *ad.easa.europa.eu.*
- 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–2022–1567.

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 data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1567; Project Identifier MCAI–2022–00099–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule 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 final rule.

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 AD 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 AD, 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 AD. 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 2022–0015, dated January 26, 2022 (EASA AD 2022–0015) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 and A350–1041 airplanes. The MCAI states that due to a production quality issue, HECF patches may not have been installed at all required locations of the upper and lower wing covers. This condition, combined with a pre-existing undetected incorrect installation of an adjacent fastener and associated nut-cap, if not detected and corrected, could create an ignition source for the fuel vapor inside the fuel tanks, which, in case of a lightning strike of high intensity in the area, could possibly result in ignition of the fuel-air mixture in the affected fuel tank and consequent loss of the airplane. EASA AD 2022–0015 requires a one-time detailed inspection of the affected areas and, depending on findings, accomplishment of applicable corrective action(s).

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1567.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0015 specifies procedures for a one-time detailed inspection of the affected areas for missing HECF patches and, depending on the inspection results, accomplishment of applicable corrective actions including installing missing HECF patches. 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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2022–0015 described previously, except for any differences identified as exceptions in the regulatory text of this 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, EASA AD 2022–0015 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022–0015 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0015 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 2022–0015. Service information required by EASA AD 2022–0015 for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1567 after this AD is published.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the forgoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
Up to 10.5 work-hours × $85 per hour = Up to $893	Minimal	Up to $893.

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
3.5 work-hours × $85 per hour = $298	Minimal	$298

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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, and

(2) Will not affect intrastate aviation in Alaska.

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:

2022–25–09 Airbus SAS: Amendment 39–22265; Docket No. FAA–2022–1567; Project Identifier MCAI–2022–00099–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 6, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and A350–1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0015, dated January 26, 2022 (EASA AD 2022–0015).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that Heavy Expanded Copper Foil (HECF) patches may not have been installed at all required locations of the upper and lower wing covers. The FAA is issuing this AD to address the missing HECF patches combined with a pre-existing undetected incorrect installation of an adjacent fastener and associated nut-cap. The unsafe condition, if not addressed, could result in an ignition source for the fuel vapor inside the fuel tanks in case of a lightning strike of high intensity in the area, could result in ignition of the fuel-air mixture in the affected fuel tank and consequent loss 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 2022–0015.

(h) Exceptions to EASA AD 2022–0015

(1) Where EASA AD 2022–0015 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0015.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0015 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the airplane can be modified, provided no passengers are onboard.

(k) 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 (l) 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 Airplane'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 (k)(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.

(l) 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.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0015, dated January 26, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0015, 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 November 29, 2022.

Christina Underwood,

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

[FR Doc. 2022–27684 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0588; Project Identifier AD–2022–00114–T; Amendment 39–22249; AD 2022–24–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–14–20, which applied to all The Boeing Company Model 737 airplanes. AD 2021–14–20 required repetitive functional tests of the cabin altitude pressure switches, and on-condition actions, including replacement, if necessary. AD 2021–14–20 also required reporting test results. This AD was prompted by data collected from the reports required by AD 2021–14–20, which revealed that the switches were subject to false test failures due to lack of clear instructions for setup of the test adapters during the functional tests. This AD retains the repetitive functional tests and on-condition actions, and specifies certain adapter requirements for the functional tests. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 26, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0588; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nicole Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3959; email: *Nicole.S.Tsang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–14–20, Amendment 39–21647 (86 FR 38214, July 20, 2021) (AD 2021–14–20). AD 2021–14–20 applied to all The Boeing Company Model 737 airplanes. The NPRM published in the **Federal Register** on July 7, 2022 (87 FR 40460). The NPRM was prompted by reports of latent failures of the cabin altitude pressure switches, and the determination that using certain adapters while performing a functional test may lead to false failures of the cabin altitude pressure switches. In the NPRM, the FAA proposed to retain the repetitive functional tests and on-condition actions, and specify certain adapter requirements for the functional tests. The FAA is issuing this AD to address the unexpectedly high rate of latent failure of both pressure switches on the same airplane, which could result in the cabin altitude warning system not activating if the cabin altitude exceeds 10,000 feet, resulting in hypoxia of the flightcrew, and loss of control of the airplane.

Discussion of Final Airworthiness Directive

Comments

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

The FAA received additional comments from four commenters, including United Airlines, Delta Air Lines, American Airlines, and Boeing. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise Note 1 to Paragraph (g)

Delta Air Lines (DAL) asked that the FAA revise note 1 to paragraph (g) of the proposed AD to call out equivalent applicable Boeing 737 Aircraft Maintenance Manual (AMM) procedures, in addition to calling out the procedures in the 737 Task Card. DAL stated that the 737 Task Cards called out in Note 1 to paragraph (g) of the proposed AD are not easily accessible to the maintenance personnel performing the tasks on the aircraft. DAL added that the AMM procedure is more commonly used and easily accessed by the Aircraft Maintenance Technician, so the addition of the reference to the AMM procedure avoids potential confusion when the maintenance task is being performed.

The FAA agrees with the commenter's request for the reasons provided. The FAA has revised Note 1 to paragraph (g) of this AD to include the equivalent

applicable Boeing 737 Aircraft Maintenance Manual procedures referenced in Delta's comment.

Request To Correct Typographical Error

DAL noted that Boeing 737–600/700/800/900 Aircraft Maintenance Manual (AMM) is identified in note 1 to paragraph (g) of the proposed AD as ''Airplane Maintenance Manual'' instead of ''Aircraft Maintenance Manual.''

The FAA has corrected the reference accordingly.

Request To Return to MRB Interval

United Airlines (UAL) asked that the interval established in the Maintenance Review Board (MRB) be eventually re-established. UAL stated that tooling was determined to be a significant contributor to inconsistencies in the testing of the cabin altitude test switch. UAL added that AD 2021–14–20 would be superseded by the proposed AD to require improved AMM content defining appropriate tooling. In light of these published AMM improvements, UAL recommended a return to the interval established in the MRB.

The FAA does not agree with the commenter's request. Boeing provided the fleet data collected from AD 2021–14–20 and the trend data after operators incorporated the improved AMM content. The FAA evaluated this data and determined through risk analysis that the interval established in the MRB was unacceptable. Therefore, the FAA has not changed this AD in this regard.

Request To Remove Hose Length Requirement

American Airlines (AA) stated that the FAA should remove the hose length requirement of ''25 to 40 ft'' specified in figure 1 to paragraph (g) of the proposed AD. AA stated that the hose length requirement is an unnecessary restriction. AA added that a longer or shorter hose should not significantly affect the application of a controlled vacuum, and therefore should not affect the accuracy of the cabin altitude pressure switch functional test.

The FAA does not agree with the commenter's request. There are instructions to use a Barfield Pitot Hose, or equivalent 25- to 40-foot hose, to standardize the equipment that operators use while performing the cabin altitude warning switch functional test and to prevent false test failures. There is potential concern that a hose longer than 40 feet could have a kink in the hose that may be unnoticed by the operator, which could result in a false test failure. The FAA has not changed this AD in this regard.

Request To Use Specific Adapters for Functional Test

Boeing asked that the proposed AD not specify particular adapters for use during performance of the pressure switch functional test. Boeing stated that the proposed AD should instead direct operators to use only those adapters listed in the current Boeing AMM revision or subsequent revisions. Boeing added that if new or improved adapters become available and/or the AMM adapter list is modified, an alternative method of compliance (AMOC) will have to be approved to add them as approved adapters for the AD, which is not an efficient resolution.

The FAA does not agree to require operators to use only those adapters listed in the existing Boeing AMM revision or subsequent revisions. Figure 1 to paragraph (g) of this AD shows the same list of adapters identified in the current Boeing AMM. Approval of an AMOC to use new or improved adapters would not be necessary if the adapters meet the specifications in either paragraph (g)(2)(i) or (ii) of this AD. Therefore, the FAA has not changed this AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered any 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 these products. 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.

Costs of Compliance

The FAA estimates that this AD affects 2,693 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Functional test	1 work-hour × $85 per hour = $85 per test.	*$	$85 per test	$228,905 per test.

*If the operator needs to buy an adapter, the FAA estimates the adapter could cost up to $3,644. The FAA has no way of determining the number of operators that might need to purchase an adapter.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Switch replacement	1 work-hour × $85 per hour = $85	$1,278	$1,363

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 (AD) 2021–14–20, Amendment 39–21647 (86 FR 38214, July 20, 2021); and
■ b. Adding the following new AD:

2022–24–09 The Boeing Company: Amendment 39–22249; Docket No. FAA–2022–0588; Project Identifier AD–2022–00114–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 26, 2023.

(b) Affected ADs

This AD replaces AD 2021–14–20, Amendment 39–21647 (86 FR 38214, July 20, 2021) (AD 2021–14–20).

(c) Applicability

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800, –900, and –900ER series airplanes, and Model 737–8, 737–9, and 737–8200 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Unsafe Condition

This AD was prompted by reports of latent failures of the cabin altitude pressure switches, and the determination that using certain adapters while performing a functional test may lead to false failures of the cabin altitude pressure switches. The FAA is issuing this AD to address the unexpectedly high rate of latent failure of both pressure switches on the same airplane, which could result in the cabin altitude warning system not activating if the cabin altitude exceeds 10,000 feet, resulting in hypoxia of the flightcrew, and loss of control of the airplane.

(f) Compliance

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

(g) Repetitive Functional Tests

(1) At the latest of the times specified in paragraphs (g)(1)(i) through (iii) of this AD, perform a functional test of the cabin altitude pressure switches having part number 214C50–2, using an adapter as specified in figure 1 to paragraph (g) of this AD, or an equivalent adapter, and matching hose to connect to the cabin altitude warning switch. Repeat the functional test thereafter at intervals not to exceed 2,000 flight hours. If, during any functional test, any cabin altitude pressure switch fails to activate at an altitude of between 9,000 and 11,000 feet, replace the switch before further flight.

(i) Within 2,000 flight hours since the last functional test of the cabin altitude pressure switches.

(ii) Prior to the accumulation of 2,000 total flight hours on the airplane.

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

(2) Adapters are considered to be equivalent as long as the mating side with the switch meets the specifications in either paragraph (g)(2)(i) or (ii) of this AD:

(i) Greater than or equal to 0.265 inch (0.673 cm) X 7/16–20–UNJF–3A and less than or equal to 0.438 inch (1.113 cm) X 7/16–20–UNJF–3A for the flareless end; or

(ii) Less than or equal to 0.5 inch (1.27 cm) total with greater than or equal to 0.265 inch (0.673 cm) X 7/16–20–UNJF–3A thread for AN4 flared end.

BILLING CODE 4610–13–P

Figure 1 to paragraph (g) of this AD – *Functional Test Adapters*

Use one of the following adapters, or an equivalent adapter, and matching hose to connect to the cabin altitude warning switch:

(1) SAE J514 part number (P/N) 070220 90 Degree Straight Thread Elbow and appropriate sized O-ring (Preferred).

- Use a Barfield Pitot Hose, or equivalent 25 feet (7.62 m) to 40 feet (12.19 m) long hose, with #4 AN fitting to the adapter and quick disconnect (if applicable) to the air data test set.
- Make sure that the flat side of the adapter is connected with the cabin altitude warning switch.

NOTE: Do not connect the flared side of the adapter with the cabin altitude warning switch. Connecting the flared side of the adapter with the cabin altitude warning switch may bottom out the cabin altitude warning switch, resulting in false test results.

(2) SAE J514 P/N 070320 45 Degree Straight Thread Elbow and appropriate sized O-ring (Preferred).

- Use a Barfield Pitot Hose, or equivalent 25 feet (7.62 m) to 40 feet (12.19 m) long hose, with #4 AN fitting to the adapter and quick disconnect (if applicable) to the air data test set.
- Make sure that the flat side of the adapter is connected with the cabin altitude warning switch.

NOTE: Do not connect the flared side of the adapter with the cabin altitude warning switch. Connecting the flared side of the adapter with the cabin altitude warning switch may bottom out the cabin altitude warning switch, resulting in false test results.

(3) SAE J514 P/N 070120 Straight Thread Connector Short and appropriate sized O-ring (Preferred).

- Use a Barfield Pitot Hose, or equivalent 25 feet (7.62 m) to 40 feet (12.19 m) long hose, with #4 AN fitting to the adapter and quick disconnect (if applicable) to the air data test set.
- Make sure that the flat side of the adapter is connected with the cabin altitude warning switch.

NOTE: Do not connect the flared side of the adapter with the cabin altitude warning switch. Connecting the flared side of the adapter with the cabin altitude warning switch may bottom out the cabin altitude warning switch, resulting in false test results.

(4) AS21900-4 (or MS21900-4) Flareless Tube to Flared Tube Adapter and appropriate sized O-ring (Preferred).

- Use a Barfield Pitot Hose, or equivalent 25 feet (7.62 m) to 40 feet (12.19 m) long hose, with #4 AN fitting to the adapter and quick disconnect (if applicable) to the air data test set.

- Make sure that the flat side of the adapter is connected with the cabin altitude warning switch.

NOTE: Do not connect the flared side of the adapter with the cabin altitude warning switch. Connecting the flared side of the adapter with the cabin altitude warning switch may bottom out the cabin altitude warning switch, resulting in false test results.

(5) P/N JUD321 Hose Fitting with MS28778-4 O-ring (Eaton Aerospace LLC, Bethel, CT 02750) (Preferred).

- Use a Barfield Pitot Hose, or equivalent 25 feet (7.62 m) to 40 feet (12.19 m) long hose, with #4 AN fitting to the adapter and quick disconnect (if applicable) to the air data test set.

(6) AN807-4D (or AS5180D04 or AS5180W04) Tube to Hose Adapter, AN924-4 nut and appropriate sized O-ring (on the mating side with the switch) and spacer or washers (Alternate).

NOTE: This adapter can be used if the steps below are carefully followed. This adapter is not preferred because if the AN924-4 nut is not connected carefully as recommended below, this may bottom out the cabin altitude warning switch, resulting in false test results.

- Use a Barfield Pitot Hose, or equivalent 25 feet (7.62 m) to 40 feet (12.19 m) long hose, with quick disconnect (if applicable) to the air data test set.
- Make sure that the thread length, including fitting end after the installation of AN924-4 nut and appropriate sized 7/16 spacer or washers, is less than 0.5 inch (1.270 cm) to avoid false test results.

Note 1 to paragraph (g): Additional guidance for performing the functional test required by paragraph (g) of this AD can be found in Boeing 737–200 Aircraft Maintenance Manual (AMM) 21–33–11/501, Boeing 737–300/400/500/600/700/800/900/7/8/8200/9 AMM 21–33–00/501, 737CL AMM TASK CARD 31–026–01–01, 737CL AMM TASK CARD 31–010–01–01, 737NG AMM TASK CARD 31–020–00–01, and 737MAX AMM TASK CARD 31–020–00–01, and other approved maintenance procedures.

(h) Minimum Equipment List (MEL) Provisions

If any cabin altitude warning switch fails any functional test as required by this AD, the airplane may be operated as specified in the operator's existing FAA-approved MEL, provided provisions that specify operating the airplane at a flight altitude at or below 10,000 feet mean sea level (MSL) with the cabin altitude warning system inoperative are included in the operator's existing FAA-approved MEL.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Nicole Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3959; email: *Nicole.S.Tsang@faa.gov.*

(2) For service information identified in this AD that is not incorporated by reference, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

(k) Material Incorporated by Reference

None.

Issued on December 2, 2022.

Christina Underwood,

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

[FR Doc. 2022–27805 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0846]

Safety Zone; Annual Fireworks Displays and Other Events in the Eighth Coast Guard District Requiring Safety Zones

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Crescent City Countdown Club/New Year's Celebration fireworks display, from December 31, 2022 at 11:30 p.m. through January 1, 2023 at 12:30 a.m., to provide for the safety of life on the navigable waterways during this event. Our regulation for annual fireworks displays and other events in the Eighth Coast Guard District identifies this safety zone on Mississippi River mile marker (MM) 93.5–96.5, New Orleans, LA. During the enforcement period, entry into this zone is prohibited unless authorized by the Captain of the Port or designated representative.

DATES: The regulations in 33 Code of Federal Regulations, § 165.801, Table 5, line 10 will be enforced from 11:30 p.m. on December 31, 2022 through 12:30 a.m. on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander William Stewart, Sector New Orleans, U.S. Coast Guard; telephone (504)365–2246, email *William.A.Stewart@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone for the Crescent City Countdown Club/New Year's Celebration fireworks display, from December 31, 2022 at 11:30 p.m. through January 1, 2023 at 12:30 a.m., to provide for the safety of life on the navigable waterways during this event. Our regulation for annual fireworks displays and other events in the Eighth Coast Guard District, 33 CFR 165.801, as updated by **Federal Register** Document 83 FR 55488, identifies this safety zone on Mississippi River MM 93.5–96.5, New Orleans, LA. During the enforcement period, as reflected in § 165.801(a) through (d), entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

Dated: December 15, 2022.

K.K. Denning,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2022–27782 Filed 12–21–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

Processing Claims, Sergeant First Class Heath Robinson Honoring Our Promise To Address Comprehensive Toxics Act of 2022, or the Honoring Our PACT Act of 2022

AGENCY: Department of Veterans Affairs.

ACTION: Notification of sub-regulatory guidance.

SUMMARY: On August 10, 2022, the President signed the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (PACT Act) into law, establishing substantial legislative changes in laws administered by the Department of Veterans Affairs (VA).

DATES: VA anticipates that the processing of PACT Act-related claims will begin on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Jessica Pierce, Assistant Director, Policy Staff, Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC, 202–461–9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is drafting regulations to implement the PACT Act. Prior to the promulgation of those regulations, VA is providing sub-regulatory guidance to claims processors in the form of a Policy Letter. The Policy Letter, as it will be provided to claims processors, can be found as a supporting document at *https://www.regulations.gov.*

On August 10, 2022, Public Law 117–168, the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022, was signed into law. This historic, multifaceted law, which triggers changes to disability compensation examination requirements when there is evidence a Veteran has participated in a toxic exposure risk activity, expands presumptive locations associated with radiation exposure, expands presumptive conditions and locations associated with herbicide exposure, amends the statute involving certain benefits for Persian Gulf War Veterans, establishes presumptive conditions associated with exposure to burn pits and other toxins, and provides an avenue for a claimant-elected reevaluation of previously denied dependency and indemnity compensation (DIC) claims that can result in retroactive effective dates for benefits.

Although the PACT Act does not explicitly require VA to implement its provisions through regulations, VA currently is drafting regulations to codify the statutory changes in regulation and to address any gaps and ambiguity in the statutory language. Due to the time required to promulgate regulations, VA will implement the law and begin processing PACT Act-related claims on January 1, 2023, based on the sub-regulatory guidance contained in the Policy Letter associated with this Notice. The issuance of this Policy Letter has the benefit of allowing VA to operationalize the PACT Act and deliver earned benefits to Veterans and their dependents as quickly as possible while simultaneously continuing efforts to promulgate the implementing regulations. Nothing in this guidance affects or alters section 804 of the Camp Lejeune Justice Act of 2022.

The PACT Act contains nine titles, each containing multiple sections. Not all titles and sections impact compensation, pension and/or death benefits, as the law also addresses matters such as the expansion of health care eligibility and requirements for research studies. This Policy Letter focuses on the titles and sections that impact eligibility for disability compensation and survivor benefits. The Policy Letter provides guidance to claims processors for implementing the provisions of sections 102, 203, 204, 302, 303, 401, 402, 403, 404, 405 and 406 of this law.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on November 15, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication

electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2022–27861 Filed 12–21–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0318; FRL–10004–02–R9]

Air Plan Approval; California; San Diego County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the San Diego County Air Pollution Control District (SDCAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOC) from architectural coating operations. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rules is effective January 23, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0318. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. 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: Arnold Lazarus, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3024 or by email at *lazarus.arnold@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action

On September 19, 2022 (87 FR 57161), the EPA proposed to approve the following amended rules into the California SIP.

Local agency	Rule #	Rule title	Adopted/amended/revised	Submitted
SDCAPCD	67.0.1	Architectural Coatings	2/10/2021 (effective for state law purposes on 1/1/2022).	4/20/2021, as an attachment to a letter dated 4/16/2021.
SJVUAPCD	4601	Architectural Coatings	4/16/2020 (effective upon adoption but the new or revised VOC content limits were effective 1/1/2022).	4/23/2020, as an attachment to a letter of the same date.

We proposed to approve these amended rules because we determined that they comply with the relevant CAA requirements. More specifically, we evaluated the amended rules and determined that they remain enforceable, that they implement reasonably available control measure (RACM)-level controls, and that they would not interfere with any applicable requirement concerning attainment or reasonable further progress (RFP) or any other requirement of the CAA. In our proposed rule, we also evaluated the specific contingency measure provisions in the rules (*i.e.,* paragraph (b)(6) of SDCAPCD Rule 67.0.1 and section 4.3 of SJVUAPCD Rule 4601) and concluded that the provisions meet the requirements for contingency measures under CAA sections 172(c)(9) and 182(c)(9). While we found that the rules meet the requirements for stand-alone contingency measures, we indicated that we are not making any determination at this time as to whether these individual contingency measures are sufficient in themselves for their respective nonattainment areas to fully comply with the contingency measure requirements under CAA sections 172(c)(9) and 182(c)(9). As noted in the proposed rule, we will be taking action on the contingency measure SIP elements for San Diego County and San Joaquin Valley in separate rulemakings. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one germane comment, and that one comment was supportive of the proposed action.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the CAA, the EPA is fully approving these rules into the California SIP. Upon the effective date of this final rule, the February 10, 2021 version of SDCAPCD Rule 67.0.1 and the April 16, 2020 version of SJVUAPCD Rule 4601 will replace the previously approved versions of these rules in the California SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SDCAPCD and SJVUAPCD rules identified in section I. of this preamble. These rules concern emissions of VOC from architectural coating operations. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a

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

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

In addition, 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. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 14, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(379)(i)(C)(*9*), (c)(472)(i)(C)(*2*), and (c)(565)(i)(A)(*3*), reserved paragraph (c)(591), and paragraph (c)(592) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(379) * * *

(i) * * *

(C) * * *

(*9*) Previously approved on November 8, 2011, in paragraph (c)(379)(i)(C)(*6*) of this section and now deleted with replacement in paragraph (c)(592)(i)(A)(*1*) of this section, Rule 4601, ''Architectural Coatings,'' amended on December 17, 2009.

* * * * *

(472) * * *

(i) * * *

(C) * * *

(*2*) Previously approved on October 4, 2016, in paragraph (c)(472)(i)(C)(*1*) of this section and now deleted with replacement in paragraph (c)(565)(i)(A)(*3*) of this section, Rule 67.0.1, ''Architectural Coatings,'' adopted on June 24, 2015.

* * * * *

(565) * * *

(i) * * *

(A) * * *

(*3*) Rule 67.0.1, ''Architectural Coatings,'' rev. adopted on February 10, 2021.

* * * * *

(591) [Reserved]

(592) The following regulation was submitted on April 23, 2020, by the Governor's designee, as an attachment to a letter dated April 23, 2020.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4601, ''Architectural Coatings,'' amended on April 16, 2020.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

* * * * *

[FR Doc. 2022–27723 Filed 12–21–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0021; FRL–4866.1–02–OAR]

RIN 2060–AN36

National Emission Standards for Hazardous Air Pollutants: Site Remediation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notification of final action on reconsideration.

SUMMARY: This action finalizes amendments to the national emission standards for hazardous air pollutants (NESHAP) for the site remediation source category. This action finalizes amendments to remove exemptions from the rule for site remediation activities performed under authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as a remedial action or a non-time-critical removal action, and for site remediation activities performed under Resource Conservation and Recovery Act (RCRA) corrective actions conducted at treatment, storage, and disposal facilities.

DATES: This final rule is effective on December 22, 2022.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Matthew Witosky, Sector Policies and Programs Division (E143–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2865; and email address: *witosky.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2002–0021. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Source category	NESHAP	NAICS code [1]
Industry	40 CFR part 63, subpart GGGGG	325211 325192. 325188. 32411. 49311. 49319. 48611. 42271. 42269.
Federal Government		Federal agency facilities that conduct site remediation activities.

[1] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at *https://www.epa.gov/stationary-sources-air-pollution/site-remediation-national-emission-standards-hazardous-air.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the action and key technical documents at this same website.

A redline version of the regulatory language that incorporates the finalized changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2002–0021).

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the court) by February 21, 2023. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal

proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the purpose of this action?

On October 8, 2003, the EPA promulgated emission standards for control of certain hazardous air pollutants (HAP) from site remediations located at major sources of HAP—the 2003 Site Remediation NESHAP (68 FR 58172); 40 CFR part 63, subpart GGGGG. The 2003 Site Remediation NESHAP applied only to volatile organic HAP. 68 FR 58175. The 2003 Site Remediation NESHAP exempted site remediations performed under CERCLA authority as a remedial action or a non-time-critical removal action and site remediations under a RCRA corrective action conducted at a treatment, storage, and disposal facility (TSDF) that is either required by a permit issued by the EPA or a State program authorized by the EPA under RCRA section 3006; required by orders authorized under RCRA; or required by orders authorized under RCRA section 7003. 68 FR 58172 and 58176; 40 CFR 63.7881(b)(2) and (3). (This document refers to these exemptions as the ''CERCLA and RCRA exemptions''; however, it should be noted that the scope of these exemptions is narrower than the full scope of remediations that may be conducted under, or in relation to, CERCLA or RCRA authority.) The NESHAP also specified that site remediations are not subject to subpart GGGGG unless they are co-located at a facility with one or more other stationary sources that emit HAP and meet the affected source definition specified for a source category that is regulated by another subpart under part 63. 40 CFR 63.7881(a)(2). (This document refers to this as the ''co-location'' criterion.)

The CERCLA and RCRA exemptions were based on the EPA's conclusion that the requirements of these specific types of remediations under CERCLA and RCRA are ''functionally equivalent'' to the HAP emissions control requirements of the 2003 Site Remediation NESHAP. 68 FR 58176. EPA reasoned that these programs use remediation approaches that would generally address the protection of public health and the environment from air pollutants emitted from remediation activities on a site-specific basis. Further, in both programs, the public is given an opportunity to participate in the decision-making process, and both programs are subject to Federal oversight and enforcement authority. 68 FR 58184–85. However, the EPA did not make a determination in promulgating the RCRA and CERCLA exemptions that the kinds of emissions controls, including monitoring, recordkeeping and reporting requirements, that are implemented in the CERCLA and RCRA programs were at least as stringent as the requirements of the CAA, including that RCRA and CERCLA requirements met the maximum achievable control technology (MACT) standard established pursuant to CAA section 112(d). Nor did EPA identify a statutory basis for exempting these sources from CAA section 112 requirements.

Following promulgation of the 2003 Site Remediation NESHAP, on October 8, 2003, the EPA Administrator received a petition for reconsideration of certain aspects of the final rule from the Sierra Club, the Blue Ridge Environmental Defense League, and Concerned Citizens for Nuclear Safety. This petition stated that the EPA (1) lacked the statutory authority to promulgate the CERCLA and RCRA exemptions, and (2) had a duty to set standards for each listed HAP that petitioners alleged were emitted from the source category, specifically referring to heavy metal HAP, not just the volatile organic HAP listed in table 1 of the subpart. In addition, petitioners filed a petition for review of the 2003 Site Remediation NESHAP in the court, *Sierra Club et al.* v. *EPA,* No. 03–1435. The parties agreed to place this case in abeyance pending EPA's review of the petition for reconsideration.

On November 29, 2006, the EPA promulgated technical amendments to the 2003 Site Remediation NESHAP (71 FR 69011), but did not resolve, address, or respond to the issues in the petition for reconsideration. On October 14, 2014, the court ordered the parties in *Sierra Club et al.* v. *EPA* to show cause why the case should not be administratively terminated, and on November 13, 2014, the parties filed a joint response informing the court that they were actively exploring a new approach to the issues raised in the petition. On March 25, 2015, the EPA issued a letter [1] to the petitioners granting reconsideration on the issues raised in the petition and indicated that the agency would issue a **Federal Register** document initiating the reconsideration process (see Docket ID EPA–HQ–OAR–2002–0021–0150). The letter noted that the issue of regulation of heavy metal HAPs should be considered separately and as a part of the statutorily required risk and technology review (RTR). The petition for reconsideration and EPA's 2015 letter granting reconsideration are available for review in the rulemaking docket (Docket ID No. EPA–HQ–OAR–2002–0021–0024 and EPA–HQ–OAR–2002–0021–0150). On May 13, 2016, the EPA proposed to revise subpart GGGGG by removing the CERCLA and RCRA exemptions, as well as to remove the ''co-location'' condition in the NESHAP and requested comment on those proposed revisions (81 FR 29821).

Subsequently, on September 3, 2019 (84 FR 46138), the EPA proposed amendments to the Site Remediation NESHAP related to the RTR which was conducted as required under CAA sections 112(d)(6) and 112(f). In the 2019 proposal, the EPA used the opportunity to request additional comment regarding the implementation of the NESHAP under a scenario in which the CERCLA and RCRA exemptions were removed. Specifically, the EPA sought additional comments on whether subcategorization may be appropriate or whether there were other methods of distinguishing among appropriate requirements for CERCLA or RCRA-exempt sources, including how applicability, monitoring, recordkeeping, reporting, and compliance demonstration requirements could be structured so that formerly exempt sources would be able to comply with the Site Remediation NESHAP effectively and efficiently while also meeting the requirements of

[1] See Docket ID EPA–HQ–OAR–2002–0021–0150.

RCRA and/or CERCLA. 84 FR 46167–69. The EPA explained that it would take comments on these topics but act upon the exemptions at a later date.

Separately, in accordance with our March 25, 2015, letter, the RTR action reviewed the issue of whether heavy metals or other inorganic HAP may be emitted from this source category. We proposed that there is a lack of data indicating such HAP are emitted from this source category but requested comment seeking additional data. 84 FR 46161.

The EPA finalized the RTR on July 10, 2020 (85 FR 41680). We made clear that we were not acting on the CERCLA and RCRA exemptions, 85 FR 41683, and we finalized our proposed determination that there was a lack of data to support the assertion that inorganic and metal HAP are emitted from the site remediation source category and so we did not establish emissions standards for these HAP for the source category (85 FR 41690 and 41694–95).

The EPA proposed and finalized three key changes to the Site Remediation NESHAP in the RTR rulemaking (85 FR 41680). First, we revised leak detection thresholds for certain valves and pumps under the technology review required by CAA section 112(d)(6), see 85 FR 41690–91. Second, the rule addressed the startup, shutdown, and malfunction (SSM) case law under CAA section 112(d)(2) and (3) by adding a set of work practice requirements under CAA section 112(h) to monitor certain pressure release devices (PRDs) for actuation, 85 FR 41691–94. Third, the rule established a work practice standard also related to SSM with respect to planned routine maintenance of control systems on storage tanks, 85 FR 41695–96.

On September 8, 2020, Concerned Citizens for Nuclear Safety, Louisiana Environmental Action Network, and Sierra Club filed a petition for review of EPA's final RTR action in the court, *Concerned Citizens for Nuclear Safety* v. *EPA,* No. 20–1344 (D.C. Cir.). On that same date, Sierra Club filed a petition for reconsideration of the RTR, identifying as grounds for reconsideration the continued existence of the CERCLA and RCRA exemptions, and whether the Site Remediation NESHAP should regulate non-organic HAPs. [EPA–OAR–HQ–2002–0021–0050]

In this action, we are finalizing the May 13, 2016, proposal to remove the CERCLA and RCRA exemptions from the Site Remediation NESHAP and are addressing comments submitted in response to both the 2016 proposal and the 2019 RTR proposal on the exemptions issue. In the same 2016 action, we proposed to remove the criterion in 40 CFR 63.7881(a)(2) that an affected site remediation is only subject to the NESHAP if it is co-located with a facility that is a major source already subject to regulation under at least one other NESHAP in 40 CFR part 63. Based on our review of the public comments, as discussed in this action, we are not finalizing the proposal to remove the co-location criterion in this action.

We are not addressing in this action the second issue raised in the 2020 petition for reconsideration, *i.e.,* whether the EPA has a duty to set standards for non-organic HAP emissions from site remediation activities. The EPA will address that issue in a separate rulemaking.

B. What is the statutory authority for this action?

Section 112 of the CAA establishes a regulatory process to address emissions of HAP from stationary sources. CAA section 112(d) requires the Agency to promulgate technology-based NESHAP for each category or subcategory of major sources listed pursuant to CAA section 112(c). ''Major sources'' are defined in CAA section 112(a) as sources that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP.

III. Summary of Final Action and Significant Changes Since Proposal

This action finalizes the EPA's determinations pursuant to the reconsideration of certain aspects of the 2003 Site Remediation NESHAP, and amends, as proposed, the Site Remediation NESHAP to remove the CERCLA and RCRA exemptions at 40 CFR 63.7881(b)(2) and (3). For affected sources that are existing sources, we are finalizing a compliance date of 18 months from the effective date of the final amendment removing the CERCLA and RCRA exemptions (see section III.C. for further discussion). We define existing sources, for purposes of this action, as those site remediations that commenced construction or reconstruction on or before May 13, 2016, the date of publication of the proposal to remove the exemptions. New sources, for purposes of this action, are those site remediations that commenced construction or reconstruction after May 13, 2016. Any new sources that would have formerly been exempted by 40 CFR 63.7881(b)(2) or (3) must comply with the NESHAP as of the date this document is published in the **Federal Register**. CAA section 112(d)(10), (i)(1).

The EPA is not finalizing the proposed amendment to remove the requirement that an affected site remediation be co-located with a facility that is regulated by other NESHAP. Our reasoning for this decision is explained in section III.B of this document. In the following subsections, we introduce and summarize the final amendments to the Site Remediation NESHAP. For each issue, this section provides a description of what we proposed and what we are finalizing, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket.

A. Removal of the CERCLA and RCRA Exemptions

As discussed in the May 13, 2016, notice of proposed rulemaking on reconsideration of the NESHAP (81 FR 29821), the 2003 Site Remediation NESHAP exempted site remediations performed under the authority of CERCLA and those conducted under a RCRA corrective action or other required RCRA orders. The exemptions were based on the EPA's conclusion that the requirements of these programs consider the same HAP emissions as the 2003 Site Remediation NESHAP and, in addition, these programs provide opportunities for public involvement through the Superfund Record of Decision process and the RCRA permitting process for corrective action cleanups. The EPA concluded that these programs serve as the functional equivalent of the establishment of NESHAP under CAA section 112. Petitioners asserted that the public lacked an opportunity to comment on the functional equivalence conclusion. In the May 13, 2016, proposal, we proposed to amend the rule by removing 40 CFR 63.7881(b)(2) and (3) and solicited comment. In the proposal, we explained that on reconsideration we agreed with petitioners that the Agency lacked statutory authority under the Clean Air Act to exempt affected sources in a listed source category from otherwise applicable NESHAP requirements on the ''functional equivalence'' basis articulated in the 2003 final rule. 81 FR 29824. We further explained that the requirements of the Site Remediation NESHAP are appropriate and achievable at all subject site remediations, including those conducted under CERCLA or RCRA authority. *Id.* Also, as noted above, on September 3, 2019 (84 FR 46138), as

part of the statutorily required RTR, the EPA proposed amendments to the Site Remediation NESHAP. In the 2019 proposal, the EPA used the opportunity to request additional comment regarding the implementation of the NESHAP under a scenario in which the CERCLA and RCRA exemptions were removed.

Through the 2016 and 2019 proposals for the site remediation source category, the EPA solicited and received comments both in favor of and in opposition to the removal of the CERCLA and RCRA exemptions. The key comments and our responses are summarized below.

Comment: Several commenters stated that the EPA failed to provide a sufficient basis and purpose for the rule amendments as required by CAA section 307(d)(3). These commenters stated that nothing in CERCLA, RCRA, or the CAA has changed that would make the CERCLA and RCRA exemptions improper. The commenters also stated that since the agency does not expect any HAP reductions from the proposed changes (and in light of the 2019 risk assessment showing no adverse risks), there is no basis for these amendments. Several of these commenters stated that the EPA did not provide a basis for the proposed changes other than that the agency signed a consent agreement with the Sierra Club, noting that the proposal does not discuss why the agency's original conclusion that a RCRA/CERCLA-managed site remediation is the ''functional equivalent'' of the site remediation standard was incorrect or why that finding should be changed. One commenter also stated that CERCLA and RCRA provide ample safeguards for protecting public health and welfare with regard to HAP emissions, as evidenced by the EPA's estimate that there would be no further HAP reductions with the proposed changes. The commenter stated that due to this, the removal of the CERCLA and RCRA exemptions does not satisfy the CAA's intent to list sources which cause or significantly contribute to air pollution which might ''reasonably be anticipated to endanger the public health or welfare.''

Response: The EPA disagrees that the CERCLA and RCRA exemptions are proper. As explained in the preamble to the 2016 proposed rule, see 89 FR 29823–29824, the basis and purpose of the proposed rule amendments are to meet the obligations of the CAA to establish NESHAP for all sources in the listed source category. The site remediation source category was listed under CAA section 112(c)(1). Once a source category is listed, CAA section 112(c)(2) mandates that the EPA ''shall establish emission standards under subsection [112](d).'' CAA section 112(d) in turn mandates the establishment of emission standards ''for each category or subcategory of major sources and area sources.'' While CAA section 112(d)(1) allows for distinguishing among classes, types, and sizes of sources in establishing emission standards, nothing in CAA section 112 authorizes the EPA to exempt certain sources entirely from emissions standards based on regulation under some other statute. Congress has made clear through the plain language of CAA section 112 that the development and implementation of NESHAPs promulgated pursuant to CAA section 112 is a mandatory mechanism for regulation of HAP emissions across all major sources of such emissions. *e.g., National Lime Association* v. *EPA,* 233 F.3d 625, 633–34 (D.C. Cir. 2000) (finding that section 112(d)(1) requires EPA to set emissions standards for all listed HAP emitted from each listed major source category or subcategory). This holds true for the site remediation source category notwithstanding that the RCRA and CERCLA programs may also address air pollutant emissions from disposal and remediation activities.

While we originally promulgated exemptions from the NESHAP for certain facilities, including facilities where site remediations were performed under authority of CERCLA or RCRA, we have re-evaluated the legal basis for these exemptions and determined that they should be removed. In response to the petition for reconsideration received pursuant to section 307(d)(7)(B) of the CAA in 2003 from the Sierra Club, the Blue Ridge Environmental Defense League, and Concerned Citizens for Nuclear Safety (which is available in the docket for this action), we have reconsidered the exemptions in the rule for these sources and our rationale for this approach.[2] We have determined, as explained above, that there is no statutory authority under section 112 of the CAA to exempt sources in a listed source category from NESHAP requirements simply because those sources may be subject to similar requirements through other statutes. In removing these exemptions, the EPA will be meeting its statutory obligations to establish and apply MACT standards for all affected source emissions of HAP at these major sources in the site remediation source category.

With respect to commenters' contention that nothing has changed since the 2003 promulgation of the NESHAP, we note that the basis for removing the exemption is to bring this NESHAP in line with the statutory requirement of CAA section 112 to regulate all affected sources of HAP in a listed source category. Case law since the 2003 promulgation of the NESHAP has only strengthened and confirmed that this is a correct understanding of the plain language of the statute. *E.g., Sierra Club* v. *EPA,* 479 F.3d 875, 878 (D.C. Cir. 2007) (confirming the holding in *National Lime Association* v. *EPA,* 233 F.3d 625, 633–34 (D.C. Cir. 2000)).

With respect to commenters' contention that EPA did not, in its 2016 proposal, explain why the agency's original conclusion that a RCRA or CERCLA-managed site remediation is the ''functional equivalent'' of the site remediation standard was incorrect, EPA disagrees that such an explanation is necessary, because the CAA does not authorize exemptions on this basis in the first place. Nonetheless, as the EPA explained in the May 2016 proposal, the site remediation activities conducted under the authority of CERCLA and RCRA are similar to site remediation activities that were not exempt from the Site Remediation NESHAP, and the requirements of the Site Remediation NESHAP are appropriate for and achievable by all site remediation activities.

Comment: Several commenters stated that the Site Remediation NESHAP amendments should not apply retroactively to existing RCRA and CERCLA site remediations. Two commenters added that if it were to apply to any of these sites, it should be only to remediation projects that are not yet fully developed. In the alternative, these commenters suggested that compliance with CERCLA or RCRA corrective action requirements should be deemed as compliance with the Site Remediation NESHAP. Other commenters suggested that where remediation plans under CERCLA or RCRA have already been approved and the plans include air emission control requirements, the EPA should view these as acceptable work practice and control standards. These commenters stated that this would also alleviate any potential conflicts between the Site Remediation NESHAP and the approved remediation plan under CERCLA or RCRA. One commenter also added that the evaluations of the hazards associated with the remediation activity required under CERCLA are more

[2] Commenter is incorrect that the EPA entered into a consent decree with environmental organizations. While the EPA and those parties had considered entering into a settlement agreement in *Sierra Club* v. *EPA,* No. 03–1435 (D.C. Cir.), that agreement was never finalized.

inclusive and protective than the Site Remediation NESHAP requirements. Several commenters stated that a grandfathering provision should be put in place to ensure the sites currently conducting an approved CERCLA or RCRA remediation at the time of the adoption of the final rule can continue to clean up with no delays. One commenter noted that there is precedent for this in NESHAPs, such as the Pharmaceutical NESHAP, which grandfathered existing process vents that were controlled by 93 percent or greater prior to the NESHAP proposal date.

A commenter added that removal of the exemption would eliminate the EPA's current site-specific discretion to determine whether application of the Site Remediation NESHAP is relevant and appropriate for a site. The commenter noted that the reason many sites are addressed under CERCLA is because they are large and complex, and applying the Site Remediation NESHAP may not be consistent with the methods that would otherwise be used to perform the remediation. The commenter also added that even if an alternative work practice were approved, this could either delay the remediation or force additional administrative activities to occur under the CAA. The commenter also remarked that under CERCLA, only the substantive requirements of other laws are considered potentially relevant and appropriate, but not the administrative requirements, such as reporting and recordkeeping. The commenter asked that the EPA consider creating subcategories that would exempt certain large-scale remediation activities, such as cleanups of large volumes of soil, sludge, or sediment, as the Site Remediation NESHAP may interfere with the use of the remedial technologies that would otherwise be selected under the National Contingency Plan.

Response: The EPA disagrees that existing site remediations should not be subject to the Site Remediation NESHAP. Section 112 of the CAA requires that the EPA issue regulations addressing both new and existing sources. *See, e.g.,* CAA sections 112(a), (d), and (i). Removing the exemptions is not retroactive rulemaking. Retroactivity refers to requirements ''extending in scope or effect to matters that have occurred in the past.'' Black's Law Dictionary 1318 (7th Ed. 1999). The EPA is not applying the removal of the exemptions retroactively but rather prospectively. The requirements of the NESHAP will apply going forward at both new and existing site remediation sources. As authorized under CAA section 112(i)(3), the compliance date for existing sources is 18 months after the effective date of this final rule. In line with how other source categories are regulated, this will provide time for existing site remediations (existing as of May 13, 2016) that become newly subject to the NESHAP through the removal of the CERCLA and RCRA exemptions to comply with the requirements of the Site Remediation NESHAP in accordance with the governing cleanup program's statutory and regulatory requirements. During this time period, the owners or operators of the site remediation affected source will be able to evaluate the need for additional emissions control in accordance with the governing cleanup program and put those controls in place by the compliance date. The commenters have supplied no information with reasonable specificity that this time period for compliance, or the NESHAP's requirements themselves, will unduly delay cleanup activities.

The commenters' requests to consider compliance with CERCLA or RCRA sufficient for compliance with CAA requirements is effectively a request to simply continue the exemptions. As explained above, Congress directed EPA, under CAA section 112, to establish emission standards for listed source categories under the procedures and criteria of that section of the Act and did not provide for EPA to defer that standard-setting process to other statutory programs.

We are not reopening our 2003 determinations regarding MACT for the Site Remediation NESHAP. Under the reasoning and analysis of the original 2003 promulgation of 40 CFR part 63, subpart GGGGG, the EPA's MACT findings were equally valid for the CERCLA and RCRA sources that the EPA exempted.[3] However, we reviewed the comments to determine whether a basis existed to revisit these determinations with respect to the CERCLA and RCRA sources, and we find that commenters have not provided information to the agency that would warrant reopening these determinations.

In particular, commenters have not supplied sufficient information to establish why ''grandfathering'' a particular emission standard is appropriate, even if ''grandfathering'' may have been used in the one example cited by commenter. The requirements of the NESHAP have been applicable to non-exempt new and existing site remediation sources since the original NESHAP was promulgated, and the EPA is not aware of any existing sources facing difficulty with compliance with the requirements of the NESHAP, nor have commenters supplied such information.

Nor have the commenters supplied information or examples demonstrating that compliance with the requirements of the NESHAP is incompatible or will interfere with the implementation of ongoing CERCLA or RCRA remediation activities at the formerly exempt sites. In general, the Site Remediation NESHAP does not prescribe remediation strategies, technology, or equipment, but rather establishes emissions limits and in some cases work practice standards that apply depending on the kinds of strategies selected for the remediation (*e.g.,* if process vents are used, then requirements applicable to process vents apply, if tanks are used, then requirements applicable to tanks apply, etc.). As the EPA indicated at proposal, and as commenters have generally affirmed, the EPA believes that, for the most part, the standards established in the NESHAP are already being met at CERCLA and RCRA overseen cleanups, and thus the emissions control requirements of the NESHAP should not be unreasonably costly or onerous to meet.

Further, the process and sources of information used in adopting the original standards confirm that there is no need to reopen our category-wide MACT determinations. To select a MACT emissions limitation (or work practice standard) for each affected source, in the original promulgation of the NESHAP, we looked at the types of air emission controls required under national air emission standards for sources similar to those sources that potentially may be associated with site remediations. These air emission standards are MACT for other source categories, particularly the Off-site Waste and Recovery Operations (OSWRO) NESHAP under 40 CFR part

[3] Similarly, the amendments to the NESHAP in the RTR action in 2020 are applicable and achievable for the entire source category and were not premised on the continued existence of the CERCLA and RCRA exemptions. Two of the three key changes were related to the need to address SSM case law under CAA section 112(d)(2) and (3) and were applied as achievable work practice standards for the entire source category, 85 FR 41691–96. The EPA acknowledged that its analysis of the impact of the third change, the leak detection and repair enhancements, was not assessed for exempt sources, *id.* 41690. However, the EPA did not find any basis in the RTR rulemaking to treat the exempt sources differently should the exemption be lifted, but merely noted that the impacts of this change would be considered if the exemptions were removed. The EPA has considered these impacts for the CERCLA and RCRA exempt sources, including both environmental benefits and costs, with respect to all of the key changes to the NESHAP made in the RTR. Section IV of this preamble.

63, subpart DD, and the air emission standards for RCRA hazardous waste treatment, storage, and disposal facilities under subparts AA, BB, and CC in 40 CFR parts 264 and 265 (RCRA Air Rules). The control levels established by the emission limitations and work practices we promulgated are widely implemented at existing sources subject to these similar rules, thus demonstrating that the control levels are technically achievable. *See* 68 FR 58174.

Thus, these control requirements and action levels already existed in either the RCRA Air Rules or the OSWRO NESHAP, or both. Given that these existing rules specify control requirements for sources similar to those comprising the affected source group for the Site Remediation NESHAP, and that sources already regulated by these existing standards also will likely manage and/or treat remediation material regulated by the Site Remediation NESHAP, we continue to believe that the requirements of subpart GGGGG represent achievable industry practice for remediation activities including at the formerly exempt RCRA and CERCLA sites.

Further, as commenters acknowledge, CERCLA cleanups should be designed to meet the substantive environmental requirements of other statutes in accordance with compliance with Applicable or Relevant and Appropriate Requirements (ARARs) under CERCLA section 121(d). The programmatic requirements of CERCLA require the consideration of virtually any Federal standard as an ARAR, including the Site Remediation NESHAP. In other words, substantive requirements of the Site Remediation NESHAP are expected to be considered as potential ARARs.[4] Furthermore, the substantive provisions may also have been considered relevant and appropriate requirements under CERCLA on a site-specific basis since the promulgation of the regulations in 2003.

Finally, the EPA notes that decisions on compliance with ARARs are made within the CERCLA regulatory framework rather than the Clean Air Act, and as a result, the EPA will not address those issues in this action. For example, CERCLA authorizes waivers from applicable environmental regulations in certain situations. Two examples of potential waivers authorized in the statute are when compliance with a substantive Federal requirement that may be an ARAR may result in greater risk to human health and the environment or where other alternatives will achieve equivalent performance. CERCLA section 121(d)(4). In any event, CERCLA remediations must assure protection of human health and the environment. While the EPA anticipates that waiver circumstances should be rare in meeting the requirements of the Site Remediation NESHAP, nonetheless, such flexibility is available on an as-needed basis through the provisions of CERCLA rather than the CAA.

For the reasons discussed above and in the preamble for the proposed rule and our response to comments document available in the docket, we are removing the CERCLA and RCRA exemptions from the Site Remediation NESHAP.

B. Retention of the Co-Location Requirement

In the May 13, 2016, proposal on reconsideration, the EPA proposed to remove the criterion in 40 CFR 63.7881(a)(2) that an affected site remediation is only subject to the NESHAP if it is co-located with a facility that is a major source already subject to regulation under at least one other NESHAP in 40 CFR part 63. This rule change was proposed to further effectuate the removal of the exemptions so that any formerly exempt CERCLA or RCRA site remediations that are themselves major sources of HAP, without regard for co-location with a major source, should be subject to the rule. 81 FR 29824. This proposed amendment would have the effect of making any site remediations with emissions in excess of major source thresholds subject to the Site Remediation NESHAP for the first time, and would affect all site remediations, not only those falling under the CERCLA or RCRA exemptions.

Based on our review of the public comments, as discussed below, the EPA is not finalizing this proposed rule amendment in this action.

The EPA received several comments in opposition to the removal of the co-location requirement. Key comments and our response include the following:

Comment: Two commenters expressed concern that with the removal of the criteria that a remediation be co-located with a major source facility for HAP, an oil or chemical spill with emissions over the major source thresholds set out in CAA section 112(a)(1) would be subject to the rule, even if the spill occurred in a remote, inaccessible, or potentially expansive location, such as remote Alaska. The commenters urged the EPA to keep the co-location condition or provide an exemption for remediation as a result of a spill response. One commenter added that without the co-location condition, applicability will likely extend to small sources that were not considered in the original rulemaking.

Response: We have concluded that it is not appropriate to finalize the proposed rule amendment to remove the co-location criterion, and we are retaining that provision of the NESHAP. Based on the available information regarding the amount of HAP emitted from site remediations, remediation facilities that are not co-located with major sources are not major sources of HAP—*i.e.,* the Agency has no data to suggest that site remediation affected sources that are not already co-located with a major source themselves emit greater than 10 tons per year of any single HAP or 25 tons per year of all HAPs.[5] The effect of removing the co-location criterion would be to require applicability determinations in many situations where it would be extremely difficult to substantiate whether the applicability thresholds are met or not, and yet it would be unlikely that such thresholds are met. As commenters observe, such circumstances could arise in emergency scenarios where there is an overriding imperative to address immediate threats to human health or the environment. At such source locations (*e.g.,* in the field or along transportation corridors), neither the ''source'' itself (*e.g.,* the site of a spill that is being remediated), or its ''owner or operator,'' may have any experience with CAA compliance, including the necessary permitting requirements, the data for making CAA applicability determinations, or requirements for monitoring, recordkeeping, and reporting. They may not even possess requisite ownership interests in such sites to be able to effectively implement such requirements. The onset of Site Remediation NESHAP compliance obligations in these circumstances—even if limited to making an applicability determination based on the level of emissions that could occur from site remediation activities—could inhibit or delay responders from taking necessary, immediate steps to protect human health and the environment. Therefore, because there are no data

[4] Compliance With Other Laws Manual Parts I and II (OSWER 540–G–89–006, Aug. 8, 1989 and Aug. 1989), both available in the docket at EPA–HQ–OAR–2002–0021.

[5] EPA's analysis for the RTR reviewed NEI data for active remediations. Active remediation emissions averaged less than 1 percent of emissions of the associated major sources subject to the rule. [National Emission Standards for Hazardous Air Pollutants: Site Remediation Residual Risk and Technology Review, Docket ID EPA–HQ–OAR–2018–0833–0001].

suggesting that there are site remediations that are themselves major sources of HAP, and to avoid the potential that rendering applicability determinations could inhibit site remediations in a variety of unusual or emergency circumstances, the EPA is retaining the applicability condition that site remediations be co-located with a facility that is a major source regulated by at least one other NESHAP.[6]

As the EPA is not finalizing the proposed amendment to remove the co-location condition, remote sites not co-located at a stationary source of HAP regulated by another NESHAP will not be regulated through this action. However, we note that if and when a site remediation is performed as a result of a spill, it will be necessary to bring personnel and remediation equipment to the area, and those responding to such circumstances can be expected to implement situation-appropriate measures to protect air quality under relevant emergency response actions, as provided for under CERCLA, Clean Water Act section 311, and other relevant remediation and emergency response statutes at the state and Federal levels.

C. Compliance Dates

The EPA proposed several compliance dates in the May 13, 2016, proposed notice of reconsideration. We proposed to make the recordkeeping and reporting requirements specified in 40 CFR 63.7950 through 63.7953 and 63.7955 applicable to new and existing affected sources conducting site remediations under CERCLA or RCRA on the effective date of the final amendments removing the CERCLA and RCRA exemptions, which is the date of publication of this final rule in the **Federal Register**.

For existing affected sources (*e.g.,* existing as of May 13, 2016), we proposed a compliance date for the rule's other requirements for site remediations conducted under the authorities of CERCLA or RCRA of 18 months from the effective date of the final amendments removing the CERCLA and RCRA exemptions.

For new affected sources, we proposed a compliance date for the rule's requirements for site remediations conducted under the authorities of CERCLA or RCRA of the effective date of the final amendments removing the CERCLA and RCRA exemptions or upon initial startup, whichever is later.

Based on our review of the public comments, as discussed below, the EPA is finalizing this action with one change to the proposed compliance dates for existing affected sources. For existing affected sources, the compliance date for *all* the site remediation NESHAP requirements, including the recordkeeping and reporting requirements specified in 40 CFR 63.7950 through 63.7953 and 63.7955, is 18 months from the effective date of the final amendments removing the CERCLA and RCRA exemptions. This date is June 24, 2024. For new affected sources, the compliance date for all the site remediation NESHAP requirements is the effective date of the final amendments removing the CERCLA and RCRA exemptions or upon initial startup, whichever is later. CAA section 112(d)(10), (i)(1).

The EPA received several comments regarding these compliance timeframes. These comments are summarized below along with our responses.

Comment: Several commenters stated that a compliance date 18 months after the final rule is promulgated may be appropriate for facilities that do not require additional emission controls but claimed that additional time will be needed for facilities that require additional emission controls. Several other commenters stated that 18 months is not enough time to comply with the rule, and potentially not enough time to even determine whether sources are exempt from the rule. These commenters suggest 3 years be given for compliance with the rule amendments. One commenter also suggested that the EPA incorporate into the compliance date the time needed to modify existing RCRA permits or CERCLA records of decision (RODs) to reflect new control devices, time for getting an air construction permit, and time for approval of alternative test methods. This commenter suggested a compliance date of 5 years after the promulgation of the standards. One commenter noted concerns about the compliance date for new sources, which may start up soon after promulgation of the amendments. The commenter recommends that new sources be provided 3 years from the amendment affected date or until initial startup, whichever is later, to comply.

Response: We have concluded that 18 months after the effective date of this action is sufficient time for existing sources to come into compliance. We consider 18 months a reasonable estimate for the work to be done. We also note that commenters have not supplied reasonably specific information that 18 months is not practicable, and the EPA is obligated to require compliance with these requirements as expeditiously as practicable. CAA section 112(i)(3). Further, the EPA does not have discretion under the statute to provide 5 years for existing sources to come into compliance as suggested by one commenter. *See id* (requiring compliance no later than 3 years after the effective date).

As the EPA indicated at proposal, and as commenters have generally affirmed, for the most part, the emissions standards established in the NESHAP are already being met at cleanups overseen under CERCLA and RCRA, and thus additional emissions controls are unnecessary in most cases. To comply with the NESHAP, we anticipate that some facilities may need to install pressure relief device monitors, which entails identifying affected pressure release devices and installing monitors that are capable of alerting a facility operator of a pressure release device actuation. When these requirements were added to the Site Remediation NESHAP in 2020 (85 FR 41680), the compliance date selected for existing sources was 18 months, to allow site remediation facility owners and operators to research equipment and vendors, and to purchase, install, test, and properly operate any necessary equipment. The EPA considers that providing more than 18 months now for existing facilities operating under the authority of RCRA or CERCLA to comply would be excessive compared to the compliance period provided for other existing facilities and relative to the actual work involved. We also anticipate that some existing facilities may need to revise their leak detection and repair (LDAR) programs to use the leak definitions included in 40 CFR part 63, subpart UU, for valves and pumps. A compliance time of 18 months is adequate for existing facility owners or operators to modify their existing LDAR programs to comply with these standards for pumps and valves. When the requirement to comply with 40 CFR part 63, subpart UU, was added to the Site Remediation NESHAP in 2020 (85

[6] We note that the fact that we do not believe there are site remediations that are themselves major sources in no way undermines the basis for the listing of the site remediation category itself (which we are not reopening), or the requirements of the NESHAP. Site remediation affected sources are associated with other major sources of HAP, and site remediation sources would otherwise go unregulated under CAA section 112 at those major sources in the absence of this NESHAP. Thus, the EPA views this NESHAP as necessary to ensure that all sources of HAP at major sources are addressed under CAA section 112. *National Lime Association* v. *EPA,* 233 F.3d 625, 633–34 (D.C. Cir. 2000) (finding that section 112(d)(1) requires EPA to set emissions standards for all listed HAP emitted from each listed major source category or subcategory); *Sierra Club* v. *EPA,* 479 F.3d 875, 878 (D.C. Cir. 2007) (confirming holding that section 112(d)(1) requires EPA to set emissions standards for all listed HAP emitted from each listed major source category or subcategory).

FR 41680) for the leak definitions for valves and pumps rather than the leak definitions of 40 CFR part 63, subpart TT, we provided a one-year compliance date for these requirements for existing facilities. However, to simplify compliance, in this action we have provided one date (*i.e.,* 18 months after promulgation) by which existing facilities must meet all requirements.

In order to avoid any confusion and unnecessary burden regarding the onset of compliance requirements under the NESHAP for formerly exempt existing sources (*e.g.,* existing by May 13, 2016), we are not finalizing our proposal that existing sources comply by the effective date of the final rule with the recordkeeping and reporting requirements of 40 CFR 63.7950 through 63.7953 and 63.7955. While we generally believe such requirements could be complied with relatively quickly, the content of many of these requirements relates to information regarding compliance with emissions limitations, work practice standards, or other requirements that would not begin until 18 months after the effective date of this action. *E.g.,* 40 CFR 63.7951(a)(1) (first compliance report not due until the onset of compliance obligations according to the schedule established in 40 CFR 63.7883). The Agency has determined that it would make sense in this case to simply align the onset of all requirements of subpart GGGGG for existing sources under a single compliance schedule. Thus, for existing sources, the compliance date for all requirements of the NESHAP will be 18 months from the effective date of this rule.

Affected sources that commenced construction or reconstruction after May 13, 2016 (the date we proposed to remove the exemptions), are ''new sources'' for purposes of section 112 and must comply immediately upon the effective date of this final rule or on initial startup, whichever is later. This is consistent with the CAA, and the EPA does not have discretion to alter this requirement. CAA section 112(a)(4), 112(d)(10), and 112(i)(1).

To the extent any source-specific circumstances may exist warranting potential relief from compliance timing as authorized by the statute, source owners or operators are encouraged to review the mechanisms for obtaining such relief that are available under subpart A of part 63. 40 CFR 63.6. For example, 40 CFR 63.6(i) allows the Administrator to grant extensions of compliance with emission standards under certain specified circumstances.

For purposes of complying with the Initial Notification requirements of 40 CFR 63.9(b)(2), the EPA is not finalizing any changes to the language of 40 CFR 63.7950 in this action. However, with respect to both new and existing affected sources formerly covered by the CERCLA and RCRA exemptions being removed in this action, the Agency interprets the phrase ''120 calendar days after the source becomes subject to this subpart'' as used in paragraphs (b) and (c) of § 63.7950 as referring to the date 120 calendar days after the publication of this document in the **Federal Register**.

Finally, we note that when and how records of decision at CERCLA Superfund sites may be reopened, amended, or modified is a matter to be addressed within the Superfund program itself rather than in this CAA action.

We are, therefore, finalizing a compliance date of 18 months from the effective date of these final amendments for existing sources and on the effective date or upon initial startup, whichever is later, for new sources that become subject to the Site Remediation NESHAP as a result of the removal of the CERCLA and RCRA exemptions.

IV. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

We estimate 74 facilities will become subject to the Site Remediation NESHAP as a result of the removal of the CERCLA and RCRA exemptions. Based on available information from the RCRA and CERCLA programs, 31 of these 74 facilities are expected to be subject to only a limited set of the rule requirements under 40 CFR 63.7881(c)(1). Due to the low annual quantity of HAP contained in the remediation material excavated, extracted, pumped, or otherwise removed during the site remediations conducted at these facilities, they would likely only be required under the Site Remediation NESHAP to prepare and maintain written documentation to support the determination that the total annual quantity of the HAP contained in the remediation material excavated, extracted, pumped, or otherwise removed at the facility is less than 1 megagram per year. For the remaining 43 facilities, we anticipate each facility will have an annual quantity of HAP in the removed remediation material of 1 megagram or more. For these facilities, we expect that the facilities already generally meet the emission control and work practice requirements of the Site Remediation NESHAP. As discussed in further detail below, we anticipate certain formerly exempt facilities will incur some limited costs to comply with current SSM provisions in the NESHAP following the RTR rulemaking, 85 FR 41691–96, and the updating of leak detection and repair requirements under CAA section 112(d)(6), 85 FR 41690–91. These impacts are estimated below.

The 2020 RTR rulemaking for the site remediation source category made three substantive changes to the standards. We modified the threshold for detection of leaks for valves and pumps within the existing LDAR program. We also added a requirement to monitor certain pressure release devices (PRDs).[7] While current RCRA standards in subpart BB (40 CFR 264.1050) include LDAR, the leak threshold for valves and pumps in light liquid service are 10,000 ppm. In the 2020 RTR for site remediation, the NESHAP's thresholds were revised to 500 ppm for valves, 1,000 ppm for pumps upon inspection, and 2,000 ppm to make a repair. These changes pursuant to the technology review could require additional actions from affected sources to comply with the Site Remediation NESHAP. However, the decision to remove the CERCLA and RCRA exemptions is not dependent on or affected by the cost of compliance with these changes. We stated in the 2016 proposal that we did not anticipate significant costs of compliance for sources affected by removal of the exemptions. We continue to find this to be the case; however, given that the NESHAP was modified in the interim, we have updated our impact analysis to reflect these changes in the NESHAP, which may result in slightly greater environmental benefits due to removing the exemptions, and some slightly higher compliance costs, as summarized in section IV.C.[8]

Of the 43 facilities that we anticipate will have an annual quantity of HAP in the removed remediation material of 1 megagram or more, we anticipate that 30 will have no applicable emission control requirements or work practice standards because the waste is shipped offsite for treatment and no controls or work practice requirements would be applicable prior to treatment. For these 30 facilities, we anticipate the only new requirements for the Site Remediation NESHAP will be the initial and ongoing recordkeeping and reporting obligations

[7] The EPA added a work practice standard for certain storage vessels. That work practice was determined to be without cost. 85 FR 41696. Note that the SSM changes were made under authority of 112(d)(2) and (3) rather than (d)(6).

[8] While this section discloses to the public the overall anticipated impacts of this action as per standard Agency practice, the EPA is not reopening any of its MACT or RTR determinations for this source category. *See* section III.A.

required by 40 CFR 63.7936 and 63.7950 through 63.7952. These sections describe the recordkeeping and reporting activities required for transferring the remediation material off-site to another facility; the initial notification and on-going notification requirements; the ongoing semi-annual compliance reporting requirements; and recordkeeping requirements for continuous monitoring, planned routine maintenance, and for units that are exempt from control requirements under §§ 63.7885(c) and/or 63.7886(d).

The remaining 13 facilities are anticipated to have on-site remediation activities for which the emission control requirements of the NESHAP will apply. While we anticipate that most of these emission control activities are already being conducted under existing requirements through RCRA or CERCLA, the PRD and revised LDAR requirements (*e.g.,* new leak detection and repair thresholds for valves and pumps) will also apply, as well as the recordkeeping and reporting activities described above.

Finally, as explained in the following section, while the EPA generally expects that existing, formerly exempt site remediations are already meeting the substantive emissions control requirements of the NESHAP (with the possible exception of the revisions to the NESHAP promulgated in the 2020 RTR rulemaking), there is at least some anecdotal evidence from comments that this may not be the case in all circumstances. As explained in greater detail in the response to comments document, to the extent this situation exists, it could mean the compliance costs of this action are proportionately greater than we estimate; however, such circumstances do not obviate any prior determinations of cost-effectiveness with respect to this NESHAP. Indeed, such circumstances would only strengthen the basis for removing the exemptions to ensure that the emissions reduction benefits of this NESHAP are achieved.

While new site remediations are likely to be conducted under the authority of CERCLA or RCRA in the future, we are currently not aware of any such new site remediation affected sources that are expected to be constructed.

The potential scope of this action's impacts on affected entities is discussed in greater detail in the memorandum, ''National Impacts Associated with the Final Amendments to Remove the Exemption for Facilities Performing Site Remediations under CERCLA or RCRA in the NESHAP for Site Remediation,'' which is available in the rulemaking docket (Docket ID No. EPA–HQ–OAR–2002–0021).

B. What are the air quality impacts?

We estimate that the application of the change in the LDAR leak thresholds to the formerly exempt sources will result in a HAP emissions reduction of 2 tons per year. As explained in the memo ''Leak Detection and Repair Program Impacts for Site Remediation RCRA and CERCLA Facilities'' the lower leak threshold has the potential to reduce emissions by requiring repair of smaller leaks.

A second change made in the 2020 rule included a requirement to perform additional monitoring of PRD actuations that will also apply to formerly exempt sources. The PRD monitoring leads to emission reductions by immediately alerting operators to the actuation of a PRD, which is typically caused by a malfunction. Due to their nature, the frequency or duration of malfunctions cannot be predicted, so estimation of future emissions reductions is not possible. As such, no additional emissions reductions due to the addition of PRD monitoring are included in our assessment of air quality impacts.

For the remainder of the Site Remediation NESHAP requirements, we estimate the potential for a small amount of HAP emission reductions from the removal of the CERCLA and RCRA exemptions. We expect that most facilities newly becoming subject to the rule will either be subject to a limited set of the emissions control requirements of the rule due to the low amount of HAP contained in the remediation material handled, will already meet the emissions control requirements of the rule, or will not have any applicable emissions control requirements for the specific remediation activities and material handled. We received comments that some sources subject to RCRA or CERCLA requirements would be required to add or supplement controls if the applicability of the NESHAP was changed. The EPA acknowledges that such a situation could arise and only strengthens the basis for removing the exemptions to ensure that the emissions reduction benefits of this NESHAP are achieved. The commenters did not provide information to allow us to make a reliable estimate of how often this may occur, or the cost or amount of emission reductions that could result from applicable requirements and controls. It is also possible that with further examination of the NESHAP and the existing emissions controls at their facility(s), a commenter could determine that no further emission control is necessary. Another possibility is that certain requirements that should have been in place will now be imposed, and the corresponding emissions reductions will now be realized, further strengthening the basis for removing these exemptions. Thus, the EPA acknowledges that there may be HAP emissions reductions as a result of the remainder of the Site Remediation NESHAP requirements, but we have not quantified the potential reductions beyond the 2 tons per year from LDAR reductions, due to a lack of information to substantiate or quantify the potential reductions. Therefore, while unquantified, we consider there is a potential for an unquantified amount of HAP emission reductions to result from this action.

C. What are the cost impacts?

We anticipate that 13 of the 74 affected facilities will implement additional emissions control measures to meet the LDAR and PRD requirements of the Site Remediation NESHAP at a total estimated capital cost of $79,000 and a total annual cost of $21,000 for all 13 facilities. We have estimated the nationwide annual compliance costs, including the LDAR and PRD requirements for these facilities as well as the reporting and recordkeeping requirements for all 74 affected facilities to be approximately $2.7 million.

D. What are the economic impacts?

The EPA conducted economic impact analyses for this final rule, as detailed in the memorandum, ''Economic Impact Analysis for Site Remediation NESHAP Amendments: Final Report,'' which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2002–0021). The economic impacts of the rule are calculated as the percentage of total annualized costs incurred by each affected ultimate parent owner relative to their revenues. This ratio provides a measure of the direct economic impact to ultimate parent owners of facilities while presuming no impact on consumers. We estimate that none of the ultimate parent owners affected by this proposal will incur total annualized costs of 0.1 percent or greater of their revenues. Thus, these economic impacts are low for affected companies and the industries impacted by this rule, and there will not be substantial impacts on the market. The costs of the rule are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

E. What are the benefits?

The final standards are projected to achieve 2 tons of reductions in HAP through the applicability of lower leak detection and repair thresholds. In addition, we anticipate some unquantified amount of HAP emissions reduction at some formerly exempt site remediations as a result of additional monitoring of PRDs. In addition, any future remediation activities initiated at the formerly exempt existing site remediations or site remediations constructed in the future will include the required levels of HAP emissions control. To the extent facilities newly subject to the NESHAP must revise their CAA monitoring, recordkeeping and reporting, we anticipate improved data and information with respect to air emissions at these facilities. We have not quantified the monetary benefits associated with the amendments; however, the avoided emissions will result in improvements in air quality and reduced negative health effects associated with exposure to air pollution from these emissions.

F. What analysis of environmental justice did we conduct?

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms; specifically, minority populations (people of color and/or Indigenous peoples) and low-income populations (59 FR 7629, February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through Federal Government actions (86 FR 7009, January 25, 2021). The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' In recognizing that people of color and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution. Consistent with EPA's commitment to integrating EJ in the Agency's actions, and following the directives set forth in multiple Executive Orders, the Agency has carefully considered the impacts of this action on communities with EJ concerns.

To examine the potential for any EJ concerns that might be associated with site remediation facilities that are affected by removing these exemptions, we performed a demographic analysis, which is an assessment of individual demographic groups of the populations living within 5 kilometers (km) and 50 km of the facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups.

The results show that for populations within 5 km of the 74 existing facilities, the following demographic groups were above the national average: African American (15 percent versus 12 percent nationally), Hispanic/Latino (21 percent versus 19 percent nationally), Other/Multiracial (16 percent versus 8 percent nationally), people living below the poverty level (16 percent versus 13 percent nationally), over 25 without a high school diploma (14 percent versus 12 percent nationally) and linguistic isolation (7 percent versus 5 percent nationally).

The results show that for populations within 50 km of the 74 existing facilities, the following demographic groups were above the national average: African American (15 percent versus 12 percent nationally), Hispanic/Latino (21 percent versus 19 percent nationally), Other/Multiracial (12 percent versus 8 percent nationally), over 25 without a high school diploma (13 percent versus 12 percent nationally) and linguistic isolation (7 percent versus 5 percent nationally). The average percentage of the population living within 50km of the 74 facilities that is living below the poverty level is equal to the national average (13 percent). However, we note that half of the facilities (34 facilities) have populations within 50km that are above the national average for poverty.

A summary of the proximity demographic assessment performed is included as Table 2. The methodology and the results of the demographic analysis are presented in a technical report, ''Analysis of Demographic Factors for Populations Living Near Site Remediation Facilities,'' available in the docket for this action (Docket ID EPA–HQ–OAR–2002–0021).

TABLE 2—PROXIMITY DEMOGRAPHIC ASSESSMENT RESULTS FOR SITE REMEDIATION FACILITIES

Demographic group	Nationwide	Population within 50 km of 74 facilities	Population within 5 km of 74 facilities
Total Population	328,016,242	90,083,099	2,763,629
	Race and Ethnicity by Percent (Number of facilities above national average percentage for demographic)		
White	60	51% (44)	48% (48)
African American	12	15% (33)	15% (24)
Native American	0.7	0.3% (13)	0.3% (14)
Hispanic or Latino (includes white and nonwhite)	19	21% (18)	21% (19)
Other and Multiracial	8	12% (17)	16% (24)
	Income by Percent (Number of facilities above national average percentage for demographic)		
Below Poverty Level	13	13% (36)	16% (34)
Above Poverty Level	87%	87% (38)	84% (40)
	Education by Percent		

TABLE 2—PROXIMITY DEMOGRAPHIC ASSESSMENT RESULTS FOR SITE REMEDIATION FACILITIES—Continued

Demographic group	Nationwide	Population within 50 km of 74 facilities	Population within 5 km of 74 facilities
	(Number of facilities above national average percentage for demographic)		
Over 25 and without a High School Diploma	12	13% (32)	14% (31)
Over 25 and with a High School Diploma	88	87% (42)	86% (43)
	Linguistically Isolated by Percent (Number of facilities above national average percentage for demographic)		
Linguistically Isolated	5	7% (19)	7% (13)

Notes:

• The nationwide population count and all demographic percentages are based on the Census' 2015–2019 American Community Survey five-year block group averages and include Puerto Rico. Demographic percentages based on different averages may differ. The total population counts within 5 km and 50 km of all facilities are based on the 2010 Decennial Census block populations.

• To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category for these analyses. A person is identified as one of five racial/ethnic categories above: White, African American, Native American, Other and Multiracial, or Hispanic/Latino. A person who identifies as Hispanic or Latino is counted as Hispanic/Latino for this analysis, regardless of what race this person may have also identified as in the Census.

The EPA investigated the risk for exempt sources in parallel to the risk assessment for the affected sources of the category (Docket ID No. EPA–HQ–OAR–2018– 0833). The maximum individual risk for cancer was 4-in-1 million for actual emissions and for maximum allowable emissions. The hazard indices for noncancer risks were well below 1 (0.3 for actual and maximum allowable emissions). The regulatory changes to this NESHAP (subpart GGGGG) discussed in section III.A of this action will further the effort to improve human health impacts for populations in these demographic groups.

Among the 13 facilities for which we anticipate this action will result in a reduction of HAP emissions, the area within 5km of at least seven of the facilities exceeds the national average for at least one racial/ethnicity demographic, the area within 5km of at least six facilities exceeds the national average for ''People Living Below the Poverty Level'', and the area within 5km of at least five facilities exceeds the national average for ''Greater than or equal to 25 years of age without a High School Diploma.'' The changes will provide additional health protection for all populations, including for people of color, low-income, and indigenous communities living near these sources.

V. Statutory and Executive Order Reviews

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

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it raises novel legal and policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2062.10. OMB Control Number 2060–0534. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them. To check whether the ICR for this action is approved, please consult *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRASearch,* and search using OMB Control Number 2060–0534. OMB typically reviews ICR packages within sixty days of a final notice.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

Respondents/affected entities: Unlike a specific industry sector or type of business, the respondents potentially affected by this ICR cannot be easily or definitively identified. Potentially, the Site Remediation NESHAP may be applicable to any type of business or facility at which a site remediation is conducted to clean up media contaminated with organic HAP when the remediation activities are performed, the authority under which the remediation activities are performed, and the magnitude of the HAP in the remediation material meets the applicability criteria specified in the rule. A site remediation that is subject to this rule potentially may be conducted at any type of privately-owned or government-owned facility at which contamination has occurred due to past events or current activities at the facility. For site remediation performed at sites where the facility has been abandoned and there is no owner, a government agency takes responsibility for the cleanup.

Respondent's obligation to respond: Mandatory (42 U.S.C. 7414).

Estimated number of respondents: 104 total for the source category, of which 74 are estimated to become respondents as a result of this final action.

Frequency of response: Semiannual.

Total estimated burden: 42,945 total hours (per year) for the source category, of which 24,068 hours are estimated as a result of this final action. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $3.1 million total (per year) for the source category, of which approximately $2.7 million is estimated as a result of this final action. This includes $250,000 total annualized capital or operation and maintenance costs for the source category, of which $146,000 is estimated as a result of this final action.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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. The final amendments to the Site Remediation NESHAP are estimated to affect 74 facilities. Of these 74 facilities, 19 are owned by the Federal Government, which is not a small entity. The remaining 55 facilities are owned by 46 firms, and the Agency has determined that one of these can be classified as a small entity using the Small Business Administration size standards for their respective industries. The small entity subject to the requirements of this action is a small business. The Agency has determined that one small business may experience an impact of less than 0.1% of revenues in one year. Details of this analysis are presented in the memorandum, ''Economic Impact Analysis for Site Remediation NESHAP Amendments: Final Report,'' which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2002–0021).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates an enforceable duty on the private sector, the cost does not exceed $100 million or more.

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: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Because the proposed rule amendments would result in reduced emissions of HAP and reduced risk to anyone exposed, the EPA believes that the proposed rule amendments would provide additional protection to children. More information on the source category's risk can be found in section IV of the preamble published on September 13, 2019 (84 FR 46138). The complete risk analysis results and the details concerning its development are presented in the memorandum entitled ''Residual Risk Assessment for the Site Remediation Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,'' available in the docket (Docket ID No. EPA–HQ–OAR–2018– 0833).

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Additional technological controls are not anticipated due to this action and no increased energy use is expected.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations (people of color and/or Indigenous peoples) and low-income populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The results of our demographic analysis show that the percentages of people of color, low-income populations and/or indigenous peoples who live within 5 km of the 74 existing facilities are slightly (2 or 3 percent) or moderately higher (8 percent) than the national average: African American (15 percent versus 12 percent nationally), Hispanic/Latino (21 percent versus 19 percent nationally), Other/Multiracial (16 percent versus 8 percent nationally), people living below the poverty level (16 percent versus 13 percent nationally), over 25 without a high school diploma (14 percent versus 12 percent nationally) and linguistic isolation (7 percent versus 5 percent nationally). The small level of emission reductions is unlikely to affect the risk borne by these populations in a measurable amount. The reductions of 2 tons of HAP per year plus an unquantifiable amount due to the remainder of the NESHAP provisions discussed in section IV.B are not enough to be reliably quantified with respect to risk or impact. While the quantity of HAP reductions is small, directionally the final amendments increase the level of protection provided to human health and the environment by regulating site remediations previously exempt from the Site Remediation NESHAP.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting, and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends title 40, chapter I, of the Code of Federal Regulations (CFR) as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart GGGGG—National Emission Standards for Hazardous Air Pollutants: Site Remediation

§ 63.7881 [Amended]

■ 2. Section 63.7881 is amended by removing and reserving paragraphs (b)(2) and (3).

■ 3. Section 63.7882 is amended by adding paragraph (d) to read as follows:

§ 63.7882 What site remediation sources at my facility does this subpart affect?

* * * * *

(d) Notwithstanding paragraphs (b) and (c) of this section:

(1) Each affected source for your site is considered an existing source if your site remediation commenced construction or reconstruction under the authority of the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) as a remedial action or a non-time-critical removal action on or before May 13, 2016.

(2) Each affected source for your site is considered an existing source if your site remediation commenced construction or reconstruction under a Resource Conservation and Recovery Act (RCRA) corrective action conducted at a treatment, storage, and disposal facility (TSDF) that is either required by your permit issued by either the U.S. Environmental Protection Agency (EPA) or a state program authorized by the EPA under RCRA section 3006; required by orders authorized under RCRA; or required by orders authorized under RCRA section 7003 on or before May 13, 2016.

(3) Each affected source for your site is considered a new source if your site remediation commenced construction or reconstruction under the authority of CERCLA as a remedial action or a non-time-critical removal action after May 13, 2016.

(4) Each affected source for your site is considered a new source if your site remediation commenced construction or reconstruction under a RCRA corrective action conducted at a TSDF that is either required by your permit issued by either the U.S. Environmental Protection Agency (EPA) or a State program authorized by the EPA under RCRA section 3006; required by orders authorized under RCRA; or required by orders authorized under RCRA section 7003 after May 13, 2016.

■ 4. Section 63.7883 is amended by adding paragraph (g) to read as follows:

§ 63.7883 When do I have to comply with this subpart?

* * * * *

(g) Notwithstanding paragraphs (a) through (f) of this section, the following dates for compliance apply to sources identified in § 63.7882(d):

(1) Site remediations identified in § 63.7882(d)(1) and (2) must comply with the requirements of this subpart that apply to you no later than June 24, 2024.

(2) Site remediations identified in § 63.7882(d)(3) and (4) must comply with the requirements of this subpart that apply to you no later than December 22, 2022, or upon initial startup, whichever is later.

[FR Doc. 2022–27523 Filed 12–21–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0189; FRL–10458–01–OCSPP]

Iron Oxide (Fe_3O_4) in Pesticide Formulations Applied to Animals; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of iron oxide (Fe_3O_4) (CAS Reg. No. 1317–61–9) when used as an inert ingredient (colorant) in pesticide formulations applied to animals. The United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service submitted a petition (IN–11661) to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of iron oxide (Fe_3O_4), when used in accordance with the terms of that exemption.

DATES: This regulation is effective December 22, 2022. Objections and requests for hearings must be received on or before February 21, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0189, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 506–2875; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/*title-40.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0189 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received

by the Hearing Clerk on or before February 21, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0189, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov//where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/.*

II. Petition for Exemption

In the **Federal Register** of March 22, 2022 (87 FR 16133) (FRL–9410–11–OCSPP), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11661) by the USDA Animal and Plant Health Inspection Service, 4700 River Road, Unit 149, Riverdale, MD 20737. The petition requested that 40 CFR 180.930 be amended by establishing an exemption from the requirement of a tolerance for residues of iron oxide (Fe_3O_4) (CAS Reg. No. 1317–61–9) when used as an inert ingredient (colorant) in pesticide formulations at no more than 2,000 parts per million (ppm) (0.2% by weight) in the final formulation applied to animals. That document referenced a summary of the petition prepared by the USDA Animal and Plant Health Inspection Service, the petitioner, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. When making a safety determination for an exemption for the requirement of a tolerance, FFDCA section 408(c)(2)(B) directs EPA to consider the considerations in section 408(b)(2)(C) and (D). Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Section 408(b)(2)(D) lists other factors for EPA consideration making safety determinations, *e.g.,* the validity, completeness, and reliability of available data, nature of toxic effects, available information concerning the cumulative effects of the pesticide chemical and other substances with a common mechanism of toxicity, and available information concerning aggregate exposure levels to the pesticide chemical and other related substances, among others.

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for iron oxide (Fe_3O_4) including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with iron oxide (Fe_3O_4) follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by iron oxide (Fe_3O_4) as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The toxicological database of iron oxide (Fe_3O_4) is supported by data regarding iron oxide red and iron oxide yellow. EPA has determined that it is appropriate to bridge iron oxide red and iron oxide yellow data to assess iron oxide (Fe_3O_4) due to similarities in structure, and similarities among the

available human health toxicity data of these substances.

Iron oxide (Fe_3O_4) exhibits low levels of acute toxicity via the oral and inhalation routes of exposure and is anticipated to have low acute dermal toxicity. It is not a skin or eye irritant nor a skin sensitizer. No adverse effects were reported in the 90-day study in rats. No evidence of neurotoxicity was observed in the neurotoxicity screening performed in the 90-day oral rat study, and no evidence of immunotoxicity was seen in the available studies. No adverse reproduction or developmental effects were reported in the available reproduction and developmental toxicity study summaries in rats. Furthermore, concern for carcinogenicity is low, based on negative results in a mutagenicity study, and the lack of structural alerts for mutagenicity or carcinogenicity.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program.*

The hazard profile of iron oxide (Fe_3O_4) is adequately defined. Overall, iron oxide (Fe_3O_4) is of low acute, subchronic, and developmental toxicity. No systemic toxicity is observed up to 1,000 mg/kg/day. Since signs of toxicity were not observed, no toxicological endpoints of concern or PODs were identified. Therefore, a qualitative risk assessment for iron oxide (Fe_3O_4) can be performed.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses and drinking water.* In evaluating dietary exposure to iron oxide (Fe_3O_4), EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from iron oxide (Fe_3O_4) in food as follows:

Dietary exposure to iron oxide (Fe_3O_4) may occur from consuming game treated with pesticide formulations (baits) containing this inert ingredient and from non-pesticidal uses (food additive uses and inactive ingredient uses in FDA-approved drugs). Exposure to iron oxide (Fe_3O_4) via drinking water is expected to be negligible, based on the limited use pattern (baits). However, no toxicological endpoints of concern were selected, and therefore, a quantitative dietary exposure assessment for iron oxide (Fe_3O_4) was not conducted.

2. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

No residential exposure is anticipated from the proposed uses for iron oxide (Fe_3O_4) in pesticide formulation applied to animals. Iron oxide (Fe_3O_4) may be present in current pesticide and non-pesticide products that may be used in and around the home. However, a quantitative residential exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Based on the lack of toxicity in the available database, EPA has not found iron oxide (Fe_3O_4) to share a common mechanism of toxicity with any other substances, and iron oxide (Fe_3O_4) does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that iron oxide (Fe_3O_4) does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on an assessment of available data for iron oxide (Fe_3O_4), EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children. Because there are no threshold effects associated with iron oxide (Fe_3O_4), EPA conducted a qualitative assessment. As part of that assessment, the Agency did not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

E. Aggregate Risks and Determination of Safety

Because no toxicological endpoints of concern were identified, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to iron oxide (Fe_3O_4) residues.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of iron oxide (Fe_3O_4) in or on any food commodities. EPA is establishing a limitation on the amount of iron oxide (Fe_3O_4) that may be used in pesticide formulations applied to animals. This limitation will be enforced through the pesticide registration process under the Federal

Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that exceeds 0.2% iron oxide (Fe_3O_4) in the final pesticide formulation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established in 40 CFR 180.930 for residues of iron oxide (Fe_3O_4) (CAS Reg. No. 1317–61–9) when used as an inert ingredient (colorant) in pesticide formulations at no more than 0.2% by weight of the final formulation applied to animals.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 13, 2022.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.930, amend table 1 by adding in alphabetical order an entry for ''Iron oxide (Fe_3O_4) (CAS Reg. No. 1317–61–9)'' to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.930

Inert ingredients	Limits	Uses
* * *	* * *	*
Iron oxide (Fe_3O_4) (CAS Reg. No. 1317–61–9)	Not to exceed 0.2% of pesticide formulations	Colorant.
* * *	* * *	*

[FR Doc. 2022–27869 Filed 12–21–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0301; FRL–9321–01–OCSPP]

Simazine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of simazine in or on citrus fruits (crop group 10–10), pome fruits (crop group 11–10), stone fruits (crop group 12–12), and tree nuts (crop group 14–12) and amends the tolerance for residues in or on almond hulls. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 22, 2022. Objections and requests for hearings must be received on or before February 21, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0301, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (Mail Code 7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the **Federal Register**'s e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0301 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before February 21, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0301, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 25, 2012 (77 FR 43562) (FRL–9353–6), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP2F8006) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.213 be amended by establishing tolerances for residues of the herbicide simazine, in or on citrus fruits (crop group 10), pome fruits (crop group 11), stone fruits (crop group 12), and tree nuts (crop group 14, except almond hull) at 0.05, 0.03, 0.1, and 0.07 parts per million (ppm), respectively, and amending the tolerance for residues in or on almond hulls to 3 ppm. In addition, the petition requested the removal of tolerances for apple, hazelnut, peach, pecan, plum, and walnut at 0.20 ppm, and for almond, cherry, grapefruit, lemon, macadamia nut, orange, and pear at 0.25 ppm, upon establishment of the new tolerances. That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA determined that the residue data for the citrus fruit crop group support a tolerance level of 0.04 ppm, not 0.05 ppm as proposed by the registrant, and a level of 0.05 ppm not 0.07 ppm is being established for crop group 14–12. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all

other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for simazine including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with simazine follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Simazine and Its Chlorinated Metabolites

Simazine is a chlorotriazine herbicide that is similar in structure to atrazine and propazine. These chlorotriazine herbicides, along with their common chlorinated metabolites, have been determined by the EPA to share a common neuroendocrine mechanism of toxicity and constitute the triazine common mechanism group (CMG). Because of the similar structures and metabolites among these three pesticides, they are also assumed to be of equal potency for neuroendocrine effects. Therefore, the more robust toxicological database for atrazine has been used to characterize neuroendocrine toxicity, and for endpoint selection, for all of these compounds. The neuroendocrine endpoint chosen for these chemicals is attenuation of the luteinizing hormone (LH) surge after 4 days of exposure, the most sensitive effect which protects for other downstream adverse endocrine related toxicological effects and potential effects on non-endocrine systems.

EPA has concluded that the available data do not identify a unique quantitative susceptibility in the developing organism. None of the available studies with atrazine evaluating rats exposed during gestation, lactation, or in the peri-pubertal periods have shown effects at doses lower than those eliciting the LH surge attenuation in adult female rats after 4 days of exposure. Additionally, the POD, based upon attenuation of the LH surge, is protective against adverse reproductive/developmental outcomes such as delays in onset of puberty, disruption of ovarian cyclicity and inhibition of prolactin release. For other potential adverse outcomes, the effects occurred at dose levels approximately one order of magnitude or higher than the no observed adverse effect level (NOAEL)/lowest observed adverse effect level (LOAEL) for LH surge attenuation. As simazine has been classified as ''Not likely to be carcinogenic to humans,'' cancer risk is not a concern and a quantitative cancer risk assessment was not conducted.

Hydroxysimazine and Its Hydroxylated Metabolites

In addition to the chlorotriazine metabolites, simazine also has an analogous series of metabolites, known as the hydroxy metabolites, in which the chlorine is replaced by a hydroxy moiety. While the hydroxy metabolites are all considered to be of equal toxicity to each other, these compounds exhibit different toxicological properties than the chlorinated metabolites, and risk estimates are therefore quantified separately using an endpoint and POD based on hydroxyatrazine. The available data indicate that the kidney is the primary target organ for hydroxysimazine and its metabolites.

There is no evidence for increased susceptibility in the young following *in utero* exposure or carcinogenicity in the available data for hydroxysimazine and its metabolites.

A complete discussion of the toxicological profile for simazine and specific information on the studies received and the nature of the adverse effects caused by simazine as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *https://www.regulations.gov* in document titled Simazine. ''Human Health Risk Assessment for Registration Review and to Support the Registration of Proposed Uses on Citrus Fruit (Crop Group 10–10), Pome Fruit (Crop Group 11–10), Stone Fruit (Crop Group 12–12), Tree Nuts (Crop Group 14–12), and Tolerance Amendment for Almond Hulls'' in docket ID number EPA–HQ–OPP–2013–0251.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/science-and-assessing-pesticide-risks.*

The toxicological endpoints for simazine used for human risk assessment and an explanation for how the Agency calculated those PODs can be found in the Simazine Human Health Risk Assessment, sections 4.6–4.84, 5.4.2.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to simazine, EPA considered exposure under the petitioned-for tolerances as well as all existing simazine tolerances in 40 CFR 180.213. EPA assessed dietary exposures from simazine and its chlorinated metabolites separately from exposures to hydroxysimazine and the hydroxylated metabolites due to the different toxicities observed for the compounds. The assessments of residues of these substances in food were conducted as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the

possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for simazine and its chlorinated metabolites but not for hydroxysimazine and the hydroxylated metabolites.

In estimating acute dietary exposure to residues of simazine and its chlorinated metabolites, EPA used 2003–2008 food consumption information from the United States Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to anticipated residue levels in food, the acute assessment was refined using field trial data, default processing factors, and assumed that 100% of the proposed and registered commodities were treated.

ii. *Four-day/Chronic exposure.* Typically, chronic exposure is assessed, but for simazine and its chlorinated metabolites a four-day exposure duration is appropriate since the toxicological effect (attenuation of the LH surge) occurs after four days of exposure and is protective of exposures of longer durations. In conducting the four-day dietary exposure assessment, EPA used the food consumption data from the United States Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to anticipated residue levels in food, four-day dietary assessments were partially refined using field trial studies, default processing factors, and assumed that 100% of the proposed and registered commodities were treated.

In conducting the chronic dietary exposure assessment for hydroxysimazine and its hydroxylated metabolites, EPA used the food consumption data from USDA's NHANES/WWEIA. As to anticipated residue levels in food, the chronic dietary assessment for hydroxysimazine and its hydroxylated metabolites was refined using residue levels from metabolism studies, default processing factors, and average percent crop treated data.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that neither simazine nor hydroxysimazine poses a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The acute and four-day steady state dietary assessment for simazine assumed 100% crop treated for all registered and requested crops. The chronic (background) assessments for simazine and its chlorinated metabolites and for hydroxysimazine and its hydroxylated metabolites incorporated average percent crop treated estimates as follows: almond: 10%; apple: 10%; avocado: 5%; blueberry: 15%; caneberry: 45%; cherry: 5%; field corn: 5%; sweet corn: 2.5%; grapefruit: 20%; grape: 25%; hazelnut: 35%; lemon: 10%; nectarine: 5%; olive: 15%; orange: 25%; peach: 15%; pear: 10%; pecan: 5%; plums/prunes: 2.5%; strawberry: 5%; tangerine: 5%; and walnut: 20%. 100% CT was assumed for the remaining commodities.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figures for each existing use are derived by combining available public and private market survey data for that use, averaging across all observations, and rounding up to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which simazine may be applied in a particular area.

2. *Dietary exposure from drinking water.* Extensive and robust surface and groundwater monitoring data are available for triazines (including simazine) and were included in the drinking water assessment. The Agency also used screening-level water exposure models in the dietary exposure analysis and risk assessment for simazine in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of simazine. Estimated drinking water concentrations (EDWCs) are based on total triazine

residues, which include atrazine, propazine, and simazine, and all the related metabolites, and are not just based on simazine and its chlorinated and hydroxylated metabolites, these EDWCs may be considered high-end estimates for the simazine risk assessment. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/pesticide-risk-assessment.*

Based on the Pesticide Root Zone Model Ground Water (PRZM GW), the surface water concentration calculator (SWCC), and FQPA Index Reservoir Screening Tool (FIRST) modeling, the EDWCs of simazine are estimated to be 265–610 parts per billion (ppb) for surface water and 92.6–100 ppb for groundwater for acute exposure; 265–585 ppb for surface water and 92.6–100 ppb for groundwater for the 4-day exposures; and 76–104 ppb for surface water and 5.11–7.33 ppb for groundwater for chronic exposures for non-cancer assessments.

A drinking water level of comparison (DWLOC) approach to aggregate risk was used to calculate the amount of exposure available in the total 'risk cup' for drinking water after accounting for any exposures from food and/or residential use. The DWLOCs are then compared to the EDWCs. If the DWLOCs are greater than the EDWCs, there is no aggregate risk of concern. The use of a DWLOC approach facilitates determining aggregate risks when there are multiple EDWCs or when there are potential aggregate risk estimates of concern. Water ingestion rates are included in the acute and chronic DWLOC calculations. These values vary with population subgroup, the duration time of interest, and the exposure percentile applicable for regulation. These values were determined directly from the NHANES/WWEIA water consumption data, making use of the appropriate exposure durations and percentiles. For the simazine 4-day aggregate assessments, the DWLOC approach used a reciprocal MOE calculation method since the target MOEs (level of concern based on the total uncertainty factor) are the same for all relevant sources of exposure. For the four-day assessment, water consumption is accounted for in the PBPK model when deriving the drinking water PODs and is not included in the DWLOC calculation. Infants and children were assumed to consume water 6 times a day, with a total consumption volume of 0.688557 liters per day (L/day). Youths and female adults were assumed to consume water 4 times a day, with a total consumption volume of 1.71062 L/day.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Simazine is currently registered for the following uses that could result in residential exposures: residential turf. There are no residential handler combined (dermal + inhalation) risk estimates of concern for simazine.

There is potential for short-term post-application exposure for individuals as a result of being in an environment that has been previously treated with simazine. There were post-application dermal risk estimates of concern for adults and children 1 to <2 years old and combined (dermal + incidental oral) risk estimates of concern for children 1 to <2 years old (LOC = 30) from high contact activities on treated turf. These scenarios are considered worst-case and are protective of all other exposure scenarios.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Simazine is a chlorotriazine herbicide. A cumulative risk assessment with the chlorotriazines atrazine, simazine, propazine, and their common metabolites is available at *https://www.regulations.gov,* Docket ID EPA–HQ–OPP–2013–0266.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* For simazine and its chlorinated metabolites, there was no increased quantitative or qualitative susceptibility in any of the guideline studies on atrazine in the rat, and there was no increased quantitative susceptibility in the rabbit study. Although there was increased qualitative susceptibility in the atrazine rabbit study, increased resorptions (deaths) at a dose level that resulted in decreased body-weight gain and clinical signs in the maternal animal the observed effects occur at higher doses than the benchmark dose lower confidence limit (BMDL) of 2.42 mg/kg/day used to assess risk. The BMDL of 2.42 mg/kg/day is protective of developmental effects in the rabbit.

For hydroxysimazine, there was no evidence of increased qualitative or quantitative susceptibility in the available toxicological data on this metabolite including a developmental rat study and female and male pubertal assays.

3. *Conclusion.* For simazine and its chlorinated metabolites, EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X based on lack of increased sensitivity for infants and children. That decision is based on the following findings:

i. The toxicity database for the chlorotriazines (including simazine) and their metabolites is considered complete.

ii. Chlorotriazines have an established neuroendocrine mode of action and LH attenuation is the most sensitive endpoint identified in the database. LH attenuation is protective of potential health outcomes associated with chlorotriazines.

iii. There was no increased quantitative or qualitative susceptibility in any of the guideline studies on atrazine in the rat, and there was no increased quantitative susceptibility in the rabbit study. Although there was increased qualitative susceptibility in the atrazine rabbit study, the observed effects occur at higher doses than the benchmark dose lower confidence limit (BMDL) of 2.42 mg/kg/day used to assess risk. The BMDL of 2.42 mg/kg/day is protective of developmental effects in the rabbit.

iv. There are no residual uncertainties identified in the exposure databases.

EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to simazine in drinking water. These assessments will not underestimate the exposure and risks posed by simazine.

For hydroxysimazine, EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X based on lack of increased sensitivity for infants and children. That decision is based on the following findings:

i. The toxicity database for hydroxysimazine is complete for a metabolite.

ii. Hydroxysimazine does not have a neuroendocrine mode of action as the parent chlorotriazines.

iii. There was no evidence of increased qualitative or quantitative susceptibility in the available toxicological data on this metabolite including a developmental rat study and female and male pubertal assays.

iv. There are no residual uncertainties identified in the exposure databases.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk. Simazine and its chlorinated metabolites.* The acute aggregate assessment considers food and water exposures. The acute DWLOC for females 13 to 49 years old is 5,500 ppb. The acute DWLOC is greater than the acute EDWCs for total chlorotriazines TCTs in surface water or ground water (EDWC range = 100–610 ppb); there is no acute aggregate risk of concern.

Hydroxysimazine and its Hydroxylated Metabolites

No toxicological effects attributable to a single dose were identified for hydroxysimazine; therefore, an acute endpoint has not been identified and no risk is expected from this exposure scenario.

2. *Four-day/Chronic risk. Simazine and its chlorinated metabolites.* The four-day aggregate risk assessments are protective for short-term, intermediate-term, and chronic aggregate risks since the POD and endpoint used for the four-day assessment are the most sensitive for any duration, and are, therefore, protective of longer durations of exposure. The calculated four-day DWLOCs are all greater than the 4-day EDWCs for TCTs in surface water or ground water; there are no four-day aggregate risks of concern.

Hydroxysimazine and its Hydroxylated Metabolites

The chronic aggregate risk assessment for the hydroxysimazine considers food and water exposures. No residential exposures to the hydroxysimazine metabolite are expected from the simazine uses. The lowest chronic DWLOC for hydroxysimazine is for all infants (<1 year old) at 1300 ppb. The chronic DWLOCs are greater than the chronic EDWCs for total hydroxytriazines (THTs) in surface water or ground water (EDWC range = 7.33–76 ppb); there is no chronic aggregate risk of concern.

3. *Aggregate cancer risk for U.S. population.* Simazine has been classified as ''Not likely to be carcinogenic to humans.'' Hydroxysimazine is also not likely to pose cancer risks based on the lack of cancer effects seen in available studies.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to simazine residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (LC–MS/MS) is available to enforce the tolerance expression.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established MRLs for simazine.

C. Revisions to Petitioned-For Tolerances.

The submitted residue data support a tolerance level of 0.04 ppm for the citrus fruit crop group. The petitioner's proposed tolerance level of 0.05 ppm was based on using the maximum combined residue level of 0.038 ppm (one grapefruit sample) in the Organisation for Economic Co-operation and Development (OECD) tolerance calculation procedures. EPA's approach to tolerance calculations uses the average field trial value of 0.034 ppm, which warrants a tolerance of level of 0.04 ppm instead. Also, although the proposed tolerance level of 0.07 ppm for crop group 14–12 is supported by OECD tolerance calculations, EPA is establishing the tolerance at 0.05 ppm to harmonize with the Canadian MRL. Due to the conservatisms in the OECD calculator, the tolerance level of 0.05 ppm will be sufficient to cover residues of simazine in or on food resulting from legal applications of the pesticide.

D. International Trade Considerations

In this Final Rule, EPA is reducing the existing tolerances for the commodities of almond from 0.25 to 0.05 ppm as part of nut, tree, group 14–12; apple from 0.2 to 0.03 ppm as part of fruit, pome, group 11–10; cherry from 0.25 to 0.1 ppm as part of fruit, stone, group 12–12; grapefruit, lemon, and orange from 0.25 to 0.04 ppm as part of fruit, citrus, group 10–10; hazelnut, nut, macadamia, pecan, and walnut from 0.2 to 0.05 ppm as part of nut, tree, group 14–12; peach and plum from 0.2 to 0.1 ppm as part of fruit, stone, group 12–12; and pear from 0.25 to 0.03 as part of fruit, pome, group 11–10. The Agency is reducing these tolerances because available residue data demonstrates that the new tolerances are sufficient to cover residues on these commodities.

In accordance with the World Trade Organization's (WTO) Sanitary and Phytosanitary Measures (SPS) Agreement, EPA intends to notify the WTO of this revision in order to satisfy its obligation. In addition, the SPS Agreement requires that Members provide a ''reasonable interval'' between the publication of a regulation subject to the Agreement and its entry into force to allow time for producers in exporting Member countries to adapt to the new requirement. At this time, EPA is establishing an expiration date for the existing tolerances to allow those

tolerances to remain in effect for a period of six months after the effective date of this final rule, in order to address this requirement. After the six-month period expires, residues of simazine on grapefruit, lemon, and orange cannot exceed the citrus fruits (crop group 10–10) tolerance of 0.04 ppm; apple and pear cannot exceed the pome fruits (crop group 11–10) tolerance of 0.03 ppm; cherry, peach, and plum cannot exceed the stone fruits (crop group 12–12) tolerance of 0.1 ppm; and almond, hazelnut, nut, macadamia, pecan, and walnut cannot exceed the tree nuts (crop group 14–12) tolerance of 0.05 ppm.

This reduction in tolerance levels is not discriminatory; the same food safety standard contained in the FFDCA applies equally to domestically produced and imported foods. The new tolerance levels are supported by available residue data.

V. Conclusion

Therefore, tolerances are established for residues of simazine in or on Fruit, citrus, group 10–10, Fruit, pome, group 11–10, Fruit, stone, group 12–12, and Nut, tree, group 14–12 at 0.04 ppm, 0.03 ppm, 0.10 ppm, and 0.05 ppm, respectively, and the tolerance for Almond, hulls is amended to 3 ppm.

VI. Statutory and Executive Order Reviews

This action establishes and modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 16, 2022.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Revise § 180.213 to read as follows:

§ 180.213 Simazine; tolerances for residues.

(a) *General.* Tolerances are established residues of the herbicide simazine, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified in table 1 to this paragraph (a) is to be determined by measuring only the sum of simazine, 6-chloro-N,N′-diethyl-1,3,5-triazine-2,4-diamine, and its metabolites 6-chloro-N-ethyl-1,3,5-triazine-2,4-diamine, and 6-chloro-1,3,5-triazine-2,4-diamine, calculated as the stoichiometric equivalent of simazine, in or on the commodity.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Almond [1]	0.25
Almond, hulls	3
Apple [1]	0.20
Avocado	0.20
Blackberry	0.20
Blueberry	0.20
Cattle, meat	0.03
Cattle, meat byproducts	0.03
Cherry [1]	0.25
Corn, field, forage	0.20
Corn, field, grain	0.20
Corn, field, stover	0.25
Corn, pop, grain	0.20
Corn, pop, stover	0.25
Corn, sweet, forage	0.20
Corn, sweet, kernel plus cob with husks removed	0.25
Corn, sweet, stover	0.25
Cranberry	0.25
Currant	0.25
Egg	0.03
Fruit, citrus, group 10–10	0.04
Fruit, pome, group 11–10	0.03
Fruit, stone, group 12–12	0.1
Goat, meat	0.03
Goat, meat byproducts	0.03
Grape	0.20
Grapefruit [1]	0.25
Hazelnut [1]	0.20
Horse, meat	0.03
Horse, meat byproducts	0.03
Lemon [1]	0.25

TABLE 1 TO PARAGRAPH (a)—Continued

Commodity	Parts per million
Loganberry	0.20
Milk	0.03
Nut, macademia [1]	0.25
Nut, tree, group 14–12	0.05
Olive	0.20
Orange [1]	0.25
Peach [1]	0.20
Pear [1]	0.25
Pecan [1]	0.20
Plum [1]	0.20
Raspberry	0.20
Sheep, meat	0.03
Sheep, meat byproducts	0.03
Strawberry	0.25
Walnut [1]	0.2

[1] This tolerance expires on June 22, 2023.

(b) through(d) [Reserved]

[FR Doc. 2022–27715 Filed 12–21–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–OLEM–2022–0191 and EPA–HQ–OLEM–2022–0680; FRL–10435–01–OLEM]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''the EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds two sites to the General Superfund section of the NPL.

DATES: The rule is effective on January 23, 2023.

ADDRESSES: Contact information for the EPA Headquarters:

• Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW; William Jefferson Clinton Building West, Room 3334, Washington, DC 20004, (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail code 5204T), U.S. Environmental Protection Agency; 1301 Constitution Avenue NW, Washington, DC 20460, telephone number: (202) 566–1048, email address: *jeng.terry@epa.gov.*

The contact information for the regional dockets is as follows:

• Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; (617) 918–1413.

• James Desir, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; (212) 637–4342.

• Lorie Baker, Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, 4 Penn Center, 1600 John F. Kennedy Boulevard, Mailcode 3SD12, Philadelphia, PA 19103; (215) 814–3355.

• Sandra Bramble, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, Mailcode 9T25, Atlanta, GA 30303; (404) 562–8926.

• Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; (312) 886–4465.

• Michelle Delgado-Brown, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1201 Elm Street, Suite 500, Mailcode SED, Dallas, TX 75270; (214) 665–3154.

• Kumud Pyakuryal, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRSTAR, Lenexa, KS 66219; (913) 551–7956.

• David Fronczak, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8SEM–EM–P, Denver, CO 80202–1129; (303) 312–6096.

• Eugenia Chow, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105; (415) 972–3160.

• Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 288 Martin Street, Suite 309, Blaine, WA 98230; (360) 366–8868.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was

amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund section'') and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. On January 9, 2017 (82 FR 2760), a subsurface intrusion component was added to the HRS to enable the EPA to consider human exposure to hazardous substances or pollutants and contaminants that enter regularly occupied structures through subsurface intrusion when evaluating sites for the NPL. The current HRS evaluates four pathways: ground water, surface water, soil exposure and subsurface intrusion, and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with a permanent remedy, taken instead of or in addition to removal actions'' (40 CFR 300.5).) However, under 40 CFR 300.425(b)(2), placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or

plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. Plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination; and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones Company is responsible for the contamination located on the plant site.

EPA regulations provide that the remedial investigation (''RI'') ''is a process undertaken . . . to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For more information on the CCL, see the EPA's internet site at *https://www.epa.gov/superfund/construction-completions-national-priorities-list-npl-sites-number.*

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments, and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *https://www.epa.gov/superfund/about-superfund-cleanup-process#reuse.*

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following website: *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

The EPA has improved the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that: (1) Explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence between the EPA and states and tribes where applicable, is available on the EPA's website at *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

II. Availability of Information to the Public

A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at the EPA headquarters and in the EPA regional offices.

An electronic version of the public docket is available through *https://www.regulations.gov* (see table below for docket identification numbers). Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified in section II.D.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Hercules Inc	Hattiesburg, MS	EPA–HQ–OLEM–2022–0191
PCE—Carriage Cleaners	Bellevue, NE	EPA–HQ–OLEM–2022–0680

B. What documents are available for review at the EPA headquarters docket?

The headquarters docket for this rule contains the HRS score sheets, the documentation record describing the information used to compute the score, a list of documents referenced in the documentation record for each site and any other information used to support the NPL listing of the site. These documents are also available online at *https://www.regulations.gov.*

C. What documents are available for review at the EPA regional dockets?

The EPA regional dockets contain all the information in the headquarters docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score. These reference documents are available only in the regional dockets.

D. How do I access the documents?

You may view the documents that support this rule online at *https://www.regulations.gov* or by contacting the EPA HQ docket or appropriate regional docket. The hours of operation for the headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. Please contact the individual regional dockets for hours. For addresses for the headquarters and regional dockets, see **ADDRESSES** section in the beginning portion of this preamble.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the internet at *https://www.epa.gov/superfund/national-priorities-list-npl-sites-site-name.*

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following two sites to the NPL, all to the General Superfund section. Both of these sites are being added to the NPL based on an HRS score of 28.50 or above.

GENERAL SUPERFUND SECTION

State	Site name	City/county
MS	Hercules Inc	Hattiesburg.
NE	PCE—Carriage Cleaners	Bellevue.

B. What did the EPA do with the public comments it received?

The EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. The EPA is adding two sites to the NPL in this final rule. The Hercules Inc site in Hattiesburg, MS, was proposed for addition to the NPL on March 18, 2022 (87 FR 15349). The PCE—Carriage Cleaners site was proposed for addition to the NPL on September 9, 2022 (87 FR 55342).

Comments on the Hercules Inc site have been addressed in a response to comment support document available in the public docket concurrently with this rule. To view public comments on this site, as well as EPA's response, please refer to the support document available at *https://www.regulations.gov.*

The EPA received no comments in the docket for the PCE—Carriage Cleaners site. The EPA received three comments in the East Basin Road Groundwater docket that expressed support for sites in the September 9, 2022 proposed rule, including the PCE—Carriage Cleaners site.

IV. Statutory and Executive Order Reviews

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

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

This 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. This rule does not contain any information collection requirements that require approval of the OMB.

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. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

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 imposes no enforceable duty on any state, local or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

E. Executive Order 13132: Federalism

This final rule 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: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

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)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

K. Congressional Review Act

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

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation. Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802. Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996), cast the validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, the EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Barry N. Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

For the reasons set out in the preamble, title 40, chapter I, part 300, of the Code of Federal Regulations is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Amend table 1 of appendix B to part 300 by adding entries for ''MS, Hercules Inc'' and ''NE, PCE—Carriage Cleaners'' in alphabetical order by state to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
*	* * * * * *	*	
MS	Hercules Inc	Hattiesburg	
*	* * * * * *	*	
NE	PCE—Carriage Cleaners	Bellevue	

TABLE 1—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/County	Notes (a)
*	* * * * *	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

[FR Doc. 2022–27348 Filed 12–21–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2 and 27

[WT Docket No. 19–348; DA 22–1188; FR ID 116794]

Facilitating Shared Use in the 3100–3550 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Wireless Telecommunication Bureau (Bureau) selects the four entities that will represent the interest of the new entrants to the 3.45–3.55 GHz band in selecting the Reimbursement Clearinghouse. The four entities selected are NBCUniversal, Nexstar Broadcasting (Nexstar), CTIA-The Wireless Association (CTIA), and the Competitive Carriers Association (CCA). In addition, the Bureau adopts certain requirements regarding the Clearinghouse search committee process and the operation of the Clearinghouse. These requirements support the prevention of waste, fraud, and abuse in the handling of reimbursement funds and will protect confidential information.

DATES: This final agency action is effective January 23, 2023.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Morgan Mendenhall, Wireless Telecommunications Bureau, Mobility Division, (202) 418–0154 or *morgan.mendenhall@fcc.gov.* For information regarding the Paperwork Reduction Act information collection requirements, contact Cathy Williams, Office of Managing Director, at 202–418–2918 or *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This summary of the *3.45 GHz Clearinghouse Order* in WT Docket No. 19–348, DA 22–1188, adopted and released November 10, 2022. The full text of the *3.45 GHz Clearinghouse Order,* including all Appendices, is available for public inspection at the following internet address: *https://docs.fcc.gov/public/attachments/DA-22-1188A1.pdf.* Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the *3.45 GHz Band Second Report and Order (R&O)* (86 FR 17920, April 7, 2021) on small entities. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* (*FNPRM*) released in October 2020 in this proceeding (85 FR 66888, October 21, 2020). The Commission sought written public comment on the proposals in the *FNPRM,* including comments on the IRFA. No comments were filed addressing the IRFA. This FRFA conforms to the RFA. The Commission will send a copy of the *3.45 GHz Clearinghouse Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, it contains 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, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission will send a copy of the *3.45 GHz Clearinghouse Order (Order)* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Synopsis

I. Introduction

With this final action, the Wireless Telecommunications Bureau (Bureau) identifies four entities that will form a search committee to select a Reimbursement Clearinghouse (Clearinghouse) to oversee the reimbursement of relocation expenses for certain secondary, non-Federal radiolocation licensees in the 3.45–3.55 GHz band (3.45 GHz band). These entities are NBCUniversal, Nexstar Broadcasting (Nexstar), CTIA, and the Competitive Carriers Association (CCA). In addition, the Bureau adopts certain requirements regarding the Clearinghouse search committee process and the operation of the Clearinghouse. These requirements support the prevention of waste, fraud, and abuse in the handling of reimbursement funds and will protect confidential information.

II. Background

In the *3.45 GHz Band Second R&O,* the Commission adopted rules to make 100 megahertz of mid-band spectrum available for flexible use throughout the contiguous United States. To facilitate this goal, the Commission previously had determined that secondary, non-Federal radiolocation licensees in the band would be relocated to the 2.9–3.0 GHz band. In the *3.45 GHz Band Second R&O,* the Commission further determined that secondary, non-Federal radiolocation authorizations would sunset 180 days after new 3.45 GHz Service licenses are granted in the band. Because these licenses were granted on May 4, 2022, the non-Federal radiolocation authorizations sunset on October 31, 2022. In addition, the Commission in the *3.45 GHz Band Second R&O* required ''new flexible-use licensees in the 3.45 GHz Service to reimburse secondary, non-federal radiolocation licensees for reasonable costs related to the relocation of those

operations to the 2.9–3.0 GHz band, including the costs of a relocation clearinghouse's administration of the reimbursement.'' 36 FCC Rcd 5987, 6042, para 155 (2021), 86 FR 60775 . Specifically, each new 3.45 GHz Service licensee will be responsible for reimbursement of a *pro rata* share of reasonable relocation costs of non-Federal radiolocation operations.

The Commission in the *3.45 GHz Band Second R&O* delegated authority to the Bureau, working in coordination with the Office of the Managing Director, to develop and implement a clearinghouse selection process similar to the process used in the 3.7 GHz proceeding. The Commission's delegation also included the authority to seek notice and comment on the parameters of additional considerations that should inform the creation and administration of the cost-sharing plan to help implement the Commission's decision and, if necessary for the purposes of the more limited relocation in the 3.45 GHz Service, to adjust the procedures adopted in the 3.7 GHz proceeding to tailor them to the relocation in the 3.45 GHz proceeding. As in the 3.7 GHz proceeding, the Commission in the *3.45 GHz Band Second R&O* provided for the creation of a neutral, independent clearinghouse to oversee the collection and distribution of relocation reimbursement payments from new 3.45 GHz Service licensees to non-Federal secondary radiolocation incumbents. Unlike in the 3.7 GHz context, however, in the 3.45 GHz proceeding, the Commission did not identify the specific industry stakeholders who would compose the search committee to select the Clearinghouse.

On August 20, 2021, the Bureau released a *Public Notice* (*Search Committee Public Notice*) seeking comment on the selection process for, and operation of, the Clearinghouse. Comments and replies were due on September 30, 2021, and October 12, 2021, respectively (86 FR 51335, September 15, 2021). The Bureau received comments from Nexstar, NBCUniversal, and CTIA; a reply from the Wireless Infrastructure Association (WIA); and a subsequent *ex parte* letter from CCA.

III. Discussion

A. Composition of the Clearinghouse Search Committee

As noted above, the Commission delegated authority to the Bureau to implement a clearinghouse selection process similar to the process used in the 3.7 GHz band transition. In the 3.7 GHz proceeding, the Commission determined that the clearinghouse search committee would be composed of nine members appointed by nine entities that the Commission found, collectively, reasonably represented the interests of the stakeholders in the 3.7 GHz band transition. These entities represented incumbents in the band (space station operators—three entities, and earth station operators—three entities) as well as prospective flexible-use licensees (three entities). The Commission determined that the range of entities it had chosen would fairly represent the broad interests of the relevant stakeholders in the 3.7 GHz band transition. Since the clearinghouse search committee was not similarly identified in the *3.45 GHz Band Second R&O,* the Bureau sought comment on the optimal number of members and which appropriate industry stakeholders should be included on the search committee for the 3.45 GHz band transition.

NBCUniversal and Nexstar, the two secondary, non-Federal incumbents in the 3.45 GHz band, both seek representation on the search committee. Due to the difference between the use and size of their operations, NBCUniversal and Nexstar favor each company having its own seat, rather than a shared incumbent representative. Similarly, CTIA volunteered to represent traditional wireless providers on the search committee. CTIA also acknowledged the need for another representative to advocate for new entrants in the band that would not be covered by its own membership. WIA likewise supported representation for both small- and large-market new entrants, in addition to incumbents, suggesting two seats for the incumbents and two for new entrants to represent small and large auction winners. Although CCA did not initially file comments in this portion of the proceeding, CCA has since indicated an interest in serving on the search committee to represent the small-market segment of new entrants.

1. Representation of Interests

The Bureau finds that equal representation of both interest groups present in the instant transition—incumbent radiolocation systems and new-entrant flexible-use licensees—is both consistent with the 3.7 GHz band transition and will ensure a fair and transparent Clearinghouse selection process in this proceeding. Specifically, each interest group will have two seats: two incumbent seats to represent NBCUniversal's and Nexstar's differing business models, and two new-entrant seats to represent both small- and large-market flexible-use licensees.

First, the Bureau finds that equal representation of both interest groups is consistent with the approach used in the 3.7 GHz band proceeding. There, the search committee was comprised of nine members representing three distinct interest groups: incumbent space station operators, incumbent earth station operators, and prospective flexible-use licensees. Each interest group received three representatives on the search committee, which included seats for smaller and larger interests within each interest group segment. The corollary of the 3.7 GHz band approach here is thus equal representation of the two interest groups in the 3.45 GHz transition: non-Federal radiolocation incumbents and new entrants, with two seats on each side. The Bureau agrees with WIA that new entrants are a diverse group that would be best served by representatives for both smaller and larger new entrants.

Second, the Bureau finds that equal representation will foster compromise. By having equal representation from both interest groups on the search committee, no one group can act unilaterally in the selection process, ensuring that the resulting Clearinghouse fairly facilitates the transition process. WTB agreed with WIA that having equal representation for both interest groups on the search committee will provide ''confidence that the clearinghouse selected remains impartial and will seek an equitable outcome for all the parties involved in the relocation.''

While this approach deviates from our proposal in the *Search Committee Public Notice* to have an odd number of members on the search committee, the Bureau sought comment on the optimal number of members to include on the search committee. Further, the Bureau specifically recognized that the 3.45 GHz relocation would be less complex than that in the 3.7 GHz band, and suggested that a smaller committee might be more efficient. The Bureau finds that a search committee comprised of four members, two incumbent representatives and two new entrant representatives, will accurately reflect the interests present in the 3.45 GHz band, is responsive to suggestions raised by commenters, and is well-positioned to facilitate compromise. In the event that equal representation leads to deadlock despite our instruction to proceed by consensus, the search committee shall inform the Bureau and the Bureau may then consider additional measures, including resolution by majority vote or

appointment of an additional search committee member. The Bureau shall act on such request within 30 days, and the search process shall continue consistent with this final action and the Commission's rules.

The Bureau disagrees with Nexstar that the approach most consistent with the 3.7 GHz band process would be to have two-thirds of the search committee seats here represented by incumbent interests. While two-thirds of the 3.7 GHz band search committee was comprised of incumbents, the incumbent space station operators and earth station operators represent distinct industry segments. For example, in the 3.7 GHz band space station operators provide downlink signals to various types of earth stations, and the earth station operators in turn deliver programming to television and radio broadcasters and telephone and data services to consumers. Each incumbent group was given its own equal representation on the 3.7 GHz band search committee to reflect the differences in their interests with respect to the transition process. The Bureau applies the same logic here, and thus have designated equal representation of both the incumbent and new entrant interest groups in the 3.45 GHz band.

1. Number of Seats and Membership

As discussed above, the Bureau finds that here the appropriate implementation of equal representation is two search committee seats for the incumbents and two for the new entrants. Specifically, the Bureau finds that the four-member Clearinghouse search committee will be comprised of representatives from NBCUniversal, Nexstar, CTIA, and CCA. As proposed in the *Search Committee Public Notice,* each entity shall nominate one individual to serve on the search committee. WIA, the commenter to most directly address this issue, supports this process, and states that such representation will promote confidence that the selected clearinghouse will be fair to all parties in the transition.

NBCUniversal and Nexstar, both of which volunteered to be on the search committee, will represent their own respective interests as secondary incumbent radiolocation service users. The Bureau finds that CTIA and CCA together will best represent the interests of new entrants given their diverse memberships. CTIA, which also volunteered to be on the search committee, will represent the larger-new entrant interests to the band. CCA indicated an interest in serving on the search committee and will represent the interests of smaller and rural entities.

The Bureau finds that CCA is best positioned to serve as the second new-entrant representative on the search committee. The Bureau agrees with WIA that the new entrants' interests are diverse and that it is important to have the interests of smaller and rural providers represented on the search committee. CCA notes that its members include ''small, rural carriers serving fewer than 5,000 customers'' and also indicates that some of its members are license winners in the 3.45 GHz band. Thus, the Bureau finds that CCA is well-situated to represent the smaller and rural new entrants in the band.

B. Search Committee's Selection of the Clearinghouse

In the 3.7 GHz proceeding, the Commission directed the search committee to proceed by consensus, but noted that if a vote on the selection of a clearinghouse was required, it would be by a majority vote. Likewise here, as proposed in the *Search Committee Public Notice,* the Bureau directs the search committee to proceed by consensus. In the event of deadlock, however, the Bureau directs the search committee to notify the Bureau. As noted above, in the event of deadlock under the current composition, the search committee shall inform the Bureau and the Bureau may then consider additional measures to resolve the deadlock. Further, the Bureau shall act on such request within 30 days of the search committee's request, and the search process shall continue consistent with the Commission's rules.

The Bureau requires each search committee member to certify that they have reviewed and understand the Commission's rules and requirements contained in this final action and the *3.45 GHz Band Second R&O.* Such certifications must be filed in the docket of this proceeding prior to the first meeting of the selection committee, but no later than January 5, 2023. In the event that a new search committee member is added, its certification must be filed in the docket of this proceeding no later than 30 days after the Bureau releases a Public Notice identifying the new search committee member.

The search committee must meet no later than January 5, 2023. In addition, by March 6, 2023, the search committee must release and file with the Bureau a Request for Proposal (RFP), or similar solicitation for Clearinghouse applications. Such solicitation must explain in detail the selection criteria for the position of Clearinghouse and must be consistent with the qualifications, roles, and duties of the Clearinghouse as set forth in the Commission's rules and this final action. Entities responding to the RFP must describe how they will comply with these criteria and rules adopted by the Commission. The search committee should ensure that the Clearinghouse meets the relevant best practices and standards in its operation to ensure an effective and efficient transition.

Thus, at a minimum, the search committee's solicitation for the Clearinghouse must include the following requirements to: (1) engage in strategic planning and adopt goals and metrics to evaluate its performance; (2) adopt internal controls for its operations; (3) use enterprise risk management practices; and (4) use best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds. In addition, the Clearinghouse must be required to create written procedures for its operations, using the Government Accountability Office's (GAO) Green Book to serve as a guide in satisfying such requirements.

CTIA asks that the selected Clearinghouse be required to enter into contracts with stakeholders—*i.e.,* with incumbents and new entrants. CTIA explains that ''contracts between new 3.45 GHz Service licensees and the Clearinghouse help ensure that the Clearinghouse's management of clearing funds has appropriate oversight.'' CTIA notes, however, that requiring contracts between the Clearinghouse and *all* stakeholders may stall the reimbursement process if some parties are hold outs because they lack the incentives to undertake the cost of negotiating a contract, which could significantly exceed their reimbursement liability. Instead, CTIA maintains that ''appropriate oversight of the Clearinghouse can be assured by confirming that licensees covering some reasonable proportion of the total relocation liability have negotiated contracts with the Clearinghouse.'' In addition, CTIA proposes that ''the Clearinghouse should be required to contract with any licensee that so desires on terms and conditions that are materially the same as those negotiated by other licensees.''

The Bureau believe this proposal has merit and will require such contracts here. Thus, the Bureau requires the Clearinghouse to enter into contracts with both incumbents and sufficient licensees that hold the majority of 3.45 GHz Service licenses. The Bureau notes that while contracts were not required in the 3.7 GHz band context, that framework ''expected'' that contracts

would be entered into between the selected Clearinghouse and the stakeholders. Accordingly, the Bureau finds that it is both consistent with past precedent and appropriate here to require the Clearinghouse to enter into contracts with the two incumbents and a sufficient number of new entrant licensees holding the majority of 3.45 Service licenses.

In addition, the Clearinghouse must enter into a contract with any licensee that so requests on terms and conditions that are materially the same as those negotiated by other licensees. To this end, the Bureau requires the search committee to include a requirement in its RFP or other similar solicitation document that the selected Clearinghouse will be required to enter into contracts with stakeholders based on and consistent with the Commission's rules and this final agency action, the terms of the RFP, and the applicant's responses to the RFP, as described herein. Further, as part of its response to the RFP, the Clearinghouse selectee must affirmatively represent that it will enter into such contracts with two incumbents and a sufficient number of new entrant licensees holding the majority of 3.45 Service licenses.

The Bureau notes that CTIA also asks that such contracts ''be on based on commercially reasonable terms for fiduciaries acting in the capacity of the 3.45 GHz Clearinghouse'' and that the Clearinghouse recognize ''that it owes fiduciary duties to both incumbents and new entrants.'' The Bureau believes that requiring contracts between the Clearinghouse and licensee stakeholders has merit in the context of this proceeding, and such contractual relationships and obligations will provide appropriate safeguards. Thus, the Bureau does not need to reach a decision on CTIA's request for imposing a fiduciary duty.

The search committee's solicitation shall also require that the Clearinghouse adopt robust privacy and data security best practices in its operations, given that it will receive and process information critical to ensuring a successful and expeditious transition. The Clearinghouse shall therefore also comply with, on an ongoing basis, all applicable laws and Federal Government guidance on privacy and information security requirements such as relevant provisions in the Federal Information Security Management Act (FISMA), National Institute of Standards and Technology (NIST) publications, and Office of Management and Budget guidance. The Clearinghouse must hire a third-party firm to independently audit and verify, on an annual basis, the Clearinghouse's compliance with privacy and information security requirements and to provide recommendations based on any audit findings; to correct any negative audit findings and adopt any additional practices suggested by the auditor; and to report the results to the Bureau annually beginning April 1, 2024.

The Bureau will issue a Public Notice notifying the public that the search committee has published criteria for the selection of the Clearinghouse. The Public Notice will announce a closing date of April 2, 2023 for submission of responses to the RFP.

The search committee shall notify the Bureau of its tentative choice for the Clearinghouse by May 2, 2023. This notification shall: (1) be contingent on the selectee's agreement to enter into contracts with incumbent and new, flexible-use licensee stakeholders prior to finalization of the selection; (2) fully disclose any actual or potential organizational or personal conflicts of interest or appearance of such conflict of interest of the Clearinghouse or its officers, directors, employees, and/or contractors; and (3) set out in detail the salary and benefits associated with each position. The Clearinghouse shall have an ongoing obligation to update this information as soon as possible after any relevant changes are made.

Once the search committee has notified the Bureau of its tentative selection, the selectee must negotiate one or more contracts with stakeholder licensees. Specifically, by July 3, 2023, the selectee must submit negotiated and executed contracts to the search committee. The contracts should be consistent with the requirements of this final agency action and the Commission's rules, the RFP, and the selectee's RFP responses. Such contracts should address issues such as any limitations on liability, audits, and any such other commercially reasonable terms as may be expected to be included in contracts of this nature. After submission of contracts to the search committee, the search committee must review the contracts for compliance with the Commission's rules, the RFP, and the selectee's proposal by August 1, 2023. If the search committee determines contracts are in compliance, the search committee will notify the Bureau that it has finalized the selection of the Clearinghouse and will submit copies of the selectee's RFP response and contracts in the docket. The Bureau acknowledges that requiring contracts for all 3.45 GHz Service licensees to be executed prior to the finalization of the Clearinghouse selectee may unduly delay the selection process. Thus, if the search committee has determined that the submitted contracts are in compliance and such contracts have been submitted for both incumbents and sufficient licensees that hold the majority of 3.45 GHz Service licenses, the search committee may submit the Clearinghouse selectee for final confirmation by the Bureau.

After receipt of the search committee's notification of its final selection, the Bureau will issue a Public Notice announcing the entity selected and inviting public comment on whether the selectee satisfies the criteria set out in this final agency action and in the Commission's rules. Following the comment period and submission of the RFP response and contracts in the docket, the Bureau will issue a determination as to whether the criteria for the Clearinghouse either have or have not been satisfied. Should the Bureau be unable to find the criteria have been satisfied, the selection process will start over and the search committee will submit a new proposed entity. The search committee shall remain in place at least until the Bureau issues its determination confirming the selection of the Clearinghouse.

In the event that: (1) the Clearinghouse selectee has not reached agreement with the two incumbent radiolocation service licensees and sufficient licensees that hold the majority of 3.45 GHz Service licenses; (2) the Bureau determines that the submitted contracts do not comply with the relevant requirements; or (3) the Bureau determines that the Clearinghouse selectee has otherwise not satisfied the selection criteria, the Bureau may in its discretion elect to give the parties 30 days to cure such noncompliance or instruct the search committee to reconvene and select a new Clearinghouse candidate, thus restarting the above process.

C. Clearinghouse Selection Process Deadlines

Consistent with the terms of this final agency action and the Commission's rules, the Clearinghouse selection process must comply with the following deadlines:

- *January 5, 2023, or prior to first meeting:* search committee members must file certifications in WT Docket No. 19–348.
- *January 5, 2023:* the search committee must meet.
- *March 6, 2023:* the search committee must prepare and submit the RFP to the Bureau.

- *April 3, 2023:* deadline for applicants to submit responses to the RFP.
- *May 2, 2023:* the search committee must notify the Bureau of its tentative Clearinghouse selectee.
- *July 3, 2023:* the Clearinghouse selectee must enter into contracts with incumbents and new entrants and submit such contracts to the search committee. For good cause shown, the search committee may request one brief extension of this deadline.
- *August 1, 2023:* the search committee must review contracts and notify the Bureau whether or not the contracts are approved and whether or not the Clearinghouse selection is finalized, subject to the Bureau determination that the selection criteria have been satisfied.

D. Duties of the Clearinghouse

Consistent with the delegation of authority in the *3.45 GHz Band Second R&O* and the Commission's rules, the Bureau herein sets forth the duties of the Clearinghouse. As in other spectrum band transition processes, the Bureau finds that an independent clearinghouse that oversees the reimbursement process for the 3.45 GHz band transition in a ''fair, and transparent manner will best serve the public interest.'' To that end, below the Bureau establishes procedures to prevent waste, fraud, and abuse in connection with relocation reimbursement disbursements.

Collection of reimbursement requests and supporting documentation. The Clearinghouse will be responsible for collecting from the two incumbent radiolocation operators a showing of their relocation costs for the transition as well as a demonstration of the reasonableness of those costs. The Clearinghouse will determine in the first instance whether costs submitted for reimbursement are reasonable. Parties seeking reimbursement for actual costs must submit to the Clearinghouse a claim for reimbursement, complete with sufficient documentation to justify the amount. The Clearinghouse shall review reimbursement requests to determine whether the costs are reasonable and to ensure they comply with the requirements adopted in the *3.45 GHz Band Second R&O.* The Clearinghouse shall give parties the opportunity to supplement any reimbursement claims that the Clearinghouse deems deficient.

Incumbents seeking reimbursement for their actual costs shall provide justification for those costs. The Clearinghouse shall specify a procedure for the submission of relocation cost documentation. Entities must document their actual expenses and shall submit such documentation pursuant to the procedures specified by the Clearinghouse at any time after those expenses have been incurred. The Clearinghouse may conduct audits of entities that receive reimbursements. Incumbents receiving reimbursements must make available all relevant documentation upon request from the Clearinghouse.

To determine the reasonableness of reimbursement requests, the Clearinghouse may consider the submission and supporting documentation and any relevant comparable reimbursement submissions. If the Clearinghouse determines that the amount sought for reimbursement is impermissible or unreasonable, it shall notify the party of any amount that it deems eligible for reimbursement. Approved, adjusted, or denied claims shall be simultaneously invoiced to the relevant claimant and the 3.45 Service licensees, allowing 30 days for review. To the extent that either a claimant or an 3.45 Service licensee wishes to dispute a final Clearinghouse decision, it may do so by providing written notice to the Bureau in the above-captioned docket within 30 days of invoice issuance. The Bureau shall resolve any such dispute. To the extent necessary, the Bureau may establish supplemental procedures for the resolution of any disputes that may arise during the transition. Once the 30-day invoice review period has run and absent any dispute, the Clearinghouse shall disburse approved claims from the reimbursement fund.

Apportionment of Costs Among 3.45 GHz Service Licensees. The Clearinghouse shall apportion costs among 3.45 GHz Service licensees and distribute payments to incumbent radiolocation licensees pursuant to the cost allocation structure established in the *3.45 GHz Band Second R&O* and the Commission's rules. Specifically, each 3.45 GHz Service licensee that is granted an initial license (not a renewal) ''must pay a *pro rata* portion to reimburse the costs incurred by authorized non-federal, secondary radiolocation licensees for relocating from the 3.3–3.55 GHz band.'' These costs shall include ''the cost of a clearinghouse's administration of the reimbursement, which the radiolocation licensees will pay initially and include in their reimbursable costs.'' The Clearinghouse shall determine a licensee's *pro rata* share of relocation costs by dividing the total actual costs of the incumbents' relocation (as approved by the Clearinghouse), ''by the total number of 3.45 GHz Service licenses granted, multiplied by the number of such licenses [a] Licensee will hold.'' Forty-five days after the Clearinghouse has entered into contracts with incumbents and new licensees, the Clearinghouse shall calculate the share of each 3.45 Service licensee based upon the reimbursement documentation received from the incumbents. The initial share shall incorporate any relocation-related costs incurred prior to the issuance of new flexible-use licenses (May 4, 2022) as well as from the time of issuance until the time of calculation. 3.45 GHz Service licensees shall pay their share of the initial relocation payments into a reimbursement fund, administered by the Clearinghouse, within 30 days of receiving an invoice or other written notification of the calculation of their initial share. The Clearinghouse shall draw from the reimbursement fund to pay approved, invoiced claims that are not subject to a dispute before the Bureau.

Going forward, the Clearinghouse shall calculate the 3.45 GHz Service licensees' share of relocation costs at least every six months, with the discretion to calculate the share on a more frequent basis as needed, and provide each licensee with the amount it owes no more than 30 days after each period that it calculates the licensees' share of relocation costs. Within 30 days of receiving the invoice or other written notification of the calculation of its share, each 3.45 GHz Service licensee shall pay its share of costs into the reimbursement fund. The Clearinghouse shall draw from the reimbursement fund to pay approved reimbursement claims. The Clearinghouse shall pay approved claims 30 days after invoice submission to the relevant claimant and 3.45 GHz Service licensees for their review so long as: (1) funding is available; and (2) there is no dispute regarding the underlying Clearinghouse decision before the Bureau. If the reimbursement fund does not have sufficient funds to pay approved claims before a six-month replenishment, the Clearinghouse shall provide 3.45 GHz Service licensees with 30 days' notice of the additional shares each must contribute. Any interest arising from the reimbursement fund shall be used to defray the costs of the transition for all 3.45 GHz Service licensees on a *pro rata* basis. At the end of the transition, the Clearinghouse shall return any unused amounts to the 3.45 GHz Service licensees according to their *pro rata* shares.

If a 3.45 GHz Service license is relinquished to the Commission prior to all relocation cost reimbursements being paid, the remaining payments will be distributed among the remaining 3.45 GHz Service licensees. If a new license

is issued for the previously relinquished rights prior to final transition payments becoming due, the new 3.45 GHz Service licensee will be responsible for the same *pro rata* share of relocation costs as the initial 3.45 GHz Service licensee on a going forward basis from the new license grant date. If a 3.45 GHz Service licensee assigns its rights through the secondary market, the new 3.45 GHz Service licensee will be obligated to fulfill all outstanding and future transition payment obligations associated with the license.

3.45 GHz Service licensees will, collectively, pay for the services of the Clearinghouse and staff. The Clearinghouse shall include and itemize its own reasonable costs in the cost estimates it uses to collect reimbursement fund payments from 3.45 GHz Service licensees. To ensure the Clearinghouse's costs are reasonable, the Clearinghouse shall provide to the Office of the Managing Director and the Wireless Telecommunications Bureau, by April 1 of each year beginning in 2024, an audited statement of funds expended to date, including salaries and expenses of the Clearinghouse. It shall also provide additional financial information as requested by the Office or Bureau to satisfy the Commission's oversight responsibilities and/or agency-specific and government-wide reporting obligations.

Dispute Resolution. As in the 3.7 GHz transition and consistent with our rules, the Clearinghouse here will serve in an administrative role and in a function similar to a special master in a judicial proceeding. In contrast with the *3.7 GHz Band R&O* (85 FR 64062, October 9, 2020), which enabled the Clearinghouse to mediate any cost disputes or refer the parties to alternative dispute resolution fora, here the Commission directed that any disputes arising from Clearinghouse decisions shall be decided by the Bureau. The Bureau reiterates that to the extent that either a claimant or a 3.45 Service licensee wishes to dispute a final Clearinghouse decision, it may do so by providing written notice to the Bureau in the above-captioned docket within 30 days of invoice issuance. To the extent that a 3.45 Service licensee wishes to dispute the calculation of its *pro rata* contributions to the reimbursement fund, or any transition-related payment obligation other than a reimbursement claim invoice, it may do so by providing written notice to the Bureau in the above-captioned docket within 30 days of invoice issuance or other written notification of its payment obligation. To the extent necessary, the Bureau may establish supplemental procedures for the resolution of any disputes that may arise during the transition.

Reports to the Bureau. The Clearinghouse shall provide certain information and reports to the Commission to facilitate our oversight of the transition. Each quarter, the Clearinghouse shall submit progress reports to the Bureau that detail the status of reimbursement funds available, the payments issued, and the amounts collected from licensees. The first such report must be filed no later than April 1, 2024. The reports must account for all funds spent, including the Clearinghouse's own expenses (including salaries and fees paid to law firms, accounting firms, and other consultants). The Clearinghouse shall provide to the Wireless Telecommunications Bureau and the Office of the Managing Director additional information upon request.

No later than 18 months after the release of this final agency action, the Clearinghouse must issue a special, audited report identifying any issues that have not already been referred to the Commission as well as what actions, if any, need to be taken for the Clearinghouse to complete its obligations (including the estimated costs and time frame for completing that work).

Bureau Oversight. To ensure the timely and efficient transition of the band, the Bureau will provide the Clearinghouse with any needed clarifications or interpretations of the Commission's rules or orders issued by the Commission or Bureau. As noted above, the Bureau and the Office of the Managing Director may request any documentation from the Clearinghouse necessary to provide guidance or carry out oversight.

The Bureau will issue a Public Notice upon receipt of a request of the Clearinghouse to wind down and suspend operations. If no material issues are raised within 15 days of the release of said Public Notice, the Bureau may grant the Clearinghouse's request to suspend operations on a specific date. 3.45 GHz Service licensees must pay all transition costs incurred and invoiced prior to the date set forth in the Public Notice.

E. Safeguards for Clearinghouse Operation

In the *3.7 GHz Band R&O,* the Commission stated that the Clearinghouse should operate ''pursuant to Commission rules and oversight, to mitigate financial disputes among stakeholders, and to distribute payments in a timely manner.'' 35 FCC Rcd 2343, 2446, para. 255 (2020). In addition, the Commission concluded that it needed to ''establish measures to prevent waste, fraud, and abuse with respect to reimbursement disbursements'' and that the Clearinghouse should adopt ''robust privacy and data security best practices in its operations.'' *Id.* para. 277. The Bureau agrees that such measures are likewise appropriate as part of the 3.45 GHz transition.

CTIA proposes a series of ''appropriate safeguards'' to protect all involved stakeholders and ''ensure the integrity of the process.'' Given the Commission's directive in this proceeding to develop and implement a Clearinghouse selection process similar to the process used in the 3.7 GHz proceeding, the Bureau concludes those safeguards proposed by CTIA, which are consistent with the processes articulated in the *3.7 GHz Band R&O,* should be adopted here. Thus, the Clearinghouse here must:

- Process claims consistent with the *3.45 GHz Band Second R&O,* and any clarifications issued by the Commission or the Bureau;
- Operate in a fair and transparent manner;
- Adopt a process for protecting confidential information;
- Hold deposits to minimize the risk of loss, (*e.g.,* all funds collected for reimbursement must be placed in a reputable financial institution and may only be invested in U.S. Treasury bonds); and
- Specify timing for the reimbursement process.

In addition, consistent with the need to prevent waste, fraud, and abuse in its handling of reimbursement funds, all Clearinghouse accounting related to such funds is subject to an annual audit to be performed by an independent third party selected by the Clearinghouse. The Clearinghouse shall report to the FCC all evidence and/or allegations of suspected fraud, waste, or abuse related to the 3.45 GHz relocation program, along with an initial assessment of their credibility and substantiality. Further, the Clearinghouse shall establish procedures enabling outside parties to report allegations of fraud, waste, or abuse to the RPC, and maintain a log of all such allegations that it receives. Parties seeking to report claims of fraud, waste, and abuse directly to the FCC may do so either by phone (202–418–1940) or electronically (*345clearinghouse@fcc.gov*).

To the extent that any adjustments to the Clearinghouse process or administration are necessary going forward, the Commission delegated authority to the Bureau to make such

necessary modifications. Should the Clearinghouse violate or otherwise fail to comply with the Commission's rules, the Clearinghouse's authority to operate may be terminated and, subject to the delegated authority discussed above, the selection of a new clearinghouse may be initiated.

F. CTIA Waiver Requests

CTIA requests that certain rules relating to the operation of the Clearinghouse be waived in order to allow reimbursement payments directly from 3.45 GHz Service licensees to incumbent radiolocation service operators and to permit the Bureau to determine allowable costs for reimbursement as an initial matter. If granted, CTIA's requests would strip the Clearinghouse of its core functions—determining reasonable reimbursement costs, billing and collecting reimbursement funds from new entrants, and disbursing payments to incumbents—and would reduce the Clearinghouse's role to essentially an accounting function. The Bureau finds that CTIA's requests are not for waivers but rather appear to seek rule changes. As such, they are essentially untimely requests to reconsider decisions made by the Commission in the *3.45 GHz Band Second R&O* and are beyond the scope of the authority delegated to the Bureau in establishing procedures to select and administer a Clearinghouse. The Bureau therefore dismisses CTIA's requests.

IV. Ordering Clauses

Accordingly, *it is ordered* that, pursuant to sections 2, 4(i), 5(c), 157, 301, 303, 307, 308, 309, of the Communications Act of 1934, as amended, as well as the Commercial Spectrum Enhancement Act, Public Law 108–494, 118 Stat. 3986 (Dec. 23, 2004) as amended, and the MOBILE NOW Act, Public Law 115–141, 132 Stat. 1098, Div. P, Title VI, sec. 603 (Mar. 23, 2018), 47 U.S.C. 152, 154(i), 155(c), 157, 301, 303, 307, 308, 309, 309(j)(3)(B), 309(j)(4)(D), 923(g), 928, 1502, by the Beat China by Harnessing Important, National Airwaves for 5G Act of 2020, Public Law 116–260, Division FF, Title IX, Sec. 905, and by the authority delegated in paragraph 163 of the *3.45 GHz Second R&O,* the Order *is hereby adopted.*

It is further ordered, that, pursuant to the authority delegated in §§ 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, 0.331, CTIA's Waiver Requests are *denied.*

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the Order shall be effective 30 days after publication in the **Federal Register**.

Federal Communications Commission.

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2022–27820 Filed 12–21–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–2022–0128]

RIN 2126–AC48

Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA amends its Hazardous Materials Safety Permits regulations to incorporate by reference the April 1, 2022, edition of the Commercial Vehicle Safety Alliance's (CVSA) handbook (the handbook) containing inspection procedures and Out-of-Service Criteria (OOSC) for the inspection of commercial motor vehicles used in the transportation of transuranic waste and highway route-controlled quantities of radioactive material. The OOSC provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for these inspections. Through this rule, FMCSA incorporates by reference the April 1, 2022, edition of the handbook.

DATES: Effective January 23, 2023. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of January 23, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. José Cestero, Vehicle and Roadside Operations Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–5541, *jose.cestero@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

I. Availability of Rulemaking Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2022-0128/document* and choose the document to review. To view comments, click this final rule, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Executive Summary and 1 CFR 51

This final rule updates an incorporation by reference found at 49 CFR 385.4(b)(1) and referenced at § 385.415(b). The provision at § 385.4(b)(1) currently references the April 1, 2021, edition of CVSA's handbook titled ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' The CVSA handbook contains inspection procedures and OOSC for inspections of shipments of transuranic waste and highway route-controlled quantities of radioactive material. The

OOSC, while not regulations, provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for inspections. The material is available, and will continue to be available, for inspection at the FMCSA, Office of Safety, 1200 New Jersey Avenue SE, Washington, DC 20590 (Attention: Chief, Compliance Division) at (202) 366–1812. The document may be purchased from the Commercial Vehicle Safety Alliance, 99 M Street SE, Suite 1025, Washington, DC 20003, (202) 998–1002, *cvsahq@cvsa.org.*

Fourteen updates distinguish the April 1, 2022, handbook edition from the 2021 edition. The updates are all described in detail in the September 7, 2022, notice of proposed rulemaking (NPRM) for this rule (87 FR at 48141). The incorporation by reference of the 2022 edition does not impose new regulatory requirements.

III. Abbreviations

CDL Commercial Driver's License
CVSA Commercial Vehicle Safety Alliance
DOT Department of Transportation
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
FR Federal Register
MCMIS Motor Carrier Management Information System
OOS Out-of-Service
OOSC Out-of-Service Criteria
RFA Regulatory Flexibility Act
UMRA The Unfunded Mandates Reform Act of 1995
U.S.C. United States Code

IV. Legal Basis for the Rulemaking

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits, the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on hazardous materials safety permits. The FMCSA Administrator has been delegated authority under 49 CFR 1.87(d)(2) to carry out the rulemaking functions vested in the Secretary of Transportation. Consistent with that authority, FMCSA has promulgated regulations under 49 CFR part 385, subpart E to address the congressional mandate on hazardous materials safety permits. Those regulations are the underlying provisions to which the material incorporated by reference discussed in this final rule is applicable.

V. Background

In 1986, the U.S. Department of Energy and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service (OOS) conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections on shipments of transuranic waste and highway route-controlled quantities of radioactive material. Thereafter, CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select radiological shipments includes inspection procedures, enhancements to the North American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' As of January 1, 2005, all vehicles and carriers transporting highway route-controlled quantities of radioactive material must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the United States. All CMVs transporting highway route-controlled quantities of radioactive material shipments into the United States must also pass the North American Standard Level VI Inspection either at the shipment's point of origin or when the shipment enters the United States.

Section 385.415 of title 49, Code of Federal Regulations, prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. Section 385.415(b) requires that motor carriers ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a highway route-controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of CVSA's handbook titled ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.''

Covid–19 affected the number of roadside inspections for Level I–Level VI primarily during 2020 and 2021. In 2018–2019 approximately 3.5 million Level I–Level VI inspections were performed annually, as compared to 2020–2021 where approximately 2.7 million Level I–Level VI inspections were performed annually. Across all years, nearly 96 percent of these inspections in each year were Level I, Level II, and Level III inspections. During 2018–2019 an average of 1,010 Level VI inspections were performed annually which dropped to an average of 600 annually during 2020–2021 due to Covid–19. On an annual basis Level VI inspections comprise only 0.02 percent of all inspections and, on average, OOS violations were cited in only 6 Level VI inspections annually (0.6 percent). In comparison, on average, OOS violations were cited in 26 percent of all Level I, 25 percent of all Level II, and 6 percent of all Level III inspections annually across 2018–2021 irrespective of Covid–19. As these statistics demonstrate, OOS violations are cited in a far lower percentage of Level VI inspections than Level I, II, and III inspections, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

The changes to the 2022 edition of the CVSA handbook are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As discussed below, FMCSA does not expect the changes made in the 2022 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections.

VI. Discussion of Proposed Rulemaking and Comments

A. Proposed Rulemaking

FMCSA published a NPRM on August 8, 2022 (87 FR 48141). Whereas the incorporation by reference found at 49 CFR 385.4 and referenced at 49 CFR 385.415(b) references the April 1, 2021, edition of CVSA's ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route-Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,'' the NPRM proposed to incorporate by reference the April 1, 2022, edition. Fourteen updates distinguish the April 1, 2022, edition from the 2021 edition. Each of the changes was described and discussed in detail in the NPRM. Generally, the changes serve to clarify or provide additional guidance to inspectors

regarding uniform implementation and application of the out-of-service criteria, and none is expected to affect the number of out-of-service violations cited during Level VI inspections. The incorporation by reference of the 2022 edition does not change what constitutes a violation of FMCSA regulations.

B. Comments to the NPRM

FMCSA solicited comments concerning the NPRM for 30 days ending September 7, 2022. By that date, one comment was received from CVSA, which commended FMCSA for publishing the NPRM and encouraged FMCSA to finalize the rule and update the incorporation by reference.

C. Changes From the NPRM

FMCSA makes an additional revision to 49 CFR 385.4(b) in this final rule to update the address for CVSA. This change is non-substantive and ensures that the incorporation by reference information in § 385.4 is accurate and up-to-date.

VII. Section-by-Section Analysis

Section 385.4 Matter Incorporated by Reference

Paragraph (a) of § 385.4 is amended to conform with Office of Federal Register requirements for incorporation by reference paragraphs in regulatory text. The introductory text to paragraph (b) is amended by updating the address for CVSA. Paragraph (b)(1) is amended by replacing the reference to the April 1, 2021, edition date with a reference to the new edition date of April 1, 2022.

VII. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under that E.O.

The final rule updates an incorporation by reference from the April 1, 2021, edition to the April 1, 2022, edition of CVSA's handbook titled ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' FMCSA reviewed its MCMIS data on inspections performed from 2018 to 2021 and does not expect the handbook updates to have any effect on the number of OOS violations cited during Level VI inspections. Therefore, the final rule's impact would be de minimis.

B. Congressional Review Act

This rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).[1]

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. None of the updates from the 2022 edition impose new requirements or make substantive changes to the FMCSRs.

When an Agency issues a rulemaking proposal, the RFA requires the Agency to ''prepare and make available an initial regulatory flexibility analysis'' that will describe the impact of the proposed rule on small entities (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the final rule is not expected to impact a substantial number of small entities. FMCSA received no comments in response to the NPRM that would cause the Agency to reconsider the initial determination that this rulemaking is not expected to impact a substantial number of small entities. This final rule updates an incorporation by reference found at § 385.4(b)(1) and referenced at § 385.415(b), and incorporates by reference the April 1, 2022, edition of the CVSA handbook. The changes to the 2022 edition of the CVSA handbook from the 2021 edition are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As noted above, FMCSA does not expect the changes made in the 2022 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections in the United States. Accordingly, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,[2] FMCSA wants to assist small entities in understanding this rulemaking so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see *https://www.sba.gov/about-sba/oversight-advocacy/office-national-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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement

[1] A ''major rule'' means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (49 CFR 389.3).

[2] Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 $178 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2021 levels) or more in any 1 year. Though this rulemaking would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This rulemaking contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.''

FMCSA has determined that this rulemaking does not have substantial direct costs on or for States, nor does it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,[3] requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This rulemaking does not require the collection of personally identifiable information.

I. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 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.

J. National Environmental Policy Act of 1969

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph 6(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The requirements in this rulemaking are covered by this CE.

List of Subjects in 49 CFR 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, part 385, as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; Sec. 113(a), Pub. L. 103–311, 108 Stat. 1673, 1676; Sec. 408, Pub. L. 104–88, 109 Stat. 803, 958; Sec. 350, Pub. L. 107–87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 2. Revise § 385.4 to read as follows:

§ 385.4 Matter incorporated by reference.

(a) Certain material 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. All approved incorporation by reference (IBR) material is available for inspection at the FMCSA and at the National Archives and Records Administration (NARA). Contact FMCSA at: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Ave. SE, Washington, DC 20590; Attention: Chief, Compliance Division at (202) 366–1812. For information on inspection at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the source in the following paragraph of this section.

(b) Commercial Vehicle Safety Alliance (CVSA), 99 M Street SE, Suite 1025, Washington, DC 20003, telephone (202) 998–1002, *www.cvsa.org.*

(1) ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,'' April 1, 2022, incorporation by reference approved for § 385.415(b).

(2) ''Operational Policy 4: Inspector Training and Certification'', Revised April 29, 2021 (CVSA Operational Policy 4); incorporation by reference approved for § 385.207. (Also available at *www.fmcsa.dot.gov/certification*).

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–27774 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–EX–P

[3] Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2019–0068; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BE12

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Florida Bristle Fern

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Florida bristle fern (*Trichomanes punctatum* ssp. *floridanum*) under the Endangered Species Act of 1973 (Act), as amended. In total, approximately 1,698 hectares (ha) (4,195 acres (ac)) fall within 10 units of critical habitat in Miami-Dade and Sumter Counties, Florida. This rule extends the Act's protections to the Florida bristle fern's designated critical habitat.

DATES: This rule is effective January 23, 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.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Florida Ecological Services Field Office, 1339 20th Street, Vero Beach, FL 32960; telephone 772–562–3909.

The coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2019–0068, at *https://www.fws.gov/office/florida-ecological-services/library,* and at the Florida Ecological Services Field Office at the Vero Beach address provided above. Any additional tools or supporting information that we developed for this critical habitat designation will be available at the U.S. Fish and Wildlife Service website and Field Office identified above and at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lourdes Mena, Classification and Recovery Division Manager, U.S. Fish and Wildlife Service, Florida Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; by telephone 904–731–3134; or by facsimile 904–731–3045. 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 section 4(a)(3) of the Act, if we determine that a species is an endangered or threatened species, we must designate critical habitat to the maximum extent prudent and determinable. We published a final rule to list the Florida bristle fern as an endangered species on October 6, 2015 (80 FR 60440). Designations of critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process.

What this document does. This rule finalizes a designation of critical habitat for the Florida bristle fern (*Trichomanes punctatum* ssp. *floridanum*) consisting of 10 units comprising approximately 1,698 ha (4,195 ac) in Miami-Dade and Sumter Counties, Florida.

The basis for our action. Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation of critical habitat on the basis of the best available scientific data and after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Economic analysis. In accordance with section 4(b)(2) of the Act, we prepared an economic analysis of the impacts of designating critical habitat for the Florida bristle fern. We published the announcement of, and solicited public comments on, the draft economic analysis (DEA; 85 FR 10371, February 24, 2020). Because we received no comments on the DEA, we adopted the DEA as a final version. The final economic analysis (IEc 2020, entire) is available at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2019–0068.

Peer review and public comment. 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 actions under the Act, we sought the expert opinions of independent specialists with scientific expertise that included familiarity with the species, the geographic regions in which the species occurs, and conservation biology principles. The purpose of peer review is to ensure that our designation is based on scientifically sound data and analyses. We invited these peer reviewers to comment on our specific assumptions and conclusions in the critical habitat proposal during the public comment period for the February 24, 2020, proposed rule. We received responses from two peer reviewers on our technical assumptions and analysis, and on whether or not we used the best scientific data available. These peer reviewers generally concurred with our methods and conclusions, and they provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated into this final designation of critical habitat. We also considered all comments and information we received from the public during the comment period for the proposed designation of critical habitat for the Florida bristle fern and the associated DEA (85 FR 10371; February 24, 2020).

Previous Federal Actions

On November 9, 2009, the Florida bristle fern was first recognized as a candidate for possible future listing (74 FR 57804). On October 9, 2014, we proposed to list the Florida bristle fern as an endangered species (79 FR 61136). On October 6, 2015, we finalized the listing for the subspecies as an endangered species (80 FR 60440). On February 24, 2020, we proposed to designate critical habitat for the Florida bristle fern (85 FR 10371). Please refer to the October 9, 2014 (79 FR 61136), proposed listing rule for a more detailed description of Federal actions regarding the Florida bristle fern.

Summary of Changes From the Proposed Rule

This final rule incorporates changes to our proposed rule (85 FR 10371; February 24, 2020) based on the comments and information we received. As a result, the final designation of critical habitat reflects the following changes from the February 24, 2020, proposed rule (85 FR 10371):

1. We revised Matheson Hammock (SF 1) to include additional areas as critical habitat. This unit was originally proposed as 16 ha (39 ac) and now consists of approximately 22 ha (55 ac), which is an increase of approximately 41 percent for this unoccupied unit.

2. We revised Snapper Creek (SF 2) to include additional areas as critical habitat. This unit was originally proposed as 3 ha (8 ac) and now consists of approximately 6 ha (15 ac),

which is an increase of approximately 88 percent for this unoccupied unit.

3. We added Charles Deering Estate Hammock as a new unoccupied critical habitat unit (SF 3). This unit consists of approximately 43 ha (106 ac), which is an increase of approximately 3 percent of the total proposed critical habitat acreage.

4. We revised Castellow and Ross Hammocks (proposed SF 3; now SF 4) to include additional areas as critical habitat. This unit was originally proposed as 38 ha (93 ac) and now consists of approximately 56 ha (139 ac), which is an increase of approximately 48 percent for this occupied unit.

5. We revised the unit number for Silver Palm Hammock (proposed SF 4; now SF 5).

6. We revised Hattie Bauer Hammock (proposed SF 5; now SF 6) to include additional areas as critical habitat. This unit was originally proposed as 3 ha (8 ac) and now consists of approximately 6 ha (16 ac), which is an increase of approximately 100 percent for this occupied unit.

7. We revised Fuchs and Meissner Hammocks (proposed SF 6; now SF 7) to remove 1.6 ha (4 ac) that do not contain the essential physical or biological features for the Florida bristle fern and to include an additional 0.4 ha (1 ac) as critical habitat. This unit now consists of approximately 10 ha (25 ac), which is a decrease of approximately 8 percent of the proposed area for this occupied unit.

8. We revised the unit number for Royal Palm Hammock (proposed SF 7; now SF 8), and we updated the acreage for this unit. The proposed rule reported the size of the unit as 60 ha (148 ac); in this rule, we update the size of the unit to 61 ha (150 ac). The change is due to using updated parcel data from Miami-Dade County (2021 data versus 2017 data).

9. We updated the coordinates or plot points from which the maps were generated. The information is available at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2019–0068, at *https://www.fws.gov/office/florida-ecological-services/library,* and from the Florida Ecological Services Field Office, Vero Beach.

10. Under Physical or Biological Features Essential to the Conservation of the Species in this rule:

- We corrected the critical habitat unit name and occupancy status where a long-term microclimate study occurred at Deering's Cutler Slough from Deering Snapper Creek to Charles Deering Estate Hammock.
- We changed ''underground'' to ''horizontal'' when describing rhizomal stem growth.
- In the description of nonnative, invasive plants that impact Florida bristle fern, we replaced love vine (*Cassytha filiformis*) with the most common aroid vines in the Miami-Dade County critical habitat units (golden pothos (*Epipremnum pinnatum* cv. *aureum*) and arrowhead vine (*Syngonium podophyllum*)).
- We added that invasive vines have become an increasing threat to hammocks in south Florida and can result in canopy collapse during hurricanes or other high wind events.

11. Under Special Management Considerations or Protection in this rule:

- We described the competitive interaction between native bryophytes and Florida bristle fern.
- We added language to describe that most of the critical habitat units are open to public access and that Florida bristle fern may be at risk of collection, damage from people climbing on them, and impacts to microclimate due to installation and improvements of trails.
- We added language discussing the potential short- to mid-term benefits of sea level rise to the fern through lifting a freshwater lens into previously drained areas or areas experiencing a lowered water table, which may restore or preserve a favorable microclimate for the subspecies.

12. We added the potential presence of gametophytes, the cryptic reproductive stage of the fern, at historically occupied areas to our reasoning for designating unoccupied critical habitat units in this rule.

13. In the description of each critical habitat unit in this rule, we removed language suggesting prescribed burning as an appropriate management tool for Florida bristle fern conservation.

Summary of Comments and Recommendations

Our proposed rule to designate critical habitat for the Florida bristle fern (85 FR 10371; February 24, 2020) opened a 60-day comment period on the proposed action and associated DEA, ending April 24, 2020. We requested that all interested parties submit written comments and we also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Miami Herald and Orlando Sentinel on March 4, 2020. During the comment period, we received two comment letters from peer reviewers directly addressing the proposed critical habitat designation and nine public comments. We did not receive any requests for a public hearing, and we did not receive any comments on the DEA. A majority of the comments supported the designation; none opposed the designation; and the letters from the peer reviewers included suggestions on how we could refine or improve the designation. We received some comments outside the scope of the designation (including information on recovery strategies) and, although we noted these comments, we only respond to comments herein that were within the scope of our action to designate critical habitat. All substantive information provided to us during the comment period has been incorporated directly into this final rule or is addressed below.

Peer Reviewer Comments

(1) Comment: Both peer reviewers suggested adding the following areas in Miami-Dade County to the critical habitat designation: Monkey Jungle (also known as Cox Hammock), Smathers Four Fillies Farm (contiguous to and formerly part of Snapper Creek Hammock), the Charles Deering Estate Hammock (also known as Addison Hammock), and Timms Hammock (within Camp Owaissa Bauer). The reviewers noted that these areas contain one or more of the physical or biological features defined in the proposed critical habitat rule and that Monkey Jungle, Smathers Four Fillies Farm, and the Charles Deering Estate Hammock contained documented historical records of the Florida bristle fern. Timms Hammock (within Camp Owaissa Bauer) was not known to have historical records but was noted to have excellent habitat for the Florida bristle fern and is close to another occupied unit (Hattie Bauer Hammock).

Our Response: All these areas, with the exception of Smathers Four Fillies Farm, were included in the request for information in the proposed critical habitat rule. We asked for information regarding their occupancy status and habitat suitability, whether physical or biological features essential to the conservation of the subspecies are present, and whether they should be included in the designation and why. After re-examining historical records, meeting with land managers, and re-analyzing GIS data, we added Smathers Four Fillies Farm and Charles Deering Estate Hammock to the critical habitat designation as described in Summary of Changes from the Proposed Rule, above, because we have determined they are

essential to the conservation of the species and meet the regulatory criteria. Below, we describe our response for not including Monkey Jungle and Timms Hammock to the critical habitat designation.

Monkey Jungle—The documented occurrence from Monkey Jungle (in 1989 by A. Cressler; Cressler 1991, entire) was unconfirmed due to no collections or voucher records. Monkey Jungle is privately owned, and researchers have not been permitted access to survey the entire area for Florida bristle fern (Adimey 2013, pers. comm.; van der Heiden 2013a, pers. comm.; Possley 2021, pers. comm.), so occupancy by the fern is unknown, although it was not found in the areas that were surveyed. Even though this area may have one or more of the physical or biological features essential to the conservation of the Florida bristle fern, the area has a high number of invasive plant species (Adimey 2013, pers. comm.; Possley 2020, pers. comm.), disturbance due to development and management of the park, and potential herbivory by monkeys (Adimey 2013, pers. comm.). Based on these factors, it is unlikely that this area was occupied by the Florida bristle fern at the time of listing or that it is essential for the conservation of the subspecies. Therefore, we are not adding Monkey Jungle as unoccupied critical habitat to the critical habitat designation.

Timms Hammock/Camp Owaissa Bauer—Timms Hammock is located within Camp Owaissa Bauer, which is owned and managed by Miami-Dade County. Even though this area contains some or all of the physical or biological features essential to the conservation of the Florida bristle fern, it does not contain historical or known extant populations of Florida bristle fern nor is it contiguous to currently or historically occupied areas. Because our methodology for determining which unoccupied areas were essential for the conservation of the species excludes areas that do not have historical records, regardless of habitat suitability (see Criteria Used to Identify Critical Habitat, below), Timms Hammock/Camp Owaissa Bauer does not meet the statutory requirement that unoccupied critical habitat be essential for the conservation of the species and is not included in the critical habitat designation.

(2) Comment: One peer reviewer suggested expanding the size of five units in Miami-Dade County (Matheson Hammock, Snapper Creek, Castellow and Ross Hammocks, Hattie Bauer Hammock, and Fuchs and Meissner Hammocks) to include contiguous pieces of hammock that seemed to be excluded despite meeting all habitat criteria. The reviewer noted that many of these parcels are under active forest management by public and private entities (private through a property tax incentive program and/or a local regulatory requirement). All parcels that meet forest and substrate characteristics and that are contiguous to the proposed critical habitat units were considered by the reviewer to provide habitat critical to the survival of Florida bristle fern.

Our Response: To clarify which parcels the reviewer was suggesting adding to the units, we held several discussions with the peer reviewer and the landowners or managers of each parcel to get more information about the suitability of each parcel. We only considered adding parcels to proposed units that met the criteria for designating occupied or unoccupied critical habitat units (see Criteria Used to Identify Critical Habitat, below). After re-examining historical records, meeting with land managers, and re-analyzing GIS data, we added contiguous hammock parcels to Unit SF 1 (Matheson Hammock), Unit SF 2 (Snapper Creek), Unit SF 3 (now SF 4; Castellow and Ross Hammocks), Unit SF 5 (now SF 6; Hattie Bauer Hammock), and Unit SF 6 (now SF 7; Fuchs and Meissner Hammocks) as described in Summary of Changes from the Proposed Rule, above, because we have determined they meet the statutory and regulatory criteria for critical habitat.

(3) Comment: One peer reviewer suggested adding the following areas to the critical habitat designation: Camp Redlands, Bill Sadowski Park, Whispering Pines Hammock, Black Creek Forest, Harden Hammock, Silver Palm Groves, Camp Owaissa Bauer, Lucille Hammock, Loveland Hammock, and Holiday Hammock in Miami-Dade County. The reviewer noted that these areas contain one or more of the physical or biological features essential to the conservation of Florida bristle fern as defined in the proposed critical habitat rule. The reviewer analyzed relative elevation, presence of limestone outcroppings, presence of surrogate ferns (*Asplenium verecundum* and *Tectaria fimbriata*), canopy cover, and hydrology connection when suggesting areas to add to the critical habitat designation. The reviewer noted that identifying rare fern presence as a surrogate for habitat appropriateness was similar to how the proposed listing considered potential habitat in central Florida.

Our Response: While these areas contain one or more of the physical or biological features essential to the conservation of the Florida bristle fern, they do not contain historical or known extant populations of Florida bristle fern nor are they contiguous to currently or historically occupied areas. Also, the proposed rule did not consider rare fern presence as a surrogate for habitat appropriateness when designating critical habitat units in central or south Florida. Because our methodology for designating unoccupied critical habitat excludes any areas that do not have historical records, regardless of habitat suitability (see Criteria Used to Identify Critical Habitat, below), these areas do not meet our criteria for determining that unoccupied areas are essential for the conservation of Florida bristle fern and are not included in the final critical habitat designation.

Comments From States

Section 4(b)(5)(A)(ii) of the Act requires the Service to give actual notice of any designation of lands that are considered to be critical habitat to the appropriate agency of each State in which the species is believed to occur and invite each such agency to comment on the proposed regulation. Section 4(i) of the Act states that the Secretary shall submit to the State agency a written justification for her failure to adopt regulations consistent with the agency's comments or petition. We did not receive any written comments from the State of Florida on the proposed critical habitat designation for the Florida bristle fern.

Public Comments

(4) Comment: One commenter urged the Service to add more clear reasoning behind our decision for each unoccupied area included.

Our Response: We have added language to the rule to provide more clarity for each unoccupied area. This information further supports including currently unoccupied, but historically occupied, areas to the critical habitat designation. Further information about our rationale for why unoccupied critical habitat is needed for the subspecies can be found in *Areas Outside the Geographic Area Occupied at the Time of Listing,* below. In addition, information is provided in each unit description below with the rationale for each unit.

Background

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations 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 the governing law 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)); *In re: Cattlemen's Ass'n,* No. 22–70194 (9th Cir. Sept. 21, 2022) (staying the district court's order vacating the 2019 regulations until the district court resolved a pending motion to amend the order); *Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–5206–JST, Doc. Nos. 197, 198 (N.D. Cal. Nov. 16, 2022) (granting plaintiffs' motion to amend July 5, 2022 order and granting government's motion for remand without vacatur).

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The implementing regulations at 50 CFR 424.12(b)(2) further delineate unoccupied critical habitat by setting out three specific parameters: (1) when designating critical habitat, the Secretary will first evaluate areas occupied by the species; (2) the Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species; and (3) for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for

recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Space for Individual and Population Growth and for Normal Behavior

Florida bristle fern occurs exclusively in upland hardwood forest hammock habitats that support the climate (stable humidity and temperature), hydrology, canopy cover, and limestone substrates necessary for the subspecies to persist, grow, and reproduce. Upland hardwood forests consist of a mosaic of natural hammock and hardwood communities primarily characterized as mesic, hydric, and rockland hammocks, or intermixed hammock strands, with associated transitional wetland matrix/hydric and upland communities (Florida Natural Areas Inventory [Inventory] 2010, pp. 16–28). The hammock habitats occur within and as part of larger matrices of hydric or pine rockland communities (Inventory 2010, pp. 16–28). Detailed descriptions of these natural communities can be found in Natural Communities of Florida (Inventory 2010, pp. 16–28) and in the final listing rule for Florida bristle fern (80 FR 60440; October 6, 2015). Natural communities include both wetland and upland communities having intact vegetation (*i.e.,* not cleared).

The current range of Florida bristle fern includes two metapopulations, one in south Florida (Miami-Dade County) and one in central Florida (Sumter County). The south Florida metapopulation is currently composed of four known populations, and the central Florida metapopulation is composed of two known populations. The south Florida populations of Florida bristle fern occur in communities characterized by primarily rockland hammock or closed tropical hardwood hammocks occurring within a larger matrix of pine rockland on the Miami Rock Ridge. In central Florida, the populations of the subspecies occur in predominantly mesic hammocks situated in a mosaic of hydric hammock and mixed wetland hardwoods. These internal or inter-mixed strands of hammock within the forested communities are characterized by fairly dense to extremely dense canopy cover, which prevents drastic changes in temperature and humidity and the desiccation of the fern from direct sunlight and drying winds.

The matrix of landscapes associated with the hammocks or the intermixed strands of these communities support the suitable conditions necessary for the growth and reproduction of Florida bristle fern. Suitable habitat quality and size are necessary to ensure the maintenance of the microclimate conditions (stable temperature, high humidity, moisture, canopy shade, and shelter) essential to the subspecies' survival and conservation. These combined factors establish the fern's microclimate: (a) The level of protection/exposure the fern experiences given its location in a

solution hole (a limestone solution feature; in the Miami Rock Ridge, they consist of steep-sided pits, varying in size, formed by dissolution of subsurface limestone followed by a collapse above (Snyder *et al.* 1990, p. 236)) or on an exposed boulder; (b) the quality of the solution hole or exposed boulder substrate; and (c) the amount of canopy cover. The surrounding vegetation is a key component in producing and supporting this microclimate. There are differences in vegetation and substrate characteristics between the two geographically distant metapopulations that can account for differences in the amount of habitat needed to support the fern. For example, Florida bristle fern in south Florida occurs in a tropical climate and attaches to the interior walls of well-protected and insulated solution holes. By comparison, in central Florida, Florida bristle fern occurs in a more temperate climate and is found more exposed by attaching to a substrate that is above the surface. The size and quality of the intact habitat surrounding the exposed substrate can play a greater role in providing and supporting the stable, shaded, and wind-protected microclimate conditions the fern needs. Therefore, the microclimate conditions (stable temperature, high humidity, canopy shade, and shelter) have the potential to be maintained (and the plant is able to persist) within smaller areas in south Florida than those needed to support the microclimate conditions in central Florida. For both metapopulations, intact upland hardwood forest and associated hammock habitat is an essential feature to the conservation of this subspecies, and sufficient habitat is needed to ensure the maintenance of the fern's microclimate and life processes (growth, dispersal).

Therefore, we identify upland hardwood forest hammock habitats of sufficient quality and size to sustain the necessary microclimate and life processes for Florida bristle fern to be a physical or biological feature essential to the conservation of this subspecies.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Substrate and Soils

Florida bristle fern is generally epipetric (grows on rocks) or epiphytic (grows non-parasitically upon another plant). In combination with the habitat characteristics discussed above, the subspecies requires exposed limestone substrate to provide suitable growing conditions for anchoring, nutrients, pH, and proper drainage (van der Heiden 2016, p. 1). Florida bristle fern prefers substrate having exposed oolitic (composed of minute, rounded concretions resembling fish eggs) limestone or limestone solution features (solution holes) filled with a thin layer of highly organic soil and standing water for part or all of the year. The limestone substrate occurs primarily as solution holes in south Florida and exposed limestone boulders in central Florida.

In south Florida, Florida bristle fern is currently found growing in rocky outcrops of rockland hammocks, in oolitic limestone solution holes, and, occasionally, on tree roots in limestone-surrounded areas (Nauman 1986, p. 181; Possley 2013a, pers. comm.). These rockland habitats are outcrops primarily composed of marine limestone representing the distinct geological formation of the Miami Rock Ridge, a feature that encompasses a broad area from Miami to Homestead, Florida, and narrows westward through the Long Pine Key area of Everglades National Park (Snyder *et al.* 1990, pp. 233–234). The limestone solution holes are considered specialized habitat within these hammock areas that host Florida bristle fern (Snyder *et al.* 1990, p. 247). The solution-hole features that dominate the rock surface in the Miami Rock Ridge are steep-sided pits formed by dissolution of subsurface limestone followed by the eventual collapse of the surface above (Snyder *et al.* 1990, p. 236). The limestone solution holes often have complex internal topography and vary in size and depth, from shallow holes a few centimeters deep to those that are several meters in size and up to several meters deep (Snyder *et al.* 1990, p. 238; Kobza *et al.* 2004, p. 154). The bottoms of most solution holes are filled with organic soils, while deeper solution holes penetrate the water table and have (at least historically) standing water for part of the year (Snyder *et al.* 1990, pp. 236–237; Rehage *et al.* 2014, pp. S160–S161). A direct relationship has been found between the length of time a solution hole contains water (hydroperiod length) and the habitat quality (vegetative cover) of the solution hole (Rehage *et al.* 2014, p. S161).

Oolitic limestone occurs in south Florida (and other locations in the world), but it does not occur in central Florida. In central Florida, Florida bristle fern resides on limestone substrate in high-humidity hammocks (van der Heiden 2013a, pers. comm.; van der Heiden 2016, p. 1). In the mesic hammocks on the Jumper Creek Tract of the Withlacoochee State Forest, the subspecies has been observed growing on exposed limestone rocks as small as 0.1 meters (m) (0.3 feet (ft)) tall as well as on larger boulders with tall, horizontal faces, and occurs alongside numerous other plant species, including rare State-listed species (*e.g.,* hemlock spleenwort (*Asplenium cristatum*) and widespread polypody (*Pecluma dispersa*)) (van der Heiden 2013b, pers. comm.; van der Heiden and Johnson 2014, pp. 7–8). Rock outcrops may also provide suitable substrate where the underlying Ocala limestone (a geologic formation of exposed limestone near Ocala, Florida) is near the surface.

Therefore, based on the information above, we identify exposed substrate derived from oolitic limestone, Ocala limestone, or exposed limestone boulders, which provide anchoring and nutritional requirements, to be a physical or biological feature essential to the conservation of Florida bristle fern.

Climate and Hydrology

Florida bristle fern is considered strongly hygrophilous (*i.e.,* growing or adapted to damp or wet conditions) and is generally perceived as restricted to constantly humid microhabitat (Krömer and Kessler 2006, p. 57; Proctor 2012, pp. 1024–1025). Features that allow for proper ecosystem functionality and a suitable microhabitat required for the growth and reproduction of the subspecies include a canopy cover of suitable density (*i.e.,* average canopy closure more than 75 percent) and humidity and moisture of sufficient levels and stability (on average, above approximately 90 percent relative humidity) (van der Heiden and Johnson 2014, p. 8; Possley 2015, pers. comm.; van der Heiden 2016, p. 18).

The relationship between moist habitats and the *Hymenophyllaceae* Family of ferns (filmy ferns), to which the *Trichomanes* species belongs, has been long observed and documented (Shreve 1911, pp. 187, 189; Proctor 2003, entire; Proctor 2012, p. 1024). In a tropical rain forest system, the diversity and number of filmy fern species is shown to have a direct relation to the air moisture (relative humidity) (Gehrig-Downie *et al.* 2012; pp. 40–42). While not in the same fern Family as the Florida bristle fern, a study of the rare temperate woodland fern, Braun's hollyfern (*Polystichum braunii*), found air humidity to be a key factor in species health, with stronger plant productivity occurring in higher humidity levels (Schwerbrock and Leuschner 2016, p. 5). Although a minimum suitable humidity level, or threshold, for Florida bristle fern has not been quantified for either

metapopulation of the subspecies, information from field studies indicates conditions of high and stable relative humidity are essential to the subspecies. Minor drops in ambient humidity may limit reproduction of the subspecies and can negatively impact overall health of the existing metapopulations, as well as inhibit the growth of new plants, impacting long-term viability (Possley 2013b, pers. comm.; van der Heiden 2013a, pers. comm.). This relationship was observed in Sumter County, where small drops (approximately 1 to 2 percent) in relative humidity associated with colder weather resulted in observed declines in the health of some clusters of Florida bristle fern within the local population (van der Heiden and Johnson 2014, p. 9).

The average relative humidity for hammocks in Sumter County remained near 95 percent for the duration of a September–November 2013 study (van der Heiden and Johnson 2014, pp. 8–9). Further, the minimum and maximum monthly average relative humidity from September 2013 to March 2015 for the two central Florida hammocks supporting Florida bristle fern were 88 and 99 percent and 89 and 100 percent, respectively (van der Heiden 2016, p. 18). The lowest monthly average relative humidity in each of the hammocks was 65 and 69 percent, respectively. In comparison, the minimum and maximum monthly average relative humidity documented outside of the hammock (from June 2014 to March 2015) was 68 and 93 percent, respectively, with a low monthly relative humidity of 51 percent. In summary, similar and consistently high average humidity values occurred between and within the two hammocks supporting the subspecies, and consistently higher relative humidity values were recorded in the hammocks compared to outside the hammocks.

Likewise, in south Florida, 8 years of data-log monitoring of Deering's Cutler Slough (the location of a known extirpated population, Charles Deering Estate Hammock, of Florida bristle fern) recorded an average of 90 percent relative humidity occurring within a solution hole compared to the 84 percent average relative humidity documented in the slough outside of the solution hole during the same time period (Possley *et al.* 2009, pp. 4–6; Possley 2015, pers. comm.).

The hammock environments are high or slightly elevated grounds that do not regularly flood but are dependent on a high water table to keep humidity levels high (Inventory 2010, pp. 19–28). The subspecies is affected by humidity at two spatial scales: the larger hammock community-scale and the smaller substrate (boulder/solution hole) microclimate-scale (van der Heiden and Johnson 2014, pp. 9–10). Moisture (precipitation and low evaporation) and humidity levels are likely factors limiting the occurrence of Florida bristle fern (Shreve 1911, p. 189; Proctor 2003, p. 726; Gehrig-Downie *et al.* 2012, p. 40). The high humidity levels discussed above and stable temperatures, moisture, and shading (cover) are all features considered essential to the subspecies and produced by the combination of:

(1) Solution hole or boulder microclimate;

(2) Organic, moisture-retaining soils (high soil moisture conditions);

(3) Hydrology of the surrounding or adjacent wetlands; and

(4) Protective shelter of the surrounding habitat minimizing effects from drying winds and/solar radiation.

Solution holes provide the limestone substrate and produce the necessary humid and moist microclimate needed by the subspecies in south Florida. In central Florida, the fern occurs in the more northerly portion of the hammocks and northern aspect of the limestone boulders, obtaining greater shading and moist conditions compared to the sunnier and drier south-facing portions of the hammocks and sides of boulders (van der Heiden and Johnson 2014, pp. 7, 31). Variances within hammocks, such as slight structural differences or proximity to water, also play an important part in where suitable microhabitat occurs in the hammock habitats. Intact hydrology and the connectivity of substrates to surface water and streams may play a role in spore and vegetative fragment dispersal for the subspecies (we provide more detail about this below, under *Sites for Reproduction, Germination, and Spore Production and Dispersal*). Soils associated with the hammock ecosystems consist of sands mixed with organic matter, which produce better drained soils than soils of surrounding or adjacent wetland communities. Soils in habitats of extant Florida bristle fern populations in south Florida consist of an uneven layer of highly organic soil and moderately well-drained, sandy, and very shallow soils (classified as Matecumbe muck). Soils in habitats of the central Florida metapopulation are predominantly sand and Okeelanta muck (80 FR 60440; October 6, 2015). For both metapopulations, a relatively high soil-moisture content and high humidity are maintained by dense litter accumulation, ground cover, and heavy shade produced by the dense canopy (Service 1999, pp. 3–99).

In addition, the protected hammock habitats are slightly higher in elevation than the surrounding habitat, which combined with the limestone substrate, leaf litter, and sandy soils, create a hydrology that differs from lower elevation habitats. It is this combination of hammock ecosystem characteristics (*i.e.,* closed canopy, limestone substrate, humid climate, higher elevation) occurring in hardwood forested upland communities as described earlier that are essential to the conservation of the subspecies.

Therefore, based on the information above, we identify a constantly humid microhabitat climate consisting of dense canopy cover, moisture, stable high temperature, and stable monthly average relative humidity of 90 percent or higher, with intact hydrology within hammocks and the surrounding and adjacent wetland communities, to be a physical or biological feature essential to the conservation of Florida bristle fern.

Cover and Shelter

Florida bristle fern occurs exclusively in hardwood hammock habitats having dense canopy, which provides shade necessary to support suitable microhabitat for the subspecies to persist, grow, and reproduce. In south Florida (Miami-Dade County), the extant populations of Florida bristle fern occur in communities classified as rockland hammocks on the Miami Rock Ridge. In central Florida (Sumter County), the extant populations of the subspecies occur in mesic hammocks, often situated in a mosaic of natural communities including hydric hammock and mixed wetland hardwoods.

The dense canopies of the hammock systems (including rockland and mesic hammocks) contribute to maintaining suitable temperature and humidity levels within this microclimate. The dense canopies found in these habitats minimize temperature fluctuations by reducing soil warming during the day and heat loss at night, thereby helping to prevent frost damage to hammock interiors (Inventory 2010, p. 25). In areas with greater temperature variations, as in central Florida, these benefits afforded by the dense canopy of both the mesic hammock and surrounding habitat combined are important to maintaining suitable conditions for Florida bristle fern. The rounded canopy profile of hammocks helps maintain mesic (moist) conditions by deflecting winds, thereby limiting desiccation (extreme dryness) during dry periods and reducing interior storm damage (Inventory 2010, p. 25). Changes

in the canopy can impact humidity and evaporation rates, as well as the amount of light available to the understory. Both known extant metapopulations of Florida bristle fern live in dense canopy habitat, with shady conditions, which may be obligatory due to the poikilohydric (*i.e.,* possess no mechanism to prevent desiccation) nature of some fern species including the Florida bristle fern (Krömer and Kessler 2006, p. 57).

While the proper amount of canopy is critical to the persistence of Florida bristle fern, the lower limit of acceptable canopy density has yet to be quantified for either metapopulation. Field observations in south Florida have found clusters of Florida bristle fern desiccated when the immediate canopy above plants was destroyed or substantially reduced, allowing high amounts of light into the understory (Possley 2019, entire); however, over the course of many months, these clusters eventually recovered. In addition, this dense, closed canopy may serve as a shield for Florida bristle fern to inhibit the growth of other plant species on the same part of an inhabited rock area (van der Heiden and Johnson 2014, p. 9). In central Florida, the average canopy closure where Florida bristle fern occurs has been estimated to be more than 75 percent (van der Heiden and Johnson 2014, p. 9). Although there are several occurrences in these mesic hammocks where sunlight can be observed through the canopy, generally the habitat is shaded throughout the year, with the lowest canopy cover recorded at 64 percent in December (van der Heiden and Johnson 2014, pp. 8, 20). This information was obtained from a study of short duration (September–December 2013), and it is likely that percent canopy cover and consequently shading would be greater in summer months when foliage is densest (van der Heiden and Johnson 2014, p. 8).

Surrounding habitat that minimizes the effects from drying winds and solar radiation and provides a stable and protective shelter is necessary for this fern to survive. A suitable habitat size and quality is necessary to provide a functioning canopy cover that maintains the microclimate conditions (humidity, moisture, temperature, and shade) essential to the conservation of the subspecies. Field observations of Florida bristle fern in central Florida found more robust and healthy ferns in an interior hammock with approximately 300 m (985 ft) of surrounding habitat between it and cleared pastureland. This was compared to ferns in a hammock that had only 100 m (328 ft) of surrounding habitat separating it from the edge of cleared pasture. The ferns located nearer the edge (*i.e.,* approximately within 100 m (328 ft)) of the adjacent cleared pasture had visible signs of stress, and these ferns appeared desiccated and had fewer reproductive bristles than the ferns in the hammock and with 300 m (985 ft) of surrounding vegetation (van der Heiden 2016, p. 3). These observations are consistent with findings that documented edge effects on ferns up to 200 m (656 ft) into the forest (Hylander *et al.* 2013, pp. 559–560). Edge effects included loss of individual plants, loss of percent canopy cover, and increased temperature, sunlight, and wind on the microclimate (Hylander *et al.* 2013, pp. 559–560; Silva and Schmitt 2015, pp. 227–228). There are no similar studies for the fern in Miami-Dade County, though it is assumed their occurrence in solution holes provides some protection from the edge effects of the hammock habitat.

Therefore, based on the information above, we identify dense canopy cover of surrounding native vegetation (at least 300 m (985 ft) as measured from the edge of and surrounding the boulder substrate for central Florida) that consists of the upland hardwood forest hammock habitats and provides shade, shelter, and moisture to be a physical or biological feature essential to the conservation of Florida bristle fern.

Sites for Reproduction, Germination, and Spore Production and Dispersal

Growth and reproduction of Florida bristle fern can occur through spore dispersal, rhizome (horizontal stem) growth, and clonal vegetative fragments (80 FR 60440; October 6, 2015). The habitats identified above provide plant communities, which require a self-maintaining closed canopy and climate-controlled interior, an adequate space for the rhizomal growth, dispersal of seeds, sporophyte and gametophyte survival, and recruitment of plant fragments.

While specific information on spore dispersal distances is largely unknown for this subspecies, the microclimate is found to be essential for spore germination and survival. Dispersal of spores, gametophytes, and vegetative fragments may take place via water-based methods, animals, and, to a lesser extent, wind-driven opportunities. In the *Hymenophyllaceae* Family of ferns, spores lack the capacity to withstand desiccation, are not known to be dispersed long distance through the wind, and depend upon the moist microclimate for growth and survival (Mohammad Rosli 2014, p. 21).

In terms of protecting the subspecies' genetic components, a recent study of Florida bristle fern chloroplast DNA found little genetic differentiation between the two metapopulations, which can indicate that both metapopulations are recently established from a single source or that there is a favoring of a genetic sequence (Hughes 2015, entire). Lower genetic variation in a population produces a lower effective population (the number of individuals that can undergo cross-fertilization). In such small populations, such as with Florida bristle fern, any loss of individuals may also be a loss of genetic information and a reduction of subspecies fitness (Fernando *et al.* 2015, pp. 32–34). Therefore, ensuring space for reproduction, germination, spore production, and dispersal of the subspecies helps ensure the conservation of genetic information and subspecies fitness.

Adequate space and the maintenance of the stable microclimate habitat support clonal growth as well as the reproductive stages of Florida bristle fern. The rare American hart's tongue fern (*Asplenium scolopendrium* var. *americanum*) is a species like the Florida bristle fern that relies on the specific microclimate conditions of high humidity, moisture, and shelter. In a study of the American hart's tongue fern, the presence of these microclimate habitat conditions determined the success of the fern's life-history processes (growth, reproduction, and spore production) (Fernando *et al.* 2015, p. 33).

Interior condition of the hammock microclimate (*e.g.,* humidity, temperature) are influenced by the hammock's own canopy and hydrology and the vegetative structure and hydrology of the surrounding habitat. For example, in south Florida, the pre-settlement landscape of the rockland hammocks on the Miami Rock Ridge occurred as ''small islands'' in a sea of pine rockland and seasonally flooded prairies, or transverse glades (shallow channels through the Miami Rock Ridge that had wet prairie vegetation and moved water out of the Everglades Basin toward the coast). It has been estimated that originally more than 500 hammocks occurred in this area, ranging in size from 0.1 ha (0.2 ac) to over 40 ha (100 ac) (Craighead 1972, p. 153). The vast majority of these hammocks have been destroyed, and those that remain are significantly reduced in size. In addition, the habitats surrounding the remaining rockland hammocks have been drastically altered or destroyed, primarily through urban and agricultural development, and, in many

cases, no longer function as effective or efficient buffers to protect rockland hammocks from the impacts of changes in temperature and humidity, or extreme weather or natural stochastic events (*e.g.,* frost, high winds, and hurricanes/tropical storms). This fragmentation and distance between hammocks can hinder water-based dispersal and the recruitment of new plants and gametophytes. Fragmentation may reduce the stable, protected microclimate conditions and the survivability of spores within that microclimate. Thus, the hammock microhabitat supporting the subspecies must be of a suitable minimum size with sufficiently dense canopy, substrate, and understory vegetation within a hammock's interior, and there must also be intact surrounding habitat of sufficient amount, distribution, and space to support appropriate growing conditions for Florida bristle fern across its range.

The central Florida metapopulation of Florida bristle fern occurs in two mesic hammocks, which exist as part of a wetland matrix of hydric hammock, mixed wetland hardwoods, cypress/tupelo floodplain swamp, and freshwater marsh. The surrounding existing suitable habitat and substrate are essential to providing space for growth, reproduction, and dispersal of the existing populations.

Therefore, we identify the habitats described as physical or biological features above that also provide suitable microhabitat conditions, hydrology, and connectivity that can support the subspecies' growth, distribution, and population expansion (including rhizomal growth, spore dispersal, and sporophyte and gametophyte growth and survival) to be a physical or biological feature essential to the conservation of Florida bristle fern.

Habitats Protected From Disturbance

Florida bristle fern can be outcompeted by other native, as well as nonnative, invasive species. Nonnative plants and native weeds, including a few of the most common invasive plants such as golden pothos (*Epipremnum pinnatum* cv. *aureum*), arrowhead vine (*Syngonium podophyllum*), Brazilian pepper (*Schinus terebinthifolius*), and Burma reed (*Neyraudia reynaudiana*), compete with Florida bristle fern for space, light, water, and nutrients; limit the subspecies' growth and abundance; and can make habitat conditions unsuitable for the subspecies. Nonnative plant species have affected hammock habitats where Florida bristle fern occurs, and as identified in the final listing rule (80 FR 60440; October 6, 2015), are considered one of the threats to the subspecies (Snyder *et al.* 1990, p. 273; Gann *et al.* 2002, pp. 552–554; Inventory 2010, pp. 22, 26). Invasive vines such as golden pothos, arrowhead vine, *Philodendron* spp., and *Monstera* spp., have become an increasing threat to hammocks in south Florida and can result in canopy collapse during hurricanes or other high wind events (Duncan 2020, pers. comm.). Nonnative plants can outcompete and displace Florida bristle fern in solution holes, and can blanket existing occurrences, blocking out all light and smothering the fern (Possley 2013c, pers. comm.). Native bryophytes, especially leafy liverworts such as *Neckeropsis undulata,* also compete with Florida bristle fern and gain the advantage in higher light levels (Possley 2019, pp. 3–4). In addition to the negative impacts of nonnative and native invasive plants, feral hogs can impact substrate and vegetation (directly) and habitat suitability (indirectly). Rooting from hogs can destroy existing habitat by displacing smaller rocks where the subspecies grows and potentially damage or eliminate a cluster of the fern (Werner 2013, pers. comm.). In the Withlacoochee State Forest, damaged areas from feral hogs are also more susceptible to invasion from nonnative plant species (Werner 2013, pers. comm.).

Therefore, based on the information above, we identify a plant community of predominantly native vegetation that is minimally disturbed or free from human-related disturbance, with either no competitive nonnative, invasive plant species, or such species in quantities low enough to have minimal effect on Florida bristle fern, to be a physical or biological feature essential to the conservation of Florida bristle fern.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to Florida bristle fern conservation from studies of the species' habitat, ecology, and life history as described above, in the final listing rule (80 FR 60440; October 6, 2015), and the proposed critical habitat rule (85 FR 10371; February 24, 2020). We have determined that the following physical or biological features are essential to Florida bristle fern conservation:

(1) Upland hardwood forest hammock habitats of sufficient quality and size to sustain the necessary microclimate and life processes for Florida bristle fern.

(2) Exposed substrate derived from oolitic limestone, Ocala limestone, or exposed limestone boulders, which provide anchoring and nutritional requirements.

(3) Constantly humid microhabitat consisting of dense canopy cover, moisture, stable high temperature, and stable monthly average humidity of 90 percent or higher, with intact hydrology within hammocks and the surrounding and adjacent wetland communities.

(4) Dense canopy cover of surrounding native vegetation that consists of the upland hardwood forest hammock habitats and provides shade, shelter, and moisture.

(5) Suitable microhabitat conditions, hydrology, and connectivity that can support Florida bristle fern's growth, distribution, and population expansion (including rhizomal growth, spore dispersal, and sporophyte and gametophyte growth and survival).

(6) Plant community of predominantly native vegetation that is minimally disturbed or free from human-related disturbance, with either no competitive nonnative, invasive plant species, or such species in quantities low enough to have minimal effect on Florida bristle fern.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of Florida bristle fern may require special management considerations or protections to reduce threats related to habitat modification and destruction primarily due to development, agricultural conversion, hydrologic alteration, nonnative and invasive species, public use, and sea level rise. For more information on threats to Florida bristle fern, please refer to the final listing rule (80 FR 60440; October 6, 2015).

The four known populations of the south Florida metapopulation occur on County-managed conservation lands at Castellow Hammock, Hattie Bauer Hammock, Fuchs Hammock, and Meissner Hammock. However, these areas are still vulnerable to the effects of activities in the surrounding areas, including agricultural clearing and hydrologic alterations. In addition, these areas are vulnerable to threats from nonnative, invasive species, especially if current control efforts are discontinued or decreased. The small amount of rockland hammock or mixed

rockland/mesic hammock is vulnerable to impacts related to urban and agricultural development, including hydrologic alterations, and threats by nonnative, invasive species (especially as such areas are often not actively managed for nonnative species). Also, these areas are open to public access, and Florida bristle fern may be at risk of collection, damage from people climbing on them, and impacts to microclimate due to installation and improvements of trails (Duncan 2020, pers. comm.). We expect these hammock communities in south Florida to be further degraded due to sea level rise and the increase in the number of flood events, which would fully or partially inundate some rockland hammocks along the coast and in the southern portion of Miami-Dade County and in Everglades National Park. In the short to mid-term, sea level rise may benefit the fern by lifting a freshwater lens into previously drained areas or areas experiencing a lowered water table, which may restore or preserve a favorable microclimate for the subspecies (Duncan 2020, pers. comm.). Over the long term, however, sea level rise is expected to increase the salinity of the water table and soils, resulting in vegetation shifts across the Miami Rock Ridge.

The two known populations of the central Florida metapopulation both occur on State-owned land in the Jumper Creek Tract of the Withlacoochee State Forest. Land clearing and hydrological alterations on private lands adjacent to the Jumper Creek Tract continue to be threats to the subspecies' populations and habitat. In addition, while the Withlacoochee State Forest is generally considered public conservation land, it is managed by the Florida Forest Service and is subject to logging in certain areas. Logging is less likely to occur on the Jumper Creek Tract due to the existing matrix of hammocks and pinelands (versus a predominantly pineland community). This area is also subject to impacts from nonnative, invasive species, although forest management on the Jumper Creek Tract currently includes nonnative plant control. Moisture and humidity levels of the fern habitat are also dependent upon the hydrology of the surrounding or adjacent wetlands. Alterations in the natural hydrologic regime within the hammock and these adjacent habitats affect these physical or biological features. Draining, ditching, and excessive pumping of groundwater can lower the water table in hammocks, causing reduced moisture and humidity levels. In such cases, mesic hammocks, for example, may undergo shifts in species composition toward xeric hammock composition. These impacts to hammock systems may ultimately reduce or eliminate suitable habitat for the subspecies. A lowered water table or dewatering of hammocks can also render the habitat vulnerable to catastrophic fire.

Special management considerations and protections that will address these threats include increased coordination and conservation of the subspecies and its habitat (including preventing impacts to hammock hydrology, canopy cover, microclimate, and substrate) on Federal lands and, with the cooperation of State, County, and private landowners, on non-Federal lands. Habitat restoration and management efforts (including nonnative plant treatments) of high-priority sites will be emphasized. At this time, the subspecies does not occur on Federal lands for either metapopulation, but reintroduction is being explored for Royal Palm Hammock in Everglades National Park in south Florida.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

The current distribution of Florida bristle fern is reduced from its historical distribution to a level where it is in danger of extinction. We anticipate that recovery will require continued protection of existing populations and habitat, as well as establishing sites that more closely approximate its historical distribution, in order to ensure there are adequate numbers of Florida bristle fern in stable populations and that these populations occur over a wide geographic area within both metapopulations. This strategy will help to ensure that catastrophic events, such as fire, cannot simultaneously affect all known populations. Rangewide recovery considerations, such as maintaining existing genetic diversity and striving for representation of all major portions of the subspecies' historical range, were considered in formulating this critical habitat designation.

The amount and distribution of the designated critical habitat are designed to provide:

(1) The processes that maintain the physical or biological features that are essential to the conservation of the subspecies;

(2) Sufficient quality and size of habitat to support the persistence of the physical or biological features for the subspecies (hammock microclimate, humidity, temperature, substrate, canopy cover, native plant community);

(3) Habitat to expand the distribution of Florida bristle fern into historically occupied areas;

(4) Space to increase the size of each population to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished; and

(5) Additional space to improve the ability of the subspecies to withstand local or regional-level environmental fluctuations or catastrophes.

For Florida bristle fern, we are designating critical habitat in areas within the geographical area occupied by the subspecies at the time of listing. For those areas, we determined that they were of suitable habitat within the known historical range, with current occurrence records, contain one or more of the physical or biological features essential to the conservation of the subspecies, and require special management considerations or protection. We are also designating specific areas outside the geographical area occupied by the subspecies at the time of listing because we have determined that a designation limited to occupied areas would be inadequate to ensure the conservation of the subspecies. For those unoccupied areas, we have determined that it is reasonably certain that the unoccupied areas will contribute to the conservation of the subspecies and that the areas contain one or more of the physical or biological features that are essential to the conservation of the subspecies.

Sources of Data To Identify Critical Habitat Boundaries

To determine the general extent, location, and boundaries of the designated critical habitat, we used the following sources of information:

(1) Historical and current records of Florida bristle fern occurrence and distribution found in publications, reports, personal communications, and associated voucher specimens housed at museums and private collections;

(2) Florida Fish and Wildlife Commission (Commission), Inventory, Institute for Regional Conservation (Institute), and Fairchild geographic

information system (GIS) data showing the location and extent of documented occurrences of Florida bristle fern;

(3) Reports and databases prepared by the Institute and Fairchild;

(4) ESRI ArcGIS online basemap aerial imagery (December 2010) and historical aerial imagery (1938 for Miami-Dade County; 1941 for Sumter County); and

(5) GIS data depicting land cover (Commission and Inventory Cooperative Land Cover Map, version 3.3) within Miami-Dade and Sumter Counties, and the location and habitat boundaries of rockland hammocks in Miami-Dade County (Institute *et al.* 2005; Institute 2009; Miami-Dade County Information Technology Department 2021; Florida Geographic Data Library 2017; Commission and Inventory 2020; Sumter County 2019).

The presence of the physical or biological features was determined using the above sources of information as well as site visits by biologists and botanists (Possley 2019, entire) through field surveys, habitat mapping, and substrate mapping by the Institute (van der Heiden and Johnson 2014, entire; Possley 2015, pers. comm.; van der Heiden 2016, entire), and follow-up discussions with Miami-Dade County, Fairchild staff, and private landowners.

Areas Occupied at the Time of Listing

The occupied critical habitat units were delineated around the documented extant populations and the existing physical or biological features that require special management considerations or protection. We have determined that all currently known occupied habitat for Florida bristle fern was also occupied by the subspecies at the time of listing, and that these areas contain the physical or biological features essential to the conservation of the subspecies and which may require special management considerations or protection. We are designating these areas as occupied habitat.

Occupied Habitat—South Florida Metapopulation (Miami-Dade County)

Occupied habitat, which for the south Florida metapopulation occurs in rockland hammock habitat, was identified based on available occurrence data for Florida bristle fern. Rockland hammock boundaries were delineated using the Institute's 2009 rockland hammock GIS layer. Based on our assessment of rockland hammocks on the Miami Rock Ridge (see above, under *Sites for Reproduction, Germination, and Spore Production and Dispersal*), we included all of the remaining rockland hammocks currently occupied by Florida bristle fern within the critical habitat assessment. Next, we grouped rockland hammocks, where appropriate, to form units. Rockland hammocks in close proximity to one another provide connectivity and allow spore dispersal (water-based, animal, or wind-driven dispersal) from occupied to adjacent habitat, which is important for establishing new clusters of plants to increase population resiliency and subspecies redundancy. In addition, based on the Act's implementing regulations (50 CFR 424.12(d)), when habitats are in close proximity to one another, an inclusive area may be designated. Although the population historically observed in Ross Hammock has been reported as extirpated, we combined Ross Hammock with Castellow Hammock into a single occupied unit (unit South Florida 4 [SF 4]) because: (1) The subspecies is exceedingly hard to find even by species experts and, therefore, may be present even though it has been reported as extirpated; (2) gametophytes, the very cryptic reproductive stage of the fern, are not recognizable in the field and could still be present on site even if the sporophytes, the recognizable plant form, have been extirpated; (3) there is the likelihood that spores could travel between occupied and adjacent habitat, particularly during high-water events; and (4) habitat directly adjacent to known occurrences (*e.g.,* separated only by a road) can also be occupied if habitat conditions are suitable. Three occupied units (Castellow and Ross, Hattie Bauer, and Fuchs and Meissner hammocks) totaling 73 ha (180 ac) are designated as critical habitat for the south Florida metapopulation.

Occupied Critical Habitat—Central Florida Metapopulation (Sumter County)

For the central Florida populations, habitat was identified as the intersection of mesic, hydric, and elevated hydric hammocks that contain boulder substrate (van der Heiden 2016, p. 3).

On the Jumper Creek Tract, known extant populations of Florida bristle fern occur in two small mesic hammocks located within and supported by a matrix of hydric hammock and mixed wetland hardwood communities. The mesic hammocks are approximately 0.18 ha (0.44 ac) and 0.11 ha (0.28 ac) in size and difficult to differentiate from the surrounding forested vegetation. Our evaluation of occurrence data for this metapopulation also included historical observations of the Florida bristle fern south of the Jumper Creek Tract where the subspecies was formerly known to occur near Battle Slough (near the existing town of Wahoo) and located in close proximity to the extant populations. In this area, habitat types include mixed wetland hardwoods surrounded by freshwater marsh, cypress/tupelo, and mixed hardwood-coniferous forest. Using the information mentioned above on current and historical occurrences and habitat type and applying the data for suitable substrate (boulders), we delineated a contiguous unit of occupied habitat for Florida bristle fern.

As discussed in Physical or Biological Features Essential to the Conservation of the Species, above, suitable hammock micro-conditions in this landscape (specifically the high humidity, stable temperatures, moisture, and shade) required by Florida bristle fern are supported by the surrounding vegetation, which minimizes drastic changes in temperature or humidity at the microclimate scale. Generally, forest edges receive more light, are prone to greater desiccation, and have a reduced biodiversity compared to the forest interiors. Pronounced edge effects from adjacent land clearing and fragmentation, such as with agricultural lands, reduce the quality of forested habitat and detrimentally affect the interior microclimate.

To most accurately represent suitable habitat for Florida bristle fern within these central Florida communities and ensure the persistence of the necessary microclimate, we consider natural communities within 300 m (985 ft) as measured from the edge of and surrounding the boulder substrate (equivalent to 9.3 ha (23 ac)) to be habitat essential to the conservation of the subspecies (van der Heiden 2014, pers. comm.; van der Heiden 2016, p. 3) in protecting the habitat from edge effects. The suitable habitat communities and the distribution of exposed limestone substrate (boulder) in these communities were delineated with the use of ground survey and satellite imagery data (van der Heiden and Johnson 2014, pp. 6–7; van der Heiden 2016, p. 3). Site-level data of vegetative communities produced from aerial photography (Commission and Inventory 2020) and feedback from species experts and local biologists on habitat and substrate occurrence in this area were also used.

Thus, using the best available data, one occupied unit totaling 742 ha (1,834 ac) is designated as critical habitat for the central Florida metapopulation. This critical habitat designation consists of a contiguous unit within and adjacent to Jumper Creek Tract of intact vegetation (*i.e.,* not cleared) in mesic or hydric hammocks and mixed wetland hardwood communities having exposed

limestone substrate (boulders), which have, at minimum, a 300-m (985-ft) radius of surrounding intact vegetation.

Areas Outside the Geographic Area Occupied at the Time of Listing

To consider for designation areas not occupied by the subspecies at the time of listing, we must determine that these areas are essential for the conservation of Florida bristle fern. In south Florida, occupied critical habitat for the subspecies is within a relatively small amount of highly fragmented habitat and occupied patches are generally isolated from one another within the landscape. In addition, the extent of the geographic area in south Florida (Miami-Dade County) that is currently occupied by the plant is substantially (nearly 80 percent) smaller than its historical range. In central Florida, the two known existing populations are in very close proximity and also in a much smaller area than the known historical range. Because of this fragmentation and loss of range, both metapopulations have lower resiliency under these current conditions compared to historical occurrences, and, therefore, the subspecies' adaptive capacity (representation) and redundancy has been reduced.

Based on these factors in relation to the threats to Florida bristle fern, we have determined that designation of unoccupied areas are needed to conserve the species; thus, additional habitat is essential to provide a sufficient amount of habitat (total area and number of patches) and connectivity for the long-term conservation of the plant. Therefore, we have identified and are designating as critical habitat specific areas outside the geographical area occupied by the subspecies at the time of listing that are essential for the conservation of the subspecies. This will ensure enough sites and individuals exist for each metapopulation of Florida bristle fern to recover. We used habitat and historical occurrence data and the physical or biological features described earlier to identify unoccupied habitat essential for the conservation of the Florida bristle fern. As discussed in more detail below, the unoccupied areas we selected are essential for the conservation of the subspecies because they:

(1) Consist of a documented historical, but now extirpated, occurrence of the subspecies;

(2) Could still have Florida bristle fern gametophytes on site;

(3) Provide areas of sufficient size to support ecosystem processes;

(4) Provide suitable habitat (that contains some or all of the physical or biological features essential to the conservation of the subspecies) that allow for growth and expansion; and

(5) Occur in the known historical range of the subspecies.

These unoccupied areas provide sufficient space for growth and reproduction for the subspecies within the historical range and will provide ecological diversity so that the subspecies has the ability to evolve and adapt over time (representation) and ensure that the subspecies has an adequate level of redundancy to guard against future catastrophic events. These areas also represent the areas within the historical range with the best potential for recovery of the subspecies due to their current conditions, provide habitat and space to support spore dispersal and new growth, and are likely suitable for reintroductions. Also, the areas with historical occurrences of Florida bristle fern have a high likelihood of gametophyte presence, the very cryptic reproductive stage of the fern (Possley 2020, pers. comm.), that could develop into sporophytes (the recognizable mature plant) under the proper conditions (80 FR 60440; October 6, 2015). For these reasons, we have reasonable certainty that the unoccupied areas will contribute to the conservation of the species.

Unoccupied Habitat—South Florida Metapopulation (Miami-Dade County)

The existing suitable habitat for the south Florida metapopulation consists of a patchwork of small parcels. Therefore, we must ensure the integrity of the solution hole and canopy cover, which is responsible for maintaining the stable damp, humid, and shaded microclimate identified as a physical or biological feature for the subspecies.

Using the Institute's 2009 rockland hammock GIS layer, the Commission and Inventory's Cooperative Land Cover site-level data for rockland hammocks, the Institute *et al.'*s 2015 Natural Forest Community GIS layer for hammocks, and site visit information from Service staff biologists and botanists from Fairchild and Miami-Dade County, we evaluated all unoccupied sites within rockland hammock habitats, including mixed rockland/mesic hammock and rockland hammock with connecting mixed wetland hardwood habitat, in Miami-Dade County. Specifically, we reviewed available historical aerial photography of 20 rockland hammocks historically occupied, but now unoccupied, by the subspecies. Ten additional potential sites were visited by Service staff. Also, specific information provided by Miami-Dade County and Fairchild on four additional areas was reviewed. A site was considered in the evaluation for unoccupied critical habitat if it is within the historical range of the subspecies and:

(1) Holds a documented historical occurrence;

(2) Contains one or more of the physical or biological features essential to the conservation of the subspecies;

(3) Provides viable habitat for introductions or could be restored to support Florida bristle fern;

(4) Occurs at the edge of the range and provides areas that would allow for growth and expansion; or

(5) Occurs near an occupied site (for potential recruitment).

Each site will, in conjunction with occupied areas of designated critical habitat, support the conservation of the subspecies. Based on our review, we identified four unoccupied rockland hammock units on the Miami Rock Ridge outside of Everglades National Park (see table 1, below). These four units represent the units with documented, but now extirpated, historical occurrences with intact rockland hammock within the historical range of the subspecies outside of the Everglades National Park. Within the Everglades National Park, we identified a fifth unit, the Royal Palm Hammock, for inclusion in the designated critical habitat. This hammock was also historically occupied by the subspecies but was not occupied at the time of listing. The resulting five unoccupied designated units consist of 136 ha (335 ac) and are considered essential for the conservation of Florida bristle fern because they protect habitat needed to recover the subspecies and reestablish wild populations within the known historical range of the subspecies in Miami-Dade County. The unoccupied units each contain one or more of the physical or biological features essential to the conservation of the subspecies and are likely to provide for the conservation of the subspecies. The majority of four of the unoccupied units are on lands managed by Miami-Dade County, and the fifth unoccupied unit is on land managed by Everglades National Park.

Unoccupied Habitat—Central Florida Metapopulation (Sumter County)

For the central Florida metapopulation, criteria for determining unoccupied critical habitat included units that:

(1) Hold a documented historical occurrence;

(2) Contain one or more of the physical or biological features essential to the conservation of the subspecies;

(3) Provide space for growth and recovery (to add resiliency to a small population);

(4) Provide viable habitat for introductions; and

(5) Provide connectivity across the range of the subspecies.

Unoccupied habitat was delineated based on documented historical occurrences, existing suitable habitat (as defined by the physical or biological features), and evaluation of the habitat and substrate delineation mapping (van der Heiden 2016, pp. 5–7) with data obtained through field surveys and satellite mapping. The one unoccupied unit designated as critical habitat consists of approximately 747 ha (1,846 ac) (see table 1, below). It consists of documented historically occupied (now extirpated) habitat with suitable wetland and upland communities having intact vegetation (*i.e.,* not cleared) and hammocks and exposed limestone boulders with at least a 300-m (985-ft) radius or greater of surrounding native vegetation (van der Heiden 2014, pers. comm.; van der Heiden 2016, p. 3). Its size was based on the conditions necessary to maintain the physical or biological features essential to the conservation of the subspecies. It is considered essential for the conservation of Florida bristle fern because it protects habitat needed to recover the subspecies and reestablish wild populations within the known historical range of the subspecies in Sumter County. The unoccupied unit contains one or more of the physical or biological features essential to the conservation of the subspecies and is likely to provide for the conservation of the subspecies.

Critical Habitat Maps

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical or biological features necessary for Florida bristle fern. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not included for designation as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation under the Act with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the discussion of individual units below. We will make the coordinates or plot points or both on which each map is based available to the public at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2019–0068, at *https://www.fws.gov/office/florida-ecological-services/library,* and at the Florida Ecological Services Field Office, Vero Beach (see **FOR FURTHER INFORMATION CONTACT**, above).

Final Critical Habitat Designation

We are designating approximately 1,698 ha (4,195 ac) in 10 units in Miami-Dade and Sumter Counties, Florida, as critical habitat for Florida bristle fern. The designated critical habitat consists of units identified for the south and central Florida metapopulations and are delineated in (1) south Florida by rockland/tropical hammocks of Miami-Dade County (208 ha (515 ac)); and (2) central Florida by Withlacoochee State Forest, Jumper Creek Tract, and adjacent lands in Sumter County (1,489 ha (3,680 ac)). Four of the units are currently occupied by the subspecies and contain those physical or biological features essential to the conservation of the subspecies but may require special management considerations or protection. Six of the units are currently unoccupied by the subspecies but are essential for the conservation of the subspecies. Table 1 shows the name, occupancy, area, and land ownership of each unit within the critical habitat designation for Florida bristle fern. Land ownership within the entire designated critical habitat consists of Federal (4 percent), State (91 percent), County (3 percent), and private (2 percent) ownership.

TABLE 1—NAME, OCCUPANCY, AREA, AND LAND OWNERSHIP OF DESIGNATED CRITICAL HABITAT UNITS FOR FLORIDA BRISTLE FERN (*Trichomanes punctatum* SSP. *floridanum*)

[Area estimates reflect all land within critical habitat unit boundaries. All areas are rounded to the nearest whole hectare (ha) and acre (ac). Ownership information is based on Miami-Dade County data (2021) and Sumter County data (2019).]

Unit	Occupancy	Federal ha (ac)	State ha (ac)	County ha (ac)	Private/other ha (ac)	Total ha (ac)
Rockland/Tropical Hammocks of South Florida, Miami-Dade County						
Matheson Hammock (SF 1)	Unoccupied	0	0	21 (51)	2 (4)	22 (55)
Snapper Creek Hammock (SF 2)	Unoccupied	0	3 (8)	0	3 (7)	6 (15)
Charles Deering Estate Hammock (SF 3).	Unoccupied	0	43 (106)	0	0	43 (106)
Castellow and Ross Hammocks (SF 4)	Occupied	0	17 (43)	25 (63)	13 (32)	56 (139)
Silver Palm Hammock (SF 5)	Unoccupied	0	4 (10)	0	0	4 (10)
Hattie Bauer Hammock (SF 6)	Occupied	0	0	4 (10)	2 (6)	6 (16)
Fuchs and Meissner Hammocks (SF 7)	Occupied	0	2 (5)	8 (19)	0 (1)	10 (25)
Royal Palm Hammock (SF 8)	Unoccupied	61 (150)	0	0	0	61 (150)
South Florida Total		61 (150)	70 (172)	58 (144)	20 (50)	208 (515)
Withlacoochee State Forest, Jumper Creek Tract, and adjacent lands of Central Florida, Sumter County						
CF 1	Occupied	0	726 (1,795)	0	16 (39)	742 (1,834)
CF 2	Unoccupied	0	747 (1,846)	0	0	747 (1,846)
Central Florida Total		0	1,473 (3,641)	0	16 (39)	1,489 (3,680)

TABLE 1—NAME, OCCUPANCY, AREA, AND LAND OWNERSHIP OF DESIGNATED CRITICAL HABITAT UNITS FOR FLORIDA BRISTLE FERN (*Trichomanes punctatum* SSP. *floridanum*)—Continued

[Area estimates reflect all land within critical habitat unit boundaries. All areas are rounded to the nearest whole hectare (ha) and acre (ac). Ownership information is based on Miami-Dade County data (2021) and Sumter County data (2019).]

Unit	Occupancy	Federal ha (ac)	State ha (ac)	County ha (ac)	Private/other ha (ac)	Total ha (ac)
Total South and Central Florida.	.....	61 (150)	1,543 (3,813)	58 (144)	36 (89)	1,698 (4,195)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Florida bristle fern, below.

Rockland/Tropical Hammocks of South Florida, Miami-Dade County, Florida

The designated critical habitat for the south Florida metapopulation is composed of eight units (SF 1–SF 8) consisting of approximately 208 ha (515 ac) located between South Miami and eastern Everglades National Park in central and southern Miami-Dade County, Florida.

SF 1—Matheson Hammock

We identified this area as essential for the conservation of the Florida bristle fern. SF 1 consists of approximately 22 ha (55 ac) of habitat in Matheson Hammock in and around Matheson Hammock Park in Miami-Dade County, Florida. This unit is composed of 20.6 ha (51.1 ac) of County-owned land that is primarily managed cooperatively by Miami-Dade County's Environmentally Endangered Lands (EEL) program and Natural Areas Management (NAM) division. The remaining 1.5 ha (3.7 ac) are privately owned and managed by the landowners through the EEL Covenant Program and/or are protected from development through Miami-Dade County's designation as Natural Forest Communities. Matheson Hammock is within the historical range of Florida bristle fern but was not occupied by the subspecies at the time of listing.

Although it is currently considered unoccupied, Florida bristle fern was documented here in the past (80 FR 60440; October 6, 2015), and it is possible that the site still contains the fern's gametophytes (the very cryptic reproductive stage of the fern) (Possley 2020, pers. comm.) that could develop into sporophytes (the recognizable mature plant) under the proper conditions (80 FR 60440; October 6, 2015). Also, this unit contains some or all of the physical or biological features essential to the conservation of the subspecies. Unit SF 1 possesses those characteristics as described by the first identified physical or biological feature (upland hardwood forest hammock habitats of sufficient quality and size to sustain the necessary microclimate and life processes for Florida bristle fern) and the second identified physical or biological feature (exposed substrate derived from oolitic limestone, Ocala limestone, or exposed limestone boulders, which provide anchoring and nutritional requirements). The third through sixth identified physical or biological features are degraded in this unit, but with appropriate management and restoration actions (such as removal of invasive plant species), these physical or biological features can be restored. Based upon the presence of key habitat needs and the conditions of the site, this unit constitutes habitat for the Florida bristle fern.

This unit will serve to protect habitat needed to recover the subspecies and reestablish wild populations within the historical range in Miami-Dade County. Re-establishing a population in this unit would increase redundancy in the South Florida metapopulation. It would also provide habitat for recolonization in the case of stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed, or should Florida bristle fern be extirpated from one of its currently occupied locations. This unit is essential for the conservation of the subspecies because it will provide habitat for range expansion in known historical habitat that is necessary to increase viability of the subspecies by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the subspecies because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring habitat and reintroducing the subspecies are being developed for this unit. As stated previously, the majority of this unit is composed of County-owned land and primarily managed cooperatively by Miami-Dade County's EEL program and NAM division. The EEL program's focus is on the ''protection and conservation of endangered lands,'' and these EEL areas are managed for restoration and conservation through actions such as invasive plant removal. In addition, State and County partners have shown interest in reintroduction efforts for the Florida bristle fern in this area. The privately owned portions of this unit are either enrolled in the County's EEL Covenant Program, a 10-year commitment to restore and manage the property as a natural area in exchange for tax incentives, or designated as a Natural Forest Community under Miami-Dade County's Code of Ordinances (chapter 24, article IV, division 2, section 24–49.2), which limits development of rockland hammocks to no more than 10 percent of the site.

SF 2—Snapper Creek

We identified this area as essential for the conservation of the subspecies. SF 2 consists of approximately 6 ha (15 ac) of habitat in Snapper Creek Hammock adjacent to R. Hardy Matheson Preserve in Miami-Dade County, Florida. This unit consists of 3.2 ha (8 ac) of State-owned land that is primarily managed cooperatively by Miami-Dade County's EEL program and NAM division and 2.6 ha (7 ac) of University of Miami-owned land that is managed in cooperation with Fairchild. Snapper Creek is within the historical range of Florida bristle fern but was not occupied by the subspecies at the time of listing.

Although it is currently considered unoccupied, Florida bristle fern was documented here in the past (80 FR 60440; October 6, 2015), and it is possible that the site still contains the fern's gametophytes (the very cryptic reproductive stage of the fern) (Possley 2020, pers. comm.) that could develop into sporophytes (the recognizable mature plant) under the proper conditions (80 FR 60440; October 6, 2015). Also, this unit contains some or all of the physical or biological features essential to the conservation of the subspecies. Unit SF 2 possesses those characteristics as described by the first

identified physical or biological feature (upland hardwood forest hammock habitats of sufficient quality and size to sustain the necessary microclimate and life processes for Florida bristle fern) and the second identified physical or biological feature (exposed substrate derived from oolitic limestone, Ocala limestone, or exposed limestone boulders, which provide anchoring and nutritional requirements). The third through sixth identified physical or biological features are degraded in this unit, but with appropriate management and restoration actions (such as removal of invasive plant species), these physical or biological features can be restored. Based upon the presence of key habitat needs and the conditions of the site, this unit constitutes habitat for the Florida bristle fern.

This unit will serve to protect habitat needed to recover the subspecies and reestablish wild populations within the historical range in Miami-Dade County. Re-establishing a population in this unit would increase the subspecies' redundancy in the South Florida metapopulation. It will also provide habitat for recolonization in the case of stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed, or should Florida bristle fern be extirpated from one of its currently occupied locations. This unit is essential for the conservation of the subspecies because it will provide habitat for range expansion in known historical habitat that is necessary to increase viability of the subspecies by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the subspecies because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring habitat and reintroducing the subspecies are being developed for this unit. As stated previously, this unit is composed of State-owned land that is primarily managed cooperatively by Miami-Dade County's EEL program and NAM division and University of Miami-owned land that is cooperatively managed with Fairchild. The EEL program's focus is on the ''protection and conservation of endangered lands,'' and these EEL areas are managed for restoration and conservation through actions such as invasive plant removal. In addition, State, County, and private partners have shown interest in reintroduction efforts for the Florida bristle fern in this area.

SF 3—Charles Deering Estate Hammock

We identified this area as essential for the conservation of the Florida bristle fern. SF 3 consists of approximately 43 ha (106 ac) of habitat in the Charles Deering Estate in Miami-Dade County, Florida. This unit is composed of State-owned land that is primarily managed cooperatively by Miami-Dade County's EEL program and NAM division. Charles Deering Estate Hammock is within the historical range of Florida bristle fern but was not occupied by the subspecies at the time of listing.

Although it is currently considered unoccupied, Florida bristle fern was documented here in the past (80 FR 60440; October 6, 2015), and it is possible that the site still contains the fern's gametophytes (the very cryptic reproductive stage of the fern) (Possley 2020, pers. comm.) that could develop into sporophytes (the recognizable mature plant) under the proper conditions (80 FR 60440; October 6, 2015). Also, this unit contains all of the physical or biological features essential to the conservation of the subspecies. Based upon the presence of key habitat needs and the conditions of the site, this unit constitutes habitat for the Florida bristle fern.

This unit will serve to protect habitat needed to recover the subspecies and reestablish wild populations within the historical range in Miami-Dade County. Re-establishing a population in this unit would increase the subspecies' redundancy in the South Florida metapopulation. It will also provide habitat for recolonization in the case of stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed, or should Florida bristle fern be extirpated from one of its currently occupied locations. This unit is essential for the conservation of the subspecies because it will provide habitat for range expansion in known historical habitat that is necessary to increase viability of the subspecies by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the subspecies because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for reintroducing the subspecies are being developed for this unit. As stated previously, this unit is composed entirely of State-owned land and is primarily managed cooperatively by Miami-Dade County's EEL program and NAM division. The EEL program's focus is on the ''protection and conservation of endangered lands,'' and these EEL areas are managed for restoration and conservation through actions such as invasive plant removal. In addition, State and County partners have shown interest in reintroduction efforts for the Florida bristle fern in this area.

SF 4—Castellow and Ross Hammocks

SF 4 consists of approximately 56 ha (139 ac) of habitat in Castellow and Ross Hammocks in and around Castellow Hammock Preserve in Miami-Dade County, Florida. This unit consists of 17.5 ha (43.3 ac) of State-owned and 25.6 ha (63.4 ac) of County-owned lands that are primarily managed cooperatively by Miami-Dade County's EEL program and NAM division. The remaining 13 ha (32.3 ac) are privately owned and managed by the landowners through the EEL Covenant Program and/or are protected from development through Miami-Dade County's designation as Natural Forest Communities. This unit is occupied by the subspecies and contains some or all of the physical or biological features essential to its conservation.

Special management considerations or protection may be required to address threats of commercial, residential, or agricultural development; hydrological alterations; competition with nonnative species; human use and recreation; and sea level rise. In some cases, these threats are being addressed or coordinated with our partners and landowners to implement needed actions. Such actions include removal of invasive species, review of County development plans, and review of projects considering land use changes.

SF 5—Silver Palm Hammock

We identified this area as essential for the conservation of the subspecies. SF 5 consists of approximately 4 ha (10 ac) of habitat in Silver Palm Hammock in Miami-Dade County, Florida. This unit consists of State-owned land that is primarily managed cooperatively by Miami-Dade County's EEL program and NAM division. Silver Palm Hammock is within the historical range of Florida bristle fern but was not occupied by the subspecies at the time of listing.

Although it is currently considered unoccupied, Florida bristle fern was documented here in the past (80 FR 60440; October 6, 2015), and it is possible that the site still contains the fern's gametophytes (the very cryptic reproductive stage of the fern) (Possley 2020, pers. comm.) that could develop into sporophytes (the recognizable mature plant) under the proper conditions (80 FR 60440; October 6, 2015). Also, this unit contains some or all of the physical or biological features

essential to the conservation of the subspecies. Unit SF 5 possesses those characteristics as described by the first identified physical or biological feature (upland hardwood forest hammock habitats of sufficient quality and size to sustain the necessary microclimate and life processes for Florida bristle fern); the second identified physical or biological feature (exposed substrate derived from oolitic limestone, Ocala limestone, or exposed limestone boulders, which provide anchoring and nutritional requirements); the third identified physical or biological feature (constantly humid microhabitat consisting of dense canopy cover, moisture, stable high temperature, and stable monthly average humidity of 90 percent or higher, with intact hydrology within hammocks and the surrounding and adjacent wetland communities); the fourth identified physical or biological feature (dense canopy cover of surrounding native vegetation that consists of the upland hardwood forest hammock habitats and provides shade, shelter, and moisture); and the fifth identified physical or biological feature (suitable microhabitat conditions, hydrology, and connectivity that can support Florida bristle fern's growth, distribution, and population expansion (including rhizomal growth, spore dispersal, and sporophyte and gametophyte growth and survival)). The sixth identified physical or biological feature is degraded in this unit, but with appropriate management and restoration actions (such as removal of invasive plant species), this feature can be restored. Based upon the presence of key habitat needs and the conditions of the site, this unit constitutes habitat for the Florida bristle fern.

This unit will serve to protect habitat needed to recover the subspecies and reestablish wild populations within the historical range in Miami-Dade County. Re-establishing a population in this unit would increase the subspecies' redundancy in the South Florida metapopulation. It will also provide habitat for recolonization in the case of stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed, or should Florida bristle fern be extirpated from one of its currently occupied locations. This unit is essential for the conservation of the subspecies because it will provide habitat for range expansion in known historical habitat that is necessary to increase viability of the subspecies by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the subspecies because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring habitat are being developed for this unit. As stated previously, this unit is entirely composed of State-owned land and is primarily managed cooperatively by Miami-Dade County's EEL program and NAM division. The EEL program's focus is on the ''protection and conservation of endangered lands,'' and these EEL areas are managed for restoration and conservation through actions such as invasive plant removal. In addition, State and County partners have shown interest in reintroduction efforts for the Florida bristle fern in this area.

SF 6—Hattie Bauer Hammock

SF 6 consists of approximately 6 ha (16 ac) of habitat in Hattie Bauer Hammock in and around Hattie Bauer Hammock Preserve in Miami-Dade County, Florida. This unit consists of 4 ha (10 ac) of County-owned land that is primarily managed cooperatively by Miami-Dade County's EEL program and NAM division. The remaining 2 ha (6 ac) are privately owned and managed by the landowners through the EEL Covenant Program and/or are protected from development through Miami-Dade County's designation as Natural Forest Communities. This unit is occupied by the subspecies and contains some or all of the physical or biological features essential to its conservation.

Special management considerations or protection may be required to address threats of commercial, residential, or agricultural development; hydrological alterations; competition with nonnative species; human use and recreation; and sea level rise. In some cases, these threats are being addressed or coordinated with our partners and landowners to implement needed actions. Such actions include removal of invasive species, review of County development plans, and review of projects considering land use changes.

SF 7—Fuchs and Meissner Hammocks

SF 7 consists of approximately 10 ha (25 ac) of habitat in Fuchs and Meissner Hammocks in and around Fuchs and Meissner Hammock Preserves in Miami-Dade County, Florida. This unit consists of 2 ha (5 ac) of State-owned and 7.6 ha (19 ac) of County-owned lands that are primarily managed cooperatively by Miami-Dade County's EEL program and NAM division. The remaining 0.4 ha (1 ac) are privately owned and managed by the landowners through the EEL Covenant Program and/or are protected from development through Miami-Dade County's designation as Natural Forest Communities. This unit is occupied by the subspecies and contains some or all of the physical or biological features essential to its conservation.

Special management considerations or protection may be required to address threats of commercial, residential, or agricultural development; hydrological alterations; competition with nonnative species; human use and recreation; and sea level rise. In some cases, these threats are being addressed or coordinated with our partners and landowners to implement needed actions. Such actions include removal of invasive species, review of County development plans, and review of projects considering land use changes.

SF 8—Royal Palm Hammock

We identified this area as essential for the conservation of the subspecies. SF 8 consists of approximately 61 ha (150 ac) of habitat in Royal Palm Hammock in Everglades National Park, which is federally owned land, in Miami-Dade County, Florida. Royal Palm Hammock is within the historical range of Florida bristle fern but was not occupied by the subspecies at the time of listing.

Although it is currently considered unoccupied, Florida bristle fern was documented here in the past (80 FR 60440; October 6, 2015), and it is possible that the site still contains the fern's gametophytes (the very cryptic reproductive stage of the fern) (Possley 2020, pers. comm.) that could develop into sporophytes (the recognizable mature plant) under the proper conditions (80 FR 60440; October 6, 2015). Also, this unit contains all of the physical or biological features essential to the conservation of the subspecies. Based upon the presence of key habitat needs and the conditions of the site, this unit constitutes habitat for the Florida bristle fern.

This unit will serve to protect habitat needed to recover the subspecies and reestablish wild populations within the historical range in Miami-Dade County. Re-establishing a population in this unit would increase the subspecies' redundancy in the South Florida metapopulation. It will also provide habitat for recolonization in the case of stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed, or should Florida bristle fern be extirpated from one of its currently occupied locations. This unit is essential for the conservation of the subspecies because it will provide habitat for range expansion in known historical habitat that is necessary to increase viability of the subspecies by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the subspecies because the need for conservation efforts is recognized and is being discussed by our conservation partners, and habitat maintenance in this unit is ongoing. This unit is entirely composed of federally owned Everglades National Park land, and the National Park Service has responsibilities under section 7(a)(1) of the Act to carry out programs for the conservation of federally listed endangered and threatened species. The Everglades National Park General Management Plan (Plan), approved in 2015, prior to the published final listing rule for Florida bristle fern, guides the National Park Service's management of Everglades National Park, including conservation of endangered and threatened species. The 2015 Plan identifies the Florida bristle fern as extirpated from Everglades National Park (Royal Palm Hammock), and, therefore, specific conservation measures were not discussed for the subspecies (National Park Service 2015, p. 226). However, Everglades National Park continues to conduct nonnative plant species control in Royal Palm Hammock, which helps maintain the physical or biological features essential to the conservation of the Florida bristle fern.

Withlacoochee State Forest, Jumper Creek Tract, and Adjacent Lands of Central Florida, Sumter County

The designated critical habitat for the central Florida metapopulation is composed of two units (CF 1 and CF 2) consisting of approximately 1,489 ha (3,680 ac) located within and adjacent to the Jumper Creek Tract of the Withlacoochee State Forest in Sumter County, Florida.

CF 1

CF 1 consists of approximately 742 ha (1,834 ac) of habitat in Sumter County, Florida. This unit consists of 726 ha (1,795 ac) of State-owned land within the Jumper Creek Tract of the Withlacoochee State Forest and 16 ha (39 ac) of privately owned land directly adjacent to the two locations where Florida bristle fern is currently observed. The State-owned land is managed by the Florida Forest Service. This unit is occupied by the subspecies and contains all of the physical or biological features essential to its conservation.

Special management considerations or protection may be required to address threats of residential and agricultural development, land clearing, logging, cattle grazing, hydrological alteration, competition with nonnative species, human use and recreation, and impacts related to climate change. In some cases, these threats are being addressed or coordinated with our partners and landowners to implement needed actions.

CF 2

We identified this area as essential for the conservation of the subspecies. CF 2 consists of approximately 747 ha (1,846 ac) of habitat on State-owned land within the Jumper Creek Tract of the Withlacoochee State Forest, Sumter County, Florida. This is within the historical range of Florida bristle fern but was not occupied by the subspecies at the time of listing.

Although it is currently considered unoccupied, Florida bristle fern was documented here in the past (80 FR 60440; October 6, 2015), and it is possible that the site still contains the fern's gametophytes (the very cryptic reproductive stage of the fern) (Possley 2020, pers. comm.) that could develop into sporophytes (the recognizable mature plant) under the proper conditions (80 FR 60440; October 6, 2015). Also, this unit contains all of the physical or biological features essential to the conservation of the subspecies. Based upon the presence of key habitat needs and the conditions of the site, this unit constitutes habitat for the Florida bristle fern.

This unit will serve to protect habitat needed to recover the subspecies and reestablish wild populations within the historical range in Sumter County. Re-establishing at least one historical population in this unit would increase the subspecies' redundancy in the Central Florida metapopulation. It will also provide habitat for recolonization in the case of stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed, or should Florida bristle fern be extirpated from one of its currently occupied locations. This unit is essential for the conservation of the subspecies because it will provide habitat for range expansion in known historical habitat that is necessary to increase viability of the subspecies by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the subspecies because the need for conservation efforts is recognized and is being discussed by our conservation partners, and habitat maintenance in this unit is ongoing. This unit is entirely composed of State-owned land that is part of the Withlacoochee State Forest. The Ten-Year Resource Management Plan for the Withlacoochee State Forest (Management Plan), approved in 2015, prior to the published final listing rule for Florida bristle fern, guides the Florida Forest Service's management, including protection of endangered and threatened species found on the Withlacoochee State Forest. The Management Plan lists the Florida bristle fern as occurring in the Forest, but specific conservation measures are not discussed for the subspecies. However, the Withlacoochee State Forest conducts nonnative species control (Florida Department of Agriculture and Consumer Services 2015, p. 34), which helps maintain the physical or biological features essential to the conservation of Florida bristle fern. The Florida Forest Service has shown interest in reintroduction efforts for Florida bristle fern in this area.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed 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 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 agency actions within the subspecies' habitat that may require consultation include management and any other landscape-altering activities on Federal lands administered by the Service, Army National Guard, U.S. Forest Service, and National Park Service; issuance of section 404 Clean

Water Act permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency, do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (1) if the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action.

In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such designation, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would significantly alter native vegetation structure or composition within the upland hardwood forest hammock habitat consisting of rockland or closed tropical hardwood hammock (south Florida) or mesic, hydric, or intermixed hammock strands (central Florida) ecosystems as defined as a physical or biological feature essential to the conservation of the Florida bristle fern in the designated critical habitat. Such activities could include, but are not limited to, land conversion or clearing related to residential, commercial, agricultural, or recreational development, including associated infrastructure; logging; introduction of nonnative plant species; or improper fire management. These activities could result in loss, modification, and fragmentation of rockland/mesic hammock habitat, thereby eliminating or reducing the habitat necessary for the growth and reproduction of the subspecies.

(2) Actions that would significantly alter microhabitat for Florida bristle fern within the rockland or closed tropical hardwood hammock (in south Florida) or mesic, hydric, or intermixed hammock strands (in central Florida) ecosystems, including significant alterations to the substrate within the rockland/mesic-hydric hammocks or to the canopy or hydrology within the rockland/mesic-hydric hammocks or surrounding upland hardwood forest vegetation as identified as a physical or biological feature essential to the conservation of the Florida bristle fern in the designated critical habitat. Such activities could include, but are not limited to, residential, commercial, agricultural, or recreational development, including associated infrastructure; land conversion or clearing; logging; introduction of nonnative species, including invasive plants or feral hogs; ground or surface water withdrawals; and ditching. These activities could result in changes to temperature, humidity, light, and existing water levels, thereby eliminating or reducing the microhabitat necessary for the growth and reproduction of the subspecies.

(3) Actions that would significantly alter the hydrology of the upland forested hammock ecosystems as defined as a physical or biological feature essential to the conservation of the Florida bristle fern in the designated critical habitat, including significant alterations to the hydrology of surrounding wetland habitat and the underlying water table. Such activities could include, but are not limited to, regional drainage efforts, ground or surface water withdrawals, and ditching. These activities could result in changes to existing water levels and humidity levels within the hammocks, thereby eliminating or reducing the habitat necessary for the growth and reproduction of the subspecies.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical

areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. There are no DoD lands with a completed INRMP within the final critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

The first sentence in section 4(b)(2) of the Act requires that we take into consideration the economic, national security, or other relevant impacts of designating any particular area as critical habitat. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

On December 18, 2020, we published a final rule in the **Federal Register** (85 FR 82376) revising portions of our regulations pertaining to exclusions of critical habitat. These final regulations became effective on January 19, 2021, and applied to critical habitat rules for which a proposed rule was published after January 19, 2021. Consequently, these new regulations do not apply to this final rule because the rule proposing critical habitat for Florida bristle fern published on February 24, 2020. In addition, this regulation was rescinded (87 FR 43433; July 21, 2022) and no longer applies to any designations of critical habitat. Therefore, for this final rule designating critical habitat for the Florida bristle fern, we apply the regulations at 424.19 and the 2016 Joint Policy on 4(b)(2) exclusions (81 FR 7226; February 11, 2016).

Exclusions Based on Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, we consider our economic analysis of the critical habitat designation and related factors (IEc 2020, entire). The analysis, dated January 30, 2020, was made available for public review from February 24, 2020, through April 24, 2020 (85 FR 10371). The economic analysis addressed probable economic impacts of critical habitat designation for Florida bristle fern. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the Florida bristle fern is summarized below and available in the screening analysis for the species (IEc 2020, entire), available at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2019–0068 or by contacting the Florida Ecological Services Field Office, Vero Beach (see **ADDRESSES**).

We did not receive any public comments on the DEA. Based on peer review comments and changes that we made to the critical habitat units (see Summary of Changes from the Proposed Rule, above), the IEM was revised to reflect the areas added to the final critical habitat designation. Due to the small amount of area added to the final critical habitat designation, it was determined that the screening analysis did not need to be revised.

In our evaluation of the probable incremental economic impacts that may result from the designation of critical habitat for Florida bristle fern, first we identified, in the IEM dated April 2021, probable incremental economic impacts associated with the following categories of activities: (1) Commercial or residential development; (2) roadway and bridge construction; (3) utility-related activities; (4) agriculture, including land clearing; (5) grazing; (6) groundwater pumping; (7) surface water withdrawals and diversions; (8) forest management; (9) fire management; (10) conservation and restoration activities, including nonnative species control; and (11) recreation. Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where Florida bristle fern is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the subspecies. When this final critical habitat designation rule becomes effective, consultations to avoid the destruction or adverse modification of critical habitat will be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the subspecies being listed and those attributable to the critical habitat designation (*i.e.,* the difference between the jeopardy and adverse modification standards) for Florida bristle fern. The following considerations helped to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the subspecies, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to Florida bristle fern would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this subspecies. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this designation.

The final critical habitat designation for Florida bristle fern totals approximately 1,698 ha (4,195 ac) in Miami-Dade and Sumter Counties, Florida, and includes both occupied and unoccupied units. Within the occupied units, any actions that may affect critical habitat would also affect the subspecies, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of Florida bristle fern. Therefore, the economic impacts of

implementing the rule through section 7 of the Act will most likely be limited to additional administrative effort to consider adverse modification.

Within the unoccupied units, incremental section 7 costs will include both the administrative costs of consultation and the costs of developing and implementing conservation measures needed to avoid adverse modification of critical habitat. Therefore, this analysis focuses on the likely impacts to activities occurring in unoccupied units of the final critical habitat designation. This analysis considers the potential need to consult on development, transportation, and other activities authorized, undertaken, or funded by Federal agencies within unoccupied habitat. The total annual incremental section 7 costs associated with the designation were estimated to be $210,000 in 2019 dollars (IEC 2020, p. 12). The increase in size of the unoccupied units from the proposed to the final critical habitat designation is minor (52 ha (129 ac)) and is not anticipated to significantly increase the annual incremental section 7 costs associated with the designation. Accordingly, we conclude that these costs will not reach the threshold of ''significant'' under E.O. 12866.

We considered the economic impacts of the critical habitat designation. The Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the Florida bristle fern based on economic impacts.

Exclusions Based on Impacts on National Security and Homeland Security

In preparing this rule, we have determined that the lands within the final designation of critical habitat for the Florida bristle fern are not owned or managed by the DoD or Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. We did not receive any additional information during the public comment period for the proposed designation regarding impacts of the designation on national security or homeland security that would support excluding any specific areas from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. Consequently, the Secretary is not exercising her discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security as discussed above. We consider a number of factors, including whether there are permitted conservation plans covering the species in the area such as habitat conservation plans (HCPs), safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of Tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no HCPs or other management plans for Florida bristle fern, and the designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, HCPs, or permitted or non-permitted plans or agreements from this critical habitat designation. We did not receive any additional information during the public comment period for the proposed rule regarding other relevant impacts to support excluding any specific areas from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. Accordingly, the Secretary is not exercising her discretion to exclude any areas from the final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this E.O. that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. Our economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Florida bristle fern conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The economic analysis concludes that incremental impacts may primarily occur due to administrative costs of section 7 consultations for development and transportation projects, and for other activities primarily related to land and facility management, cultural resource, research, and conservation activities in Everglades National Park; however, these are not expected to significantly affect small governments. Incremental impacts stemming from various species conservation and development control activities are expected to be borne by the Federal Government, State of Florida, and Miami-Dade County, which are not considered small governments. Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Florida bristle fern in a takings implications assessment. The Act does not authorize us to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take

permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for Florida bristle fern does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, the appropriate State resource agencies in Florida. We did not receive comments from the State of Florida. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the subspecies are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the subspecies are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the subspecies, this rule identifies the physical or biological features essential to the conservation of the subspecies. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under 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. As discussed above (see *Exclusions Based on Other Relevant Impacts*), we have determined that no Tribal lands will be affected by this designation.

References Cited

A complete list of references cited in this rule is available on the internet at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2019–0068 and upon request from the Florida Ecological Services Field Office, Vero Beach (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the U.S. Fish and Wildlife Service, Florida Ecological Services Field Office

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

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. Amend § 17.12(h) in the List of Endangered and Threatened Plants under Ferns and Allies by removing the entry for ''*Trichomanes punctatum*ssp. *floridanum*'' and adding in its place an entry for ''*Trichomanes punctatum* ssp. *floridanum*'' to read as follows:

17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
		FERNS AND ALLIES		
*	*	*	*	*
Trichomanes punctatum ssp. *floridanum*.	Florida bristle fern	Wherever found	E	80 FR 60440, 10/6/2015; 50 CFR 17.96(b)(1).[CH]
*	*	*	*	*

■ 3. Amend § 17.96 by adding paragraph (b) to read as follows:

17.96 Critical habitat—plants.

* * * * *

(b) *Conifers, ferns and allies, and lichens.* (1) Family Hymenophyllaceae: *Trichomanes punctatum* ssp. *floridanum* (Florida bristle fern).

(i) Critical habitat units are depicted for Miami-Dade and Sumter Counties, Florida, on the maps in this entry.

(ii) Within these areas, the physical or biological features essential to the conservation of Florida bristle fern consist of the following components:

(A) Upland hardwood forest hammock habitats of sufficient quality and size to sustain the necessary microclimate and life processes for Florida bristle fern.

(B) Exposed substrate derived from oolitic limestone, Ocala limestone, or exposed limestone boulders, which provide anchoring and nutritional requirements.

(C) Constantly humid microhabitat consisting of dense canopy cover, moisture, stable high temperature, and stable monthly average humidity of 90 percent or higher, with intact hydrology within hammocks and the surrounding and adjacent wetland communities.

(D) Dense canopy cover of surrounding native vegetation that consists of the upland hardwood forest hammock habitats and provides shade, shelter, and moisture.

(E) Suitable microhabitat conditions, hydrology, and connectivity that can support Florida bristle fern's growth, distribution, and population expansion (including rhizomal growth, spore dispersal, and sporophyte and gametophyte growth and survival).

(F) Plant community of predominantly native vegetation that is minimally disturbed or free from human-related disturbance, with either no competitive nonnative, invasive plant species, or such species in quantities low enough to have minimal effect on Florida bristle fern.

(iii) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on January 23, 2023.

(iv) Data layers defining map units were created using ESRI ArcGIS mapping software along with various spatial data layers. ArcGIS was used to calculate the size of habitat areas. The projection used in mapping and calculating distances and locations within the units was North American Albers Equal Area Conic, NAD 83 Geographic. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2019–0068, *https://www.fws.gov/office/florida-ecological-services/library,* and at the Florida Ecological Services Field Office, Vero Beach. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(v) Index map follows:

Figure 1 to Family Hymenophyllaceae: *Trichomanes punctatum* ssp. *floridanum* (Florida bristle fern) paragraph (b)(1)(v)

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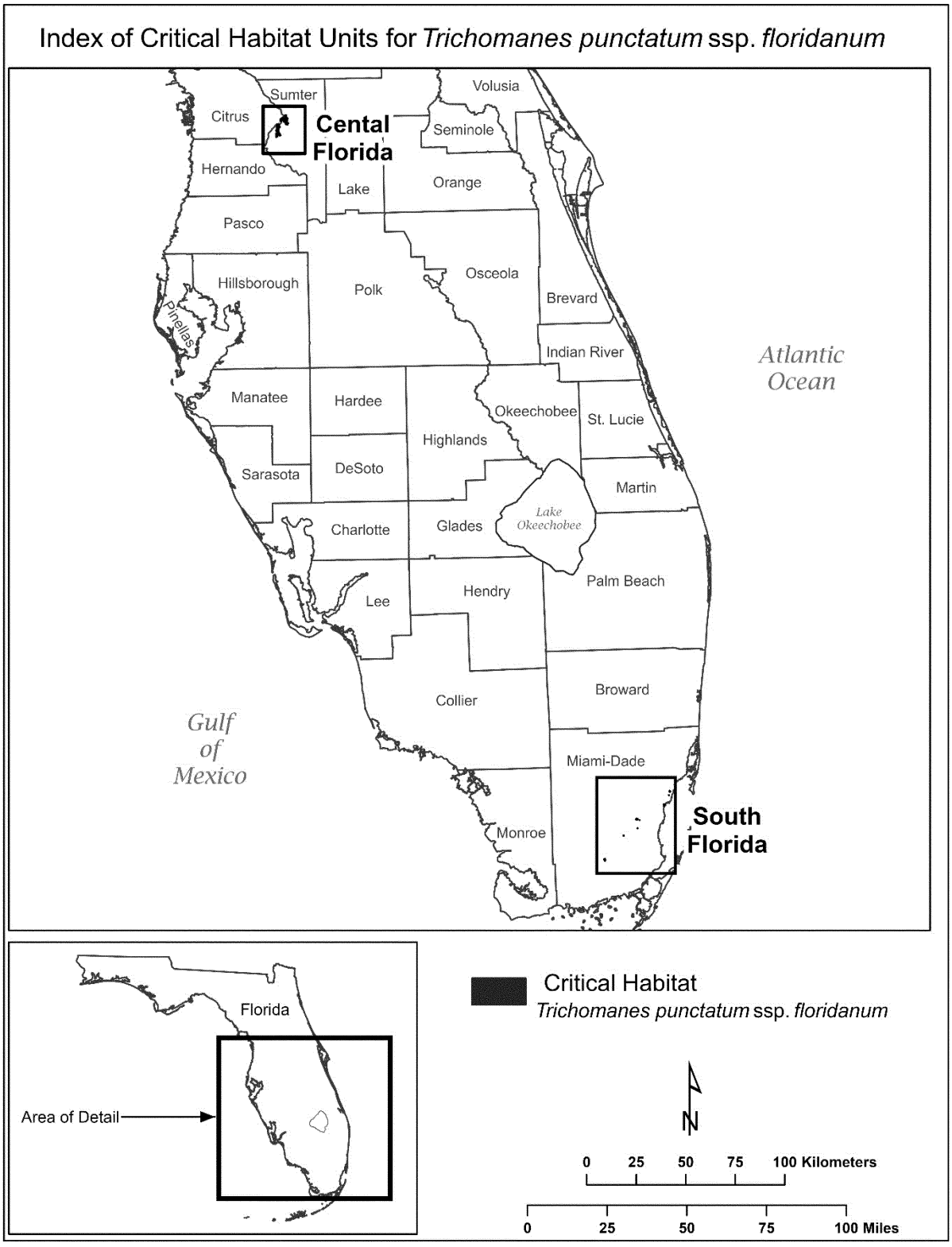


(vi) SF 1—Matheson Hammock, SF 2—Snapper Creek Hammock, and SF 3—Charles Deering Estate Hammock, Miami-Dade County, Florida.

(A) SF 1 consists of approximately 22 hectares (ha) (55 acres (ac)) in Matheson Hammock in and around Matheson Hammock Park. This unit is composed of 20.6 ha (51.1 ac) of County-owned land that is primarily managed cooperatively by Miami-Dade County's Environmentally Endangered Lands (EEL) program and Natural Areas Management division. The remaining 1.5 ha (3.7 ac) are privately owned and managed by the landowners through the County's EEL Covenant Program and/or are protected from development through the County's designation as Natural Forest Communities.

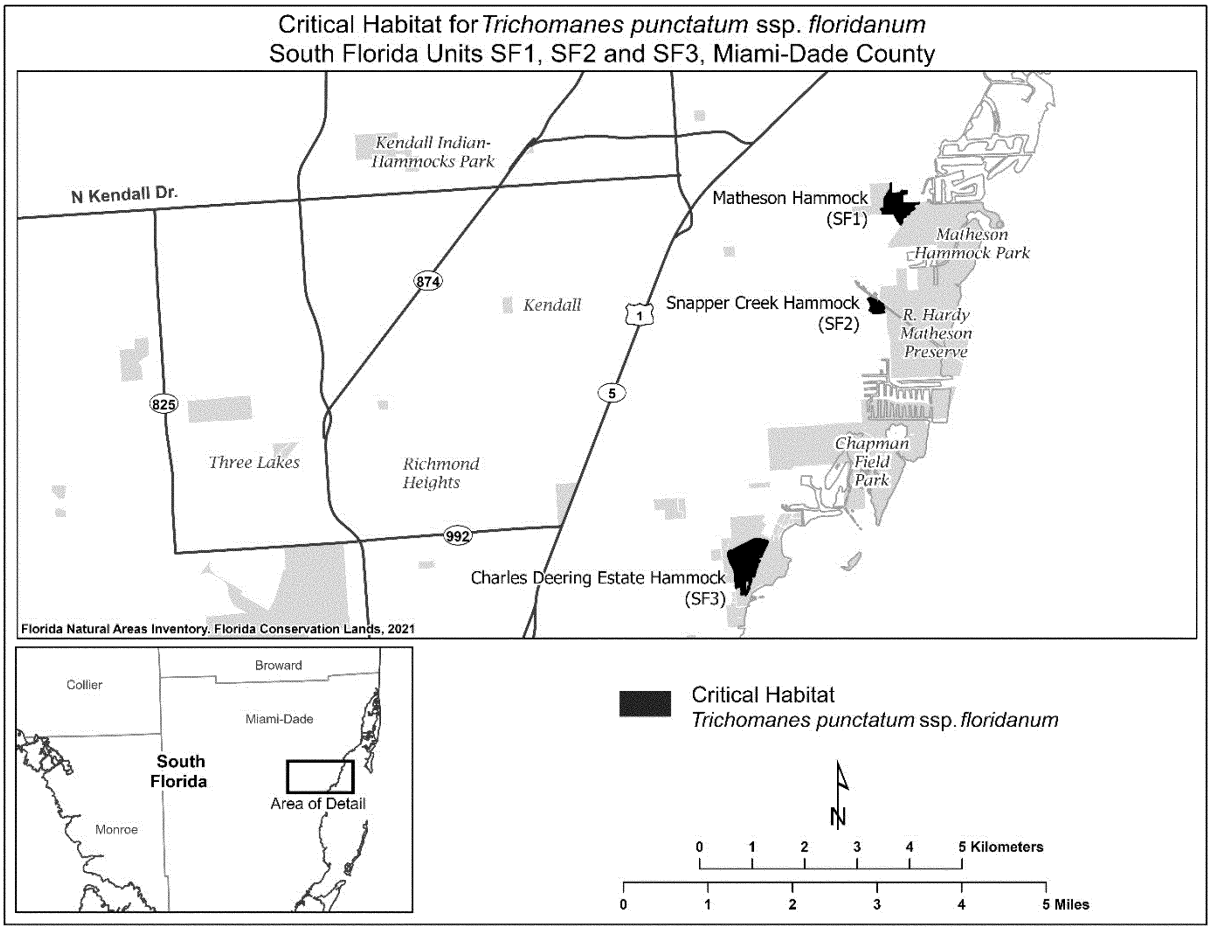
(B) SF 2 consists of approximately 6 ha (15 ac) in Snapper Creek Hammock adjacent to R. Hardy Matheson Preserve.

This unit consists of 3.2 ha (8 ac) of State-owned land that is primarily managed cooperatively by Miami-Dade County's EEL program and Natural Areas Management division and 2.8 ha (7 ac) of University of Miami-owned land that is managed in cooperation with Fairchild Tropical Botanical Gardens.

(C) SF 3 consists of approximately 43 ha (106 ac) in Charles Deering Estate. This unit is comprised of State-owned land that is primarily managed by the Miami-Dade County EEL program and Natural Areas Management division.

(D) Map of SF 1, SF 2, and SF 3 follows:

Figure 2 to Family Hymenophyllaceae: *Trichomanes punctatum* ssp. *floridanum* (Florida bristle fern) paragraph (b)(1)(vi)(D)



(vii) SF 4—Castellow and Ross Hammocks, SF 5—Silver Palm Hammock, SF 6—Hattie Bauer Hammock, and SF 7—Fuchs and Meissner Hammocks, Miami-Dade County, Florida.

(A) SF 4 consists of approximately 56 ha (139 ac) in Castellow and Ross Hammocks in and around Castellow Hammock Preserve. This unit consists of 17.5 ha (43.3 ac) of State-owned and 25.6 ha (63.4 ac) of County-owned lands that are primarily managed cooperatively by the Miami-Dade County EEL program and Natural Areas Management division. The remaining 13 ha (32.3 ac) are privately owned and managed by the landowners through the EEL Covenant Program and/or are protected from development through Miami-Dade County's designation as Natural Forest Communities.

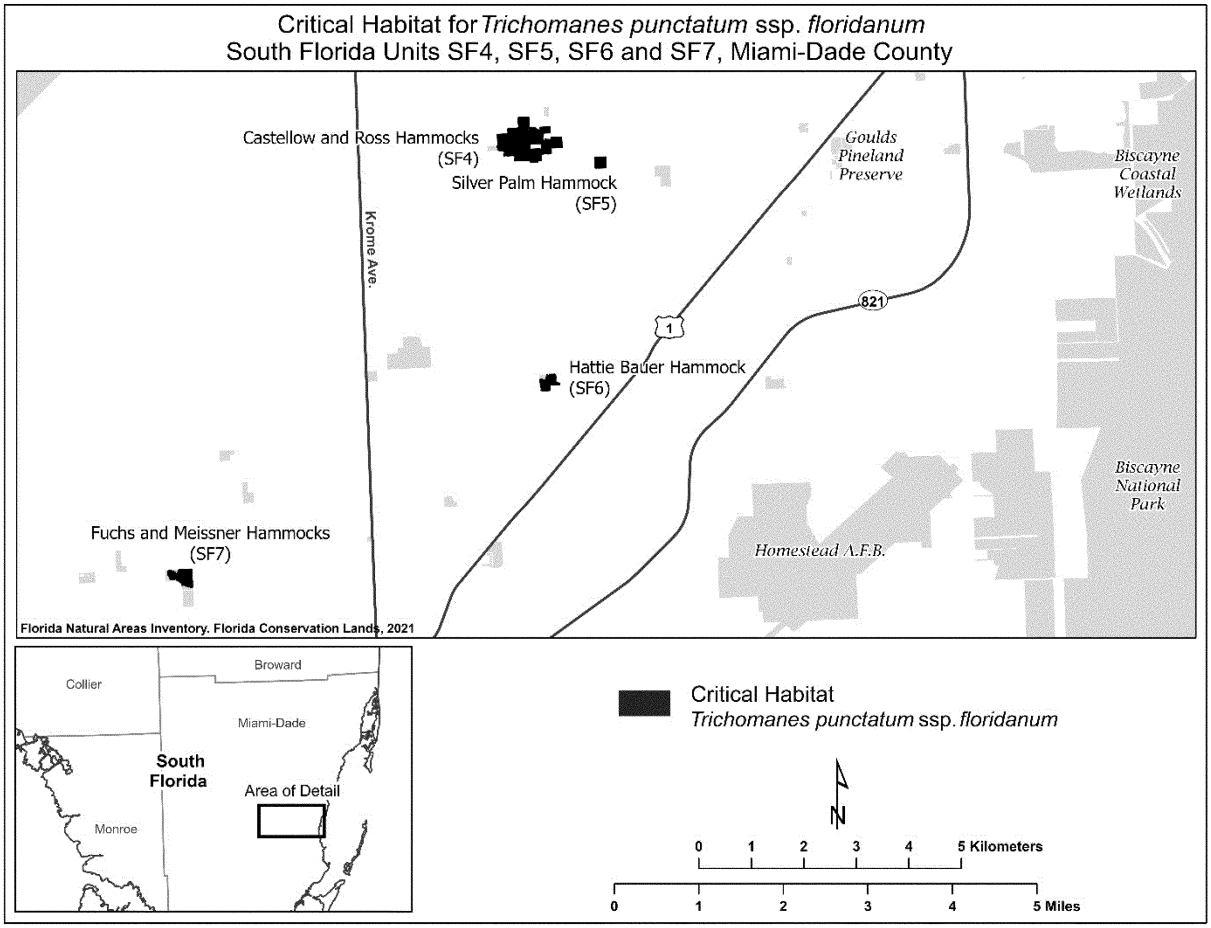
(B) SF 5 consists of approximately 4 ha (10 ac) in Silver Palm Hammock. This unit comprises State-owned land that is primarily managed cooperatively by the Miami-Dade County EEL program and Natural Areas Management division.

(C) SF 6 consists of approximately 6 ha (16 ac) in Hattie Bauer Hammock in and around Hattie Bauer Hammock Preserve. This unit consists of 4 ha (10 ac) of County-owned land that is primarily managed cooperatively by the Miami-Dade County EEL program and Natural Areas Management division. The remaining 2 ha (6 ac) are privately owned and managed by the landowners through the EEL Covenant Program and/or are protected from development through Miami-Dade County's designation as Natural Forest Communities.

(D) SF 7 consists of approximately 10 ha (25 ac) in Fuchs and Meissner Hammocks in and around Fuchs and Meissner Hammock Preserves. This unit consists of 2 ha (5 ac) of State-owned and 7.6 ha (19 ac) of County-owned lands that are primarily managed cooperatively by the Miami-Dade County EEL program and Natural Areas Management division. The remaining 0.4 ha (1 ac) are privately owned and managed by the landowners through the EEL Covenant Program and/or are protected from development through Miami-Dade County's designation as Natural Forest Communities.

(E) Map of SF 4, SF 5, SF 6, and SF 7 follows:

Figure 3 to Family Hymenophyllaceae: *Trichomanes punctatum* ssp. *floridanum* (Florida bristle fern) paragraph (b)(1)(vii)(E)

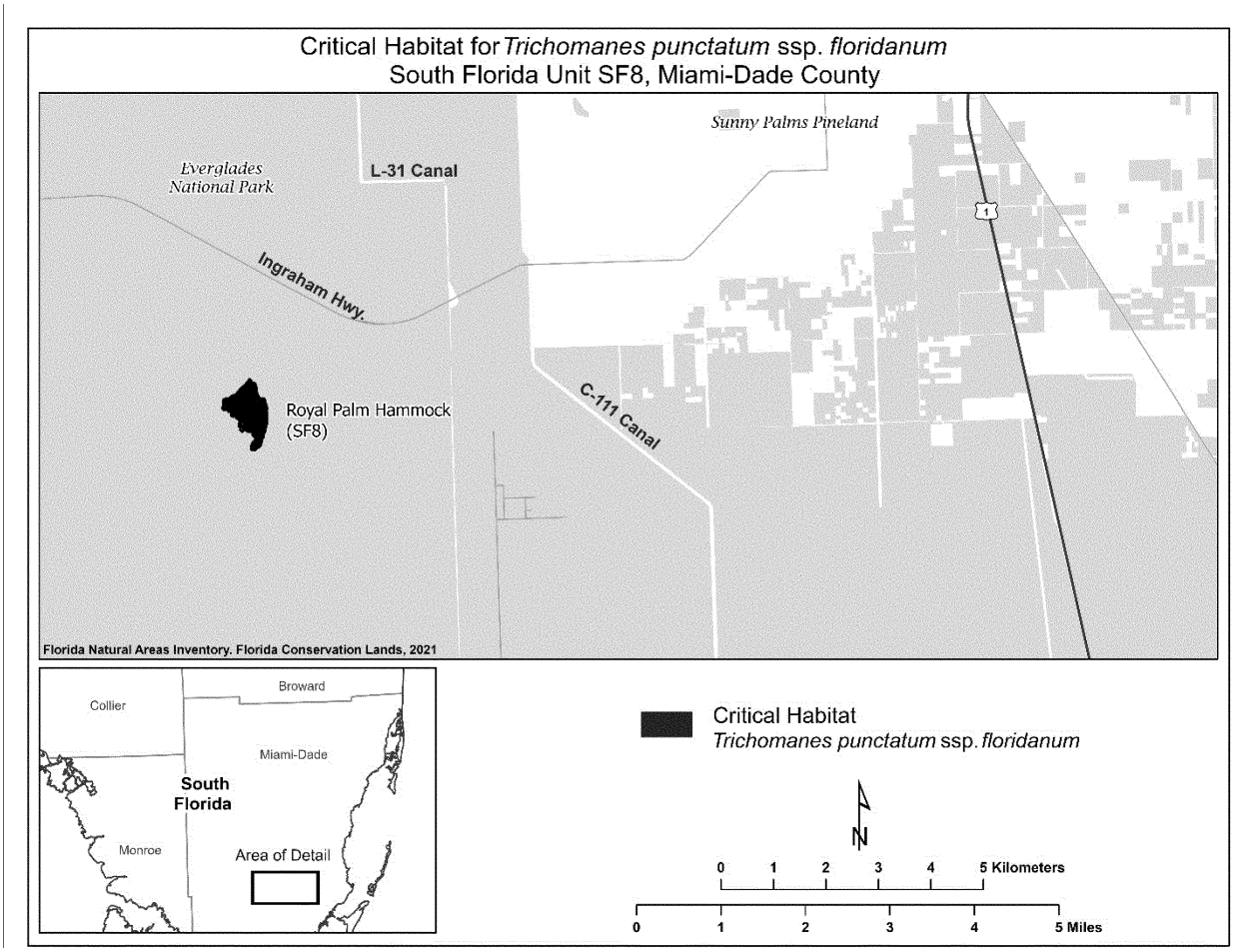


(viii) SF 8—Royal Palm Hammock, Miami-Dade County, Florida.

(A) SF 8 consists of approximately 61 ha (150 ac) in Royal Palm Hammock in Everglades National Park.

(B) Map of SF 8 follows:

Figure 4 to Family Hymenophyllaceae: *Trichomanes punctatum* ssp. *floridanum* (Florida bristle fern) paragraph (b)(1)(viii)(B)



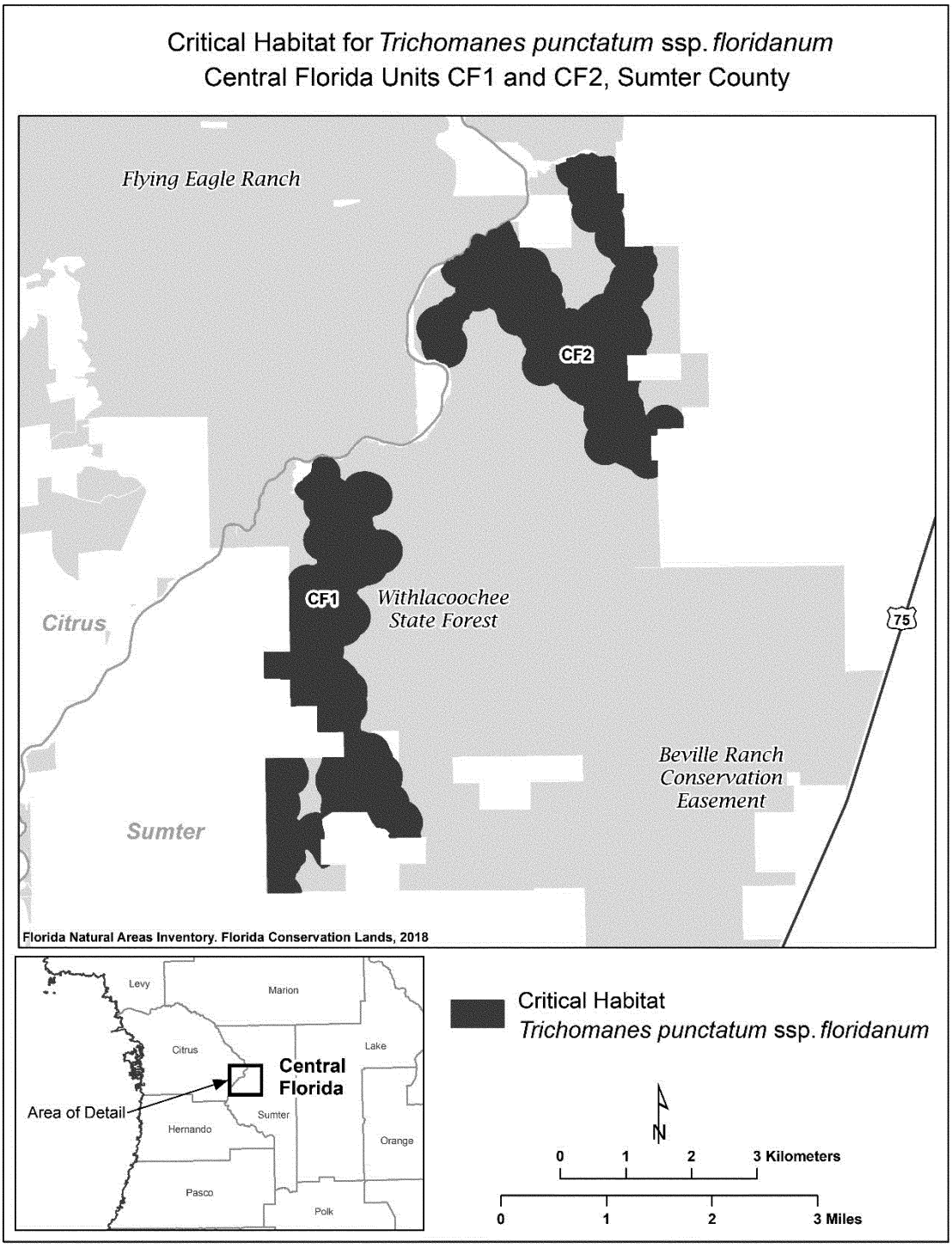
(ix) CF 1 and CF 2, Sumter County, Florida.

(A) CF 1 consists of approximately 742 ha (1,834 ac) of State-owned land (726 ha (1,795 ac)) within the Jumper Creek Tract of the Withlacoochee State Forest and of privately owned land (16 ha (39 ac)) directly adjacent to Withlacoochee State Forest. The State-owned land is managed by the Florida Forest Service.

(B) CF 2 consists of approximately 747 ha (1,846 ac) of State-owned land within the Jumper Creek Tract of the Withlacoochee State Forest.

(C) Map of CF 1 and CF 2 follows:

Figure 5 to Family Hymenophyllaceae: *Trichomanes punctatum* ssp. *floridanum* (Florida bristle fern) paragraph (b)(1)(ix)(C)



(2) [Reserved]

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–27089 Filed 12–21–22; 8:45 am]

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Proposed Rules

Federal Register
Vol. 87, No. 245
Thursday, December 22, 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.

FEDERAL ELECTION COMMISSION

11 CFR Parts 103, 104, 9007, 9014, and 9038

[Notice 2022–23]

Rulemaking Petition: Disgorgement of Contributions

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: notification of availability.

SUMMARY: On August 25, 2022, the Federal Election Commission received a Petition for Rulemaking asking the Commission to amend or clarify its regulations regarding the refunding of contributions that violate the source prohibitions or amount limitations of the Federal Election Campaign Act (''the Act''). The petitioner requests that the Commission amend its regulations to permit committees to disgorge illegal contributions to the United States Treasury, and to provide that the Commission may require disgorgement when, according to the petitioner, a refund would be unjust and create incentives for future lawbreaking.

DATES: Comments must be submitted on or before February 21, 2023.

ADDRESSES: All comments must be in writing. Commenters may submit comments electronically via the Commission's website at *http://sers.fec.gov/fosers/,* reference REG 2022–06.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Knop, Assistant General Counsel, or Mr. Tony Buckley, Attorney, Office of the General Counsel, at (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On August 25, 2022, the Commission received a Petition for Rulemaking from the Campaign Legal Center (''Petition''). The Petition asks the Commission to ''amend or clarify the scope and remedies provided in § 103.3 to promote the robust enforcement of FECA.'' Petition at 8.

The Petition notes that ''Commission regulations currently state that committee treasurers must examine 'all contributions received for evidence of illegality,' and 'shall refund' illegal contributions to the contributors.'' Petition at 1. (citing 11 CFR 103.3(b)). The Petition further notes that the requirement that committees refund improper contributions ''is not required by FECA.'' Petition at 2. The Petition asserts that refunding illegal contributions can undermine the enforcement purposes of FECA by unjustly rewarding those making illegal contributions. According to the Petition, ''when those caught brazenly violating the law are rewarded with the return of the money they contributed—the tool of their illegal activity—it sends the regulated community and the public a very troubling message that the FEC permits violators to profit from their violations.'' Petition at 2.

The Act prohibits committees from accepting contributions in excess of certain limits or from certain sources. *See, e.g.,* 52 U.S.C. 30116(a) (limiting the amount a committee may accept from a person); 30118(a) and 30119(a) (prohibiting a committee from accepting contributions from corporations, labor organizations, national banks, and federal contractors); *but see SpeechNow.org* v. *Fed. Election Comm'n,* 599 F.3d 686 (D.C. Cir. 2010) (en banc) (striking down contribution limits as applied to independent expenditure-only committees). Commission regulations generally require a committee treasurer to ascertain whether a contribution exceeds the amount limitations or is from a prohibited source. *See* 11 CFR 103.3(b). A contribution determined to exceed the amount limitations may be redesignated, reattributed, or returned to the contributor. *See* 11 CFR 103.3(b)(3). A contribution determined to be from an improper source must be returned to the contributor. *See* 11 CFR 103.3(b)(1) and (2).

In Advisory Opinion 1996–05 (Kim), a political committee asked how it should reimburse contributions that it belatedly discovered to be unlawful corporate contributions made in the names of others. The Commission concluded that the requestor may refund the contributions to the corporation or, in the alternative, pay the amount of the contributions to the United States Treasury. Subsequently, in an unrelated matter, *Fireman* v. *FEC,* 44 Fed. Cl. 528 (1999), the Court of Federal Claims held that 11 CFR 103.3(b)(1) and (2) mandated a refund of all illegal contributions to the contributors regardless of the circumstances, and thereby rejected the Commission's interpretation of 11 CFR 103.3(b)(1) and (2) as permitting disgorgement of illegal contributions to the United States Treasury.

According to the Petition, ''[m]any recent FEC enforcement matters involving prohibited contributions have resulted in a partial or complete contribution refund to the violator, undercutting the effect of any civil penalty.'' Petition at 6. As one example, the Petition cites Matter Under Review (MUR) 7450, where a federal contractor made $525,000 in illegal contributions and agreed to pay a $125,000 civil penalty but had already recovered $500,000 as a contribution refund before the Commission's enforcement action was completed. Petition at 6–7.

The petition argues that ''[t]he near certainty that federal contractors will recover their illegal contributions—more than offsetting any civil penalties the Commission assesses—undermines the deterrent effect of enforcing the federal contractor contribution ban.'' Petition at 7. The Petition urges the Commission ''to amend or clarify its regulations to explicitly recognize that illegal contributions may be disgorged, and that the Commission may require the disgorgement of illegal contributions in appropriate circumstances.'' Petition at 8.

The Commission seeks comment on the Petition. The public may inspect the

Petition on the Commission's website at *http://sers.fec.gov/fosers/.*

The Commission will not consider the Petition's merits until after the comment period closes. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. The Commission will announce any action that it takes in the **Federal Register**.

Dated December 16, 2022.

On behalf of the Commission,

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–27779 Filed 12–21–22; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1643; Project Identifier MCAI–2022–00799–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–21–07, which applies to all Airbus SAS Model A350–941 and –1041 airplanes. AD 2020–21–07 requires replacement of affected passenger oxygen masks (which includes re-identifying the parts). Since the FAA issued AD 2020–21–07, it was determined that additional parts are subject to the unsafe condition. This proposed AD would continue to require the actions in AD 2020–21–07, and would require replacing additional affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also prohibit 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 February 6, 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–2022–1643; 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*. It is also available at *regulations.gov* under Docket No. FAA–2022–1643.
- 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: 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–2022–1643; Project Identifier MCAI–2022–00799–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 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

The FAA issued AD 2020–21–07, Amendment 39–21280 (85 FR 64949, October 14, 2020) (AD 2020–21–07), for all Airbus SAS Model A350–941 and –1041 airplanes. FAA AD 2020–21–07 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2020–0031, dated February 18, 2020 (EASA AD 2020–0031), to correct an unsafe condition identified as sticking of the breathing bag on certain passenger oxygen masks, which could prevent the breathing bag from fully inflating, and possibly injure cabin occupants following a depressurization event.

AD 2020–21–07 requires replacement of affected passenger oxygen masks (which includes re-identifying the parts).

Actions Since AD 2020–21–07 Was Issued

Since the FAA issued AD 2020–21–07, EASA superseded EASA AD 2020–0031 and issued EASA AD 2022–0112, dated June 17, 2022 (EASA AD 2022–0112) (also referred to as the MCAI), to

correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states that additional affected parts (emergency passenger oxygen container assembly having serial number BEHJ–XXXX) have been identified as being subject to the same unsafe condition.

The FAA is issuing this AD to address sticking of the breathing bag on certain passenger oxygen masks. The unsafe condition, if not addressed, could prevent the breathing bag from fully inflating, and possibly injure cabin occupants following a depressurization event. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1643.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2020–21–07, this proposed AD would retain all of the requirements of AD 2020–21–07. Those requirements are referenced in EASA AD 2022–0112, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0112 specifies procedures for replacing the affected passenger oxygen masks (those passenger oxygen masks contained in each affected emergency passenger oxygen container assembly), and re-identifying each affected part. EASA AD 2022–0112 also prohibits the installation of affected parts.

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 retain all of the requirements of AD 2020–21–07. This proposed AD would require accomplishing the actions specified in EASA AD 2022–0112 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 2022–0112 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0112 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 2022–0112 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 2022–0112. Service information required by EASA 2022–0112 for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1643 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2020–21–07 (13 airplanes)	6 work-hours × $85 per hour = $510	* $0	$510	$6,630
New proposed actions	6 work-hours × $85 per hour = $510	* 0	510	15,300

* The FAA has received no definitive data that would enable the FAA to provide cost estimates of the parts cost for the replacement specified in this proposed AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2020–21–07, Amendment 39–21280 (85 FR 64949, October 14, 2020); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2022–1643; Project Identifier MCAI–2022–00799–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 6, 2023.

(b) Affected ADs

This AD replaces AD 2020–21–07, Amendment 39–21280 (85 FR 64949, October 14, 2020) (AD 2020–21–07).

(c) Applicability

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

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that sticking effects have been observed affecting the breathing bag on certain passenger oxygen masks, and by a determination that additional parts are subject to the unsafe condition. The FAA is issuing this AD to address sticking of the breathing bag on certain passenger oxygen masks. The unsafe condition, if not addressed, could prevent the breathing bag from fully inflating, and possibly injure cabin occupants following a depressurization event.

(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 2022–0112, dated June 17, 2022 (EASA AD 2022–0112).

(h) Exceptions to EASA AD 2022–0112

(1) Where EASA AD 2022–0112 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0112 does not apply to this AD.

(3) Where EASA AD 2022–0112 specifies to do the replacement and re-identification specified in Airbus Service Bulletin A350–35–P013, Revision 02, dated March 8, 2022, which specifies to inspect for the part number and serial number and then do a replacement; this AD only requires the replacement and re-identification.

(4) Where service information identified in EASA AD 2022–0112 specifies to do an inspection for the date of manufacture of the affected part, this AD does not require that inspection.

(5) Where Table 3 of EASA AD 2022–0112 specifies a compliance time for airplanes on which ''the SB'' has not been embodied, for this AD the compliance time for those airplanes is ''before exceeding 72 months since airplane date of manufacture or within 30 days after the effective date of this AD, whichever occurs later.''

(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 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) 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 (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 2022–0112, dated June 17, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0112, 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 December 12, 2022.

Christina Underwood,

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

[FR Doc. 2022–27295 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1672; Airspace Docket No. 22–ACE–22]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Marion, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Marion, IA. The FAA is proposing this action to support new public instrument procedures.

DATES: Comments must be received on or before February 6, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–1672/Airspace Docket No. 22–ACE–22 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at Marion Airport, Marion, IA, to support instrument flight rule operations at this airport.

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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1672/Airspace Docket No. 22–ACE–22.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. 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 the **ADDRESSES** section for the 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 Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 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.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marion Airport, Marion, IA.

This action is necessary to support new public instrument procedures.

Class E airspace designations are published in paragraph 6005 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 Class E airspace designations listed in this document will 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 regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would 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

Accordingly, pursuant to the authority delegated to me, 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 14 CFR 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 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE IA E5 Marion, IA [Establish]

Marion Airport, IA
(Lat. 42°01′47″ N, long. 91°31′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marion Airport.

Issued in Fort Worth, Texas, on December 19, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–27813 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1673; Airspace Docket No. 22–AGL–38]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Paoli, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Paoli, IN. The FAA is proposing this action to support new public instrument procedures.

DATES: Comments must be received on or before February 6, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–1673/Airspace Docket No. 22–AGL–38 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at Paoli Municipal Airport, Paoli, IN, to support instrument flight rule operations at this airport.

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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1673/Airspace Docket No. 22–AGL–38.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. 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 the **ADDRESSES** section for the 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 Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 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.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.3-mile

radius of Paoli Municipal Airport, Paoli, IN.

This action supports new public instrument procedures.

Class E airspace designations are published in paragraph 6005 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 Class E airspace designations listed in this document will 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 regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would 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

Accordingly, pursuant to the authority delegated to me, 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 14 CFR 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 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL IN E5 Paoli, IN [Establish]

Paoli Municipal Airport, IN
(Lat. 38°35′05″ N, long. 86°27′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Paoli Municipal Airport.

Issued in Fort Worth, Texas, on December 19, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–27814 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2022–0956; FRL–10491–01–R3]

Air Plan Disapproval; West Virginia; Revision to the West Virginia State Implementation Plan To Add the SSM Rule 45CSR1—Alternative Emission Limitations During Startup, Shutdown, and Maintenance Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a state implementation plan (SIP) revision submitted by the State of West Virginia on June 13, 2017. The revision pertains to a new rule setting forth the requirements to establish, at the discretion of the Secretary of the West Virginia Department of Environmental Protection (WVDEP), an alternative emission limitation (AEL) for a source that requests an AEL. This SIP revision was submitted in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, for provisions in the West Virginia SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing to disapprove the SIP revision and proposing to determine that such SIP revision does not correct the deficiencies identified in the June 12, 2015, SIP Call.

DATES: Written comments must be received on or before January 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2022–0956 at *www.regulations.gov,* or via email to *Gordon.Mike@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2053. Ms. Nichols can also be reached via electronic mail at *Nichols.Serena@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. EPA's 2015 SSM SIP Action

On February 22, 2013, the EPA issued a **Federal Register** notice of proposed rulemaking (the February 2013 Proposal) outlining EPA's policy at the time with respect to SIP provisions related to periods of startup, shutdown, and malfunction (SSM). EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the Clean Air Act (CAA) with regard to excess emission

events.[1] For each SIP provision that the EPA determined to be inconsistent with the CAA, the EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, the EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013 (the supplemental notice of proposed rulemaking (SNPR)), in light of a D.C. Circuit decision that determined the CAA precludes authority of the EPA to create affirmative defense provisions. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate (79 FR 55920, September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), the EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction'' (80 FR 33839 June 12, 2015), hereafter referred to as the ''2015 SSM SIP Action.'' The 2015 SSM SIP Action clarified, restated, and updated the EPA's interpretation that SSM exemptions (whether automatic or discretionary) and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

EPA issued a Memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.[2] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to West Virginia in 2015. The 2020 Memorandum did, however, indicate the EPA's intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether the EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA's Deputy Administrator withdrew the 2020 Memorandum and announced EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[3] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including overburdened communities, receive the full health and environmental protections provided by the CAA.[4] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects the EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the agency takes action on SIP submissions, including West Virginia's SIP submittal provided in response to the 2015 SIP call.

B. West Virginia's Provisions Related to Excess Emissions

With respect to the West Virginia SIP, in the 2015 SSM SIP Action, EPA determined that 14 provisions were substantially inadequate to meet CAA requirements.[5] Three of these provisions allowed for automatic exemptions; eight of these provisions allowed for discretionary exemptions from otherwise applicable SIP emission limitations; one of these provisions imposed an alternative limit on hot mix asphalt plants; one of these provisions allowed the state to establish alternative visible emission standards; one of these was an affirmative defense provision identified by EPA to be substantially inadequate. The rationale underlying EPA's determination that the provisions were substantially inadequate to meet CAA requirements, and therefore to issue a SIP call to West Virginia to remedy the provisions, is detailed in the 2015 SSM SIP Action and the accompanying proposals.

In response to the 2015 SSM SIP Action, West Virginia submitted a SIP revision on June 13, 2017. West Virginia's submission requested the approval of a new state rule into the West Virginia SIP that sets forth the requirements to establish an AEL for a source that may require an AEL.

II. Summary of West Virginia's SIP Revision and EPA Analysis

A. West Virginia's SIP Revision

The new regulations adopted by West Virginia in response to the 2015 SSM SIP Action can be found at W.Va. Code R. 45–1–1 through 45–1–5. Section 45–1–1.1 explains that the rule contains criteria to establish an alternative emission limitation during startup, shutdown and maintenance, and was adopted to respond to the 2015 SSM SIP Action. Section 45–1–1.5.a states that ''persons'' subject to 45CSR2 through 7, 45CSR10, 45CSR21, or 45CSR40 that may be unable to meet an emission limit during startup, shutdown or maintenance ''may request'' an AEL in accordance with 45CSR1–1–3, while 45CSR1–1–5.b states that persons subject to 45CSR16 or 45CSR34 shall meet the applicable startup or shutdown provisions of applicable Federal rules and are not eligible for an AEL. [6] W.Va. Code R. 45–1–2 contains definitions for the new regulation. Notably, the submitted rule does not itself establish any AELs for any sources or categories. Rather, it contains provisions authorizing the Secretary to establish AELs through permits and sets forth certain requirements that any such AELs must meet. Additionally, it provides a mechanism for sources to request AELs by applying for permits, and provides that sources applying for such permits

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (February 22, 2013).

[2] October 9, 2020, Memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.

[3] September 30, 2021, Memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

[4] *See* 80 FR 33840, 33985, June 12, 2015

[5] Id. at 33962.

[6] The headings for West Virginia's regulations use the ''W.Va. Code R. X–X–X'' format, while references to regulatory sections within the text of the regulation itself follow the ''XCSRX'' format, where ''X'' represents a numeral. The remainder of this notice will use the ''XCSRX'' format for most references.

shall propose AELs that meet the criteria set forth in the rule.

The regulation at 45CSR1–3.1 states that the Secretary of WVDEP may establish an AEL ''as a practically enforceable permit condition . . . in accordance with the requirements of 45CSR13, 45CSR14, or 45CSR19 as applicable.'' [7] The regulations at 45CSR1–3.2 through 45CSR1–3.4 then explain acceptable forms that the AELs may take, so long as the normal permit limits and AELs provide for continuous compliance and do not result in ''effectively unlimited or an uncontrolled level of emissions.'' These explanations and limitations closely follow the guidance provided by EPA's 2015 SSM SIP Action.[8] Finally, 45CSR1–3.5 states that the Secretary shall use the criteria in 45CSR1–5 to develop the AEL.

The criteria in 45CSR1–5.1.a through 45CSR1–5.1.f require that limits developed by the Secretary must closely follow six of the seven specific criteria listed as appropriate considerations for SIP provisions addressing startup and shutdowns in EPA's 2015 SSM SIP Action.[9] Also, 45CSR1–5.2 states that an AEL must require the source to use good practices to minimize emissions and to use best efforts regarding planning, design and operating procedures, which closely parallels the sixth criterion in EPA's 2015 SSM SIP Action.[10] However, 45CSR1–3.5 also allows an AEL to be developed for ''maintenance,'' while the 2015 SSM SIP Action notes that maintenance is generally included in ''phases of normal operation at a source, for which the source can be designed, operated, and maintained in order to meet the applicable emission limitations and during which a source should be expected to control and minimize emissions. Accordingly, exemptions for emissions during these periods of normal source operation are not consistent with CAA requirements.'' [11] Because maintenance is a different normal mode of operation, any AEL developed for maintenance periods ''must meet the substantive requirements applicable to the type of SIP provision at issue, must meet the applicable level of stringency for that type of emission limitation and must be legally and practically enforceable.'' [12]

Finally, 45CSR1–6 requires that sources maintain certain records during periods of startup, shutdown and maintenance, while 45CSR1–7 states that any inconsistency between this regulation and any rule shall be resolved by the determination of the Secretary of WVDEP based upon application of the more stringent provision.

B. EPA's Analysis

EPA has identified several significant concerns with West Virginia's June 13, 2017, SIP submittal which suggest that it should not be approved. First, the SIP revision did not remove any of the existing West Virginia regulatory provisions from West Virginia's regulations that were found to be substantially inadequate in the 2015 SSM SIP Action, nor did the revision ask EPA to remove these provisions from the EPA-approved West Virginia SIP. Instead, the SIP submittal asks EPA to approve, as a SIP revision, a newly-adopted West Virginia regulation (45 CSR 1) that allows, but does not require, sources to apply for and receive AELs during periods of startup, shutdown, or maintenance, but not malfunction.[13] Moreover, the rule does not establish such limits for the sources that are subject to the automatic or discretionary exemptions provisions.

As such, West Virginia's SIP submittal does not remove from the West Virginia regulations, or from the EPA-approved West Virginia SIP, those provisions allowing automatic exemptions (W. Va. Code R. 45–2–9.1, W. Va. Code R. 45–7–10.3 and W. Va. Code R. 45–40–100.8) and discretionary exemptions (W. Va. Code R. 45–2–10.1, W. Va. Code R. 45–3–7.1, W. Va. Code R. 45–5–13.1, W. Va. Code R. 45–6–8.2, W. Va. Code R. 45–7–9.1, W. Va. Code R. 45–10–9.1 and W. Va. Code R. 45–21–9) from otherwise applicable SIP emission limits. These automatic and discretionary exemptions are still applicable and available to any source covered by these regulations. Therefore, the primary problem expressed in EPA's 2015 SSM SIP Action—the existence of automatic or discretionary exemptions from otherwise applicable SIP limitations—has not been solved. The new provision allowing sources to apply for AELs is not mandatory, so it is questionable as to why any source would apply for an AEL if the alternative is to do nothing and remain subject to the automatic or discretionary exemption from the limit that is still in West Virginia's regulations. Finally, even if a source covered by one of these automatic or discretionary exemptions for SSM events applies for an AEL, it is not clear from the text of the 45CSR1 regulation that the automatic or discretionary exemptions otherwise allowed by West Virginia's regulations are not available to a source that is granted an AEL by West Virginia. Without these provisions being removed from West Virginia's own regulations and the SIP, the foundational problems in West Virginia's SIP cited by EPA in the 2015 SSM SIP Action still persist.

A second concern supporting EPA's proposed disapproval of the SIP revision is that states may not unilaterally amend their SIPs without the appropriate process contemplated by the CAA. Even if the AEL approval process described in the SIP revision were mandatory for every source with emissions limitations subject to the SIP-called provisions, all revisions to SIP-approved emissions limitations must be subject to a state public comment process and submitted to EPA for approval. There is no explicit requirement in West Virginia's proposed SIP revision that would require State-approved AELs to be submitted to EPA for approval. Even if West Virginia intended to submit these AELs as SIP revisions, the potential resource burden on West Virginia and EPA in evaluating each single source AEL for both consideration of the criteria for an AEL and compliance with the requirements for revising a SIP could be significant.

Additionally, even if all sources were required to put in place AELs upon State approval, and even if all State-approved AELs are be submitted for EPA approval into West Virginia's SIP, until all sources potentially covered by the SIP-called provisions have had their AELs approved into the SIP, West Virginia would still be in violation of EPA's 2015 SSM SIP Policy and the accompanying SIP calls, and may be subject to sanctions and/or a Federal implementation plan (FIP) accordingly.

A third concern is that the additional regulatory language in 45CSR1 added by West Virginia is not in accordance with the first, and potentially most important, of the seven criteria EPA set forth in the 2015 SSM SIP Action. The 2015 SSM SIP Action states that, ''except in the case where a single source or small group of sources has the potential to cause an exceedance of the NAAQS [National Ambient Air Quality Standard] or PSD [prevention of significant deterioration] increments, it may be appropriate, in consultation with EPA, to create narrowly-tailored SIP revisions that take technological limitations into account and state that

[7] 45CSR13 generally covers minor source permitting. 45CSR14 is the Prevention of Significant Deterioration (PSD) permit program. 45CSR19 is the nonattainment new source review permit program.

[8] 80 FR 33840 at 33980, June 12, 2015.

[9] Id.

[10] Id.

[11] 80 FR 33913, June 12, 2015.

[12] Id.

[13] The full text of West Virginia's adopted regulation, 45 CSR 1, is in the docket for this action.

the otherwise applicable emissions limitations do not apply during narrowly-defined startup and shutdown periods.'' [14] The 2015 SSM SIP Action outlines seven criteria that would be considered by EPA when determining whether a SIP revision setting an alternative emission limitation during an SSM event complies with the CAA requirements and is therefore approvable. The first criterion is that the revision must be limited to specific, narrowly-defined source categories using specific control strategies.

West Virginia's submittal creates a process in which the Secretary may establish an AEL for a single source on a case-by-case basis, rather than establishing a single AEL applicable to a group of sources within a specific, narrowly-defined source category, which is problematic on its own. In addition, setting AELs on a single source, case-by-case basis raises concerns regarding the consistency of SSM provisions between similar types of sources with similar emission controls. When developing its AEL policy, EPA envisioned that states would create one standard value AEL for startups or shutdowns that would apply to a group of similar sources with similar emission controls, such as coal-fired boilers using wet scrubbers to control sulfur dioxide, and would require no further review or judgment by the state or EPA. However, West Virginia's approach would require each such source to apply for an AEL and potentially receive a different AEL than other similar sources. This could lead to inconsistent alternative limits for sources that should probably have similar alternative limits for startup or shutdown.

A fourth concern is that the additional language added by 45CSR1 does not cover malfunctions, while the 2015 SSM SIP Action did cite to certain West Virginia regulations providing for exemptions during malfunctions.[15] While the State is not required to establish an AEL for malfunctions, the continued existence of exemptions for malfunction events fails to address the 2015 SSM SIP Action.

Another significant concern with West Virginia's SIP submission is that 45CSR1–1–5.b states that sources subject to new source performance standards (NSPS), as incorporated into 45CSR16, and National Emissions Standards for Hazardous Air Pollutants (NESHAPS), as incorporated into 45CSR34, shall follow any SSM provisions set forth in an applicable NSPS and/or NESHAP and is not eligible for an AEL. This reliance on SSM provisions in NSPS and NESHAPS is problematic in some cases for multiple reasons.

First, EPA admits that many of the existing NSPS and NESHAP standards still contain exemptions from emission limitations during periods of SSM. The exemptions in these EPA regulations, however, predate the 2008 issuance of the D.C. Circuit decision in *Sierra Club* v. *Johnson,* in which the court held that emission limitations must be continuous and thus cannot contain exemptions for emissions during SSM events.[16] Likewise, the NSPS general provisions in 40 CFR 60.8 also predate that 2008 court decision. Since the 2008 *Sierra Club* decision, EPA has been working to remove or revise these SSM provisions as NSPS and NESHAPS are reviewed.[17] Thus, some NSPS and NESHAPS have been revised to address the 2008 Sierra Club decision, but some have not, and West Virginia's 45CSR1–1–5.b does not distinguish between the updated standards and not-yet-updated standards. Despite the fact that EPA has not completed its work removing SSM provisions from every NSPS and NESHAP, the Agency is not willing to newly approve problematic SSM provisions into SIPs.

Second, while the 2015 SSM SIP Action acknowledges that certain Federal rules may provide useful examples of approaches for appropriate and feasible AELs for states to apply during startup and shutdown in a SIP provision (in particular those Federal rules that have been revised or newly promulgated since 2008),[18] it should not be assumed that emission limitation requirements in recent NESHAP and NSPS are appropriate for all sources regulated by the SIP. The universe of sources regulated by the Federal NSPS and NESHAP programs is not identical to the universe of sources regulated by states for purposes of the NAAQS. Moreover, the pollutants regulated under the NESHAP program (*i.e.,* hazardous air pollutants) are in many cases different than those that would be regulated for purposes of attaining and maintaining the NAAQS, protecting PSD increments, improving visibility, and meeting other CAA requirements. *See* 80 FR 33916, June 12, 2015. Therefore, the particular work practice standards which any particular NSPS or NESHAP adopts for an SSM event as part of a continuously applicable emission limitation would still need to be evaluated on a case-by-case basis as to their applicability and appropriateness as AELs for SIP purposes. Furthermore, the SIP must be clear as to what the applicable limitations are for each source at all times. West Virginia's regulation at 45CSR1–1–5.b leaves it up to each source to identify which NSPS and/or NESHAP and any applicable SSM provision may apply, which makes it far from clear to EPA and the public which standard applies, making it difficult or impossible to enforce any standard against the source. Finally, EPA also recommends giving consideration to the seven specific criteria delineated in the 2015 SSM SIP Action for developing AELs in SIP provisions that apply during startup and shutdown. *See id.* at 33980.

III. Proposed Action

EPA's review indicates that West Virginia's submittal (1) does not remove those provisions of State regulation that were identified by the 2015 SIP Action as inconsistent with the CAA, but instead adopts an optional regulatory process for creating source-specific AELs; and (2) requires individual, source-by-source determinations of alternative limits subject only to required State approval, without any requirement that such revisions of otherwise applicable emissions limitations should be submitted to EPA as a separate SIP revision. EPA also believes this source-by-source approach will prove burdensome for both West Virginia and EPA, and potentially result in similar sources in similar source categories receiving different and inconsistent alternative emission limits during startup and shutdown. In addition, as mentioned above, until all sources potentially covered by the SIP-called provisions have had their AELs approved into the SIP, West Virginia would still be in violation of EPA's 2015 SSM SIP Policy and the accompanying SIP calls, and may be subject to sanctions and/or a FIP accordingly. For these and other reasons described above, EPA is therefore proposing to disapprove West Virginia's June 13, 2017 SIP revision that establishes a new rule setting forth the requirements to establish an AEL for a source voluntarily requesting an AEL. EPA is soliciting public comments on the issues discussed in this document.

[14] 80 FR 33840 at 33914, June 12, 2015.

[15] See 45CSR2–9.1, 45CSR4–100.8, 45CSR3–7.1, 45CSR5–13.1, 45CSR6–8.2, 45CSR7–9.1, 45CSR10–9.1, 45CSR21–9.

[16] 551 F.3d 1019 (D.C. Cir. 2008).

[17] 80 FR 33840 at 33890–91, June 12, 2015.

[18] Specifically, EPA is referring to Federal rules for the New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants that have been issued since the D.C. Circuit's decision of December 19, 2008, *Sierra Club* v. *Johnson,* 551 F.3d 1019 (D.C. Cir. 2008).

These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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'' as defined by Executive Order 12866 and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

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 merely proposes to disapprove a SIP submission as not meeting the CAA.

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. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

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: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. 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 merely proposes to disapprove a SIP submission as not meeting the CAA.

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

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

This action merely proposes to disapprove a SIP submission as not meeting the CAA.

List of Subjects in 40 CFR Part 52

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

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2022–27713 Filed 12–21–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R01–OAR–2020–0007; FRL–10498–01–R1]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Air Emissions Standards for Halogenated Solvent Cleaning Machines; State of Rhode Island Department of Environmental Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to grant the Rhode Island Department of Environmental Management (RI DEM) the authority to implement and enforce the amended Rhode Island Code of Regulations, Control of Emissions from Organic Solvent Cleaning (Organic Solvent Cleaning Rule), and the General Definitions Regulation (General Definitions Rule) in place of the National Emission Standard for Halogenated Solvent Cleaning (Halogenated Solvent NESHAP) as a partial rule substitution as it applies to organic solvent cleaning machines in Rhode Island. Upon approval, RI DEM's amended Organic Solvent Cleaning Rule and General Definitions Rule would apply to all sources that otherwise would be regulated by the Halogenated Solvent NESHAP, except for continuous web cleaning machines, for which the Halogenated Solvent NESHAP would continue to apply. The EPA has reviewed RI DEM's request and has preliminarily determined that the State's amended Organic Solvent Cleaning Rule and General Definitions Rule satisfy the requirements necessary for approval. Thus, the EPA is proposing to approve the request. This approval would make RI DEM's amended Organic Solvent Cleaning Rule and General Definitions Rule federally enforceable. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before January 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2020–0007 at *https://www.regulations.gov,* or via email to *bird.patrick@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. The EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxics, and Indoor Programs Branch, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, telephone number 617–918–1287, *bird.patrick@epa.gov.*

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

Table of Contents

I. Background and Purpose

Under CAA section 112(l), the EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements for hazardous air pollutants (HAPs). The Federal regulations governing the EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E. *See* 58 FR 62262 (November 26, 1993), as amended by 65 FR 55810 (September 14, 2000). Under these regulations, a state air pollution control agency has the option to request the EPA's approval to substitute a state rule for the applicable Federal rule (*e.g.,* the National Emission Standards for Hazardous Air Pollutants (NESHAP)). Upon approval by the EPA, the state agency is authorized to implement and enforce its rule in place of the Federal rule, and the state rule becomes federally enforceable in that state.

The EPA promulgated the National Emissions Standards for Halogenated Solvent Cleaning (''Halogenated Solvent NESHAP'') on December 2, 1994. *See* 40 CFR part 63, subpart T. The EPA promulgated several amendments to the Halogenated Solvent NESHAP, with the latest amendments promulgated on May 3, 2007. *See* 72 FR 25138.

On June 18, 2010, the EPA approved the Rhode Island Air Pollution Control Regulation No. 36, currently codified in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning (Organic Solvent Cleaning Rule), and Rhode Island Air Pollution Control General Definitions Regulation, currently codified in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 0 General Definitions Regulation (General Definitions Rule), as a partial rule substitution for the Halogenated Solvent NESHAP, applicable to all sources in Rhode Island, except for continuous web cleaning machines,[1] for which the Halogenated Solvent NESHAP continues to apply. *See* 75 FR 34647.

Under 40 CFR 63.91(e)(2), within 90 days of any state amendment, repeal, or revision of any state rule approved as an alternative to a Federal requirement, the state must provide the EPA with a copy of the revised authorities and request approval of the revised rule. In a letter dated June 30, 2022, RI DEM requested approval of its amended rules pertaining to organic solvent cleaning in Rhode Island. Specifically, RI DEM requested approval of its amended rules in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning, effective June 13, 2022, excluding the provisions in Parts 36.2, 36.5.A.28, 36.6.D, and 36.17,[2] and in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 0 General Definitions Rule, effective January 4, 2022, excluding the provisions in Part 0.2.[3] In this **Federal Register** document, the EPA is proposing to approve the amended Organic Solvent Cleaning Rule and General Definitions Rule under the rule substitution criteria in 40 CFR 63.93.

Rhode Island's Part 36 Organic Solvent Cleaning Rule was also submitted as a State Implementation Plan (SIP) revision for purposes of meeting reasonable available control technology (RACT) requirements for volatile organic compounds (VOCs). The EPA will take action on that submittal in a separate document.

II. What requirements must a state rule meet to substitute for a section 112 rule?

A state must first demonstrate that it has satisfied the ''up-front'' criteria contained in 40 CFR 63.91(d). The process of providing ''up-front approval'' assures that a state has met the delegation criteria in section 112(l)(5) of the CAA as implemented by the EPA's regulations at 40 CFR 63.91(d). These criteria require, among other things, that the state has demonstrated that its program contains adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. Under 40 CFR

[1] The regulatory text promulgated in 40 CFR 63.99(a)(40)(ii) on June 10, 2010 specifies that the EPA's approval applies to area sources. However, Rhode Island did not request that the rule substitution be limited to area sources. In addition, nothing in the June 10, 2010 **Federal Register** preamble describes the rule substitution as being limited to area sources. We believe the rule substitution was intended to apply to both major and area sources and that the term area source is erroneously included in the regulatory text in § 63.99(a)(40)(ii). We therefore propose to remove the reference to area sources currently in 40 CFR 63.99(a)(40)(ii) by this rulemaking.

[2] The excluded provisions at Parts 36.A.5.28, 36.6.D, and 36.17 apply to industrial solvent cleaning not regulated by the Halogenated Solvent NESHAP. We are not proposing to approve these provisions.

[3] The excluded provisions at Parts 36.2 and 0.2 state that the State's regulation shall be liberally construed to permit RI DEM to effectuate the purposes of state laws, goals and policies. We are not proposing to approve these provisions.

63.91(d)(3), interim or final Title V program approval under 40 CFR part 70 satisfies the criteria set forth in 40 CFR 63.91(d) for ''up-front approval.'' On October 1, 2001, the EPA promulgated full approval of RI DEM's operating permits program. *See* 66 FR 49839. Accordingly, RI DEM has satisfied the up-front approval criteria of 40 CFR 63.91(d).

Additionally, the regulations governing approval of state requirements that substitute for a section 112 rule require the EPA to evaluate the state's submittal to ensure that it meets the stringency and other requirements of 40 CFR 63.93. A rule will be approved if the state requirements contain or demonstrate: (1) Applicability criteria that are no less stringent than the corresponding Federal rule; (2) levels of control and compliance and enforcement measures that result in emission reductions from each affected source that are no less stringent than would result from the otherwise applicable Federal rule; (3) a compliance schedule that requires each affected source to be in compliance within a time frame consistent with the deadlines established in the otherwise applicable Federal rule; and (4) the additional compliance and enforcement measures as specified in 40 CFR 63.93(b)(4). *See* 40 CFR 63.93(b).

A state may also seek, and the EPA may approve, a partial delegation of the EPA's authorities. CAA 112(l)(1). To obtain a partial rule substitution, the state's submittal must meet the otherwise applicable requirements in 40 CFR 63.93 and be separable from the portions of the program that the state is not seeking rule substitution for. *See* 64 FR 1889, January 12, 1999.

Before we can approve alternative requirements in place of a part 63 emissions standard, the state must submit to us detailed information that demonstrates how the alternative requirements compare with the otherwise applicable Federal standard. A detailed discussion of how the EPA determines equivalency for state alternative NESHAP requirements is provided in the preamble to the EPA's proposed subpart E amendments on January 12, 1999. *See* 64 FR 1908, January 12, 1999.

III. What material changes did Rhode Island make to its organic solvent cleaning rule and general definitions rule?

Effective as of June 13, 2022,[4] RI DEM amended Part 36 Control of Emissions from Organic Solvent Cleaning (amended Organic Solvent Cleaning Rule) and effective as of January 4, 2022, RI DEM amended Part 0 General Definitions Regulation (amended General Definitions Rule). The new State regulations differ in several ways from the regulations we last approved in 2010. *See* 75 FR 34647.

In 2016, the State of Rhode Island revised its Administrative Procedures Act to require that every state regulation be rewritten into the new Rhode Island Code of Regulations format. In order to meet this requirement, Part 0 General Definitions Rule and Part 36 Organic Solvent Cleaning Rule were revised consistent with the required format. Changes to the format included renumbering and lettering the provisions, moving the general provisions about purpose, authority, and severability from the end of the regulation to the beginning, and eliminating the table of contents. In addition, Rhode Island added an incorporated materials section to adopt and incorporate the Federal regulations cited within the rule. These revisions are not substantive, and they continue the State program we had previously approved, with the exceptions noted below. Our prior approval notice contains a detailed discussion of the differences between Rhode Island's Organic Solvent Cleaning Rule and the Halogenated Solvent NESHAP. *See* 75 FR 34647, June 18, 2010.

In addition to the recodification to the new format, Rhode Island also made several substantive changes to the Part 36 Organic Solvent Cleaning Rule. The following discussion summarizes the material changes to Rhode Island's amended Organic Solvent Cleaning Rule. A detailed side by side comparison table of Rhode Island's amended Organic Solvent Cleaning Rule compared to the Halogenated Solvent NESHAP is included in the docket identified in the **ADDRESSES** section of this **Federal Register** document *See* Enclosure 1 of Rhode Island's June 30, 2022 submission.

Rhode Island's amended Organic Solvent Cleaning Rule added an exemption from requirements for cold cleaning machines with an internal volume of 1 liter or less and not using halogenated HAP solvents as defined. *See* Rhode Island's Part 36.6.C. Because Rhode Island regulates cold cleaning machines with an internal volume of 1 liter or less if using halogenated HAP solvents as does the Halogenated Solvent NESHAP, Rhode Island's amended Organic Solvent Cleaning Rule is no less stringent than the Halogenated Solvent NESHAP. *See* 40 CFR 63.460(a).

Rhode Island's amended Organic Solvent Cleaning Rule changed the requirement for batch vapor machines without a solvent air interface to determine compliance with the three-month rolling emission limit on the 15th of every month. The Halogenated Solvent NESHAP requires these machines to determine compliance with the three-month rolling emission limit on the 1st of every month. Because the State's rule and the NESHAP require the same frequency of determining compliance (*i.e.,* once every month), Rhode Island's amended Organic Solvent Cleaning rule is not less stringent than the Halogenated Solvent NESHAP. *See* Rhode Island's Part 36.12.A.3 and 40 CFR 63.464 and 63.465(c).

Rhode Island's Organic Solvent Cleaning Rule includes solvent vapor pressure limits for certain cold cleaning operations. Rhode Island's amended Organic Solvent Cleaning Rule clarified the provisions for cold cleaning machines excluded from the solvent vapor pressure limits. The Halogenated Solvent NESHAP does not set vapor pressure limits for solvents. Because Rhode Island's rule amended Organic Solvent Cleaning rule imposes limits beyond what the NESHAP requires, it is not less stringent than the Halogenated Solvent NESHAP. *See* Rhode Island's Part 36.9.G.

Rhode Island's Organic Solvent Cleaning Rule includes a monthly halogenated HAP solvent emission limit for all organic solvent cleaning operations, calculated on a 12-month rolling average basis. Rhode Island's amended Organic Solvent Cleaning Rule added explicit compliance dates for sources complying with the monthly halogenated HAP solvent emission limit. *See* Rhode Island's Parts 36.8.Q and 36.7.B. Rhode Island's monthly halogenated HAP solvent emission limit compliance dates are consistent with the Halogenated Solvent NESHAP. *See* 40 CFR 63.460(i).

Rhode Island removed the specific dates for approval of alternatives for machines installed before November 29, 1993 because those dates have passed. Rhode Island's amended Organic Solvent Cleaning Rule requires alternatives to be submitted and approved by EPA and RI DEM before startup of the machine. Rhode Island's amended Organic Solvent Cleaning Rule is equivalent to the Halogenated Solvent NESHAP. *See* Rhode Island's Parts 36.9.C.2, 36.10.F.5, 36.10.G.3, 36.11.H.3, and 36.11.G.4 and 40 CFR 63.469.

[4] Since the EPA's 2010 approval, Rhode Island amended Part 36 on January 9, 2017, and then subsequently on January 13, 2019 and June 13, 2022.

Rhode Island removed the provision requiring requests to be submitted by December 1, 1996, for exemptions from automated parts handling for machines installed before November 29, 1993, because the deadline has passed for sources to request an exemption from parts handling for machines installed before November 29, 1993. Rhode Island's amended Organic Solvent Cleaning Rule requires requests for exemption from parts handling to be submitted 30 days before startup of the solvent cleaning machine. The Halogenated Solvent NESHAP does not have an analogous requirement for sources to request using the alternative emission limitation as an alternative to the control technology standards. Both the Halogenated Solvent NESHAP and Rhode Island's rule require sources complying with the alternative emission standard to report solvent emissions averages. Because Rhode Island's amended Organic Solvent Cleaning Rule imposes this request requirement that the NESHAP does not require, it is not less stringent than and is consistent with the Halogenated Solvent NESHAP. *See* Rhode Island's Part 36.16 and 40 CFR 63.464.

Rhode Island removed initial notification and compliance notification reporting dates for sources installed before November 29, 1993, because those reporting deadlines have passed. Rhode Island's amended Organic Solvent Cleaning Rule requires sources to submit an initial notification 120 days before startup and a compliance notification report 60 days after startup. The Halogenated Solvent NESHAP requires the initial notification for new sources to be submitted as soon as practicable before construction or reconstruction is commenced and requires the initial statement of compliance report to be submitted no later than 150 days after startup. Because RI's amended Organic Solvent Cleaning Rule requires a more expeditious notification and reporting schedule than the NESHAP, it is not less stringent than and is consistent with the Halogenated Solvent NESHAP. *See* Rhode Island's Parts 36.15.1.A and 36.15.2.A and 40 CFR 63.468(b)–(e).

Rhode Island amended and added definitions in order to be consistent with the NESHAP, including definitions for air blanket, consumption, contaminants, cover, halogenated HAP solvent, hoist, overall control device efficiency, part, soil, solvent/air interface area, sump heater, sump heater coils, and vapor cleaning. Because Rhode Island's definitions are equivalent to those in the NESHAP, Rhode Island's rule is no less stringent than the NESHAP. *See* Rhode Island's Part 36.5 and 40 CFR 63.461.

IV. What is the EPA's evaluation regarding Rhode Island's amended organic solvent cleaning rule and general definitions rule?

After reviewing the request for approval of Rhode Island's amended Organic Solvent Cleaning Rule and General Definitions Rule, the EPA proposes to find that this request meets all of the requirements necessary to qualify for a partial rule substitution approval under CAA section 112(l) and 40 CFR 63.93. Specifically, we believe that the amended State program generally continues the program we approved in 2010, with the exceptions described in this document. We thus incorporate the findings we made in our 2010 approval notification. *See* 75 FR 34650, June 18, 2010. The amendments to the program since then are generally non-substantive changes to conform the State's regulations to its recently revised Administrative Procedures Act. We have scrutinized the several substantive changes as described above and find that these do not unfavorably affect the stringency of the State's program or its consistency with the NESHAP. We thus propose to find that Rhode Island's amended Organic Solvent Cleaning Rule and General Definitions Rule meet all the criteria for our approval in 40 CFR 63.93(b): the State's program is not less stringent than the Halogenated Solvent NESHAP as required by each of the criteria set forth in 40 CFR 63.93(b)(1)–(2), is consistent with the compliance schedule in the NESHAP as required by 40 CFR 63.93(b)(3), and satisfies the compliance and enforcement requirements in 40 CFR 63.93(b)(4). We make these findings for the State's program as applied to all sources in Rhode Island otherwise regulated by the Halogenated Solvent NESHAP, except for continuous web cleaning machines for which the Halogenated Solvent NESHAP would continue to apply. Therefore, the EPA proposes to approve Rhode Island's amended Organic Solvent Cleaning Rule, effective as of June 13, 2022, and Rhode Island's General Definitions Rule, effective as of January 4, 2022, in lieu of the Halogenated Solvent NESHAP, for all sources in Rhode Island, except for continuous web cleaning machines.

V. Proposed Action

EPA is proposing to approve RI DEM's amended rules in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning, effective as of June 13, 2022, excluding the provisions in Parts 36.2, 36.5.A.28, 36.6.D, and 36.17, and in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 0 General Definitions Regulation, effective as of January 4, 2022, excluding the provisions in Part 0.2, as a partial rule substitution for the Halogenated Solvent NESHAP, for all sources in Rhode Island, except for continuous web cleaning machines. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before the EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register** document.

VI. 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 Rhode Island's rules in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning, effective as of June 13, 2022, excluding the provisions in Parts 36.2, 36.5.A.28, 36.6.D, 36.17, and in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 0 General Definitions Regulation, effective as of January 4, 2022, excluding the provisions in Part 0.2. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve CAA section 112(l) submissions that comply with the provisions of the Act and applicable Federal regulations. In reviewing section 112(l) submissions, the EPA's role is to approve state choices, provided that they meet the criteria and objectives of the CAA and of the EPA's implementing regulations. Accordingly, this action proposes to

approve the State's request as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001).

In addition, this rule is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA. It also does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994) because the EPA is proposing to approve the State's request as meeting Federal requirements and is not imposing additional requirements beyond those imposed by State law. This rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the EPA is not proposing to approve the submitted rule to apply in Indian country located in the State, and because the submitted rule will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 15, 2022.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2022–27765 Filed 12–21–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 221219–0276]

RIN 0648–BK71

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plans of Puerto Rico, St. Croix, and St. Thomas and St. John; Spiny Lobster Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Framework Amendment 1 under the Fishery Management Plans for Puerto Rico, St. Croix, and St. Thomas and St. John (collectively, the island-based FMPs) (Framework Amendment 1). If implemented, this proposed rule would modify annual catch limits (ACLs) for spiny lobster in the U.S. Caribbean exclusive economic zone (EEZ) off Puerto Rico, St. Croix, and St. Thomas and St. John. The proposed rule would also revise the accountability measure (AM) trigger for spiny lobster in the EEZ around each island group. The purpose of this proposed rule is to update management reference points for spiny lobster under the island-based FMPs, consistent with the best scientific information available to prevent overfishing and achieve optimum yield (OY).

DATES: Written comments must be received by January 23, 2023.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2022–0104'' by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''*NOAA–NMFS–2022–0104*'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit all written comments to Sarah Stephenson, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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).

Electronic copies of Framework Amendment 1, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/generic-framework-amendment-1-modification-spiny-lobster-management-reference-points.*

FOR FURTHER INFORMATION CONTACT: Sarah Stephenson, Southeast Regional Office, NMFS, telephone: 727–824–5305, email: *sarah.stephenson@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Puerto Rico, St. Croix, and St. Thomas and St. John fisheries include spiny lobster, and are managed under the island-based FMPs. The island-based FMPs were prepared by the Caribbean Fishery Management Council (Council) and NMFS. NMFS implemented the island-based FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the OY from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

On September 22, 2020, the Secretary of Commerce approved the island-based FMPs under section 304(a)(3) of the Magnuson-Stevens Act. For Puerto Rico and the U.S. Virgin Islands (USVI), the

Council and NMFS manage fisheries under the island-based FMPs. NMFS published the final rule in the **Federal Register** to implement the island-based FMPs on September 13, 2022 (87 FR 56204). The island-based FMPs contain management measures applicable for Federal waters off the respective island group. Federal waters around Puerto Rico extend seaward from 9 nautical miles (nmi; 16.7 km) from shore to the offshore boundary of the EEZ. Federal waters around St. Croix, and St. Thomas and St. John extend seaward from 3 nmi (5.6 km) from shore to the offshore boundary of the EEZ.

The island-based FMPs establish status determination criteria (SDC) and other management reference points for all stocks and stock complexes included for Federal management, including spiny lobster, following a 3-step process. Step 1 adopts and applies a 4-tiered acceptable biological catch (ABC) control rule to specify SDC and reference points depending on differing levels of data availability. Step 2 establishes a proxy for maximum sustainable yield (MSY) when fishing mortality cannot be determined. Step 3 applies a reduction factor to the ABC for each stock or stock complex to specify the ACL, reflecting the Council's estimate of management uncertainty. The OY is equal to the ACL for each stock or stock complex.

Under the ABC control rule, Tier 1 applies to stocks with the most data available, while each subsequent tier operates with less available data than the preceding tier. Tier 4, the final tier, is the most data limited and applies when no accepted quantitative assessment is available. Tier 4 introduces a new reference point, the sustainable yield level, which is determined under one of two sub-tiers, Tier 4a and Tier 4b, based on an understanding of the stock's vulnerability to fishing pressure. Tier 4a is less conservative and applies when the stock's vulnerability to fishing pressure is relatively low or moderate. Under each of the island-based FMPs, the SDC and other management reference points for spiny lobster are currently derived by applying the Tier 4a definitions using a period of stable and sustainable landings. For spiny lobster, only commercial landings data are collected. Because recreational landings data are not available, the ACLs for spiny lobster are based on commercial landings and apply to all harvest for the stock, whether commercial or recreational.

In 2019, the Southeast Data, Assessment, and Review (SEDAR) completed separate stock assessments for spiny lobster in Puerto Rico, St. Croix, and St. Thomas and St. John (SEDAR 57), which were reviewed by the Council's Scientific and Statistical Committee (SSC) and determined to be suitable for management advice. Specifically, the SSC supported the stock assessments as providing the best scientific information available relative to the SDC of overfishing status and overfished status; accepted an MSY proxy of the fishing morality rate (F) at 30 percent spawning potential ratio ($F_{30\%SPR}$); supported the outcome that overfishing is not occurring and that the populations are not overfished; and supported and recommended the use of the assessments to update the values for management reference points and SDC in the island-based FMPs using definitions in Tier 3 (data limited, accepted assessment available) of the Council's ABC control rule.

Under Tier 3 of the ABC control rule, if the biomass (B) of the stock falls below the minimum stock size threshold (MSST), which would be set equal to 75 percent of the long-term spawning stock biomass ($0.75*SSB_{MFMT}$) at the maximum fishing mortality threshold (MFMT), the stock would be determined to be overfished; that is, if the ratio of B to MSST is less than 1. If NMFS determines the stock is overfished, the Council would then need to develop a rebuilding plan capable of returning the stock to a level that allows the stock to achieve MSY on a continuing basis. Additionally, under Tier 3, in years when there is a stock assessment, if F exceeds the MFMT, the stock is considered to be undergoing overfishing; that is, if the ratio of F to the MFMT is greater than 1. This level of fishing mortality, if continued, would reduce the stock biomass to an overfished condition. In years in which there is no assessment, the stock is considered to be undergoing overfishing if landings exceed the overfishing limit (OFL).

Under Tier 3, the ABC is derived by reducing the OFL by the SSC's scientific uncertainty buffer (sigma; for spiny lobster stocks sigma = 1.0) and reflecting the acceptable probability of overfishing determined by the Council (defined as P*; for spiny lobster stocks P* equals 0.45). The ACL is then derived by reducing the ABC by the Council's management uncertainty buffer.

The Council requested that the SSC coordinate with the NMFS Southeast Fisheries Science Center (SEFSC) to provide recommended OFLs and ABCs for spiny lobster for each island group for years 2021 to 2023. At its February 2021 meeting, the Council's SSC recommended both a variable-catch approach and a constant-catch approach for updating spiny lobster OFLs and ABCs for the period of 2021–2023 under each FMP. Under both approaches, the SSC recommended that the spiny lobster OFLs and ABCs for 2024 and subsequent fishing years be set equal to the OFL and ABC values specified for 2023 under the variable-catch approach. The Council requested that the SEFSC provide an interim assessment by 2023 to update OFL projections to allow catch levels to later be revised for subsequent fishing years in an expected future amendment to each of the island-based FMPs. Interim assessments are designed to occur between regular SEDAR assessments to determine trends in stock condition and project future catch advice.

Consistent with the SEDAR 57 stock assessment, and recommendations from the Council's SSC and the SEFSC, the Council developed Framework Amendment 1 to prevent overfishing of spiny lobster and achieve OY, consistent with the requirements of the Magnuson-Stevens Act. For each island-based FMP, the Council set constant-catch ACLs for spiny lobster for fishing years 2021–2023, and set ACLs for 2024 and later based on the ABCs specified for 2023 under the variable-catch approach. The ACLs are equal to 95 percent of the ABCs recommended by the SSC, which reflects the Council's management uncertainty buffer.

All weights described in this proposed rule are in round weight.

Management Measures Contained in This Proposed Rule

This proposed rule would revise the ACLs for spiny lobster in the EEZ around Puerto Rico, St. Croix, and St. Thomas and St. John. This proposed rule would also revise the sequence of landings data used by NMFS to determine if an AM is triggered for, or needs be applied to, spiny lobster in the EEZ around each island group.

Annual Catch Limits

If implemented, this proposed rule would modify the spiny lobster ACLs in the EEZ around Puerto Rico, St. Croix, and St. Thomas and St. John for the 2023 fishing year and the 2024 and subsequent fishing years.

For the Puerto Rico FMP, the ACL for spiny lobster would decrease from the current ACL of 527,232 lb (239,148.4 kg) to 369,313 lb (167,517 kg) for the 2023 fishing year, and then further decrease to 366,965 lb (166,452 kg) for the 2024 and subsequent fishing years.

For the St. Croix FMP, the ACL for spiny lobster would decrease from the current ACL of 197,528 lb (89,597.1 kg)

to 140,667 lb (63,805 kg) for the 2023 fishing year, and then would further decrease to 120,830 lb (54,807 kg) for the 2024 and subsequent fishing years.

For the St. Thomas and St. John FMP, the ACL for spiny lobster would decrease from the current ACL of 209,210 lb (94,892 kg) to 142,636 lb (64,698 kg) for the 2023 fishing year, and then would further decrease to 126,089 lb (57,193 kg) for the 2024 and subsequent fishing years.

The updated management reference points, including the proposed ACL reductions, are expected to better protect against overfishing of the stock in relation to the current catch limits, thus ensuring, to the greatest extent practicable, continued access to the resource in future years.

NMFS notes that Framework Amendment 1 includes recommended ACLs for the 2021 and 2022 fishing years. However, as a result of delays associated with the final rule implementing the island-based FMPs, which needed to precede this rulemaking, and the time needed by NMFS to develop and implement this current rulemaking, this proposed rule does not include proposed spiny lobster ACLs for the 2021 and 2022 fishing years.

Accountability Measures

Under each island-based FMP, the current AM for spiny lobster states that NMFS compares available landings of spiny lobster to the spiny lobster ACL based on a moving multi-year average of landings. In the first year following implementation of the island-based FMPs, NMFS compares a single year of available landings to the ACL; in the second year following implementation, NMFS compares a single year of available landings to the ACL; in the third year following implementation, NMFS compares a 2-year average of available landings to the ACL; and in the fourth year following implementation, NMFS compares a 3-year average of available landings to the ACL. Thereafter, NMFS compares a progressive running 3-year average of available landings to the ACL. NMFS, in consultation with the Council, may deviate from the specific time sequences based on data availability.

Framework Amendment 1 and this proposed rule would revise how NMFS evaluates whether landings of spiny lobster around each island group have exceeded the ACL and trigger the AM. As described in Framework Amendment 1, NMFS would compare the average of the most recent 3 years of available spiny lobster landings to the average of the ACLs in effect during those same fishing years. An AM may be triggered if the average annual landings exceeded the average of the ACLs in effect during those same fishing years. The Council determined this process would better anticipate changes to the spiny lobster ACLs moving forward, following future stock assessments for spiny lobster.

Framework Amendment 1 also clarifies that if spiny lobster landings for a given year are available, but if NMFS has concerns with the data reliability, *e.g.,* concerns with expansion factors applied to reported landings, then NMFS may use different data years to compare to the ACL to determine if the AM has been triggered, consistent with the best scientific information available. The process for how NMFS would apply the timing of an AM during a fishing year remains as described in each of the island-based FMPs and the implementing final rule.

If NMFS determines that an ACL overage resulted from improved data collection or monitoring rather than from increased catch, the AM would not be triggered and NMFS would not reduce the length of the fishing season for spiny lobster.

Measures in Framework Amendment 1 Not Codified in This Proposed Rule

In addition to the ACLs described in this proposed rule, Framework Amendment 1 specifies the MSY proxy, MFMT, and MSST for spiny lobster. Framework Amendment 1 also specifies the spiny lobster OFLs and ABCs for the 2021–2023 fishing years and for the 2024 and subsequent fishing years for Puerto Rico, St. Croix, and St. Thomas and St. John. However, as explained above, this proposed rule does not include spiny lobster management reference points for the 2021 and 2022 fishing years.

For the Puerto Rico FMP, the MSY proxy, MFMT, and MSST for spiny lobster would be 432,501 lb (196,179 kg), 0.197 ($F_{30\%SPR}$), and 84.8 billion eggs ($0.75*SSB_{MFMT}$), respectively. The OFL for spiny lobster would be 440,803 lb (199,944 kg) for the 2023 fishing year, and then 438,001 lb (198,673 kg) for the 2024 and subsequent fishing years. The ABC for spiny lobster would be 388,750 lb (176,334 kg) for the 2023 fishing year, and then 386,279 lb (175,213 kg) for the 2024 and subsequent fishing years.

For the St. Croix FMP, the MSY proxy, MFMT, and MSST for spiny lobster would be 127,742 lb (57,943 kg), 0.203 ($F_{30\%SPR}$), and 23 billion eggs ($0.75*SSB_{MFMT}$), respectively. The OFL for spiny lobster would be 167,897 lb (76,156 kg) for the 2023 fishing year, and then 144,219 lb (65,416 kg) for the 2024 and subsequent fishing years. The ABC for spiny lobster would be 148,071 lb (67,163 kg) for the 2023 fishing year, and then 127,189 lb (57,691 kg) for the 2024 and subsequent fishing years.

For the St. Thomas and St. John FMP, the MSY proxy, MFMT, and MSST for spiny lobster would be 133,601 lb (60,600 kg), 0.244 ($F_{30\%SPR}$), and 21.3 billion eggs ($0.75*SSB_{MFMT}$), respectively. The OFL for spiny lobster would be 170,247 lb (77,222 kg) for the 2023 fishing year, and then 150,497 lb (68,264 kg) for the 2024 and subsequent fishing years. The ABC for spiny lobster would be 150,143 lb (68,103 kg) for the 2023 fishing year, and then 132,725 lb (60,203 kg) for the 2024 and subsequent fishing years.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Framework Amendment 1, the island-based FMPs for Puerto Rico, St. Croix, and St. Thomas and St. John, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this proposed rule. This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The objective of this proposed rule and Framework Amendment 1 is to use the best scientific information available to update management reference points for spiny lobster under the each of island-based FMPs, based on the SEDAR 57 spiny lobster stock assessments and application of the Council's ABC Control Rule, and to revise the AM trigger for spiny lobster in the EEZ

around each island group. All monetary estimates in the following analysis are in 2020 dollars.

This proposed rule, if implemented, would apply to all anglers (recreational fishermen) and commercial fishing businesses that harvest spiny lobster in the U.S. Caribbean EEZ off Puerto Rico, St. Croix, and St. Thomas and St. John. The RFA does not consider recreational anglers to be small entities, whether fishing from for-hire fishing, private, or leased vessels. Small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(6) and 601(3)–(5)). Recreational anglers are not businesses, organizations, or governmental jurisdictions. Therefore, neither estimates of the number of anglers nor the impacts on them are required or provided in this analysis, and only the impacts on commercial fishermen will be discussed.

Any commercial fisherman that operates a fishing vessel that lands spiny lobster harvested from Federal or state waters off Puerto Rico or the U.S. Virgin Islands must be commercially licensed to do so by the respective territorial government. Each licensed commercial fisherman represents a unique commercial fishing business. In 2016, 811 licensed commercial fishermen in Puerto Rico submitted catch reports. In 2019, 46.6 percent of active commercial fishermen reported landings of spiny lobster. Using the percentage of active commercial fishermen in 2019 who reported landings of spiny lobster and the number of active commercial fishermen prior to the 2017 hurricane season, which had disastrous impacts on Puerto Rico's commercial fishermen, NMFS estimates 378 commercial fishing businesses in Puerto Rico may be directly affected by the proposed rule. NMFS estimates that 81 (57.4 percent) of St. Croix's 141 licensed commercial fishermen and 35 (29.5 percent) of St. Thomas and St. John's 119 licensed commercial fishermen target spiny lobster. Therefore, up to 81 commercial fishing businesses in St. Croix and 35 in St. Thomas and St. John may harvest spiny lobster in the EEZ and may be directly affected by the proposed rule.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $11 million for all of its affiliated operations worldwide. The Puerto Rico fishery and U.S. Virgin Islands fisheries as a whole are estimated to generate direct revenues of $6.06 million and $5.48 million annually, respectively, assuming current landings have fully recovered from the significant negative impacts of the 2017 hurricane season and the COVID–19 pandemic. If fully recovered from those events, the average small commercial fishing business in Puerto Rico and the U.S. Virgin Islands has annual revenues of $7,472 and $21,077, respectively. Whether there has been a full recovery or not, all commercial fishing businesses in Puerto Rico, St. Croix, and St. Thomas and St. John are identified to be small entities based on the NMFS size standard. No other small entities that would be directly affected by this proposed rule have been identified.

Action 1 of Framework Amendment 1 would update the OFLs, ABCs, and ACLs for spiny lobster in the Puerto Rico FMP, the St. Croix FMP, and the St. Thomas and St. John FMP. The magnitude of the impact of this action is dependent on Action 2, which would revise the sequence of landings data used to compare to the ACLs for determining whether the AM for the spiny lobster stock under each FMP has been triggered. It would not change the process for applying an AM in Puerto Rico, St. Croix, and St. Thomas and St. John.

Under this proposed rule and Framework Amendment 1, the average of the most recent 3 years of available spiny lobster landings, *e.g.,* 2019–2021, as estimated by NMFS and based on best scientific information available, would be compared to the average of the ACLs for those same years to determine if there has been an exceedance that triggers the AM.

Data on the costs and profits of the small businesses directly regulated by this proposed rule are not collected. However, the estimates of annual revenue losses and the percentages of annual total revenues that those losses represent offer insight into if the proposed rule could significantly reduce profits.

Puerto Rico

NMFS uses spiny lobster landings in Puerto Rico from 2012 through 2019 to estimate the impacts because those were the most recent landings data available at the time of the analysis. The baseline ACL of spiny lobster in Puerto Rico is 527,232 lb (239,148 kg), and no 3-year average or single year of those landings of spiny lobster exceeds the baseline ACL. Therefore, NMFS expects there would be no exceedance of the ACL and there would be no impacts on small businesses in Puerto Rico under the status quo.

The highest and lowest 3 years of spiny lobster landings in Puerto Rico from 2012 through 2019 are used to evaluate a range of the impact of the proposed rule from 2023 through 2027. The average of the highest 3 years of landings is 486,343 lb (220,601 kg), which is greater than the proposed moving 3-year average of ACLs for each year from 2023 through 2027. Because the estimate of maximum average landings is greater than the proposed moving 3-year average of ACLs, the AM would be triggered each year from 2023 through 2027. That average of the highest 3 years of landings is also greater than the proposed ACL for each year from 2023 through 2027, and the difference is the ACL overage of landings, which from 2023 through 2027 would range from 117,030 to 119,378 lb (53,084 to 54,149 kg) and average 118,908 lb (53,936 kg) annually. If the AM was triggered, the length of each spiny lobster fishing season in Federal waters off Puerto Rico would be reduced to eliminate the annual ACL overage of landings, unless NMFS determined that the best scientific information available indicated otherwise. The average price of spiny lobster is estimated to be $7.17 per pound. Over the 5-year period from 2023 through 2027, the average annual impact to all small businesses combined would range from $0 to a loss of annual revenues totaling $734,731. When that total annual impact is divided equally across the 378 (46.6 percent of 811) small businesses that may be directly affected by this action, the average small business would incur an average decrease in annual revenue of $1,944, which represents 26.0 percent of the average annual total revenue of these small businesses. Note that the significance of this impact is based on the assumptions that spiny lobster landings have fully recovered from the adverse impacts of both the 2017 hurricane season and COVID–19 pandemic and that all spiny lobster landings in Puerto Rico are harvested from the EEZ. The maximum impact would be less if spiny lobster landings have not fully recovered to pre-2017 levels or if spiny lobster is harvested from both Federal and territorial waters. If landings from 2023 through 2027 remain on pace with the average of the lowest 3 years of landings, rather than the highest, the estimate of average landings would be less than the moving

3-year average of ACLs. In that case, there would be no exceedance of the ACL and no impact on small businesses.

St. Croix

NMFS uses spiny lobster landings in St. Croix from 2012 through 2019 to estimate the impacts because those were the most recent landings data available at the time of the analysis. The baseline ACL of spiny lobster in St. Croix is 197,528 lb (89,597 kg), and during the 8-year period, annual landings ranged from 10,970 to 87,073 lb (4,976 to 39,496 kg). Consequently, NMFS expects that from 2023 through 2027 baseline landings would be less than the baseline ACL. In that case, there would be no exceedance of the ACL and no impact on small businesses in St. Croix under the status quo.

The highest and lowest 3 years of landings in St. Croix from 2012 through 2019 are used to evaluate a range of the impact from 2023 through 2027. The average of the highest 3 years of landings is 63,811 lb (28,944 kg) and the lowest 3 years of landings is 17,628 lb (7,996 kg), and both of those landings averages are lower than the proposed 3-year moving average of ACLs. Consequently, NMFS expects there would be no exceedance of the ACL and there would be no impact on small commercial fishing businesses of St. Croix.

St. Thomas and St. John

NMFS uses spiny lobster landings in St. Thomas and St. John from 2012 through 2019 to estimate the impacts because those were the most recent landings data available at the time of the analysis. The baseline ACL of spiny lobster in St. Thomas and St. John is 209,201 lb (94,892 kg), and from 2012 through 2019, annual landings never exceeded 121,695 lb (55,200 kg). Therefore, NMFS expects there would be no exceedance of the ACL and no impact on small businesses in St. Thomas and St. John under the status quo.

The highest and lowest 3-year averages of spiny lobster landings in St. Thomas and St. John from 2012 through 2019 are used to evaluate a range of the impact from 2023 through 2027 under the proposed rule. The highest 3-year average is 107,804 lb (48,899 kg) and the lowest 3-year average is 84,793 lb (38,461 kg). The estimate of maximum average landings in 2023 (107,804 lb (48,899 kg)) is greater than the proposed 3-year moving average ACL (104,199 lb (47,264 kg)) for that year, but the estimate of maximum average landings in 2024 and thereafter is less than the proposed 3-year moving average ACL in 2024 and thereafter. Consequently, if the estimate of maximum average landings were to occur, the AM would be triggered in 2023, but not thereafter. The proposed ACL in 2023 (142,636 lb (64,699 kg), however, would be greater than that maximum landings estimate (107,804 lb (48,899 kg)). Because there would be no (zero) overage estimate, and no reduction in the fishing season, and no impact on small businesses of St. Thomas and St. John is expected.

If annual landings from 2023 through 2027 in St. Thomas and St. John are better represented by the lowest, 3-year average of landings from 2012 through 2019, rather than the highest, the estimate of annual landings would be less than the proposed ACL for each year. There would be no exceedance of the ACL, no application of the AM, and no impact on small businesses in Thomas and St. John.

Table 1 provides a summary of estimated impacts to small businesses directly regulated by the proposed rule in the near term.

TABLE 1—SUMMARY OF AVERAGE ANNUAL ADVERSE IMPACTS BY ISLAND AREA BY ACTION PER SMALL BUSINESS THAT HARVESTS SPINY LOBSTER, 2023–2027

Action	Brief description	Puerto Rico	St. Croix	St. Thomas & St. John
1	Update OFLs, ABCs, & ACLs	Impact dependent on Action 2.		
2	Revise sequence of landings data for overage determination.	$0 to $1,944 per small business (0 to 26.0 percent of average annual revenue for 46.6 percent of active small commercial fishing businesses).	$0 per small business.	$0 per small business.

Given the extent to which the maximum average adverse impact could reduce the annual revenue to approximately 46.6 percent of Puerto Rico's small commercial fishing businesses by $1,944, which represents 26.0 percent of the average annual revenue of those small businesses, NMFS determined that this proposed rule could have a significant adverse impact on a substantial number of small entities in Puerto Rico. That magnitude, however, is based on the assumptions that landings of spiny lobster have fully recovered from both the 2017 hurricane season and COVID–19 pandemic and all harvest of spiny lobster occurs in Federal waters. If landings have not fully recovered or if spiny lobster is harvested in both Federal and territorial waters, the maximum impact would be less. Moreover, the proposed rule may have no adverse economic impact on small businesses in Puerto Rico. The proposed rule would have no impact on small businesses in St. Croix or St. Thomas and St. John.

Considered, but not selected, alternatives to Action 1 discussed in Framework Amendment 1 would have higher or lower ACLs than the preferred alternative. Under Alternative 1 (no action), the OFL proxy, ABC, and ACL for spiny lobster would remain as specified under each island-based FMP. Alternatives 2 and 3 would update the management reference points for spiny lobster based on the accepted stock assessments. Alternative 2 would set declining OFLs and ABCs for 2021–2023 and includes three sub-alternatives (2a–2c) that would set the ACLs equal to a percentage of the ABC: Sub-alternative 2a would set the ACL equal to ABC; Sub-alternative 2b would set the ACL equal to 95 percent of the ABC; and Sub-alternative 2c would set the ACL equal to 90 percent of the ABC. Alternative 3 would set constant OFLs and ABCs for 2021–2023 and includes three sub-alternatives (3a–3c) that use the same reduction factors as the Alternative 2 sub-alternatives to set the ACLs equal to a percentage of the ABC.

Generally, the more the ACL is reduced, the larger the potential adverse impact because landings and dockside revenue from those landings are similarly reduced. Alternatives 2c and 3c would have larger potential maximum adverse impacts than the proposed action, while Alternatives 2a and 3a would have smaller potential maximum adverse impact than the preferred alternative.

Alternative 1 (no action) of Action 2 would compare a stepped progression of landings (starting with a single year of landings and then progressing to a 3-year average) to the ACL. A considered, but not selected, alternative to Action 2 (Alternative 3 in Framework Amendment 1) would have the estimate of landings based on the most recent single year's landings. Such an estimate is vulnerable to atypical fluctuations, and consequently, that alternative would likely result in more seasons being shortened than the proposed action. Hence, the adverse impact on small businesses, especially in Puerto Rico, would likely be greater under that unselected alternative than the proposed action.

List of Subjects in 50 CFR Part 622

Caribbean, Fisheries, Fishing, Spiny lobster.

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

Dated: December 19, 2022.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

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

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

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

■ 2. In § 622.440, revise paragraph (c) to read as follows:

§ 622.440 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(c) *Spiny lobster.* (1) For the 2023 fishing year, the ACL is 369,313 lb (167,517 kg), round weight. For the 2024 and subsequent fishing years, the ACL is 366,965 lb (166,452 kg), round weight.

(2) At or near the beginning of the fishing year, NMFS will compare a three year average of available landings to the average ACLs effective during those same years, as described in the FMP. If NMFS estimates that average landings have exceeded the average ACLs, the AA will file a notification with the Office of the Federal Register to reduce the length of the fishing season for spiny lobster within that fishing year by the amount necessary to prevent average landings from exceeding the ACL for that fishing year, as specified in paragraph (c)(1). If NMFS determines that a fishing season reduction is not necessary based on the best scientific information available, or if NMFS determines the ACL exceedance was due to improved data collection or monitoring rather than from increased landings, NMFS will not reduce the length of the fishing season. Any fishing season reduction required under this paragraph (c)(2) will be applied starting from September 30 and moving earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied starting from October 1 and moving later toward the end of the fishing year.

* * * * *

■ 3. In § 622.480, revise paragraph (c) to read as follows:

§ 622.480 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(c) *Spiny lobster.* (1) For the 2023 fishing year, the ACL is 140,667 lb (63,805 kg), round weight. For the 2024 and subsequent fishing years, the ACL is 120,830 lb (54,807 kg), round weight.

(2) At or near the beginning of the fishing year, NMFS will compare a three year average of available landings to the average ACLs effective during those same years, as described in the FMP. If NMFS estimates that average landings have exceeded the average ACLs, the AA will file a notification with the Office of the Federal Register to reduce the length of the fishing season for spiny lobster within that fishing year by the amount necessary to prevent average landings from exceeding the ACL for that fishing year, as specified in paragraph (c)(1). If NMFS determines that a fishing season reduction is not necessary based on the best scientific information available, or if NMFS determines the ACL exceedance was due to improved data collection or monitoring rather than from increased landings, NMFS will not reduce the length of the fishing season. Any fishing season reduction required under this paragraph (c)(2) will be applied starting from September 30 and moving earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied starting from October 1 and moving later toward the end of the fishing year.

* * * * *

■ 4. In § 622.515, revise paragraph (c) to read as follows:

§ 622.515 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(c) *Spiny lobster.* (1) For the 2023 fishing year, the ACL is 142,636 lb (64,698 kg), round weight. For the 2024 and subsequent fishing years, the ACL is 126,089 lb (57,193 kg), round weight.

(2) At or near the beginning of the fishing year, NMFS will compare a three year average of available landings to the average ACLs effective during those same years, as described in the FMP. If NMFS estimates that average landings have exceeded the average ACLs, the AA will file a notification with the Office of the Federal Register to reduce the length of the fishing season for spiny lobster within that fishing year by the amount necessary to prevent average landings from exceeding the ACL for that fishing year, as specified in paragraph (c)(1). If NMFS determines that a fishing season reduction is not necessary based on the best scientific information available, or if NMFS determines the ACL exceedance was due to improved data collection or monitoring rather than from increased landings, NMFS will not reduce the length of the fishing season. Any fishing season reduction required under this paragraph (c)(2) will be applied starting from September 30 and moving earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied starting from October 1 and moving later toward the end of the fishing year.

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[FR Doc. 2022–27846 Filed 12–21–22; 8:45 am]

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Notices

Federal Register
Vol. 87, No. 245
Thursday, December 22, 2022

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

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

Comments regarding this information collection received by January 23, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function

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

Rural Housing Service

Title: 7 CFR 1970, Environmental Policies and Procedures.

OMB Control Number: 0575–0197.

Summary of Collection: The National Environmental Policy Act (NEPA) (42 U.S.C. 4321, et seq) and other applicable environmental and historic preservation statutes requires that all Federal agencies consider the potential environmental consequences of their actions on the quality of the human environment and historic properties prior to agency actions being made. In RD's case, the ''action'' is the approval of financial assistance and obligation of Federal funds. To comply with NEPA and other environmental laws, regulations, and Executive Orders, RD requires applicants submitting applications for financial assistance to include project-specific environmental information along with other underwriting requirements.

Need and Use of the Information: This information is used to document whether there are any ''extraordinary circumstances'' that would preclude the use of a CE (see, 40 CFR 1501.4). Therefore, the purpose of collecting environmental information is to support RD's decision making regarding the need for completing an EIS, EA, or whether a project proposal qualifies for the use of a CE.

Description of Respondents: Individuals or Households.

Number of Respondents: 2,454.

Frequency of Responses: Reporting: Once; Annually.

Total Burden Hours: 240,816.

Rural Housing Service

Title: 7 CFR 3570 Community Facilities Technical Assistance and Training Grant Program.

OMB Control Number: 0575–0198.

Summary of Collection: The Community Facilities Technical Assistance and Training (TAT) is a competitive grant program which the Rural Housing Service (RHS) administers. Section 306 of the Consolidated Farm and Rural Development Act (CONACT), 7 U.S.C. 1926, was amended by Section 6006 of the Agriculture Act of 2014 (Pub. L. 113–79) to establish the Community Facilities Technical Assistance and Training Grant. Section 6006 authorized grants be made to public bodies and private nonprofit corporations (including Indian Tribes) that will serve rural areas for the purpose of enabling the grantees to provide to associations technical assistance and training with respect to essential community facilities authorized under Section 306(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)). Grants can be made for 100 percent of the cost of assistance.

Need and Use of the Information: Eligible entities receive TAT grants to help small rural communities or areas identify and solve problems relating to essential community facilities. The grant recipients may provide technical assistance to public bodies and private nonprofit corporations. Applicants applying for TAT grants must submit an application, which includes an application form, narrative proposal, various other forms, certifications, and supplemental information. The Rural Development State Offices and the RHS National Office staff will use the information collected to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements. Failure to collect proper information could result in improper determinations of eligibility or improper use of funds.

Description of Respondents: Not-for-Profit Institutions.

Number of Respondents: 42.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,733.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–27809 Filed 12–21–22; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 23, 2023 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.

Risk Management Agency

Title: Multiple Peril Crop Insurance.

OMB Control Number: 0563–0053.

Summary of Collection: The Federal Crop Insurance Corporation (FCIC) is a wholly-owned Government corporation created February 16, 1938 (7 U.S.C. 1501). The program was amended previously, by Public Law 96–365, dated September 26, 1980, that provided for nationwide expansion of a comprehensive crop insurance program. The Federal Crop Insurance Act (Act), as amended in later years, further expanded the role of the crop insurance program to be the principal risk management safety net used by producers to cover crop losses. The Act further required that the crop insurance program operate on an actuarially sound basis. To meet these goals, existing crop programs must be improved and expanded, new crop products developed, and new insurance concepts studied for possible implementation. Meeting these goals requires the collection of a wide range of information (data elements). These data elements are used in part to determine insurance coverage, premiums, subsidies, payments, and indemnities. It allows for other program and administrative operations. It also creates an information database used to support continued development and improvements in crop insurance products available to producers and which meet the goal of a sound insurance program. The Act was again amended on June 20, 2000, by Public Law 106–224 which mandates changes to crop insurance regulations, provides for independent review of crop insurance products by persons experienced as actuaries and in underwriting, and gives contracting authority for the development of new products.

Need and Use of the Information: The collection of information involves producers and insurance companies. Specific information (data) is required to apply for crop insurance, determine program eligibility, report crop information, establish liability, change coverage, determine a loss, etc. Producers must provide records, documents, or other information to the insurance company during an investigation or settlement of a claim. Insurance companies may provide late or prevented planting coverage, or provide coverage under a written agreement when coverage would not otherwise be available, etc. Pertinent information must be collected by the established dates to administer the crop insurance program in an actuarially sound manner.

The information collection requirements for this revised package are necessary for administering the crop insurance program. Insurance companies must obtain enough information so insurability, liability, premium, subsidy, and indemnities can be accurately determined. It is important that insurance agents work closely with producers to collect accurate information since the guarantee, liability, premium, subsidy, and any applicable indemnities are based on this information.

Description of Respondents: Farms; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 534,379.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 8,067,906.

Levi S. Harrell,

Departmental Information Clearance Officer.

[FR Doc. 2022–27806 Filed 12–21–22; 8:45 am]

BILLING CODE 3410–08–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 and other forms of information technology.

Comments regarding this information collection received by January 23, 2023 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.

Forest Service

Title: Annual Wildfire Summary Report.

OMB Control Number: 0596–0025.

Summary of Collection: The Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101) requires the Forest Service (FS) to collect information about wildfire suppression efforts by State and local fire fighting agencies in order to support specific congressional funding requests for the Forest Service State and Private Forestry Cooperative Fire Program. The program provides supplemental funding for State

and local firefighting agencies. The FS works cooperatively with State and local fire fighting agencies to support their fire suppression efforts. FS will collect information using form FS 3100–8, Annual Wildfire Summary Report.

Need and Use of the Information: FS will collect information using form FS–3100–8 to determine if the Cooperative Fire Program funds, provided to the State and local fire fighting agencies have been used by State and local agencies to improve their fire suppression capabilities. The information collected includes the numbers of fires and acres burned on State and private land by cause, such as lightning, campfires, smoking, debris burning, arson, equipment, railroads, children and miscellaneous activities. Information about the importance of the State and Private Cooperative Fire Program will be shared with the pubic. The form also collects information on numbers of fires and acres burned by size classes. FS would be unable to assess the effectiveness of the State and Private Forestry Cooperative Fire Program if the information provided on FS–3100–8, were not collected.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 56.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 28.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–27807 Filed 12–21–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Infrastructure Investment and Jobs Act Financial Assistance to Facilities That Purchase and Process Byproducts for Ecosystem Restoration (CFDA 10.725) Wood Products Infrastructure Assistance (WPIA)

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no revision of a currently approved information collection, Infrastructure Investment and Jobs Act Financial Assistance to Facilities that Purchase and Process Byproducts for Ecosystem Restoration (CFDA 10.725) Wood Products Infrastructure Assistance (WPIA).

DATES: Comments must be received in writing on or before February 21, 2023 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to the contact listed under **FOR FURTHER INFORMATION CONTACT**.

Comments submitted in response to this notice may be made available to the public through relevant websites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may inspect the draft supporting statement and/or comments received at Superior National Forest Supervisor's Office, 8901 Grand Ave. Place, Duluth, MN 55808 during normal business hours. Visitors are encouraged to call ahead to 218–626–4300 to facilitate entry to the building. The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to the contact listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Brian Brashaw, Cooperative Forestry, Wood Innovations, 608–334–5819. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Infrastructure Investment and Jobs Act Financial Assistance to Facilities that Purchase and Process Byproducts for Ecosystem Restoration (CFDA 10.725) Wood Products Infrastructure Assistance (WPIA).

OMB Number: 0596–0254.

Expiration Date of Approval: 05/31/2023.

Type of Request: Extension with no revision of a currently approved information collection.

Abstract: The grants and agreements awarded under this announcement will support the Bipartisan Infrastructure Law (BIL), 2021. Section 40804(b)3 directs the USDA Forest Service Forest Service to provide financial assistance to an entity seeking to establish, reopen, expand, or improve a sawmill or other wood processing facility in close proximity to a unit of federal or Indian land that has been identified as high or very high priority for ecological restoration. Eligible applicants are for-profit entities; state, local governments; Indian Tribes; school districts; community, not-for-profit organizations; institutions of higher education; and special purpose districts (*e.g.,* public utilities districts, fire districts, conservation districts, and ports). The need and process to collect information from applicants is detailed in 2 CFR part 200 and Forest Service Handbook 1509.11, Chapter 20, which prescribes administrative requirements and processes applicable to all Forest Service domestic Federal Financial Assistance awards. In particular, collection of information is necessary to assist in accelerating the pace and scale of ecosystem restoration on federal and Indian lands. Information collected will be reviewed by Forest Service staff to evaluate eligibility and proposed activities of the applicant.

Affected Public: Individuals and Households, the Private Sector (Businesses and Non-Profit Organizations, and/or State, Local or Tribal Government.

Estimate of Burden per Response: 8.25 hours.

Estimated Annual Number of Respondents: 78.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 643.50 hours.

Comment is Invited: Comment is invited on: (1) whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Jaelith Hall-Rivera,

Deputy Chief, State & Private Forestry.

[FR Doc. 2022–27845 Filed 12–21–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; National Woodland Owner Survey

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revision of the National Woodland Owner Survey information collection.

DATES: Comments must be received in writing on or before February 21, 2023 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Brett Butler, USDA Forest Service, 160 Holdsworth Way, Amherst, MA 01003. Comments also may be submitted by email to: *brett.butler2@usda.gov.*

Comments submitted in response to this notice may be made available to the public through relevant websites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may inspect the draft supporting statement and/or comments received at 160 Holdsworth Way, Room 201, Amherst, MA 01003 during normal business hours. Visitors are encouraged to call ahead to 413–545–1387 to facilitate entry to the building. The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to *brett.butler2@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Brett Butler, Northern Research Station, 413–545–1387. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: National Woodland Owner Survey.

OMB Number: 0596–0078.

Type of Request: Revision.

Abstract: There are an estimated 704 million acres of forestland across the United States, excluding interior Alaska. Of this forestland, over half is owned by millions of corporations, families, individuals, and other private groups with the remaining managed by over a thousand different federal, state, and local government agencies and tribal organizations. Understanding the attitudes and behaviors of the owners and managers of the forestland is critical for understanding the current and future state of the nation's forests. The Forest Service conducts the National Woodland Owner Survey (NWOS) to increase our understanding of:

- Who owns and manages the forestland of the United States;
- Why they own/manage it;
- How they have used it; and
- How they intend to use it.

This information is used by policy analysts, foresters, educators, and researchers to facilitate the planning and implementation of forest policies and programs and provides landowners, managers, and the public a better understanding of the social context of forests.

The Forest Service's direction and authority to conduct the NWOS is from the Forest and Range Land Renewable Resources Planning Act of 1974 and the Forest and Range Land Renewable Resources Act of 1978. These acts assign responsibility for the inventory and assessment of forest and related renewable resources to the Forest Service. Additionally, the importance of an ownership survey in this inventory and assessment process is highlighted in the 2014 Farm Bill, the Agricultural Research, Extension, and Education Reform Act of 1998, and the recommendations of the Second Blue Ribbon Panel on the Forest Inventory and Analysis program (FIA).

Previous iterations of the NWOS were conducted in 1978, 1993, 2002–2006, 2011–2013, 2017–2018, and 2019–2023. Approval for the current iteration of the NWOS expires on March 31, 2025. Data collection for the next iteration is slated for 2024–2028. In order to implement changes and expansions made in the survey instruments for the entire cycle, we are seeking approval of this revision in time for the start of the cycle in 2024. If this revision is approved, the NWOS will be permitted to complete the first three years of the 2024–2028 cycle and will submit a renewal for completing the final two years of data collection at the appropriate time.

Changes proposed for this revision include minor survey answer choice formatting changes on all survey modules, a simplified large corporate ownership survey, a new small corporate ownership survey, a new tribal module, additional science modules, and additional question choices on the state form. Information will be collected related to:

- The characteristics of the land holdings;
- Attitudes and perceptions of the owners and managers;
- Resource uses and management activities; and
- Where applicable, landowner demographics.

Separate survey instruments are being developed for different target populations, including family forest ownerships, corporate and other private forest ownerships, private forest ownerships on selected U.S. affiliated protectorates and territories, residential urban landowners, tribal lands, and public lands. For the families and individuals, the dominant ownership group of forestland owners, a subset of ownerships will be sent survey instruments addressing the following topics, in addition to the core questions from the base survey instrument:

- Afforestation
- Agroforestry
- Carbon
- Climate change
- Cross-boundary cooperation
- Decision making
- Energy (solar/wind)
- Heirs' properties
- Invasive species
- Land transfer
- Landowner values
- Sense of place
- Timber
- Wellbeing
- Wildfire

The NWOS provides widely cited benchmarks for the number, extent, and characteristics of owners of forestland in the United States. These results have been used to assess the sustainability of forest resources at national, regional,

and state levels; to implement and assess forest-land owner assistance programs; and to answer a variety of questions with topics ranging from fragmentation to the economics of timber production. This is the only effort to collect in-depth information about owners of forestland at the national scale. It provides longitudinal data to track ownership trends and allows for comparisons across regions of the country.

The respondents will be a statistically selected group of individuals, families, partnerships, corporations, nonprofit organizations and other private groups, tribal groups, and public landowners that own forestland in the United States. A well distributed, random set of sampling points has been established across the country. At each point, remotely sensed data, such as aerial photographs, will be used to identify forested points. For the forested points, public records will be used to identify the owners of record (*i.e.,* the names and addresses of the landowners who will be contacted). The target number of respondents for the base NWOS implementation is 250 per state.

The NWOS will utilize a mixed-mode survey technique involving cognitive interviews, focus groups, self-administered survey, and telephone interviews. Cognitive interviews will be used to test specific questions and explore new topics or populations of interest. Focus groups will be used to provide more in-depth understanding of the responses and to explore new areas of inquiry.

The implementation of the self-administered survey, which will represent the majority of the responses, will involve up to four contacts. First, a pre-notice postcard will be sent to all potential respondents describing this information collection and why the information is being collected. Second, a survey with a cover letter and pre-paid return envelope will be sent to the potential respondents. The cover letter will reiterate the purpose of this information collection and provide the respondents with all legally required information. Third, a reminder will be mailed to thank the respondents and encourage the non-respondents to reply. Those who have yet to respond will be sent a new survey, cover letter, and pre-paid return envelope. Telephone interviews will be used for follow-up with non-respondents. For corporations, the primary survey instrument will be electronic, and for all other owners, the primary survey instrument will be paper forms with the option for completing the survey electronically online. We will use Participatory Action Research (PAR) and cognitive interviews to explore tribal land ownerships.

Forest Service researchers will coordinate all components of this information collection. Forest Service personnel with assistance provided by cooperators at the Family Forest Research Center located at the University of Massachusetts Amherst will conduct the mail portion of the survey, cognitive interviews, focus groups, and telephone follow-ups. Data will be compiled and edited by Forest Service and Family Forest Research Center personnel. Forest Service researchers and cooperators will analyze the collected data. National, regional, and state-level results will be publicly available and electronically distributed.

This information collection will generate scientifically based, statistically-reliable, up-to-date information about the owners of forestland in the United States. The results of these efforts will provide more reliable information on this important and dynamic segment of the United States population, thus facilitating more complete assessments of the country's forestland resources and improved planning and implementation of forestry programs on state, regional, and national levels.

Affected Public: Individuals and households and the private sector (businesses and non-profit organizations), tribes, and public entities.

Estimate of Burden per Response: 25 minutes for families, individuals, and other private groups with small holdings; 30 minutes for corporations with large holdings; 60 minutes for tribal entities, and 15 minutes for public entities.

Estimated Annual Number of Respondents: 5,291.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,861 hours.

Comment is Invited: Comment is invited on: (1) whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Linda S. Heath,

Acting Deputy Chief, Research & Development.

[FR Doc. 2022–27891 Filed 12–21–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request To Conduct a New Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to conduct a new information collection to gather data regarding production practices, costs and returns, and contractor expenses. This data is currently being collected under OMB number 0535–0218.

DATES: Comments on this notice must be received by February 21, 2023 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–NEW, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *eFax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related

instructions can be obtained without charge from Richard Hopper, NASS—OMB Clearance Officer, at (202) 720–2206 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Agricultural Resource Management phase 3 Economic Surveys.

OMB Control Number: 0535–NEW.

Type of Request: Intent to seek approval to create a new information collection for a period of three years.

Abstract: The Agricultural Resource Management Survey(s) (ARMS) are the primary source of information for the U.S. Department of Agriculture on a broad range of issues related to: production practices, costs and returns, and contractor expenses. Data are collected on both a whole farm level and on selected commodities. This Notice and information collection will focus on the ARMS phase 3 Economic Surveys, previously included in the Agricultural Resource Management and Chemical Use Surveys Information Collection Request (OMB Control Number 0535–0218).

The ARMS phase 3 Economic Surveys are the only annual source of information available for objective evaluation of many critical issues related to agriculture and the rural economy, such as: annual whole farm finance data, including data sufficient to construct estimates of income for farms by: type of operation, loan commodities, income for operator households, credit, structure, and organization; marketing information; and other economic data on input usage, production practices, and crop substitution possibilities.

Data from ARMS are used to produce estimates of net farm income by type of commercial producer as required in 7 U.S.C. 7998 as amended and estimates of enterprise production costs as required in 7 U.S.C. 1441(a) as amended. Data from ARMS are also used as weights in the development of the Prices Paid Index, a component of the Parity Index referred to in the Agricultural Adjustment Act of 1938, as amended. These indexes are used to calculate the annual federal grazing fee rates as described in the Public Rangelands Improvement Act of 1978 and Executive Order 12548 and as promulgated in regulations found at 36 CFR 222.51, as amended.

In addition, ARMS is used to produce estimates of sector-wide production expenditures and other components of income that are used in constructing the estimates of income and value-added which are transmitted to the U.S. Department of Commerce, Bureau of Economic Analysis, by the USDA Economic Research Service (ERS) for use in constructing economy-wide estimates of Gross Domestic Product. This transmittal of data, prepared using the ARMS, is undertaken to satisfy a 1956 agreement between the Office of Management and Budget, and the Departments of Agriculture and Commerce that a single set of estimates be published on farm income.

Number of respondents and total burden include additional sample methodology and/or sample sizes for ARMS Phase 3 in order to collect data from additional historically underserved producer groups in the ARMS Phase 3 (the Costs and Returns Survey). Collecting more data from these groups will support President Biden's and USDA's priority to advance racial justice, equity, and opportunity by providing more detailed data and research on the socioeconomic characteristics of farmers and ranchers in the United States to ensure all USDA policies and decisions are inclusive of all people the Department serves. This effort will ensure USDA is able to provide data about the financial well-being and other characteristics for historically underserved groups.

In this approval request for the next three years; the ARMS 3 surveys will overlap with the 2024 Tenure, Ownership and Transition of Agricultural Land (TOTAL, OMB Control Number 0535–0240) which will be conducted in early 2025. Farm operators who are selected to complete the ARMS phase 3 and the TOTAL survey will have the option of completing the ARMS 3 questionnaire and not having to complete the TOTAL survey. The ARMS phase 3 questionnaire contains the same essential questions as the TOTAL.

The commodity specific questionnaire versions that are scheduled to be conducted in the next three years are included in the following table.

Crop year	Survey	Target commodity	Reference year	Year survey is conducted
2023	ARMS Phase 3	CRR	2023	2024
		Soybeans	2023	2024
		Oats	2023	2024
		Peanuts	2023	2024
			2023	2024
2024	ARMS Phase 3	Tenure, Ownership and Transition of Agricultural Land (TOTAL).	2024	2025
		Broilers [1]	2024	2025
			2024	2025
			2024	2025
			2024	2025
2025	ARMS Phase 3	CRR	2025	2026
		TBD [2]	2025	2026
			2025	2026
			2025	2026
			2025	2026

[1] Broilers could be moved to after 2024 depending on burden with the TOTAL.
[2] To be determined.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical

Efficiency Act (CIPSEA) of 2018, Title III of Pub. L. 115–435, codified in 44 U.S.C. Ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average approximately 110 minutes per respondent.

Respondents: Farmers, ranchers, farm managers, farm contractors, and farm households.

Estimated Number of Respondents: Up to 47,100 respondents will be sampled each year for the ARMS phase 3 Economic Surveys.

Estimated Total Annual Burden on Respondents: Up to 76,000 hours each year.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, December 2, 2022.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2022–27773 Filed 12–21–22; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Agricultural Resources Management Survey (ARMS), phases 1 and 2 as well as Chemical Use Surveys. All phases of the Agricultural Resources Management Survey(s) are included in the current OMB Control Number 0535–0218, but this information collection renewal request will only include the ARMS phases 1 and 2 as well as Chemical Use Surveys. The ARMS phase 3 surveys will be moved to a separate information collection request. Splitting these surveys across multiple information collections will allow USDA and cooperators more flexibility for changes to best address current trends in the farming industry. A revision to burden hours will be needed due to this separation as well as changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by February 21, 2023 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0218, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *eFax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS—OMB Clearance Officer, at (202) 720–2206 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Agricultural Resources Management Survey and Chemical Use Surveys.

OMB Control Number: 0535–0218.

Expiration Date of Current Approval: November 30, 2025.

Type of Request: Intent to revise and extend a currently approved information collection.

Abstract: The Agricultural Resource Management Survey(s) (ARMS) are the primary source of information for the U.S. Department of Agriculture on a broad range of issues related to: production practices, costs and returns, pest management, chemical usage, and contractor expenses. Data are collected on both a whole farm level and on selected commodities. Historically, the ARMS docket contained a screening phase, a chemical use phase and an economic phase. This Notice and information collection will focus on the ARMS phases 1 and 2—the screening, production practices, as well as chemical use surveys.

The combined ARMS surveys are the only source of information available for objective evaluation of many critical issues related to economics, chemical usage, and cropping practices. Breaking these surveys into separate OMB approvals will assist in making timely updates to questionnaires to keep in touch with an ever-changing industry.

Cost of Production: A Congressional mandate exists for the development of annual estimates of the cost of producing wheat, feed grains, cotton, and dairy commodities.

USDA also collects cost of production data for soybeans, rice, peanuts, hogs, and beef cow-calf in order to provide economic information for comparison among the major farm commodities that compete for U.S. agricultural resources. The economic data collection and publication for the cost of production surveys will be included under a new, separate OMB approval.

Chemical Use Surveys: Congress has mandated that NASS and ERS build nationally coordinated databases on agricultural chemical use and related farm practices; these databases are the primary vehicles used to produce specified environmental and economic estimates. The surveys will help provide the knowledge and technical means for producers and researchers to address on-farm environmental concerns in a manner that maintains agricultural productivity.

The commodities that are scheduled to be included in this approval are in the following table.

Chemical Use Target Commodities 2023-2025

Year	Survey	Target Commodity
2023	ARMS Phase 1	ARMS Phases 2 & 3
	ARMS Phase 2 (PPCR)	Soybeans, Oats, Peanuts
	ARMS Phase 2 (PPR)	Barley
	Chemical Use	Fruit
2024	Integrated Screening	ARMS Phases 2 & 3 Plus Chemical Use
	ARMS Phase 2 (PPCR)	None [1/]
	ARMS Phase 2 (PPR)	Wheat, Sorghum
	Chemical Use	Vegetables
2025	Integrated Screening	ARMS Phases 2 & 3
	ARMS Phase 2 (PPCR)	TBD [2/]
	ARMS Phase 2 (PPR)	Potatoes
	Chemical Use	Fruit

PPCR - Production Practices and Costs Report

PPR - Production Practices Report

1/ No Field Crop PPCR Commodities for 2024 due to theTenure, Ownership, and Transition of Agricultural Land

(TOTAL) Survey done in Coordination with the Phase 3 survey.

2/ To Be Determined

Underserved Producer Groups: Number of respondents and total burden include additional sample methodology and/or sample sizes for ARMS Phase 1 (the Screening Survey) in order to collect data from additional historically underserved producer groups in the ARMS Phase 3 (the Costs and Returns Survey). Collecting more data from these groups will support President Biden's and USDA's priority to advance racial justice, equity, and opportunity by providing more detailed data and research on the socioeconomic characteristics of farmers and ranchers in the United States to ensure all USDA policies and decisions are inclusive of all people the Department serves. This effort will ensure USDA is able to provide data about the financial well-being and other characteristics for historically underserved groups.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, Title III of Public Law 115–435, codified in 44 U.S.C. Ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average approximately 7 minutes per response.

Respondents: Farmers, ranchers, farm managers, farm contractors, and farm households.

Estimated Number of Respondents: Approximately 115,000 respondents will be sampled each year. Less than 20 percent of these respondents will be contacted more than one time in a single year for the surveys in this docket.

Estimated Total Annual Burden on Respondents: Approximately 51,000 hours per year.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, December 2, 2022.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2022–27761 Filed 12–21–22; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–37–2022]

Foreign-Trade Zone (FTZ) 35—Philadelphia, Pennsylvania, Authorization of Production Activity, Piramal Pharma Solutions (Pharmaceutical Products), Sellersville, Pennsylvania

On August 19, 2022, Piramal Pharma Solutions submitted a notification of proposed production activity to the FTZ

Board for its facility within FTZ 35, in Sellersville, Pennsylvania.

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 52505–52506, August 26, 2022). On December 19, 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: December 19, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–27836 Filed 12–21–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–808]

Certain Steel Nails From the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain steel nails from the Sultanate of Oman (Oman) were sold in the United States at less than normal value (NV) during the period of review (POR), July 1, 2020, through June 30, 2021.

DATES: Applicable December 22, 2022.

FOR FURTHER INFORMATION CONTACT: Dakota Potts, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0223.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 2022, Commerce published the *Preliminary Results* of the 2020–2021 administrative review of the antidumping duty order on steel nails from Oman.[1] For a history of events that have occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Scope of the Order

The merchandise covered by the antidumping duty order is certain steel nails. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

Commerce addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum. These issues are identified in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/index.html.*

Changes Since the *Preliminary Results*

Based on our analysis of the comments received, we have made no change to the margin applied to Oman Fasteners LLC (Oman Fasteners) in the *Preliminary Results.* We have assigned the same margin as the total adverse facts available (AFA) rate for these final results.[3]

Use of Adverse Facts Available

We continue to find that the application of total AFA, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), is warranted in determining Oman Fasteners' dumping margin because it failed to timely submit information regarding its sales to the United States.[4] Therefore, as in the *Preliminary Results,* as AFA, we assigned Oman Fasteners a dumping margin of 154.33 percent. *See* the Issues and Decision Memorandum for further discussion.[5]

Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[6] Because the 154.33 percent rate was applied in a separate segment of this proceeding, Commerce does not need to corroborate the rate in this review.

Rates for Companies Not Selected for Individual Examination

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for companies which we did not examine in an administrative review. When the rates for individually examined companies are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the all-others rate. We based the dumping margin entirely on AFA for the sole mandatory respondent, Oman Fasteners. Therefore, we assigned the companies not selected for examination the all-others rate applied in prior segments of this proceeding (*i.e.,* 9.10 percent),[7] consistent with the guidance in section 735(c)(5)(B) of the Act.

Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period July 1, 2020, through June 30, 2021:

Manufacturer/exporter	Weighted-average dumping margin (percent)
Oman Fasteners LLC	[8] 154.33
Non-Selected Companies	9.10

[8] Based on total AFA. For a full description of the methodology underlying our conclusions regarding the application of AFA, *see* the Issues and Decision Memorandum.

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Disclosure

Normally, Commerce will disclose the calculations performed in connection with the final results of review to parties to the proceeding in accordance with 19 CFR 351.224(b). However, as there were no margin calculations performed in the instant review, there are no calculations

[1] *See Certain Steel Nails from the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020–2021,* 87 FR 43240 (July 20, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2020–2021 Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the Sultanate of Oman,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *Id.* at Comment 3.

[4] *Id.* at Comments 1 and 2.

[5] *Id.* at Comment 3.

[6] *See* section 776(c)(2) of the Act.

[7] This rate is derived in the final determination of the underlying investigation in this proceeding. *See Certain Steel Nails from the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value,* 80 FR 28972 (May 20, 2015) (*Steel Nails from Oman Final Determination*).

to disclose for the final results of this review.

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise that entered the United States during the POR that were produced by Oman Fasteners for which the respondent did not know that its merchandise was destined to the United States, Commerce will instruct CBP to liquidate unreviewed entries at the all-others rate of 9.10 percent,[9] if there is no rate for the intermediate company(ies) involved in the transaction.[10]

Because we are applying total AFA to Oman Fasteners, we will instruct CBP to apply an assessment rate to all entries Oman Fasteners produced and/or exported equal to the dumping margin indicated above in the ''Final Results of Review.'' Further, the assessment rate for antidumping duties for each of the companies not selected for individual examination will be equal to the weighted-average dumping margin identified above in the ''Final Results of Review.''

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of the final results of this administrative review for all shipments of steel nails from Oman entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) for the companies covered by this review, the cash deposit rate will be the rates listed above in the section ''Final Results of Review''; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in a completed segment for the most recent period of review; (3) if the exporter is not a firm covered in this review, a prior review, or in the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 9.10 percent, the all-others rate established in the investigation.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 16, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–27904 Filed 12–21–22; 8:45 am]

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[9] *See Steel Nails from Oman Final Determination.*

[10] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[11] *See Investigation Final Determination.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–104]

Alloy and Certain Carbon Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Administrative Review, in Part; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Ningbo Dongxin High-Strength Nut Co., Ltd. (Ningbo Dongxin), is not eligible for a separate rate. The period of review (POR) is April 1, 2021, through March 31, 2022. Commerce is also rescinding the review with respect to Ningbo Zhongjiang High Strength Bolts Co., Ltd. (Zhongjiang Bolts). Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable December 22, 2022.

FOR FURTHER INFORMATION CONTACT: Allison Hollander or Bryan Hansen, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2805 or (202) 482–3683, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 2020, Commerce published in the **Federal Register** the antidumping duty (AD) order on alloy and certain carbon steel threaded rod (threaded rod) from the People's Republic of China (China).[1] On April 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of

[1] *See Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Antidumping Duty Order,* 85 FR 19929 (April 9, 2020) (*Order*).

the *Order*.[2] On June 9, 2022, based on timely requests for an administrative review, Commerce initiated the administrative review of the *Order*.[3] The administrative review covers two companies, including one mandatory respondent, Ningbo Dongxin.

Scope of the Order

The products covered by this *Order* are threaded rod. A full description of the scope of the *Order* is provided in the Preliminary Decision Memorandum.[4]

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation. On June 21, 2022, Zhongjiang Bolts timely withdrew its request for review.[5] Because no other party requested an administrative review of Zhongjiang Bolts, Commerce is rescinding this administrative review, in part, with respect to Zhongjiang Bolts, in accordance with 19 CFR 351.213(d)(1).

China-Wide Entity

Under Commerce's policy regarding the conditional review of the China-wide entity,[6] the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity's rate (*i.e.,* 48.91 percent) is not subject to change.[7] We find the mandatory respondent, Ningbo Dongxin, to be a part of the China-wide entity in the instant review because it failed to submit a timely response to the initial AD questionnaire, thereby failing to establish its eligibility for a separate rate.[8]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. In addition, a complete version of the Preliminary Decision Memorandum can be found at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Disclosure

Normally, Commerce discloses to the parties in a proceeding the calculations performed in connection with preliminary results of review within five days after public announcement of preliminary results of review in accordance with 19 CFR 351.224(b).[9] However, because Commerce did not calculate a margin for the sole mandatory respondent, there are no calculations to disclose for the preliminary results of review.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties case briefs no later than 30 days after the date of publication of these preliminary results of review.[10] Rebuttals to case briefs may be filed no later than seven days after the case briefs are filed, and all rebuttal comments must be limited to comments raised in the case briefs.[11] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[12]

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the publication of this notice. Requests should contain the party's name, address, telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended, Commerce intends to issue the final results of this review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon issuing the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[14]

Because Commerce is rescinding this administrative review, in part, with respect to Zhongjiang Bolts, Commerce will instruct CBP to assess antidumping duties on all appropriate entries of threaded rod from China exported by Zhongjiang Bolts during the POR at the rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

If the preliminary results are unchanged for the final results, we will instruct CBP to apply an *ad valorem* assessment rate of 48.91 percent to all entries of subject merchandise during the POR which were exported by Ningbo Dongxin.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S.

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 87 FR 19075 (April 1, 2021).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 35165, 35170 (June 9, 2022) (*Initiation Notice*).

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* Zhongjiang Bolts' Letter, ''Zhongjiang Withdrawal of Request for Administrative Review,'' dated June 21, 2022.

[6] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[7] *See Order.*

[8] *See* Preliminary Decision Memorandum at 5.

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c).

[11] *See* 19 CFR 351.309(d).

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2); *see also* 19 CFR 351.303 (for general filing requirements).

[14] *See* 19 CFR 351.212(b)(1).

Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for Ningbo Dongxin, that has not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; (2) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing the preliminary results of this review in accordance with sections 751(a)(1)(B), 751(a)(3) and 777(i) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: December 13, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–27837 Filed 12–21–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–809, A–351–845, A–588–874, A–580–883, A–421–813, A–489–826, A–412–825, C–351–846, C–580–884]

Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Continuation of Antidumping Duty Orders (Australia, Japan, Korea, the Netherlands, Turkey, and United Kingdom) and Countervailing Duty Order (Korea) and Revocation of Antidumping and Countervailing Duty Orders (Brazil)

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on certain hot-rolled steel flat products (hot-rolled steel) from Australia, Japan, the Republic of Korea (Korea), the Netherlands, the Republic of Turkey (Turkey), and the United Kingdom would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD orders for these countries. Further, as a result of Commerce's and the ITC's determinations that the countervailing duty (CVD) order on hot-rolled steel from Korea would likely lead to continuation or recurrence of net countervailable subsidies and material injury to an industry in the United States, Commerce is publishing a notice of continuation CVD order for Korea. Finally, as a result of the ITC's determination that revocation of the AD and CVD orders on hot-rolled steel from Brazil is not likely to lead to continuation or recurrence of material injury to an industry in the United States, Commerce is revoking the AD and CVD orders on hot-rolled steel from Brazil.

DATES: Applicable December 22, 2022.

FOR FURTHER INFORMATION CONTACT: Zachary Le Vene, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0056.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2016, Commerce published in the **Federal Register** the AD orders on hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom (*AD Orders*) [1] and the CVD orders on hot-rolled steel from Brazil and Korea (*CVD Orders,* collectively with *AD Orders, Orders*).[2] On September 1, 2021, Commerce published the notice of initiation of the sunset reviews of the *Orders* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3] Commerce conducted expedited (120-day) sunset reviews of the *Orders,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of its reviews, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and countervailable subsidies. Commerce also notified the ITC of the magnitude of the dumping margins and net countervailable subsidies likely to prevail should the *Orders* be revoked.[4]

On December 2, 2022, the ITC published its determination, pursuant to

[1] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016), as amended by *Certain Hot-Rolled Steel Flat Products from Turkey: Notice of Court Decision Not in Harmony with the Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination, Amended Antidumping Duty Order, Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of the 2017–18 and 2018–19 Antidumping Duty Administrative Reviews, in Part,* 85 FR 29399 (May 15, 2020) (*AD Orders*).

[2] *See Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders,* 81 FR 67960 (October 3, 2016) (*CVD Orders*).

[3] *See Initiation Notice of Five-Year (Sunset) Reviews,* 86 FR 48983 (September 1, 2021) (*Initiation Notice*).

[4] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders,* 87 FR 751 (January 6, 2022); *Certain Hot-Rolled Steel Flat Products of Brazil: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 87 FR 750 (January 6, 2022); and *Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 87 FR 428 (January 5, 2022).

section 751(c) of the Act, that revocation of the AD orders on hot-rolled steel from Australia, Japan, the Netherlands, Turkey, and the United Kingdom, and the AD and CVD orders on hot-rolled steel from Korea, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, and that revocation of the AD and CVD orders on hot-rolled steel from Brazil would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[5]

Scope of the Orders

The products covered by these *Orders* are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (width) of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping [6] or countervailing duty [7] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products from the Republic of Korea (A–580–836; C–580–837), and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these *Orders* are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in these scopes regardless of levels of boron and titanium. For example, specifically included in these scopes are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of these *Orders* if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these *Orders* unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of these *Orders:*

- Universal mill plates (*i.e.,* hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling; [8]
- Ball bearing steels; [9]
- Tool steels; [10] and
- Silico-manganese steels.[11]

The products covered by these *Orders* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000,

[5] *See Hot-Rolled Steel from Australia, Brazil, Japan, Netherlands, Russia, South Korea, Turkey, and the United Kingdom,* 87 FR 74167 (December 2, 2022).

[6] *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000).

[7] *See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000).

[8] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[9] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[10] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[11] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products covered by these *Orders* may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000. The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of these *Orders* is dispositive.

Continuation of the AD Orders on Hot-Rolled Steel From Australia, Japan, the Netherlands, Turkey, and the United Kingdom and the Continuation of the AD and CVD Orders on Hot-Rolled Steel From Korea

As a result of the determinations by Commerce and the ITC that revocation of the AD orders on hot-rolled steel from Australia, Japan, the Netherlands, Turkey, and the United Kingdom, and the AD and CVD orders on hot-rolled steel from Korea would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the AD orders on hot-rolled steel from Australia, Japan, the Netherlands, Turkey, and the United Kingdom, and the AD and CVD orders on hot-rolled steel from Korea. U.S. Customs and Border Protection (CBP) will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the AD orders on hot-rolled steel from Australia, Japan, the Netherlands, Turkey, and the United Kingdom, and the AD and CVD orders on hot-rolled steel from Korea will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next sunset review of the AD orders on hot-rolled steel from Australia, Japan, the Netherlands, Turkey, and the United Kingdom, and the AD and CVD orders on hot-rolled steel from Korea not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Revocation of the AD and CVD Orders on Hot-Rolled Steel From Brazil

As a result of the determination by the ITC that revocation of the AD and CVD orders on hot-rolled steel from Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, 19 CFR 351.222(i)(1)(iii), and 19 CFR 351.218(a), Commerce is revoking the AD and CVD orders on hot-rolled steel from Brazil. Pursuant to section 751(d)(3) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is October 3, 2021 (*i.e.,* the fifth anniversary of the date of publication in the **Federal Register** of the notice of the *Orders*).[12]

Cash Deposits and Assessment of Duties on Hot-Rolled Steel From Brazil

Commerce intends to notify CBP to terminate the suspension of liquidation and to discontinue the collection of AD and CVD cash deposits on entries of hot-rolled steel from Brazil, entered or withdrawn from warehouse, on or after October 3, 2021. Commerce intends to further instruct CBP to refund with interest all cash deposits on unliquidated entries made on or after October 3, 2021. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and AD and CVD deposit requirements and assessments.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and this notice is published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: December 15, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–27839 Filed 12–21–22; 8:45 am]

BILLING CODE 3510–DS–P

[12] *See Orders.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–971]

Multilayered Wood Flooring From the People's Republic of China: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2020

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of multilayered wood flooring (wood flooring) from the People's Republic of China (China). The period of review (POR) is January 1, 2020, through December 31, 2020. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable December 22, 2022.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Jonathan Schueler, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–9175, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2011, Commerce issued a countervailing duty (CVD) order on wood flooring from China.[1] The American Manufacturers of

[1] *See Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order,* 76 FR 76693 (December 8, 2011) (*Order*); and *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders,* 77 FR 5484 (February 3, 2012), wherein the scope of the *Order* was modified (collectively, *Order*).

Multilayered Wood Flooring (the petitioner) and other interested parties requested that Commerce conduct an administrative review of the *Order.* On February 4, 2022, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the *Order.*[2] We initiated an administrative review of 92 producers/exporters of wood flooring from China for the POR. For events that occurred since the *Initiation Notice, see* the Preliminary Decision Memorandum.[3]

Scope of the Order

The product covered by the *Order* is wood flooring from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Final Rescission of Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. On February 7, 2022, Zhejiang Yuhua Timber Co. Ltd. (Zhejiang Yuhua) and A-Timber Flooring Company Limited (A-Timber Flooring) timely withdrew their request for review.[4] On March 4, 2022, Jiashan HuiJiaLe Decoration Material Co., Ltd. (Jiashan HuiJiaLe) timely withdrew its request for review.[5] On April 25, 2022, Kingman Floors Co., Ltd. (Kingman Floors) timely withdrew its request for review.[6]

With regard to Jiashan HuiJiaLe, while the company timely withdrew its request for review, there remains an active review request for it by another party; thus we are not rescinding the review with respect to this company.[7] As for Zhejiang Yuhua, A-Timber Flooring, and Kingman Floors, because their requests for review were timely withdrawn and there are no other active review requests for them, we are rescinding this review, in part, with respect to these three companies, pursuant to 19 CFR 351.213(d)(1) and (4).

On April 1, 2022, Commerce notified interested parties that we intended to rescind this administrative review with respect to the companies listed in Appendix II, in the absence of suspended entries during the POR.[8] Zhejiang Yuhua and A-Timber Flooring commented that they agree with the rescission of the review with respect to the companies listed in Appendix II and also reminded Commerce that they had already withdrawn their review requests.[9] Additionally, the petitioner filed comments arguing that Commerce should not rescind the review for the companies identified in Appendix II because these companies possibly evaded payment of duties.[10] In response to the petitioner's comments and request to do so, we referred the issue of alleged evasion to U.S. Customs and Border Protection (CBP).[11] Because CBP is the authority responsible for determining whether entries of merchandise are subject to the CVD order, we are relying on the entry data provided by CBP as the basis for determining whether to rescind this administrative review for the companies listed in Appendix II. Accordingly, we determine that there are no reviewable entries of subject merchandise by the companies listed in Appendix II based on our review of the CBP data on the record. As a result, we are rescinding this review, in part, with respect to the 67 companies listed in Appendix II, pursuant to 19 CFR 351.213(d)(3) and (4).

In addition, the following parties submitted no-shipment certifications: Anhui Longhua Bamboo Product Co., Ltd.; Benxi Flooring Factory (General Partnership) (Benxi Flooring); Benxi Wood Company; Dalian Jiahong Wood Industry Co., Ltd.; Dalian Shengyu Science and Technology Development Co., Ltd.; Dongtai Fuan Universal Dynamics, LLC; Dunhua City Dexin Wood Industry Co., Ltd.; Dunhua City Hongyuan Wood Industry Co., Ltd.; HaiLin LinJing Wooden Products, Ltd.; Jiangsu Keri Wood Co., Ltd.; Jiangsu Mingle Flooring Co., Ltd.; Jiangsu Simba Flooring Co., Ltd.; Jiangsu Yuhui International Trade Co., Ltd.; Jiashan On-Line Lumber Co., Ltd.; Pinge Timber Manufacturing (Zhejiang) Co., Ltd.; Power Dekor Group Co., Ltd.; Sino-Maple (Jiangsu) Co., Ltd.; Suzhou Dongda Wood Co., Ltd.; Tongxiang Jisheng Import and Export Co., Ltd.; and Zhejiang Shiyou Timber Co., Ltd. All of these companies were included in the Intent to Rescind Memorandum with the exception of Benxi Flooring. Therefore, as explained above, we are rescinding the review with regard to all these companies, except for Benxi Flooring. Our analysis of the CBP information placed on the record shows that Benxi Flooring made shipments during the POR.[12] Therefore, we are preliminarily treating Benxi Flooring as a non-selected company under review.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[13] For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.* A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 6487 (February 4, 2022) (*Initiation Notice*).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results in the Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China; 2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* Zhejiang Yuhua's and A-Timber Flooring's Letter, ''Withdrawal of Request for Administrative Review,'' dated February 7, 2022.

[5] *See* Jiashan HuiJiaLe's Letter, ''Notice of Withdrawal of Request for 2020 Administrative Review,'' dated March 4, 2022.

[6] *See* Kingman Floors' Letter, ''Notice of Withdrawal of Request for 2020 Administrative Review,'' dated April 25, 2022.

[7] *See* Petitioner's Letter, ''Request for Administrative Review,'' dated December 30, 2022.

[8] *See* Memorandum, ''Notice of Intent to Rescind Review, In Part,'' dated April 1, 2022 (Intent to Rescind Memorandum). A-Timber Flooring had no suspended entries during the POR, therefore we included it in this notice, but we failed to note that it had also withdrawn its request to be reviewed. Because there are no outstanding requests for review of A-Timber Flooring and we are rescinding the review with respect to it, we have omitted its name from Appendix II.

[9] *See* Zhejiang Yuhua's and A-Timber Flooring's letter, ''Comments Regarding Intent to Rescind,'' dated April 8, 2022.

[10] *See* Petitioner's Letter, ''Comments on Notice of Intent to Partially Rescind Review,'' dated April 8, 2022.

[11] *See* Commerce's Letter, ''Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China,'' dated May 5, 2022.

[12] *See* Memorandum, ''U.S. Customs and Border Protection (''CBP'') Entry Documents,'' dated November 17, 2022.

[13] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Preliminary Rate for Non-Selected Companies Under Review

As discussed above, Commerce initiated this administrative review with respect to 92 producers/exporters. We are rescinding the review for three companies that withdrew their request for administrative review and for 67 companies that had no suspended entries during the POR. As discussed above, this group includes 19 companies that certified no shipments during the POR. In addition, Commerce selected two mandatory respondents, Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Jiangsu Senmao) and Riverside Plywood Corp. (Riverside Plywood) for individual examination.[14] For the remaining 18 companies subject to this review, because the rates calculated for mandatory respondents Jiangsu Senmao and Riverside Plywood were above *de minimis* and not based entirely on facts available, we applied a subsidy rate based on a weighted-average of the subsidy rates calculated for these mandatory respondents using the publicly ranged sales data they submitted on the record. This methodology is consistent with our practice for establishing an all-others subsidy rate pursuant to section 705(c)(5)(A) of the Act. For further information on the calculation of the non-selected respondent rate, refer to the section in the Preliminary Decision Memorandum entitled ''Non-Selected Companies Under Review.'' For a list of the non-selected companies, *see* Appendix III to this notice.

Preliminary Results of the Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a countervailable subsidy rate for each of the mandatory respondents, Jiangsu Senmao and Riverside Plywood, and their cross-owned affiliates, where applicable.

We preliminarily find the countervailable subsidy rates for the mandatory and non-selected respondents under review to be as follows:

Producer/exporter	Subsidy rate (percent)
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	3.28
Riverside Plywood Corp. and its Cross-Owned Affiliates[15]	15.93
Non-Selected Companies Under Review[16]	12.24

Disclosure

We intend to disclose to interested parties the calculations performed for these preliminary results in accordance with 19 CFR 351.224(b).

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[17] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within seven days from the deadline date for the submission of case briefs.[18] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[19]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the date of publication of this notice. Requests should contain (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date and time of the hearing two days before the scheduled date.

An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Final Results

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts for the producer/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. For the companies for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2020, through December 31, 2020, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above and in Appendix III on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results are issued and published pursuant to sections

[14] Riverside Plywood's cross-owned affiliates are Baroque Timber Industries (Zhongshan) Co., Ltd.; Suzhou Times Flooring Co., Ltd.; and Zhongshan Lianjia Flooring Co., Ltd. Both Baroque Timber Industries (Zhongshan) Co., Ltd. and Suzhou Times Flooring Co., Ltd. were listed separately in the *Initiation Notice.*

[15] Cross-owned affiliates are Baroque Timber Industries (Zhongshan) Co., Ltd.; Suzhou Times Flooring Co., Ltd.; and Zhongshan Lianjia Flooring Co., Ltd.

[16] *See* Appendix III.

[17] *See* 19 CFR 351.309(c)(1)(ii).

[18] *See* 19 CFR 351.309(d)(1) and (2).

[19] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 15, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Non-Selected Companies Under Review
IV. Scope of the *Order*
V. Diversification of China's Economy
VI. Use of Facts Otherwise Available and Application of Adverse Inferences
VII. Subsidies Valuation
VIII. Interest Rate Benchmarks, Discount Rates, Inputs, Land-Use and Electricity Benchmarks
IX. Analysis of Programs
X. Recommendation

Appendix II—Companies With No Suspended Entries During the POR

1. Anhui Boya Bamboo & Wood Products Co., Ltd.
2. Anhui Longhua Bamboo Product Co., Ltd.
3. Anhui Yaolong Bamboo & Wood Products Co. Ltd.
4. Armstrong Wood Products (Kunshan) Co., Ltd.
5. Arte Mundi Group Co., Ltd. (f.k.a., Arte Mundi (Shanghai) Aesthetic Home Furnishings Co., Ltd., and Scholar Home (Shanghai) New Material Co., Ltd.)
6. Benxi Wood Company
7. Changzhou Hawd Flooring Co., Ltd.
8. Dalian Guhua Wooden Product Co., Ltd.
9. Dalian Huilong Wooden Products Co., Ltd.
10. Dalian Jaenmaken Wood Industry Co., Ltd.
11. Dalian Jiahong Wood Industry Co., Ltd.
12. Dalian Shengyu Science and Technology Development Co., Ltd.
13. Dalian T-Boom Wood Products Co., Ltd.
14. Dongtai Fuan Universal Dynamics, LLC
15. Dunhua City Dexin Wood Industry Co., Ltd.
16. Dunhua City Hongyuan Wood Industry Co., Ltd.
17. Dunhua City Jisen Wood Industry Co., Ltd.
18. Guangdong Yihua Timber Industry Co., Ltd.
19. Guangzhou Homebon Timber Manufacturing Co., Ltd.
20. HaiLin LinJing Wooden Products, Ltd.
21. Hangzhou Hanje Tec Company Limited
22. Hangzhou Zhengtian Industrial Co., Ltd.
23. Hong Kong Chuanshi International
24. Hunchun Forest Wolf Wooden Industry Co., Ltd.
25. Hunchun Xingjia Wooden Flooring Inc.
26. Huzhou Chenghang Wood Co., Ltd.
27. Huzhou Fulinmen Imp. & Exp. Co., Ltd.
28. Huzhou Sunergy World Trade Co., Ltd
29. Jiangsu Keri Wood Co., Ltd.
30. Jiangsu Mingle Flooring Co., Ltd.
31. Jiangsu Simba Flooring Co., Ltd.
32. Jiangsu Yuhui International Trade Co., Ltd.
33. Jiashan On-Line Lumber Co., Ltd.
34. Jiaxing Brilliant Import & Export Co., Ltd.
35. Jiaxing Hengtong Wood Co., Ltd.
36. Jilin Xinyuan Wooden Industry Co., Ltd.
37. Karly Wood Product Limited
38. Kember Flooring, Inc. (a.k.a. Kember Hardwood Flooring, Inc.)
39. Kemian Wood Industry (Kunshan) Co., Ltd.
40. Kornbest Enterprises Limited
41. Les Planchers Mercier, Inc.
42. Linyi Anying Wood Co., Ltd.
43. Linyi Youyou Wood Co., Ltd. (successor-in-interest to Shanghai Lizhong Wood Products Co., Ltd.) (a.k.a. The Lizhong Wood Industry Limited Company of Shanghai)
44. Logwin Air and Ocean Hong Kong
45. Muchsee Wood (Chuzhou) Co., Ltd.
46. Pinge Timber Manufacturing (Zhejiang) Co., Ltd.
47. Power Dekor Group Co. Ltd.
48. Power Dekor North America Inc.
49. Samling Global USA, Inc.
50. Scholar Home (Shanghai) New Material Co. Ltd.
51. Shanghai Lairunde Wood
52. Shanghaifloor Timber (Shanghai) Co., Ltd.
53. Sino-Maple (Jiangsu) Co., Ltd.
54. Suzhou Dongda Wood Co., Ltd.
55. Tech Wood International Ltd.
56. Tongxiang Jisheng Import and Export Co., Ltd.
57. Xiamen Yung De Ornament Co., Ltd.
58. Xuzhou Shenghe Wood Co., Ltd.
59. Yekalon Industry, Inc.
60. Yihua Lifestyle Technology Co., Ltd.
61. Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.
62. Zhejiang Dadongwu GreenHome Wood Co., Ltd. (a.k.a. Zhejiang Dadongwu Greenhome Wood Co., Ltd. and Zhejiang Dadongwu Green Home Wood Co., Ltd.)
63. Zhejiang Jiechen Wood Industry Co., Ltd.
64. Zhejiang Longsen Lumbering Co., Ltd.
65. Zhejiang Shiyou Timber Co., Ltd.
66. Zhejiang Shuimojiangnan New Material Technology Co., Ltd.
67. Zhejiang Simite Wooden Co., Ltd.

Appendix III—Non-Selected Companies Under Review

1. Benxi Flooring Factory (General Partnership)
2. Dalian Kemian Wood Industry Co., Ltd.
3. Dalian Penghong Floor Products Co., Ltd.
4. Dalian Qianqiu Wooden Product Co., Ltd.
5. Dalian Shumaike Floor Manufacturing Co., Ltd.
6. Dun Hua Sen Tai Wood Co., Ltd.
7. Dunhua Shengda Wood Industry Co., Ltd.
8. Fine Furniture (Shanghai) Limited
9. Fusong Jinlong Wooden Group Co., Ltd.
10. Fusong Jinqiu Wooden Product Co., Ltd.
11. Fusong Qianqiu Wooden Product Co., Ltd.
12. Huzhou Jesonwood Co., Ltd.
13. Jiangsu Guyu International Trading Co., Ltd.
14. Jiashan HuiJiaLe Decoration Material Co., Ltd.
15. Kingman Wood Industry Co., Ltd.
16. Metropolitan Hardwood Floors, Inc.
17. Samling Elegant Living Trading (Labuan) Ltd.
18. Zhejiang Fuerjia Wooden Co., Ltd.

[FR Doc. 2022–27843 Filed 12–21–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Hydrofluorocarbon Blends From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) continues to find that Huantai Dongyue International Trade Co., Ltd. (Huantai Dongyue), Shandong Dongyue Chemical Co., Ltd. (Shandong Dongyue), Zhejiang Yonghe Refrigerant Co., Ltd. (Zhejiang Yonghe), and Zhejiang Sanmei Chemical Ind. Co., Ltd. (Sanmei) made no shipments during the period of review (POR), August 1, 2020, through July 31, 2021. Commerce also continues to find that the remaining companies subject to this administrative review (collectively, the non-responsive parties) are part of the China-wide entity.

DATES: Applicable December 22, 2022.

FOR FURTHER INFORMATION CONTACT: Steven Seifert, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3350.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2022, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** and invited comments from interested parties.[1] No interested party submitted comments concerning the *Preliminary Results.* Accordingly, the final results remain unchanged from the *Preliminary Results.* Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

[1] *See Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020–2021*, 87 FR 54192 (September 2, 2022) (*Preliminary Results*).

Scope of the Order [2]

The products subject to the *Order* are HFC blends. HFC blends covered by the scope are R–404A, a zeotropic mixture consisting of 52 percent 1,1,1-Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R–407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R–407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R–410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R–507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R–507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.[3]

Any blend that includes an HFC component other than R–32, R–125, R–143a, or R–134a is excluded from the scope of the *Order.*

Excluded from the *Order* are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from the *Order* are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99TM (R–438A), MO79 (R–422A), MO59 (R–417A), MO49PlusTM (R–437A) and MO29TM (R–4 22D), Genetron® PerformaxTM LT (R–407F), Choice® R–421A, and Choice® R–421B.

HFC blends covered by the scope of the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.[4]

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that Huantai Dongyue, Shandong Dongyue, Zhejiang Yonghe, and Sanmei had no reviewable shipments of the subject merchandise during the POR.[5] We received no comments from interested parties with respect to the *Preliminary Results* and we received no information contradicting them. Therefore, because the record indicates that these companies had no shipments of subject merchandise to the United States during the POR, we continue to find that Huantai Dongyue, Shandong Dongyue, Zhejiang Yonghe, and Sanmei had no reviewable shipments during the POR.

China Wide Entity

Aside from Sanmei, Huantai Dongyue, Shandong Dongyue, and Zhejiang Yonghe, which we find made no shipments during the POR, Commerce considers all other companies for which a review was requested to be part of the China-wide entity because they did not demonstrate their separate rate eligibility.[6] Accordingly, for these final results, we consider all other non-responsive parties, none of which submitted a separate rate application, to be part of the China-wide entity. *See* the appendix to this notice for a list of these companies.

Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity's rate is not subject to change (*i.e.,* 216.37 percent).[7]

Assessment Rates

Consistent with Commerce's practice, any suspended entries entered under Huantai Dongyue, Shandong Dongyue, Zhejiang Yonghe, and Sanmei's case numbers will be liquidated at the China-wide entity rate.[8]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) for previously investigated or reviewed Chinese or non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity (*i.e.,* 216.37 percent); and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that

[2] *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016) (*Order*).

[3] R–404A is sold under various trade names, including Forane® 404A, Genetron® 404A, Solkane® 404A, Klea® 404A, and Suva®404A. R–407A is sold under various trade names, including Forane® 407A, Solkane® 407A, Klea®407A, and Suva®407A. R–407C is sold under various trade names, including Forane® 407C, Genetron® 407C, Solkane® 407C, Klea® 407C and Suva® 407C. R–410A is sold under various trade names, including EcoFluor R410, Forane® 410A, Genetron® R410A and AZ–20, Solkane® 410A, Klea® 410A, Suva® 410A, and Puron®. R–507A is sold under various trade names, including Forane® 507, Solkane® 507, Klea®507, Genetron®AZ–50, and Suva®507. R–32 is sold under various trade names, including Solkane®32, Forane®32, and Klea®32. R–125 is sold under various trade names, including Solkane®125, Klea®125, Genetron®125, and Forane®125. R–143a is sold under various trade names, including Solkane®143a, Genetron®143a, and Forane®125.

[4] *See* the *Order.* Certain merchandise has been the subject of affirmative anti-circumvention determinations by Commerce, pursuant to section 781 of the Tariff Act of 1930, as amended (the Act). As a result, the circumventing merchandise is included in the scope of the *Order. See Hydrofluorocarbon Blends from the People's Republic of China: Final Negative Scope Ruling on Gujarat Fluorochemicals Ltd.'s R–410A Blend; Affirmative Final Determination of Circumvention of the Antidumping Duty Order by Indian Blends Containing Chinese Components,* 85 FR 61930 (October 1, 2020); *Hydrofluorocarbon Blends from the People's Republic of China: Final Scope Ruling on Unpatented R–421A; Affirmative Final Determination of Circumvention of the Antidumping Duty Order for Unpatented R–421A,* 85 FR 34416 (June 4, 2020); and *Hydrofluorocarbon Blends from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order; Unfinished R–32/R–125 Blends,* 85 FR 15428 (March 18, 2020).

[5] *See Preliminary Results.*

[6] *See Initiation Notice,* 86 FR at 55812 (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving {non-market economy} countries must complete, as appropriate, either a separate rate application or certification, as described below.'').

[7] *See Order,* 81 FR at 55438.

[8] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 16, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Companies Part of the China-Wide Entity

1. Changshu 3F Zhonghao New Chemical Materials Co., Ltd.
2. Daikin Fluorochemicals (China) Co., Ltd.
3. Dongyang Weihua Refrigerants Co., Ltd.
4. Electrochemical Factory of Zhejiang Juhua Co., Ltd.
5. Fujian Qingliu Dongying Chemical Ind. Co., Ltd.
6. Hongkong Richmax Ltd.
7. Icool International (Hong Kong) Limited
8. Jiangsu Bluestar Green Technology Co., Ltd.
9. Jiangsu Meilan Chemical Co., Ltd.
10. Jiangsu Sanmei Chemicals Co., Ltd
11. Jinhua Binglong Chemical Technology Co., Ltd.
12. Jinhua Yonghe Fluorochemical Co., Ltd.
13. Liaocheng Fuer New Materials Technology Co., Ltd.
14. Linhai Limin Chemicals Co., Ltd.
15. Ninhua Group Co., Ltd.
16. Puremann, Inc.
17. Ruyuan Dongyangguang Fluorine Co., Ltd.
18. Shandong Huaan New Material Co., Ltd.
19. Shandong Xinlong Science Technology Co., Ltd.
20. Shanghai Aohong Chemical Co., Ltd.
21. Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd.
22. Sinochem Lantian Fluoro Materials Co., Ltd.
23. T.T. International Co., Ltd.
24. Taizhou Huasheng New Refrigeration Material Co., Ltd.
25. Taizhou Qingsong Refrigerant New Material Co., Ltd.
26. Weitron International Refrigeration Equipment (Kunshan) Co., Ltd.
27. Weitron International Refrigeration Equipment Co., Ltd.
28. Zhejiang Fulai Refrigerant Co., Ltd.
29. Zhejiang Guomao Industrial Co., Ltd.
30. Zhejiang Lantian Environmental Protection Fluoro Material Co. Ltd.
31. Zhejiang Lishui Fuhua Chemical Co., Ltd.
32. Zhejiang Organic Fluor-Chemistry Plant
33. Zhejiang Juhua Co., Ltd.
34. Zhejiang Quhua Fluor-Chemistry Co., Ltd.
35. Zhejiang Quhua Juxin Fluorochemical Industry Co., Ltd.
36. Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd.
37. Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd.
38. Zhejiang Sanmei Chemical Industry Co., Ltd.
39. Zhejiang Zhiyang Chemical Co., Ltd.
40. Zhejiang Zhonglan Refrigeration Technology Co., Ltd.
41. Zibo Feiyuan Chemical Co., Ltd.

[FR Doc. 2022–27882 Filed 12–21–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–858]

Certain Softwood Lumber Products From Canada: Notice of Amended Final Results of Countervailing Duty Administrative Review; 2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) is amending its notice of final results for the 2020 administrative review of the countervailing duty (CVD) order on certain softwood lumber products (softwood lumber) from Canada.

DATES: Applicable December 22, 2022.

FOR FURTHER INFORMATION CONTACT: John Hoffner, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3315.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2021, Commerce published its *Initiation Notice* for the administrative review of the CVD order on softwood lumber from Canada covering the period January 1, 2020, through December 31, 2020.[1] In the *Initiation Notice,* Commerce inadvertently omitted the following companies, for which we had received timely requests for an administrative review: Brink Forest Products Ltd.; Deep Cove Forest Products, Inc.; and Vanderhoof Specialty Wood Products Ltd.[2] Additionally, in the *Final Results* of the CVD administrative review covering the 2020 period of review (POR), Commerce omitted those same companies from Appendix II as being among the firms subject to the review that received the subsidy rate applicable to companies not selected for individual examination.[3]

With the issuance of this amended notice, we confirm that Brink Forest Products Ltd. and Vanderhoof Specialty Wood Products Ltd. are included among the firms subject to the CVD administrative review covering the 2020 period of review and are among the non-selected companies subject to a subsidy rate of 3.83 percent, effective August 9, 2022.[4] While the company Deep Cove Forest Products, Inc. was inadvertently omitted from the *Initiation Notice,* the company did not have entries during the POR according to the U.S. Customs and Border Protection (CBP) entry data on the record.[5] As a result, Deep Cove Forest Products, Inc. will not be subject to the assessment and cash deposit rates covering the 2020 POR.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.212(b)(2), Commerce will determine, and CBP shall assess, CVDs on all appropriate entries of subject merchandise covered by this review. However, currently we have instructed CBP to suspend all entries subject to this review, pursuant to a suspension of liquidation request filed in accordance with 19 CFR 356.8 and 19 U.S.C. 516A(g)(5)(C).[6] We also intend to

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 12599 (March 4, 2021) (*Initiation Notice*).

[2] *Id.,* 86 FR at 12609; *see also* Brink Forest Products Ltd. and Vanderhoof Specialty Wood Products Ltd.'s Letter, ''Certain Softwood Lumber Products from Canada Request for Administrative Review,'' dated January 15, 2021; Central Forest Products, Inc.'s Letter, ''Softwood Lumber from Canada; Request for Administrative Review,'' dated February 1, 2022.

[3] *See Certain Softwood Lumber Products from Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review, 2020,* 87 FR 48455, 48458–59 (August 9, 2022) (*Final Results*).

[4] *Id.,* 87 FR at 48456.

[5] *See* Memoranda, ''Certain Softwood Lumber Products from Canada: Third Countervailing Duty Administrative Review—Release of U.S. Customs and Border Protection Query,'' dated March 19, 2021; and ''Certain Softwood Lumber Products from Canada: Third Countervailing Duty Administrative Review—Release of Results of Second Query of U.S. Customs and Border Protection Data,'' dated January 5, 2022.

[6] *See* Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (aka, COALITION)'s Letter, ''Certain Softwood Lumber Products from Canada: USMCA Secretariat

Continued

issue suspension instructions for Brink Forest Products Ltd. and Vanderhoof Specialty Wood Products Ltd. consistent with that request and in accordance with 19 CFR 356.8 and 19 U.S.C. 516A(g)(5)(C).

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated CVDs in the amounts shown for the companies subject to this review, effective August 9, 2022, the date of publication of the *Final Results* in the **Federal Register**, for the two companies previously omitted. Therefore, Commerce will instruct CBP to collect cash deposits for Brink Forest Products Ltd. and Vanderhoof Specialty Wood Products Ltd. as included among the firms subject to the CVD administrative review covering the 2020 POR and as among the non-selected companies subject to a subsidy rate of 3.83 percent. These cash deposits, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 16, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2022–27844 Filed 12–21–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures 2023 Interim Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The 2023 Interim Meeting of the National Conference on Weights and Measures (NCWM) will be held in-person at the Hyatt Regency Savannah in Savannah, Georgia from Sunday, January 8 through Wednesday, January 11, 2023. This notice contains information about significant items on the NCWM Committee agendas but does not include all agenda items. As a result, the items are not consecutively numbered.

DATES: The 2023 Interim Meeting will be held from Sunday, January 8, 2023, through Wednesday, January 11, 2023. The meeting schedule is tentatively: Sunday, January 8 from 8:00 a.m. to 7:00 p.m.; Monday, January 9 from 7:30 a.m. to 5:00 p.m.; Tuesday, January 10 from 7:30 a.m. to 5:00 p.m.; and Wednesday, January 11 from 7:30 a.m. to 12:00 p.m. Eastern Time. The meeting schedule will be available on the NCWM website at *www.ncwm.com.*

ADDRESSES: This meeting will be held in-person at the Hyatt Regency Savannah, in Savannah, Georgia, 2 W Bay Street, Savannah, Georgia 31401.

FOR FURTHER INFORMATION CONTACT: Dr. Katrice Lippa, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Dr. Lippa at (301) 975–3116 or by email at *katrice.lippa@nist.gov.* The meeting is open to the public, but the payment of a registration fee is required. Please see the NCWM website (*www.ncwm.com*) to view the meeting agendas, registration forms, and hotel reservation information.

SUPPLEMENTARY INFORMATION: Publication of this notice on the NCWM's behalf is undertaken as a public service and does not itself constitute an endorsement by the National Institute of Standards and Technology (NIST) of the content of the notice. NIST participates in the NCWM as an NCWM member and pursuant to 15 U.S.C. 272(b)(10) and (c)(4) and in accordance with Federal policy (*e.g.,* OMB Circular A–119 ''Federal Participation in the Development and Use of Voluntary Consensus Standards'').

The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, and representatives from the private sector and federal agencies. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, and enforcement. NIST hosted the first meeting of the NCWM in 1905. Since then, the conference has provided a model of cooperation between Federal, State, and local governments and the private sector. NIST participates to encourage cooperation between federal agencies and the states in the development of legal metrology requirements. NIST also promotes uniformity in state laws, regulations, and testing procedures used in the regulatory control of commercial weighing and measuring devices, packaged goods, and for other trade and commerce issues.

The NCWM has established multiple committees, task groups, and other working bodies to address legal metrology issues of interest to regulatory officials, industry, consumers, and others. The following are brief descriptions of some of the significant agenda items that will be considered by some of the NCWM Committees at the NCWM Interim Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals.

This meeting also includes work sessions in which the Committees may accept comments, and where recommendations will be developed for consideration and possible adoption at the NCWM 2023, 108th Annual Meeting. The Committees may withdraw or carryover items that need additional development.

These notices are intended to make interested parties aware of these development projects and to make them aware that reports on the status of the project will be given at the Interim Meeting. The notices are also presented to invite the participation of manufacturers, experts, consumers, users, and others who may be interested in these efforts.

The following are brief descriptions of some of the significant agenda items that will be considered at the 2023 NCWM Interim Meeting. Comments will be taken on these and other recommendations to amend NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices'' (NIST Handbook 44 or HB 44), NIST Handbook 130, ''Uniform Laws and Regulations in the areas of Legal Metrology and Fuel Quality'' (NIST Handbook 130 or HB 130), and NIST Handbook 133, ''Checking the Net Contents of Packaged Goods'' (NIST Handbook 133 or HB 133). These NIST Handbooks are regularly adopted by reference or through the administrative procedures of all the states.

NCWM S&T Committee (S&T 2023 Interim Meeting)

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44. Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of products or services sold among businesses.

File No. USA–CDA–2022–10.12–03: Panel Review—Request for Continued Suspension of Liquidation,'' dated September 16, 2022.

The following items are proposals to amend NIST Handbook 44:

Item Block 2 (B2) A Define True Value for Use in Error Calculations

BLK–2: (SCL–20.3, SCL–20.4, SCL–20.5, SCL–20.6, SCL–20.7, and SCL–20.8)

The S&T Committee will further consider a proposal that has been designated as an ''Assign'' item meaning that these items have merit but are found to need further development. This ''block'' proposal includes six individual items related to the application of NIST Handbook 44 requirements based on the values of a scale's verification scale division ''e'' or the minimum scale division ''d''. Adoption of this proposal would have a great significant impact on scales, particularly in cases where the values of ''e'' and ''d'' are not equal.

Item Block 4 (B4) D Electronically Captured Tickets or Receipts

The S&T Committee will further consider a proposal to allow for the expanded use of electronic captured tickets and receipts by amending NIST HB 44 Sections 1.10. General, 3.30. LMD, 3.31. VTM, 3.32. LPG, 3.34. CLM, 3.37. MFM, 3.38. CDL, 3.39. HGM, 3.35. Milk Meters, and the definition of ''recorded representation'' in Appendix D, Definitions. The Committee amended this carry-over block of items during the 2020 Interim Meeting based on comments it received expressing a continued need for printed tickets. As a result, the proposal now references NIST HB 44 paragraph G–S.5.6. in various specific codes. At the 2021 NCWM Annual Meeting, the S&T Committee designated this block proposal as Developing for further comment and consideration. At the 2022 Interim and Annual Meetings the S&T Committee designated a Developing status for this block of items to provide stakeholders the opportunity for further review and additional comments on the various devices affected by this proposal.

VTM—Vehicle Tank Meters

VTM–18.1 S.3.1.1. Means for Clearing the Discharge Hose and UR.2.6. Clearing the Discharge Hose

The S&T Committee will further consider this item, which proposes to provide specifications and user requirements for manifold flush systems designed to eliminate product contamination on VTMs used for multiple products. This proposal would add specifications on the design of VTMs under S.3.1.1. ''Means for Clearing the Discharge Hose.'' and add a new user requirement UR.2.6. ''Clearing the Discharge Hose.'' During open hearings of previous NCWM meetings, comments were heard about the design of any system to clear the discharge hose of a product prior to the delivery of a subsequent product which could provide opportunities to fraudulently use this type of system. At the 2021 NCWM Annual Meeting the Committee agreed to keep this item Developing for further comments and consideration. At the 2022 Interim Meeting the Committee agreed to add a new paragraph UR.2.6.2., Minimizing Cross Contamination, to address issues raised about the possibility of cross contamination in receiving tanks with the use of this equipment. The Committee designated a Voting status for this item. At the 2022 Annual Meeting this item failed to receive an adequate number of votes to pass and was returned to the S&T Committee.

WIM—Weigh-In-Motion Systems

WIM–23.1: All subsections (A, S, N, T, UR) within Section 2.25. Weigh-In-Motion Systems Used for Vehicle Enforcement Screening—Tentative Code

The S&T Committee will consider a proposal to convert the current *Tentative* Code of Section 2.25 Weigh-In-Motion Systems Used for Vehicle Enforcement Screening to *Permanent* and to expand the code to include ''and Enforcement''. This also includes (but is not limited to): (1) the addition of an Accuracy Class ''E'' WIM scale (in addition to Class A) in the specifications (S); (2) the addition of test procedures to address the new Accuracy Class E in the test procedures (N) section for the determination of test speeds, dynamic test loads, and vehicle positions; (3) the designation of more stringent tolerances (T) for Accuracy Class E as compared to those for Accuracy Class A and a designation noting Accuracy Class E tolerances are to be applied to WIM scales used for enforcement purposes; and (4) the addition of a Class E weighing application in the user requirements (UR) for the explicit enforcement of vehicles based on axle, axle group, and gross vehicle weights. Assessments during the 2022 regional weights and measures association meetings recommended a Developing status to allow the submitters to address questions raised regarding the application of tolerances and test procedures; allow input regarding the use of the code for enforcement purposes (rather than screening) from those jurisdictions impacted by the proposed change in scope and status as well as input from other scale manufacturers.

The submitters of this proposal submitted a revised version of these proposed changes to the NCWM following the publication of NCWM Publication 15.

EVF—Electric Vehicle Fueling Systems

EVF–23.1: S.2.5.1., S.8

The S&T Committee will consider a proposal that will further refine electric vehicle fueling systems code requirements in NIST Handbook 44 *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices* Section 3.40 Electric Vehicle Fueling Systems Code to: (1) remove the ''megajoule'' unit of measurement definition and all references to the term cited in the design specifications; (2) base the computation of the total sales price on a more appropriate quantity interval that does not exceed 0.01 kWh rather than a 0.1 kWh; (3) decrease the permissible sizes of the minimum measured quantity (MMQ) to those that are more appropriate quantities for AC and DC systems deliveries and result in a shorter duration for the light load test procedure; and (4) no longer require an accuracy test and the applicable test tolerances at no load and at starting load.

GMA—Grain Moisture Meters 5.56. (A)

GMA–19.1 D Table T.2.1. Acceptance and Maintenance Tolerances Air Oven Method for All Grains and Oil Seeds

The S&T Committee will further consider a proposal that would reduce the tolerances for the air oven reference method in the Grain Moisture Meter Code. The proposed new tolerances would apply to all types of grains and oil seeds. This item is a carry-over proposal from 2019 and would replace the contents of Table T.2.1. with new criteria. Additional inspection data will be collected and reviewed to assess whether or not the proposed changes to the tolerances are appropriate. At the 2022 Annual Meeting the Committee recommended a Developing status to allow for consideration of additional data.

TMS/TNMS—Taxi Meters and Transportation Network Measurement Systems

Item BLOCK 3 (B3): Tolerances for Distance Testing in Taximeters and Transportation Network Systems

The S&T Committee will further consider changes included in this block affecting the HB 44 Taximeters Code

(Section 5.54.) and the Transportation Network Measurement Systems (TNMS) Code (Section 5.60.) that would amend the value of tolerances allowed for distance tests. The changes proposed in this item would change the Taximeters Code requirement T.1.1. ''On Distance Tests'' by increasing that tolerance to 2.5% when the test exceeds one mile. The change to the TNMS Code affects requirement T.1.1. ''Distance Tests'' by reducing the tolerance allowed on overregistration under T.1.1.(a) from the current 2.5% to 1% when the test does not exceed one mile and would increase the tolerance for underregistration in T.1.1.(b) from 2.5% to 4%. These changes if adopted would align the tolerances values for distance tests allowed for taximeters and TNMS. At the 2021 NCWM Annual Meeting it was noted that these items were being discussed with the USNWG and the Committee agreed to a Developing status for this item for further comment and consideration. At the 2022 NCWM Annual Meeting the item retained its Developing status.

NCWM L&R Committee (L&R 2023 Interim Meeting)

The Laws and Regulations Committee (L&R Committee) will consider proposed amendments to NIST Handbook 130 and NIST Handbook 133.

Item MOS–20.5 Section 2.21 Liquefied Petroleum Gas. The L&R Committee will further consider a proposal to clarify the existing language for the method of sale of Liquefied Petroleum Gas. This will include changes to the existing language within NIST HB 130 that references a value of ''15.6 °C'' for temperature determinations in metric units.

According to the current industry practice for sales of petroleum products, the reference temperature for sales in metric are based on 15 °C rather than the exact conversion from 60 °F (which is 15.6 °C). Thus, the temperature reference in metric should be 15 °C. This will also add language for metered sales with a maximum capacity equal to or greater than 20 gal/min will have a metering system that automatic temperature compensates. For metering systems with a maximum capacity less than 20 gal/min adding an effective date of January 2030 to all metered sales shall be accomplished using a metering system that automatic temperature compensates.

Item 22.1. Uniform Labeling Regulation for Electronic Commerce (referred as e-commerce) Products. The L&R Committee will further consider a proposal that has been designated as an ''Assigned'' item, meaning that further development will be done by the NCWM Packaging and Labeling Subcommittee. This proposal would add a new regulation into NIST HB 130 that pertains to the labeling of products in e-commerce for consumer commodities and non-consumer commodities. This regulation will provide guidance to industry, as well as those states that adopt this regulation for the purpose of inspecting ecommerce websites. This regulation would also lay out the terms that shall appear on an e-commerce website including product identity, net quantity, responsible party, unit price and price information. The development of this item will include outreach to stakeholders, including federal agencies. Online businesses shall have this regulation implemented 18 months after adoption. Stakeholder input and feedback is being asked.

Cannabis—Item NET–22.1 HB133, Section 1.2.6. Deviations Caused by Moisture Loss or Gain and Section 2.3.8. Table 2–3 Moisture Allowances provides for a 3% moisture allowance for Cannabis plant material containing more than 0.3% total delta-9 THC (Cannabis, Marijuana, or Marihuana) or containing 0.3% less total delta-9 THC (hemp).[1]

Item Block 3 Cannabis—B3: PALS –22.1. Section XX. *Cannabis* and *Cannabis*-Containing Products.[2] The Committee will further consider proposals to establish definitions within NIST HB 130 Packaging and Labeling Requirements for *Cannabis* and *Cannabis* containing products. In addition, PAL–22.2 Section 10.XX. *Cannabis* and *Cannabis*-Containing Products will establish labeling requirements. B3: MOS–22.2. HB130 Section 1.XX. and Section 2.XX. *Cannabis* and *Cannabis*-Containing Products. The Committee will consider a proposal to amend these two sections to include language for a method of sale for Cannabis. Included within this proposal is also a water activity limit of 0.60 (± 0.05), when unprocessed Cannabis is sold or transferred.

Item NET–22.2 Section 3. X. Gravimetric Test Procedure for Viscous and Non-Viscous Liquids by Portable Digital Density Meter.

The L&R Committee will further consider a proposal to develop a test procedure to allow the use of portable digital density meters for net content package testing of viscous and non-viscous liquids labeled in fluid volume. This gravimetric test procedure could be used as a substitute for some of the current test procedure found in NIST Handbook 133 (*e.g.,* 3.2. Gravimetric Test Procedure for Non-Viscous Liquids, 3.3. Volumetric Test Procedure for Non-Viscous Liquids and 3.4. Volumetric Test Procedures for Viscous Fluids—Headspace) providing a time savings and reducing destructive testing.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–27874 Filed 12–21–22; 8:45 am]

BILLING CODE 3510–13–P

[1] In contrast to hemp, marijuana, defined as cannabis with a tetrahydrocannabinol (THC) concentration of more than 0.3 percent on a dry weight basis, remains a Schedule I substance under the Controlled Substances Act (CSA). 21 U.S.C. 812(d); 21 CFR 1308.11(d)(23).

[2] *See* footnote 1.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC530]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to LLOG Exploration Offshore, L.L.C. (LLOG) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from January 1, 2023, through December 31, 2024.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

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

SUPPLEMENTARY INFORMATION:

Background

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

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

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

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

LLOG plans to conduct one of the following vertical seismic profile (VSP) survey types: Zero Offset, Offset, Walkaway VSP, and/or Checkshots within Keathley Canyon Block 736. See Section G of LLOG's application for a map. LLOG plans to use either a 12-element, 2,400 cubic inch (in^3) airgun array, or a 6-element, 1,500 in^3 airgun array. Please see LLOG's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by LLOG in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398, January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No VSP surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of these survey types. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220, June 22, 2018). Coil was selected as the best available proxy survey type for LLOG's VSP survey because the spatial coverage of the planned surveys is most similar to the coil survey pattern. For the planned survey, the seismic source array will be deployed in one of the following forms: Zero Offset VSP—deployed from a drilling rig at or near the borehole, with the seismic receivers (*i.e.,* geophones) deployed in the borehole on wireline at specified depth intervals; Offset VSP—in a fixed position deployed from a supply vessel on an offset position; Walkaway VSP—attached to a line, or a series of lines, towed by a supply vessel; or 3D VSP—moving along a spiral or line swaths towed by a supply vessel or using a source vessel. All possible source assemblages except for 3D VSP will be stationary. If 3D VSP is used as the survey design, the area that would be covered would be up to three times the total depth of the well centered around the well head. The coil survey pattern in the model was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Because LLOG's planned survey is expected to cover no additional area as a stationary source, or up to three times the total depth of the well centered around the well head, the coil proxy is most representative of the effort planned by LLOG in terms of predicted Level B harassment.

In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, estimated take numbers for this LOA are considered conservative due to the differences in both the airgun array (12 or 6 elements, 2,400 or 1,500 in^3), and in daily survey area planned by LLOG (as mentioned above), as compared to those modeled for the rule.

The survey is planned to occur for a maximum of 5 days in Zone 7. The survey may occur in either season. Therefore, the take estimates for each species are based on the season that has the greater value for the species (*i.e.,* winter or summer).

Additionally, for some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. This can result in unrealistic projections regarding the likelihood of encountering particularly rare species and/or species not expected to occur outside particular habitats. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, 5442 (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for killer whales produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for that species as described below.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *www.boem.gov/gommapps*). Two other species were also observed on less than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [3]). However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives to 1–30 m depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. In addition, as noted above in relation to the general take estimation methodology, the assumed proxy source (72-element, 8,000-in^3 array) results in a significant overestimate of the actual potential for take to occur. NMFS' determination in reflection of the information discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales would result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403; January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018. See also 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For LLOG's survey, use of the exposure modeling produces an estimate of four killer whale exposures. Given the foregoing discussion, it is unlikely that even one killer whale would be encountered during this 5 day survey, and accordingly, no take of killer whales is authorized through the LLOG LOA.

In addition, in this case, use of the exposure modeling produces results that are smaller than average GOM group sizes for multiple species (Maze-Foley and Mullin, 2006). NMFS' typical practice in such a situation is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, other relevant considerations here lead to a determination that increasing the estimated exposures to average group sizes would likely lead to an overestimate of actual potential take. In this circumstance, the very short survey duration (maximum of 5 days) and relatively small Level B harassment isopleths produced through use of the (at worst) 12-element, 2,400-in^3 airgun array (compared with the modeled 72-element, 8,000 in^3 array) mean that it is unlikely that certain species would be encountered at all, much less that the encounter would result in exposure of a greater number of individuals than is estimated through use of the exposure modeling results. As a result, in this case NMFS has not increased the estimated exposure values to assumed average group sizes in authorizing take.

[3] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations for the affected species or stocks of marine mammals. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale	[4] 0	51	n/a
Sperm whale	26	2,207	1.2
Kogia spp	[3] 15	4,373	0.3
Beaked whales	234	3,768	6.2
Rough-toothed dolphin	43	4,853	0.9
Bottlenose dolphin	[4] 1	176,108	0
Clymene dolphin	115	11,895	1
Atlantic spotted dolphin	[4] 0	74,785	n/a
Pantropical spotted dolphin	1,139	102,361	1.1
Spinner dolphin	[4] 27	25,114	0.1
Striped dolphin	60	5,229	1.1
Fraser's dolphin	[4] 19	1,665	1.1
Risso's dolphin	18	3,764	0.5
Melon-headed whale	[4] 74	7,003	1.1
Pygmy killer whale	36	2,126	1.7
False killer whale	41	3,204	1.3
Killer whale	[4] 0	267	n/a
Short-finned pilot whale	[4] 6	1,981	0.3

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and the killer whale, the larger estimated SAR abundance estimate is used.
[3] Includes 1 take by Level A harassment and 14 takes by Level B harassment.
[4] Modeled exposure estimate less than assumed average group size (Maze-Foley and Mullin, 2006).

Based on the analysis contained herein of LLOG's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to LLOG authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: December 16, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–27777 Filed 12–21–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC617]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Naval Base Point Loma Fuel Pier Inboard Pile Removal Project

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

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from the United States Navy (Navy) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to Fuel Pier Inboard Pile Removal Project at Naval Base Point Loma in San Diego Bay, California. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than January 6, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.fleming@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kate Fleming, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1 year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is

included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

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

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On August 26, 2021, NMFS issued an IHA to the Navy to take marine mammals incidental to the Fuel Pier Inboard Pile Removal Project at Naval Base Point Loma in San Diego Bay, CA (86 FR 48986), effective from January 15, 2022 through January 14, 2023. On November 16, 2022, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. At the time of submittal of the renewal request, no activities had been conducted (though the applicant indicated its intention to conduct some activities prior to expiration of the initial IHA). Therefore, a renewal is appropriate, and no monitoring data is available for review.

Description of the Specified Activities and Anticipated Impacts

The initial IHA authorized take incidental to the removal of 409 piles from the Fuel Pier at Naval base Point Loma by a variety of techniques (*i.e.,* one to two pile clippers, an underwater chainsaw, a diamond wire saw, or a vibratory hammer, possibly with the assistance of a diver, to allow for continued Naval Fleet readiness activities. At the time of the request, the Navy has not done any work under the initial IHA. The activities that would occur under the renewal IHA consist of activities that are covered by the current authorization but will not be completed prior to its expiration (if any work is undertaken prior to expiration of the initial IHA). As the Navy has not done any work under the initial IHA at the time of their request, we assume here that the activities to be conducted under the renewal IHA are identical to those evaluated for the initial IHA.

Level B harassment (disruption of behavioral patterns and TTS for individual marine mammals resulting from exposure to the sounds produced from the underwater acoustic sources) is authorized under the initial IHA and proposed for authorization through this renewal for six species of marine mammal that could be present in the project area: California sea lion (*Zalophus californianus*), the northern elephant seal (*Mirounga angustirostris*), the harbor seal (*Phoca vitulina*), the bottlenose dolphin (*Tursiops truncatus*), the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the common dolphin (*Delphinus delphis*). Based on the nature of the activity and the anticipated effectiveness of the mitigation measures Level A harassment is neither anticipated nor proposed to be authorized.

The following documents are referenced in this notice and include important supporting information:

- Initial 2020 final IHA (86 FR 48986; September 01, 2021);
- Initial 2021 proposed IHA (86 FR 38274; July 20, 2021); and
- Initial IHA application, references cited, marine mammal monitoring plan, and San Diego Bay Acoustic Compendium (available at *www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-fuel-pier-removal-naval-base-san-diego-california*).

Detailed Description of the Activity

A detailed description of the pile removal activities for which authorization of take is proposed here may be found in the notices of the proposed and final IHAs for the initial authorization. The location and nature of the activities, including the methods and types of equipment planned for use, are identical to those described in the previous notices. The Navy intends to complete work by March 31, 2023, under the terms of a previously developed Memorandum of Understanding (MOU) between the Navy and the U.S. Fish and Wildlife Service (USFWS). According to this MOU, the Navy would only be performing in-water activities during a 196-day period from September 16 to March 31 to not interfere with the California least tern (*Sterna antillarum browni*) nesting season. However, the proposed renewal would be effective for a period extending to one year from the date of expiration of the initial IHA.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notices of the proposed and final IHAs for the initial authorization. NMFS has reviewed the most recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA. This includes cases where stock abundances have changed. In all cases, stock abundance estimates are either the same (*i.e.,* bottlenose dolphin, California sea lion, harbor seal), or have increased (common dolphin, Pacific white-sided dolphin, and northern elephant seal, with the exception of the long-beaked common dolphin, which has decreased. In all cases, our negligible impact determination has not changed.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the Notices of the Proposed IHA for the initial authorization. NMFS has reviewed the most recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the

specified activity are found in the notices of the proposed and final IHAs for the initial authorization. Specifically, the source levels, days of operation, and marine mammal density/occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA.

TABLE 1—LEVEL B HARASSMENT TAKE ESTIMATES FOR THE NBPL OLD FUEL PIER PILE REMOVAL PROJECT

Common name	Level B take requested
California sea lion	1,260
Harbor seal	84
Northern elephant seal	7
Common dolphin	756
Pacific white-sided dolphin	84
Bottlenose dolphin	84

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this proposed authorization are identical to those included in the FR notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document and the notice of the proposed IHA remains accurate. The same measures are proposed for this renewal and are summarized here:

- The use of trained and qualified PSOs;
- The implementation of a 20 m shutdown zone that is larger than the predicted Level A harassment isopleths.
- Delay or halting of activities in the event that visibility decreases where the shutdown zone cannot be appropriately monitored; and,
- Pile removal during daylight hours only.
- A minimum of one to four PSO's are allowed, depending on the visibility of the 400 meter Level B harassment zone, the visibility of the entire shutdown zone, and the location of pile removal activities for concurrent pile clippers;
- PSO's will need to record all observations of marine mammals, regardless of the distance from the pile being removed.
- Draft and final monitoring reports will be submitted to NMFS.
- The Navy will submit all PSO datasheets and/or raw sighting data with the draft report.
- Reporting of injured or dead marine mammals is required.

TABLE 3—SHUTDOWN AND HARASSMENT ZONES (METERS) FOR EACH METHOD

Pile information	Removal method	Harassment zone	Shutdown zone
13-inch polycarbonate pile	One pile clipper	423	20
14-inch, 16-inch concreate piles	One pile clipper	250	
14-inch, 16-inch concreate piles	Two pile clippers	250	
14-inch, 16-inch concreate piles	Underwater chainsaw	229	
14-inch, 16-inch concreate piles	Diamond wire saw	575	
14-inch, 16-inch concreate piles	Vibratory hammer	311	

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (86 FR 38274; July 20, 2021) and solicited public comments on both our proposal to issue the initial IHA for Fuel Pier Inboard Pile Removal Project at Naval Base Point Loma and on the potential for a renewal IHA, should certain requirements be met.

Preliminary Determinations

The proposed renewal request consists of activities identical to those that are covered by the initial authorization. The methods of determining estimated take, potential effects, and required mitigation, monitoring and reporting have not changed.

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). We found that the activities authorized under the initial IHA would have a negligible impact and that the taking would be small relative to the population size.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of common dolphin, Pacific white-sided dolphin, and northern elephant seal stocks increasing slightly and the population estimate for long-beaked common dolphin decreasing slightly. As such, our negligible impact determination has not changed. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) The Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue

a renewal IHA to the Navy for conducting the Fuel Pier Inboard Pile Removal Project at Naval Base Point Loma in San Diego Bay, California from January 15, 2023 to January 14, 2024, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: December 16, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–27776 Filed 12–21–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC626]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice.

SUMMARY: The North Pacific Fishery Management Council (Council) Bering Sea Fishery Ecosystem Plan Local Knowledge, Traditional Knowledge, and Subsistence Taskforce (LKTKS) will be held January 5, 2023.

DATES: The meeting will be held on Thursday, January 5, 2023 from 8:30 a.m. to 11:30 a.m. Alaska Time.

ADDRESSES: The meeting will be a webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/2969.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under Supplementary Information, below.

FOR FURTHER INFORMATION CONTACT: Kate Haapala Council staff; phone; (907) 271–2809 and email: *kate.haapala@noaa.gov.* For technical support please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, January 5, 2023

The LKTKS will discuss outcomes of the December 2022 meeting, progress on preparing the final taskforce report to the Council, and other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2969* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2969.* If you are attending the meeting in-person please note that all attendees will be required to wear a mask.

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2969* by 5 p.m. Alaska time on Wednesday, January 4, 2023. An opportunity for oral public testimony will also be provided during the meeting.

Dated: December 19, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–27889 Filed 12–21–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC503]

Endangered Species; File No. 27106

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

ACTION: Notice; receipt of application and conservation plan for an incidental take permit; and request for comment.

SUMMARY: Notice is hereby given that the North Carolina Department of Environment and Natural Resources, Division of Marine Fisheries (NCDMF) has applied in due form for a permit pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, NCDMF's application includes a conservation plan designed to minimize and mitigate take of endangered or threatened species. The permit application is for the incidental take of ESA-listed sea turtles and sturgeon associated with the otherwise lawful gill net fisheries operating in the inshore waters of North Carolina. The duration of the requested permit is 10 years. NMFS is providing this notice in order to allow other agencies and the public an opportunity to review and comment on the application materials. All comments received will become part of the public record and will be available for review.

DATES: Written comments must be received at the appropriate address (see **ADDRESSES**) on or before January 23, 2023.

ADDRESSES: The application is available for download and review at *https://www.fisheries.noaa.gov/national/endangered-species-conservation/incidental-take-permits* and at *http://www.regulations.gov.* The application is also available upon request (see **FOR FURTHER INFORMATION CONTACT**).

You may submit comments, identified by NOAA–NMFS–2022–0115, by Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov* and enter [NOAA–NMFS–2022–0115] in the Search box. Click on the ''Comment Now!'' 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 *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We 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: Celeste Stout, NMFS, Office of Protected Resources at *celeste.stout@noaa.gov,* 301–427–8403; Wendy Piniak, NMFS, Office of Protected Resources at *wendy.piniak@noaa.gov,* 301–427–8402.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations

prohibit the 'taking' of a species listed as endangered or threatened. The ESA defines ''take'' to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species are included in the conservation plan and permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles, and Atlantic (*Acipenser oxyrinchus*) and shortnose (*A. brevirostrum*) sturgeon.

Background

NMFS received a draft permit application from NCDMF on June 22, 2022. Based on our review of the draft application, we requested further information and clarification on their mitigation measures and take requests. On December 2, 2022, NCDMF submitted an adequate and complete application for the take of ESA-listed sea turtles and sturgeon. This take is the result of the gill net fisheries operating in the internal coastal waters of North Carolina (NC) and the deploying of anchored gill nets (*i.e.,* passive gill net sets deployed with an anchor or stake at one or both ends of the nets).

The number of requested takes are expressed as estimates across the fishery based on model predictions when appropriate for Atlantic sturgeon, green sea turtles, and Kemp's ridley sea turtles. When takes could not be modeled (shortnose sturgeon, and hawksbill, leatherback, and loggerhead sea turtles), requested takes represent counts of observed takes. Additionally, in some instances, with low sample sizes, the estimates from the model output were sufficiently low such that a single observed interaction could extrapolate to a higher number of takes in real-time using the proportion method, even if the final estimated take using the model would not.

For the development these take numbers, NCDMF defined Time Period (TP) categories as follows: TP 1 (2013–2019, before regulations due to Amendments 2 and 3 of the southern Flounder Fishery Management Plan [FMP]), TP 2 (2020–2029, the 10 years of regulations due to Amendments 2 and 3 of the Southern Flounder FMP which reduced fishing effort), and TP 3 (2029–2033, after the rebuilding period of the Southern Flounder stock and regulations due to Amendments 2 and 3 would likely be removed or altered). Portions of TP 2 and TP 3 represent the 10 years for this ITP application.

NCDMF is requesting incidental take as follows in rolling 2 year (ITP Year) intervals (*i.e.,* takes may not exceed permitted levels in any two consecutive years) for TP 2 (Table 1) and TP 3 (Table 2):

TABLE 1—SEPTEMBER 2023–AUGUST 2029—TIME PERIOD 2

[TP 2]

Species	Mesh-size category	Disposition	Predicted or observed takes	Requested 2-year rolling take TP2
Atlantic sturgeon	Large & Small	Live	Predicted	436
	Large & Small	Dead	Observed	6
Green sea turtle	Large & Small	Live	Predicted	542
	Large & Small	Dead	Predicted	170
Kemp's ridley sea turtle	Large	Live	Observed	10
	Large	Dead	Observed	4
	Small	Live or Dead	Observed	4
Shortnose sturgeon	Large & Small	Live or Dead	Observed	4
Hawksbill sea turtle	Large & Small	Live or Dead	Observed	4
Leatherback sea turtle	Large & Small	Live or Dead	Observed	4
Loggerhead sea turtle	Large & Small	Live or Dead	Observed	24

TABLE 2—SEPTEMBER 2029–AUGUST 2033—TIME PERIOD 3

[TP 3]

Species	Mesh-size category	Disposition	Predicted or observed takes	Requested 2-year rolling take TP3
Atlantic sturgeon	Large & Small	Live	Predicted	1,740
	Large & Small	Dead	Predicted	112
Green sea turtle	Large & Small	Live	Predicted	588
	Large & Small	Dead	Predicted	182
Kemp's ridley sea turtle	Large	Live	Predicted	114
	Large	Dead	Observed	4
	Small	Live or Dead	Observed	4
Shortnose sturgeon	Large & Small	Live or Dead	Observed	4
Hawksbill sea turtle	Large & Small	Live or Dead	Observed	4
Leatherback sea turtle	Large & Small	Live or Dead	Observed	4
Loggerhead sea turtle	Large & Small	Live or Dead	Observed	24

Conservation Plan

NCDMF's conservation plan describes measures to minimize, monitor, and mitigate the incidental take of ESA-listed sea turtles and sturgeon. The conservation plan includes gill net fisheries operating in estuarine waters and deploying anchored gill nets as regulated through fisheries rules adopted by the North Carolina Marine Fisheries Commission and proclamations issued by the NCDMF director. Regulations include mandatory net attendance, yardage limits, mesh size restrictions, a minimum distance between fishing operations, gear marking requirements, soak-time restrictions, net shot limits, net height tie-down requirements, closed areas, and monitoring and reporting requirements. The conservation plan includes an adaptive management and monitoring program, fisheries reduction, outreach, and timely response to ''hotspots'' where sturgeon and/or sea turtle interactions are unusually high.

Additionally, NCDMF will commit funds of up to $2,000 per year to purchase PIT tags, which equates to approximately 100 tags per year. This number exceeds the average number of live Atlantic Sturgeon observed during ITP years 2013 through 2021 and should ensure that sturgeon in condition fit for tagging are PIT tagged unless poor maritime conditions make tagging infeasible. As part of the Observer Program sampling protocol, fin clips are taken from live and dead sturgeon. These samples are stored until they can be submitted for genetic analysis and included in the sturgeon genetics repository currently housed at the Atlantic Coast Sturgeon Tissue Research Repository (ACSTRR) at the Leetown Science Center. The NCDMF will commit up to $3,000 per year to fund genetic analysis; at approximately $100 per sample, this funding provides for the analysis of approximately 30 fin clips per year. The NCDMF will consult with NMFS to ensure samples collected during the current ITP and future samples collected under the requested ITP are appropriately selected based on criteria such as sturgeon length, location, and season. Should fewer than 30 fin clips be collected for a given year, any funds not expended from this allocation could be used for analysis of historical samples provided by NCDMF.

Research is also a valuable tool to address data gaps and inform research needs. The assistance and cooperation of commercial fishery stakeholders in the research can greatly benefit these projects. The NCDMF will continue to support and assist research efforts and facilitate the establishment of relationships with the commercial fishing industry. The NCDMF will also help, to the extent possible, respond to cold-stun events that occur in NC with some regularity. During future events, NCDMF will help provide transportation of staff, supplies, and turtles using Observer Program staff, vehicles, and vessels. NCDMF will communicate with the North Carolina Wildlife Resources Commission about this commitment to ensure they reach out for assistance when needed.

NCDMF's monitoring program is largely funded through state appropriations and is supplemented through other sources such as the Atlantic Coastal Cooperative Statistics Program and the National Fish and Wildlife Foundation.

NCDMF considered and rejected three other alternatives: (1) No-Action; (2) Full Gear Closure; and (3) Additional Gear Regulations.

National Environmental Policy Act

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS intends to prepare an Environmental Assessment (EA) to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from issuing a permit. Once a draft of the EA is complete it will be made available for public review and comment. The final NEPA and permit determinations will not be made until after the end of that comment period.

Next Steps

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments received during the comment period to determine whether the application meets the requirements of section 10(a) of the ESA. If NMFS determines that the requirements are met, a permit will be issued for incidental take of ESA-listed sea turtles and sturgeon. NMFS will publish a record of its final action in the **Federal Register**.

Dated: December 16, 2022.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–27799 Filed 12–21–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2021–0037]

Fifth Extension of the Modified COVID–19 Prioritized Examination Pilot Program for Patent Applications

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: To continue to support the acceleration of innovations in the fight against COVID–19 during the public health emergency, the United States Patent and Trademark Office (USPTO or Office) is extending the modified COVID–19 Prioritized Examination Pilot Program, which provides prioritized examination of certain patent applications. Requests that are compliant with the pilot program's requirements and are filed on or before February 15, 2023, will be accepted. The USPTO will evaluate whether to further extend the program during this extension period.

DATES: The COVID–19 Prioritized Examination Pilot Program is extended as of December 22, 2022, to run until February 15, 2023.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration (571–272–77285, *raul.tamayo@uspto.gov*).

SUPPLEMENTARY INFORMATION: In 2020, the USPTO published a notice on the implementation of the COVID–19 Prioritized Examination Pilot Program. See COVID–19 Prioritized Examination Pilot Program, 85 FR 28932 (May 14, 2020) (COVID–19 Track One Notice). The pilot program was implemented to support the acceleration of innovations in the fight against COVID–19. The COVID–19 Track One Notice indicated that an applicant may request prioritized examination without payment of the prioritized examination fee and associated processing fee if: (1) the patent application's claim(s) covered a product or process related to COVID–19, (2) the product or process was subject to an applicable Food and Drug Administration (FDA) approval for COVID–19 use, and (3) the applicant

met other requirements noted in the COVID–19 Track One Notice.

Since the COVID–19 Track One Notice, the USPTO has modified the pilot program by removing the limit on the number of patent applications that could receive prioritized examination and extending the pilot program four times through notices published in the **Federal Register**. The most recent notice (87 FR 38714, June 29, 2022) extended the program until December 31, 2022.

As of December 6, 2022, 353 patents had issued from applications granted prioritized status under the pilot program. The average total pendency, from filing date or later submission of a request for continued examination to issue date, for those applications was 348 days. The shortest pendency from filing date to issue date for those applications was 75 days.

The USPTO is further extending the pilot program by setting the expiration date as February 15, 2023. The Office will continue to monitor the state of the current public health emergency and evaluate whether to further extend the program. If the USPTO determines that an additional extension of the pilot program is appropriate, the Agency will publish a subsequent notice to the public.

Unless the pilot program is further extended by a subsequent notice, following the expiration of this extension, the pilot program will be terminated in favor of the Office dedicating its resources to its other prioritized examination programs. Patent applicants interested in expediting the prosecution of their patent application may instead seek to use the Prioritized Examination (Track One) Program. Patent applications accorded prioritized examination under the pilot program will not lose that status merely because the application is still pending after the date the pilot program is terminated but will instead retain prioritized examination status until that status is terminated for one or more reasons, as described in the COVID–19 Track One Notice.

The Track One Program permits an applicant to have a patent application advanced out of turn (accorded special status) for examination under 37 CFR 1.102(e) if the applicant timely files a request for prioritized (Track One) examination accompanied by the appropriate fees and meets the other conditions of 37 CFR 1.102(e). See § 708.02(b)(2) of the Manual of Patent Examining Procedure (9th ed., rev. 10.2019, June 2020). The current USPTO fee schedule is available at *www.uspto.gov/Fees.*

The Track One Program does not have the restrictions of the COVID–19 Prioritized Examination Pilot Program regarding the types of inventions for which special status may be sought, as the Track One Program does not require a connection to any particular technology. Moreover, under the Track One Program, an applicant can avoid delays associated with the determination of whether a patent application presents a claim that covers a product or process related to COVID–19 and whether the product or process is subject to an applicable FDA approval for COVID–19 use.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–27795 Filed 12–21–22; 8:45 am]

BILLING CODE 3510–16–P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–008]

Submission for OMB Review; Comments Request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is modifying an existing information collection for OMB review and approval and requests public review and comment on the submission. The agencies received no comments in response to the sixty (60) day notice. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received by January 23, 2023.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Deborah Papadopoulos, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@dfc.gov.*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Deborah Papadopoulos, (202) 357–3979.

SUPPLEMENTARY INFORMATION: The agency received no comments in response to the sixty (60) day notice published in **Federal Register** volume 87 page 59065 on September 29, 2022. Upon publication of this notice, DFC will submit to OMB a request for approval of the following information collection.

SUMMARY FORM UNDER REVIEW

Title of Collection: Development Outcomes Survey.

Type of Review: Revision of a currently approved information collection.

Agency Form Number: DFC–008.

OMB Form Number: 3015–0015.

Frequency: Once per DFC project per year.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 650.

Estimated Time per Respondent: 2 hours.

Total Estimated Number of Annual Burden Hours: 1,300 hours.

Abstract: The Development Outcomes Survey (DOS) is the principal document used by DFC to review development performance and monitor projects supported by DFC. It is a comprehensive survey that is also used to determine the project's compliance with environmental, labor, and economic policies, as consistent with DFC's authorizing legislation.

Dated December 16, 2022.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2022–27744 Filed 12–21–22; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies; Submission Dates for State Revenue and Expenditure Reports for Fiscal Year 2022, Revisions to Those Reports, and Revisions to Prior Fiscal Year Reports

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces dates for State educational agencies (SEAs) to submit expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey (NPEFS)) for fiscal year (FY) 2022, revisions to those reports, and revisions to reports for previous fiscal years. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Census Bureau is the data collection agent for this request of the Department of Education's National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2024 appropriated funds.

DATES: SEAs can begin submitting data for FY 2022 and revisions to previously submitted data for FY 2021 on Tuesday, January 31, 2023. SEAs are urged to submit accurate and complete data by Friday, March 31, 2023, to facilitate timely processing. The deadline for the final submission of all data, including any revisions to previously submitted data for FY 2021 and FY 2022, is Tuesday, August 15, 2023. Any resubmissions of FY 2021 or FY 2022 data by SEAs in response to requests for clarification, reconciliation, or other inquiries by NCES or the Census Bureau must be completed as soon as possible, but no later than Tuesday, September 5, 2023. All outstanding data issues must be reconciled or resolved by the SEAs, NCES, and the Census Bureau as soon as possible, but no later than September 5, 2023.

ADDRESSES: *Submission Information:* SEAs are encouraged to submit data online using the interactive survey form on the NPEFS data collection website at: *http://surveys.nces.ed.gov/ccdnpefs.* The NPEFS interactive survey includes a digital confirmation page where a personal identification number (PIN) may be entered. A successful entry of the PIN serves as a signature by the authorizing official. Alternatively, a certification form (ED Form 2447) also may be printed from the website, signed by the authorizing official, and mailed to the Economic Reimbursable Surveys Division of the Census Bureau at the address provided below, within five business days after submission of the NPEFS web interactive form.

SEAs may mail ED Form 2447 to: U.S. Census Bureau, ATTENTION: Economic Reimbursable Surveys Division, 4600 Silver Hill Road, Suitland, MD 20746.

If an SEA's submission is received by the Census Bureau after August 15, 2023, the SEA must show one of the following as proof that the submission was mailed on or before that date:

1. A legibly dated U.S. Postal Service postmark.
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice, or receipt from a commercial carrier.
4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.
2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Stephen Q. Cornman, Senior Survey Director, Financial Surveys, National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, 550 12th Street SW, Washington, DC 20202. Telephone: (202) 245–7753. Email: *stephen.cornman@ed.gov.* You may also contact an NPEFS team member at the Census Bureau. Telephone: 1–800–437–4196 or (301) 763–1571. Email: *erd.npefs.list@census.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: Under section 153(a)(1)(I) of the Education Sciences Reform Act of 2002, 20 U.S.C. 9543(a)(1)(I), which authorizes NCES to gather data on the financing and management of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines a State's ''average per-pupil expenditure'' (SPPE) for elementary and secondary education, as defined in section 8101(2) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7801(2)).

In addition to using the SPPE data as general information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including, but not limited to, title I, part A, of the ESEA, Impact Aid, and Indian Education programs. Other programs, such as the Education for Homeless Children and Youth program under title VII of the McKinney-Vento Homeless Assistance Act, and the Student Support and Academic Enrichment Grants under title IV, part A of the ESEA, make use of SPPE data indirectly because their formulas are based, in whole or in part, on State title I, part A, allocations.

In January 2023, the Census Bureau, acting as the data collection agent for NCES, will email ED Form 2447 to SEAs, with instructions, and will request that SEAs commence submitting FY 2022 data to the Census Bureau on Tuesday, January 31, 2023. SEAs are urged to submit accurate and complete data by Friday, March 31, 2023, to facilitate timely processing.

Submissions by SEAs to the Census Bureau will be analyzed for accuracy and returned to each SEA for verification. SEAs must submit all data, including any revisions to FY 2021 and FY 2022 data, to the Census Bureau no later than Tuesday, August 15, 2023. Any resubmissions of FY 2021 or FY 2022 data by SEAs in response to requests for clarification or reconciliation or other inquiries by NCES or the Census Bureau must be completed by Tuesday, September 5, 2023. Between August 15, 2023, and September 5, 2023, SEAs may also, on their own initiative, resubmit data to resolve issues not addressed in their NPEFS data submitted by August 15, 2023. All outstanding data issues must be reconciled or resolved by the SEAs, NCES, and the Census Bureau as soon as possible, but no later than September 5, 2023.

In order to facilitate timely submission of data, the Census Bureau will send reminder notices to SEAs in June and July of 2023.

Having accurate, consistent, and timely information is critical to an efficient and fair allocation process and to the NCES statistical process. The Department establishes Friday, August 15, 2023, as the date by which SEAs must submit data using either the interactive survey form on the NPEFS data collection website at *http://surveys.nces.ed.gov/ccdnpefs* or ED Form 2447. This date is established to ensure that the best, most accurate data will be available to support timely distribution of Federal education funds.

Any resubmissions of FY 2021 or FY 2022 data by SEAs in response to requests for clarification or reconciliation or other inquiries by NCES or the Census Bureau must be completed through the interactive survey form on the NPEFS data collection website or ED Form 2447 by Tuesday, September 5, 2023. If an SEA submits revised data after the September 5, 2023, deadline that result in a lower SPPE figure, the SEA's allocations may be adjusted downward, or the Department may direct the SEA to return funds.

Note: The following are important dates in the data collection process for FY 2022 data and revisions to reports for previous fiscal years:

Date	Activity
January 31, 2023	SEAs can begin to submit accurate and complete data for FY 2022 and revisions to previously submitted data for FY 2021.
March 31, 2023	Date by which SEAs are urged to submit accurate and complete data for FY 2022 and FY 2021.
August 15, 2023	Mandatory final submission date for FY 2021 and FY 2022 data to be used for program funding allocation purposes.
September 5, 2023	Mandatory final deadline for responses by SEAs to requests for clarification or reconciliation or other inquiries by NCES or the Census Bureau. Between August 15, 2023, and September 5, 2023, SEAs may also, on their own initiative, resubmit data to resolve issues not addressed in their final submission of NPEFS data by August 15, 2023. All data issues must be resolved.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 9543.

Mark Schneider,

Director of the Institute of Education Sciences.

[FR Doc. 2022–27862 Filed 12–21–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, January 19, 2023; 5:30 p.m.–7:00 p.m. CT.

ADDRESSES: West Kentucky Community and Technical College, Emerging Technology Center, Room 109, 5100 Alben Barkley Drive, Paducah, Kentucky 42001.

Attendees should check with the Board Support Manager (below) for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Eric Roberts, Board Support Manager, by Phone: (270) 554–3004 or Email: *eric@pgdpcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Review of Agenda
- Administrative Issues
- Public Comment Period

Public Participation: The meeting is open to the public. The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Eric Roberts as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Comments received by no later than 5:00 p.m. CT on Monday, January 16, 2023 will be read aloud during the meeting. Comments will also be accepted after the meeting, by no later than 5:00 p.m. CT on Friday, January 27, 2023. Please submit comments to Eric Roberts at the aforementioned email address. Please put ''Public Comment'' in the subject line. Individuals who wish to make oral statements pertaining to agenda items should contact Eric Roberts at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Eric Roberts, Board Support Manager, Emerging Technology Center, Room 221, 4810 Alben Barkley Drive, Paducah, KY 42001; Phone: (270) 554–3004. Minutes will also be available at the following website: *https://www.energy.gov/pppo/pgdp-cab/listings/meeting-materials.*

Signed in Washington, DC, on December 16, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–27841 Filed 12–21–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid open meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 18, 2023; 1:00 p.m. to 5:00 p.m. MST.

ADDRESSES: This hybrid meeting will be open to the public virtually via WebEx only. To attend virtually, please contact the Northern New Mexico Citizens Advisory Board (NNMCAB) Executive Director (below) no later than 5:00 p.m. MST on Friday, January 13, 2023.

Board members, Department of Energy (DOE) representatives, agency liaisons, and Board support staff will participate in-person, following COVID–19 and influenza precautionary measures, at: Cities of Gold Hotel, Tribal Room, 10 Cities of Gold Road, Santa Fe, NM 87506.

Attendees should check with the NNMCAB Executive Director (below) for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Menice B. Santistevan, NNMCAB Executive Director, by Phone: (505) 699–0631 or Email: *menice.santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- How to Calculate Environmental Risk
- Agency Updates

Public Participation: The in-person/online virtual hybrid meeting is open to the public virtually via WebEx only. Written statements may be filed with the Board no later than 5:00 p.m. MST on Friday, January 13, 2023, or within seven days after the meeting by sending them to the NNMCAB Executive Director at the aforementioned email address. Written public comments received prior to the meeting will be read into the record. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to submit public comments should follow as directed above.

Minutes: Minutes will be available by emailing or calling Menice Santistevan, NNMCAB Executive Director, at *menice.santistevan@em.doe.gov* or at (505) 699–0631.

Signed in Washington, DC, on December 16, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–27840 Filed 12–21–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Monday, January 23, 2023; 1:00 p.m.–4:15 p.m. ET.

Tuesday, January 24, 2023; 9:00 a.m.–3:30 p.m. ET.

ADDRESSES:

Center for African American History, Art, and Culture, 120 York Street NE, Aiken, SC 29801.

The meeting will also be streamed on YouTube, no registration is necessary; links for the livestream can be found on the following website: *https://cab.srs.gov/srs-cab.html.*

Attendees should check the website listed above for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Amy Boyette, Office of External Affairs, U.S. Department of Energy (DOE), Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–6120; or Email: *amy.boyette@srs.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, January 23, 2023

Chair Update
Agency Updates
Subcommittee Updates
Board Business
Public Comments

Tuesday, January 24, 2023

Program Presentations
Public Comments
Board Business, Voting

Public Participation: The meeting is open to the public. It will be held strictly following COVID–19 precautionary measures. To provide a safe meeting environment, seating may be limited; attendees should register for in-person attendance by sending an email to *srscitizensadvisoryboard@srs.gov* no later than 4:00 p.m. ET on Friday, January 20, 2023. The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Amy Boyette at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board via email either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should submit their request to *srscitizensadvisoryboard@srs.gov.* Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. Comments will be accepted after the meeting, by no later than 4:00 p.m. ET on Monday, January 30, 2023. Please submit comments to *srscitizensadvisoryboard@srs.gov.* The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make oral public comments will be provided a maximum of five minutes to present their comments. Individuals wishing to submit written public comments should email them as directed above.

Minutes: Minutes will be available by emailing or calling Amy Boyette at the email address or telephone number listed above. Minutes will also be

available at the following website: *https://cab.srs.gov/srs-cab.html.*

Signed in Washington, DC, on December 16, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–27842 Filed 12–21–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) regarding Preparing Workers and Businesses To Deliver Energy Efficiency and Residential Building Electrification Measures

AGENCY: Office of State and Community Energy Programs, Department of Energy (DOE).

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy's (DOE) Office of State and Community Energy Programs (SCEP) invites public input for its Request for Information (RFI) number DE–FOA–0002885 regarding the solicitation process and structure of future DOE Funding Opportunity Announcements (FOA) to fund the Energy Auditor and Career Skills Training (EAT and CST) grant programs, in accordance with the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL). This RFI also seeks public input on the State-Based Home Energy Efficiency Contractor Training program (Contractor Training Program), as set forth in the Inflation Reduction Act (IRA). The information collected from this RFI will be used by DOE for planning purposes to develop one or multiple potential FOAs related to these programs.

DATES: Responses to the RFI must be received no later than 5:00 p.m. EDT on January 26, 2023.

ADDRESSES: Interested parties are to submit comments electronically to *eeworkforceprograms@hq.doe.gov.* Responses must be provided as attachments to an email that includes ''Workforce RFI Response'' in the subject line. It is recommended that attachments with file sizes exceeding 25MB be compressed *(i.e.,* zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (.docx), text document, or PDF attachment to the email, and no more than 10 pages in length, 12-point font, 1-inch margins. Only electronic responses will be accepted. The complete RFI is located at *https://eere-exchange.energy.gov/.* For ease of replying and to aid categorization of your responses, please copy and paste the RFI questions, including the question numbering, and use them as a template for your response. Respondents may answer as many or as few questions as they wish.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Mary MacPherson, email at *eeworkforceprograms@hq.doe.gov* or phone number 202–586–5000. Further instruction can be found in the RFI document posted on *https://eere-exchange.energy.gov/.*

SUPPLEMENTARY INFORMATION: On November 15, 2021, President Joseph R. Biden, Jr. signed the Bipartisan Infrastructure Law (BIL),[1] which appropriates more than $62 billion to DOE to ensure the clean energy future delivers true economic prosperity to the American people by:

- Investing in American manufacturing and workers, including good-paying jobs that are subject to Davis-Bacon prevailing wage protections and provide the free and fair opportunity to join a union, effective workforce development to upskill incumbent and dislocated workers, and equitable workforce development pathways for good jobs for workers from underserved communities.
- Expanding access to energy efficiency and clean energy for families, communities, and businesses.
- Delivering reliable, clean, and affordable power to more Americans.
- Building the technologies of tomorrow through clean energy demonstrations.

On August 16, 2022, President Biden signed the Inflation Reduction Act (IRA).[2] The energy and climate provisions of this bill include tax credits for clean energy technologies, almost $9 billion in residential energy efficiency rebates, $200 million for energy efficiency contractor training, and billions more for clean energy research and development, community investment, energy justice, and permitting processes. Sections 40503 and 40513 [3] of the BIL established the EAT and CST programs, respectively. Section 50123 [4] of the IRA established the Contractor Training Program.

SCEP intends to use principles of equity and justice to guide BIL and IRA implementation, consistent with the Biden Administration's commitments to ensure that overburdened, underserved, and underrepresented individuals and communities have access to federal resources. The BIL and IRA implementation processes should advance equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. BIL and IRA implementation efforts for the EAT and CST support the goal that 40 percent of the overall benefits of certain federal investments flow to disadvantaged communities (the Justice40 Initiative).

The implementation of the EAT, CST, and Contractor Training Programs aims to support the creation of good-paying jobs with the free and fair choice to join a union, the incorporation of strong labor standards, and high-road workforce development, especially sector-based training, Registered Apprenticeship, and quality pre-apprenticeship.

Having a well-trained workforce is essential to improving the energy performance and quality of the nation's building stock, developing career pathways in the building trades and ensuring Federal funds can be deployed quickly and efficiently to meet our climate challenge and market demand. A study from the National Renewable Energy Laboratory (NREL) states the number of workers in renewable energy and energy efficiency will double by 2025 and triple by 2030.[5] Workforce development and business owner training programs at the local, state, and federal levels can prepare students, workers, and businesses for opportunities in these crucial industries. For example, a number of cities, states, and utilities are delivering energy efficiency workforce development programs to increase the supply of qualified workers while also pursuing policies and programs to increase demand for the technologies and services these workers deliver.

DOE seeks to enhance and expand new and established, nonprofit-, state-, and locally driven efforts to scale a well-trained, diverse workforce. The agency will do so in part through three new workforce development programs: Contractor Training Program, EAT, and CST. DOE intends to use these three programs to support the development of a more equitable energy efficiency and residential buildings-focused electrification workforce. For example, the existing energy efficiency workforce is disproportionately male and has a lower concentration of Hispanic workers compared to the national,

[1] Infrastructure Investment and Jobs Act, Public Law 117–58 (November 15, 2021).

[2] Inflation Reduction Act, Public Law 117–169 (August 16, 2022).

[3] Codified at 42 U.S.C. 18793 and 18802, respectively.

[4] Codified at 42 U.S.C. 18795b.

[5] NREL, *State-Level Employment Projections for Four Clean Energy Technologies in 2025 and 2030.*

economywide workforce, although it has a higher percentage of other non-White workers.

The table below describes the purpose, funding levels, and eligible entities for the Contractor Training Program, EAT, and CST.

Program name	Authorizing statute	Funds available	Eligible recipient(s)	Purpose
Energy Auditor Training (EAT).	BIL Sec. 40503 ..	$40 million for the period of fiscal years 2022 through 2026.	States [6]	The Secretary ''shall establish a competitive grant program'' to ''award grants to eligible States to train individuals to conduct energy audits or surveys of commercial and residential buildings.''
Career Skills Training (CST).	BIL Sec. 40513 ..	$10 million to remain available until expended.	Nonprofit partnerships [7].	The Secretary ''shall award grants to eligible entities to pay the Federal share of associated career skills training programs under which students concurrently receive classroom instruction and on-the-job training for the purpose of obtaining an industry-related certification to install energy efficient buildings technologies.''
State-Based Home Energy Efficiency Contractor Training Program (Contractor Training Program).	IRA Sec. 50123 ..	$200 million to remain available through September 30, 2031.	States [8]	To develop and implement a State program to ''provide training and education to contractors involved in the installation of home energy efficiency and electrification improvements, including improvements eligible for rebates under a HOMES rebate program or a high-efficiency electric home rebate program, as part of an approved State energy conservation plan under the State Energy Program.''

Purpose

The purpose of this RFI is to solicit feedback from states and nonprofits, as well as partner stakeholders such as labor unions, employers and contractors, workforce development boards (WDBs), institutions of higher education including community colleges, Historically Black Colleges and Universities (HBCUs), Tribal Colleges and Universities (TCUs), Hispanic Serving Institutions (HSIs), and other Minority Serving Institutions (MSIs), energy efficiency training providers, researchers, community partners, manufacturers, community-based organizations (CBOs), and others on issues related to the development and implementation of the Contractor Training Program, EAT, and CST. These programs focus on energy efficiency and/or residential buildings-focused electrification and do not cover renewable energy or transportation electrification workforce development programs. This is solely a request for information and not a Funding Opportunity Announcement. SCEP is not accepting applications through the release of this RFI. Specifically, DOE is interested in public input on questions across the following categories:

A. Respondent type

B. Workforce and business characteristics

C. Workforce development and business owner training strategies

D. Accessing federal funding

E. Equity and partnerships

F. Access to high quality jobs

G. Other

Confidential Business Information: According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

[6] Under section 40503(a)(2), an ''eligible State'' means a State that—''has a demonstrated need for assistance for training energy auditors; and [] meets any additional criteria determined necessary by the Secretary.'' 42 U.S.C. 18793(a)(2).

[7] Under section 40513(a), an ''eligible entity'' means a nonprofit partnership that ''(1) includes the equal participation of industry, including public or private employers, and labor organizations, including joint labor-management training programs; (2) may include workforce investment boards, community-based organizations, qualified service and conservation corps, educational institutions, small businesses, cooperatives, State and local veterans agencies, and veterans service organizations; and (3) demonstrates (A) experience in implementing and operating worker skills training and education programs; (B) the ability to identify and involve in training programs carried out under this section, target populations of individuals who would benefit from training and be actively involved in activities relating to energy efficiency and renewable energy industries; and (C) the ability to help individuals achieve economic self-sufficiency.'' 42 U.S.C. 18802(a).

[8] The term ''State'' means a State, the District of Columbia, and a United States Insular Area, which means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, and the United States Virgin Islands. IRA sections 50111 and 50211 (42 U.S.C. 17113b note and 43 U.S.C. 3006 note, respectively).

Signing Authority

This document of the Department of Energy was signed on December 16, 2022, by Dr. Henry McKoy, Director of the Office of State and Community Energy Programs, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 19, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–27901 Filed 12–21–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent Regarding Bipartisan Infrastructure Law (BIL) Support for Clean Hydrogen Electrolysis, Manufacturing, and Recycling

AGENCY: Office Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) announces the

publication of a Notice of Intent (NOI) to issue a Funding Opportunity Announcement (FOA) entitled ''Bipartisan Infrastructure Law: Clean Hydrogen Electrolysis, Manufacturing, and Recycling,'' in accordance with the Infrastructure Investment and Jobs Act also known as the Bipartisan Infrastructure Law (BIL). The anticipated FOA will support the broader government-wide approach to accelerate progress in clean hydrogen technologies and maximize the benefits of the clean energy transition as the nation works to curb the climate crisis, empower workers, and advance environmental justice.

DATES: The NOI was issued on December 16, 2022.

ADDRESSES: The NOI was issued via the EERE Exchange [1] system available at *https://eere-exchange.energy.gov/*(*see* NOI DE–FOA–0002921).

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to *HFTOBILFOA@ee.doe.gov* or to Shawna McQueen at (202) 586–8033.

SUPPLEMENTARY INFORMATION: Clean hydrogen technologies, particularly for hard-to-decarbonize sectors of the economy, will directly support Biden administration goals to put the United States on a path to achieve net-zero emissions economy-wide by no later than 2050 to benefit all Americans.[2] Section 40314 of the BIL [3] authorizes DOE appropriations of $1.5 billion over five years ($300 million per year for Fiscal Years 2022 to 2026) to support clean hydrogen manufacturing, recycling, and electrolysis. Specifically, Section 40314 amends Title VIII of the Energy Policy Act of 2005 to include a new ''Section 815—Clean Hydrogen Manufacturing and Recycling'' ($500 million) and a new ''Section 816—Clean Hydrogen Electrolysis Program'' ($1 billion). DOE intends to issue the ''Bipartisan Infrastructure Law (BIL): Clean Hydrogen Electrolysis, Manufacturing, and Recycling FOA'' to address these provisions of the BIL and to support the Hydrogen Energy Earthshot,[4] a DOE initiative to reduce the cost of clean hydrogen by 80 percent to $1 per 1 kilogram in 1 decade (''1 1 1''). The anticipated FOA will catalyze both innovation and manufacturing at scale, stimulating private sector investments, spurring development across the hydrogen supply chain, and dramatically reducing the cost of clean hydrogen. Efforts will also address support robust supply chains including for any needed critical materials and design for environmental and climate stewardship, efficiency, durability, and recyclability to ensure a strategic and sustainable build out of the clean hydrogen industry.

Specifically, the FOA will support the following objectives:

- Reduce the cost of clean hydrogen produced from electrolyzers to less than $2 per kilogram by 2026 [5]
- Advance new manufacturing technologies and techniques for clean hydrogen production and use equipment, specifically for electrolyzer and fuel cell technologies, and
- Research, develop, and demonstrate innovative and practical approaches to increase the reuse and recycling of clean hydrogen technologies.

It is anticipated that the FOA will include the following technical topics:

Area of Interest 1: Clean Hydrogen Electrolysis Program

- *Topic Area 1:* Low Cost, High Throughput Electrolyzer Manufacturing
- *Topic Area 2:* Electrolyzer Component and Supply Chain RD&D
- *Topic Area 3:* Advanced Electrolyzer Technology and Component Development

Area of Interest 2: Clean Hydrogen Manufacturing and Recycling

- *Topic Area 4:* Fuel Cell Membrane Electrode Assembly and Stack Manufacturing and Automation
- *Topic Area 5:* Fuel Cell Component and Supply Chain Development
- *Topic Area 6:* Recovery and Recycling Consortium

More information on the anticipated technical topics, including anticipated funding levels, can be found in the NOI. The NOI [DE–FOA–0002921] is available at *https://eere-exchange.energy.gov/.*

Signing Authority: This document of the Department of Energy was signed on December 14, 2022 by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 19, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–27838 Filed 12–21–22; 8:45 am]

BILLING CODE 6450–01–P

[1] The DOE Office of Energy Efficiency & Renewable Energy (EERE) issues funding opportunities and related announcements through the EERE Funding Opportunity Exchange system.

[2] U.S. Department of State and the Executive Office of the President, *The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050,* November 2021, *https://www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf.*

[3] Infrastructure Investment and Jobs Act, Public Law 117–58 (November 15, 2021), Section 40314, (42 U.S.C. 16161c), *https://www.congress.gov/bill/117th-congress/house-bill/3684.* This NOI uses the more common name ''Bipartisan Infrastructure Law (BIL).''

[4] U.S. Department of Energy Hydrogen Program, ''Hydrogen Shot,'' U.S. Department of Energy, Washington, DC, 2021. *https://www.energy.gov/eere/fuelcells/hydrogen-shot.*

[5] *See* 42 U.S.C. 16161d(c)(1).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–498–000]

Columbia Gas Transmission, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Virginia Electrification Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Virginia Electrification Project (Project), proposed by Columbia Gas Transmission, LLC (Columbia) in the above-referenced docket. Columbia requests authorization to construct and operate natural gas facilities in Virginia. The Project is designed to provide 35,000 dekatherms per day of incremental mainline capacity on Columbia's pipeline system. The Project would address a request from Columbia Gas of Virginia, an unaffiliated local distribution company, for firm transportation service to meet growing energy demand in the southeast Virginia market area off of Columbia's existing VM–107, VM–108, and VM–109 pipelines.

This final EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). Columbia's Project facilities include: one zero emission electric motor

compressor unit at the Boswells Tavern Compressor Station located in Louisa County; facility modifications to the Boswells Tavern point of receipt located in Louisa County to allow for increased capacity; replacement of all five existing gas-powered compressor units at the Goochland Compressor Station, located in Goochland County, with new units that will run exclusively on electric motors, but will have the ability to run on gas in order to ensure reliability; and change the status of an existing compressor unit from backup mode to active mode and increase the site-rated station horsepower to 5,500 horsepower at the Petersburg Compressor Station located in Prince George County. 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; however, with the exception of climate change impacts, those impacts would not be significant.

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, route, or other alternative would meet the Project objective while providing a significant environmental advantage over the Project as proposed.

The Commission mailed a copy of the *Notice of Availability of the Final Environmental Impact Statement for the Proposed Virginia Electrification Project* to federal, state, and local government representatives and agencies; local libraries; newspapers; elected officials; Native American Tribes; and other interested parties. 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 (*i.e.,* CP21–498–000). 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 final 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: December 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27856 Filed 12–21–22; 8:45 am]

BILLING CODE 6717–01–P

[1] *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews,* 178 FERC ¶ 61,108 (2022); 178 FERC ¶ 61,197 (2022).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–644–000]

Diversion Wind Energy 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 Diversion Wind Energy 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 January 5, 2023.

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: December 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27855 Filed 12–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–648–000]

Consolidated Power Co., 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 Consolidated Power Co., 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 January 5, 2023.

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: December 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27851 Filed 12–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL23–1–000]

Oil Pipeline Affiliate Committed Service

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed policy statement.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its policy for evaluating whether contractual committed transportation service complies with the Interstate Commerce Act where the only shipper to obtain the contractual committed service is the pipeline's affiliate. Specifically, in addition to those factors the Commission has considered in the past, the Commission proposes to evaluate the rate and non-rate terms offered in the open season to ensure they were not structured to favor the pipeline's affiliate and to exclude nonaffiliates.

DATES: Initial Comments are due on or before February 13, 2023, and Reply Comments are due on or before March 30, 2023.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Michaela Burroughs (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 502–8128, *Michaela.Burroughs@ferc.gov*

Evan Steiner (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8792, *Evan.Steiner@ferc.gov*

Adrianne Cook (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8849, *Adrianne.Cook@ferc.gov*

Matthew Petersen (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6845, *Matthew.Petersen@ferc.gov*

SUPPLEMENTARY INFORMATION:

1. In this Proposed Policy Statement, we propose to revise our policy for evaluating whether contractual committed transportation service between oil pipelines and their affiliates complies with the Interstate Commerce Act (ICA).[1] As discussed below, the Commission relies upon the pipeline's holding of a public open season followed by an arm's-length transaction to conclude that the resulting contractual committed service is just and reasonable and not unduly discriminatory. However, when the only shipper to agree to a committed transportation service is the pipeline's affiliate (Affiliate-Only Committed Service), there is no arm's-length transaction to support a presumption of reasonableness and nondiscrimination. Instead, the contractual service offered in the open season may have been structured to unduly discriminate against nonaffiliates. We are concerned that our present policies are not sufficient to address these issues and

[1] 49 U.S.C. app. 1 *et seq.*

ensure that Affiliate-Only Committed Service complies with the ICA.

2. Accordingly, we propose to change our policy for determining whether an Affiliate-Only Committed Service is just, reasonable, and not unduly discriminatory. In addition to those factors the Commission has considered in the past, we propose to evaluate the rate and non-rate terms offered in the open season to ensure they were not structured to favor the pipeline's affiliate and to exclude nonaffiliates. We believe that this proposal will provide guidance to industry participants that will aid in the efficient deployment of capital and the monitoring of transportation service provided under long-term contracts. We seek comment on our proposal.

I. Background on Oil Pipeline Contracting Arrangements

3. Under the ICA, an oil pipeline is a common carrier that must provide transportation to shippers upon reasonable request.[2] A pipeline has the burden to demonstrate that its proposed rates and services are just, reasonable, and not unduly discriminatory or preferential.[3] Historically, pipelines have offered transportation service on a walk-up basis without having contracts with shippers. Since the mid-1990s,[4] however, the Commission has also approved oil pipeline transportation rates and terms of service pursuant to long-term contracts with ship-or-pay obligations.[5] Because committed contract shippers are not similarly situated to uncommitted shippers,[6] they may receive service as defined by the contract (contractual committed service)[7] that differs from uncommitted service.

4. Contractual committed service complies with the ICA's common-carriage and nondiscrimination requirements when the same rates and terms are offered in a public open season where all interested shippers have an equal opportunity to obtain the committed service.[8] When the open season results in an arm's-length agreement, the Commission presumes the contractual committed service is just and reasonable and non-discriminatory.[9] In such cases, the presence of one or more nonaffiliated contracting shippers supports a presumption of reasonableness and nondiscrimination because the Commission assumes that nonaffiliated shippers are sophisticated parties that can be relied upon to protect their own interests from those of the pipeline, ensuring the agreement responds to competitive conditions.[10]

II. Concerns Regarding Affiliate-Only Committed Service

5. We are concerned regarding the adequacy of our present policies for addressing situations where, following an open season, only the pipeline's affiliated[11] shipper agrees to a

[2] *Id.* at 1(4) (''It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor.''); *Magellan Midstream Partners, L.P.,* 161 FERC ¶ 61,219, at P 12 (2017) (*Magellan*) (''By definition, a pipeline is a common carrier, and is bound by the ICA to ship product as long as a reasonable request for service is made by a shipper. . . .''), *order on reh'g and clarification,* 181 FERC ¶ 61,207 (2022) (*Magellan* Rehearing Order).

[3] *See,* e.g., *Laurel Pipe Line Co.,* 167 FERC ¶ 61,210, at P 24 n.37 (2019) (oil pipelines have the burden to demonstrate that proposed rates are just and reasonable); *ONEOK Elk Creek Pipeline, L.L.C.,* 167 FERC ¶ 61,277, at P 4 (2019) (''An oil pipeline bears the burden of demonstrating that proposed rates and changes to its tariff are just and reasonable.''); *see also* 49 U.S.C. app. 1, 2, 3(1), 5, 7, 15(1).

[4] *See Express Pipeline P'ship,* 76 FERC ¶ 61,245 (1996) (*Express*).

[5] ''Contract'' as used in this Proposed Policy Statement includes transportation service agreements (TSA) and any similar contract offered by a pipeline under which an entity must make a term commitment associated with interstate oil pipeline transportation service subject to the Commission's jurisdiction under the ICA. *See, e.g., Saddlehorn Pipeline Co.,* 169 FERC ¶ 61,118 (2019); *EnLink Del. Crude Pipeline, LLC,* 166 FERC ¶ 61,226 (2019); *Kinder Morgan Pony Express Pipeline LLC,* 141 FERC ¶ 61,180 (2012).

[6] *See Express,* 76 FERC at 62,254 (''[Committed] shippers are not similarly situated with uncommitted shippers because in any given month, uncommitted shippers may choose to ship on [the pipeline] or not. Uncommitted shippers have the maximum flexibility to react to changes in their own circumstances or in market conditions. Uncommitted shippers do not provide the revenue assurances, planning assurances, and a basis for constructing the pipeline that [committed] shippers provide.'').

[7] The contractual committed service is defined by the rates and terms the shipper agreed to in the contract. The Commission has explained that different contractual terms of service (such as tiered rates associated with different volume or term-length commitments or different prorationing benefits) are distinct committed services. *See Seahawk Pipeline, LLC,* 175 FERC ¶ 61,186, at PP 12–14 (2021) (''differing terms and conditions of service . . . creates distinct services and classes of shippers''); *Medallion Del. Express, LLC,* 170 FERC ¶ 61,047, at P 27 (2020) (finding two distinct services where one class of shippers made term and volume commitments that were not required of the other class of shippers); *Medallion Midland Gathering, LLC,* 170 FERC ¶ 61,048, at P 30 (2020) (*Medallion Midland*) (same); *EnLink NGL Pipeline, LP,* 167 FERC ¶ 61,024, at P 18 n.22 (2019) (finding a distinct committed service for expansion capacity even though the pipeline offered the same committed rate as already in effect for its base capacity committed service).

[8] *Sea-Land Serv., Inc* v. *ICC,* 738 F.2d 1311, 1317 (D.C. Cir. 1984) (''[C]ontract rates can . . . be accommodated to the principle of nondiscrimination by requiring a carrier offering such rates to make them available to any shipper willing and able to meet the contract's terms.''); *Express Pipeline P'ship,* 77 FERC ¶ 61,188, at 61,756 (1996) (''The proposed term rate structure of Express does not violate the antidiscrimination or undue preference provisions of the [ICA] because such term rates were made available to all interested shippers.''); *Enter. Crude Pipeline LLC,* 166 FERC ¶ 61,224, at P 11 (2019) (*Enterprise Crude*) (''The vital element of the contracting arrangements . . . has been an open season that provided all shippers equal opportunity to avail themselves of the offered capacity''); *Enter. TE Prods. Pipeline Co.,* 144 FERC ¶ 61,092, at P 22 (2013) (''The availability of discount rates to *all* interested shippers is the fundamental requirement upon which rulings approving such rate structures have been based. Contract rates can only satisfy the principle of nondiscrimination when the carrier offering such rates is required to make them available to 'any shipper willing and able to meet the contract's terms.' All prospective shippers must have an equal, non-discriminatory opportunity to review and enter into contracts for committed service.'') (quoting *Sea-Land,* 738 F.2d at 1317) (emphasis in original)); *Seaway Crude Pipeline Co.,* 146 FERC ¶ 61,151, at P 37 (2014) (open season process must be ''open, transparent, and free of the traditional contract nullifiers such as fraud''); *see also Nexen Mktg. U.S.A., Inc.* v. *Belle Fourche Pipeline Co.,* 121 FERC ¶ 61,235, at PP 1, 46–49 (2007) (*Nexen*) (''The allocation of expansion capacity during the open season was inconsistent with the principles of common carriage because all shippers were not given an equal opportunity to obtain the expansion capacity.''); *White Cliffs Pipeline, L.L.C.,* 148 FERC ¶ 61,037, at PP 47–51 (2014) (explaining an open season must ''afford *all* potentially interested shippers . . . a fair and equal opportunity to acquire the . . . capacity'' and finding the pipeline failed to meet ''basic common carrier and anti-discrimination obligations'' when it ''afforded an undue preference to the shippers that contracted for [ ] capacity outside of a valid open season process'') (emphasis in original).

[9] E.g., *Tesoro High Plains Pipeline Co.,* 148 FERC ¶ 61,129, at P 23 (2014) (''The Commission honors the contract terms entered into by sophisticated parties that engage in an arms-length negotiation.''); *Seaway Crude Pipeline Co.,* Opinion No. 546, 154 FERC ¶ 61,070, at PP 40–42 (2016) (holding that a proper review of a pipeline's contractual committed rates includes investigating whether the open season involved arm's-length negotiations); *Seaway Crude Pipeline Co.,* 146 FERC ¶ 61,151 at P 25 (''Absent a compelling reason, it would be improper to second guess the business and economic decisions made between sophisticated businesses when entering negotiated rate contracts.'').

[10] *Express,* 76 FERC at 62,254 (''If [contract] terms result in lower costs or respond to unique competitive conditions, then shippers who agree to enter into the contract are not similarly situated with other shippers who are unwilling or unable to do so.'') (quoting *Sea-Land,* 738 F.2d at 1316); *see also Sea-Land,* 738 F.2d at 1316 (''The core concern in the nondiscrimination area has been to maintain equality of pricing for shipments subject to substantially similar costs and competitive conditions, while permitting carriers to introduce differential pricing where dissimilarities in those key variables exist.''); *Seaway Crude Pipeline Co.,* 146 FERC ¶ 61,151 at P 28 (''When reviewing the justness and reasonableness of a contract rate, it is not primarily to relieve one party or another of what they deem an improvident bargain, especially in negotiations involving sophisticated business entities. However, contract negotiations must be held in good faith and not involve fraud or improper conduct.'').

[11] ''Affiliate'' or ''affiliated'' as used in this Proposed Policy Statement means an entity that, directly or indirectly, controls, is controlled by, or is under common control with, the oil pipeline carrier. This definition is based upon the

Continued

contractual committed service (Affiliate-Only Committed Service).[12] This has arisen in several recent filings with the Commission.[13] As discussed below, when an open season results in an Affiliate-Only Committed Service: (1) there may be concerns about the fairness of the open season; (2) there is no arm's-length transaction supporting a presumption of reasonableness; and (3) there is an inherent incentive for the pipeline to unduly discriminate in favor of its affiliate. We are concerned that our present policies do not adequately address these issues to ensure fairness to nonaffiliated shippers participating in oil pipeline open seasons.[14]

6. First, parties have raised concerns in various proceedings that pipelines may be affording an undue preference to their affiliates during the open season process for committed capacity.[15] While commercial circumstances may cause an affiliate to be the only shipper to agree to a committed service, the Commission must ensure that Affiliate-Only Committed Service is just and reasonable and does not result from an open season that discriminates against nonaffiliates.

7. Second, unlike agreements with nonaffiliates, Affiliate-Only Committed Service does not result from arm's-length transactions.[16] In the absence of an arm's-length transaction, the Commission lacks the same assurance that the Affiliate-Only Committed Service reflects just and reasonable and nondiscriminatory terms. Rather, an affiliated shipper may be indifferent to any rate paid to its affiliated pipeline because the expenditures and earnings of the affiliates are combined at the parent-company level under integrated-company economics.[17] Thus, one way for a pipeline to provide its affiliate unduly preferential access to capacity is to offer a contract rate in the open season that is onerous or uneconomic for any nonaffiliated market participant. Similarly, an affiliate may not be meaningfully bound to any onerous terms in the contract such as deficiency or shortfall penalties because deficiency payments and penalties may be transfer payments within an integrated economic entity. Therefore, the potential exists for a pipeline to unduly discriminate in favor of its affiliate by offering onerous or uneconomic contractual rates or terms designed to prevent nonaffiliated shippers from obtaining the contractual committed service.[18]

8. Third, the Commission has long recognized that there is an inherent incentive for a regulated entity to unduly discriminate in favor of an affiliate.[19] In other contexts, the

Commission's Standards of Conduct regulations for electric utilities and natural gas pipelines. *See* 18 CFR 358.3(a); *see also id.* pt. 352 (defining ''affiliated companies'' in a similar manner for accounting purposes). The Commission's Standards of Conduct regulations define ''control'' as ''the direct or indirect authority, whether acting alone or in conjunction with others, to direct or cause to direct the management policies of an entity'' and specify that ''[a] voting interest of 10% or more creates a rebuttable presumption of control.'' *Id.* 358.3(a)(3).

[12] As used in this Proposed Policy Statement, ''Affiliate-Only Committed Service'' refers to a contractual committed service that is agreed to by only the pipeline's affiliate(s) and not any nonaffiliated entity. As explained above, different contractual terms of service (such as tiered rates associated with different volume or term-length commitments, or different prorationing benefits) are distinct committed services. *See supra* n.7. For example, when a pipeline offers a contract that includes various rate, term, and volume-commitment tiers, an Affiliate-Only Committed Service occurs if only the pipeline's affiliate agrees to a certain tier, notwithstanding the fact that nonaffiliated shippers may have agreed to other tiers offered in the contract. In this example, the Affiliate-Only Committed Service is defined by the specific rate, volume, and term-length tier agreed to by the affiliated shipper but no nonaffiliated shippers. In contrast, any specific tier agreed to by an affiliate and one or more nonaffiliated shippers is not an Affiliate-Only Committed Service.

[13] *See,* e.g.*, Seahawk,* 175 FERC ¶ 61,186; *Medallion Pipeline Co.,* 170 FERC ¶ 61,192, at P 7 (2020) (*Medallion*); *Medallion Del. Express, LLC,* 163 FERC ¶ 61,170, at P 8 (2018); *Medallion Midland,* 170 FERC ¶ 61,048; *ONEOK Elk Creek,* 167 FERC ¶ 61,277; *Blue Racer NGL Pipelines, LLC,* 162 FERC ¶ 61,220, at P 6 (2018) (*Blue Racer*); *Midstream Crude Oil Pipeline, LLC,* 160 FERC ¶ 61,010, at P 4 (2017) (*Stakeholder*); *Medallion Pipeline Co.,* 157 FERC ¶ 61,075, at P 11 (2016); *EnLink Crude Pipeline,* 157 FERC ¶ 61,120, at P 4 (2016) (*EnLink Crude*).

[14] *New York* v. *United States,* 331 U.S. 284, 296 (1947) (''The principal evil at which the Interstate Commerce Act was aimed was discrimination in its various manifestations.''). We recognize that the Commission issued a proposed policy statement in Docket No. PL21–1–000 proposing guidance for oil pipelines to demonstrate that proposed rates and terms pursuant to affiliate-only contracts comply with the ICA. *Oil Pipeline Affiliate Contracts,* 173 FERC ¶ 61,063 (2020). The Commission withdrew that proposed policy statement shortly after initial comments were filed. *Oil Pipeline Affiliate Contracts,* 173 FERC ¶ 61,250 (2020). Since that time, we have continued to consider our policies for evaluating Affiliate-Only Committed Service. Although we recognize that the Commission received initial comments in Docket No. PL21–1, we observe that the proposed policy changes discussed herein differ from the proposal in Docket No. PL21–1 in multiple respects, including modifications to: (1) the proposed cost-of-service safe-harbor; and (2) standards for evaluating non-rate terms. Moreover, because the Commission withdrew the proposal in Docket No. PL21–1 before reply comments were filed, the record in that proceeding does not include responses to arguments raised in the initial comments.

[15] *See,* e.g.*, Blue Racer,* 162 FERC ¶ 61,220 at P 16 (protester alleged that ''the open season and required shipper commitments serve only to benefit [the pipeline's] affiliate''); *N.D. Pipeline Co.,* 147 FERC ¶ 61,121, at P 20 (2014) (protester alleged that pipeline's proposed rate structure ''appears designed to confer economic benefits on an affiliated shipper''); Shell Trading (US) Co., Comments, Docket No. OR17–2–001, at 7 (filed Mar. 14, 2018) (Shell Comments) (expressing concerns that ''new capacity can be priced in a way that is uneconomical for an independently functioning shipper but could be economical for an affiliated marketer through direct sales of capacity at customized rates, or through commodity transactions which have the same economic impact as such direct sales, taking advantage of its integrated company finances''); Magellan Midstream Partners, L.P., Request for Rehearing, Docket No. OR17–2–001, at 5 (filed Dec. 22, 2017) (requesting clarification regarding whether a pipeline can structure the terms and conditions of an open season such that, due to integrated-company economics, its marketing affiliate is the only shipper that can enter a contract for capacity); Liquids Shippers Grp., Comments, Docket No. OR17–2–000, at 4 (filed Dec. 14, 2016) (expressing ''concerns regarding the potential for undue discrimination or preference by a common carrier in favor of a marketing affiliate''); Airlines for America and Nat'l Propane Gas Ass'n, Petition for Rulemaking, Docket No. RM18–10–000, at 24 (filed Feb. 1, 2018) (asserting that ''pipelines are coordinating with their marketing affiliates to offer preferential rates and terms of service'').

[16] *Copperweld Corp.* v. *Indep. Tube Corp.,* 467 U.S. 752, 771 (1984) (''A parent and its wholly owned subsidiary have a complete unity of interest. Their objectives are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousnesses, but one.''); *Tapstone Midstream, LLC,* 150 FERC ¶ 61,016, at P 15 (2015) (''Because the shipper is an affiliate, there is no assurance that there was an arms-length negotiation between the entities agreeing to the rate.''); Opinion No. 546, 154 FERC ¶ 61,070 at PP 92–96 (sales between affiliates are not arm's-length because ''arm's length negotiations or transactions are characterized as adversarial negotiations between parties that are each pursuing independent interests''); Black's Law Dictionary (11th ed. 2019) (defining ''arm's-length'' as ''involving dealings between two parties who are not related or not on close terms and who are presumed to have roughly equal bargaining power'').

[17] *See Magellan,* 161 FERC ¶ 61,219 at P 14 (while the marketing affiliate ''would facially pay its pipeline's filed tariff rate, and the [m]arketing [a]ffiliate would sell that capacity for less than that rate, the entire transaction could nevertheless yield a net profit to the integrated company''); *see also Williams Pipe Line Co.,* Opinion No. 154, 21 FERC ¶ 61,260, at 61,587 n.115 (1982) (''If the X Oil Company charges itself a lot of money for shipping its own oil over its own line, that is just bookkeeping. But suppose that X also charges Y, an unaffiliated shipper, that same high rate for the use of its line. For Y, that high rate is very real. So we now have something that some will undoubtedly view as undue discrimination of a perniciously anticompetitive type.'').

[18] This issue was raised in a request for rehearing of the Commission's order in *Magellan,* 161 FERC ¶ 61,219, asking whether a pipeline can structure the terms and conditions of an open season such that, due to integrated-company economics, its marketing affiliate is the only shipper that can enter into a contract for capacity. The Commission denied this request for clarification as outside the scope of that proceeding. *Magellan* Rehearing Order, 181 FERC ¶ 61,207 at P 28. A shipper also filed comments in that proceeding raising concerns that oil pipelines are structuring open seasons in ways that are economical only for their affiliated shippers, which ''threatens . . . access to interstate liquids transportation capacity by other unaffiliated shippers'' and leaves them at a disadvantage in the marketplace. Shell Comments at 6–8.

[19] *Ne. Utils. Serv. Co.,* 66 FERC ¶ 61,332, at 62,090 (1994) (''In arm's-length transactions, assuming relatively equal bargaining strength between the parties, the buyer will be able to protect itself

Commission has found that affiliate transactions require additional scrutiny.[20] The Commission has adopted policies in these other contexts to mitigate concerns that affiliates may coordinate in ways that involve self-dealing and anti-competitive behavior to the detriment of other customers.[21] We believe such considerations are appropriate here because a similar potential exists for an oil pipeline to afford its affiliate an undue preference.[22]

9. In light of the above, we are concerned that our current practices may not be sufficient to ensure Affiliate-Only Committed Service is just, reasonable, and not unduly discriminatory under the ICA.[23] Notwithstanding the concerns discussed above, under present policy, the Commission has generally approved Affiliate-Only Committed Service rates and terms without distinguishing between affiliates and nonaffiliates or evaluating whether the pipeline afforded its affiliate an undue preference in the open season.[24]

III. Proposed Policy

10. Upon consideration of the issues discussed above, we propose to revise our policy for evaluating whether an open season resulting in Affiliate-Only Committed Service is just, reasonable, and not unduly discriminatory under the ICA.[25] Specifically, as discussed below, we propose: (1) a safe-harbor mechanism pipelines may use to demonstrate that Affiliate-Only Committed Service rates are just, reasonable, and not unduly discriminatory; and (2) standards for evaluating whether Affiliate-Only Committed Service non-rate terms offered in the open season were structured to unduly discriminate against nonaffiliates.

11. We emphasize that under the proposed guidance, affiliates may continue to participate in oil pipeline open seasons and become committed shippers on their affiliated pipelines. Where an affiliate of the pipeline and one or more nonaffiliated shippers agree to the same contractual committed service offered in an open season, there is less concern that a pipeline may have unduly discriminated in favor of its affiliate.[26] Further, the proposed guidance is not a blanket prohibition on oil pipelines implementing Affiliate-Only Committed Service. The fact that no nonaffiliated shipper agrees to a contractual committed service does not, in and of itself, provide a basis for finding that the pipeline unduly discriminated in favor of an affiliate.[27] There are legitimate reasons that nonaffiliated shippers may choose not to make a term commitment to a particular service offered under a contract by a pipeline.[28] Instead, the

against excessive charges or unreasonable contract provisions. . . . In the case of affiliate transactions, however, the buyer has less incentive to bargain for the lowest possible rates and most reasonable contract provisions, because ultimately all provisions will benefit the common parent.''); *Iowa S. Utils. Co.,* 58 FERC ¶ 61,317, at 62,014 n.10 (''Self-dealing may arise in transactions between affiliates because such affiliates may have incentives to offer terms to one another which are more favorable than those available to other market participants.''), *reh'g denied,* 59 FERC ¶ 61,193 (1992); *see also Ass'n Gas Distribs.* v. *FERC,* 824 F.2d 981, 1009 (D.C. Cir. 1987) (discounts in favor of a pipeline's gas trading affiliate ''may carry more than the usual risk of undue discrimination'').

[20] E.g., *Ind. Mun. Power Agency* v. *FERC,* 56 F.3d 247, 254 (D.C. Cir. 1995) (''[T]he Commission gives 'special scrutiny' to fuel supply contracts between a utility and its subsidiary or an affiliated company.''); *Allocation of Capacity on New Merch. Transmission Projects & New Cost-Based, Participant-Funded Transmission Projects,* 142 FERC ¶ 61,038, at P 34 (2013) (developer allocating capacity for new merchant transmission project has a ''high burden to demonstrate that the assignment of capacity to its affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly preferential or discriminatory''); *Bidding by Affiliates in Open Season Bids for Pipeline Capacity,* Order No. 894, 76 FR 72301 (Nov. 23, 2011), 137 FERC ¶ 61,126 (2011) (rule to prevent affiliated entities from coordinating their open season bids to obtain a disproportionate share of natural gas pipeline capacity at the expense of single bidders); *Ne. Utils. Serv. Co.,* 66 FERC at 62,089 (''The Commission long has recognized, and the courts have agreed, that transactions between affiliated companies require close scrutiny.''); *Iowa S. Utils. Co.,* 58 FERC at 62,014 (''[I]n looking at dealings between affiliates, the Commission is presented with a different set of concerns . . . because affiliates share common corporate goals—profits for stockholders that own both entities—and therefore have an incentive to engage in preferential transactions.'').

[21] *See,* e.g., *Bos. Edison Co. Re: Edgar Elec. Co.,* 55 FERC ¶ 61,382, at 62, 167–68 n.56 (1991) (*Edgar*) (''The Commission's concern with the potential for affiliate abuse is that a utility with a monopoly franchise may have an economic incentive to exercise market power through its affiliate dealings.''); Order No. 894, 137 FERC ¶ 61,126 at P 11 (multiple affiliates bidding in natural gas pipeline open seasons harms other entities and their customers and has a ''chilling effect on competition''); *Chinook Power Transmission, LLC,* 126 FERC ¶ 61,134, at P 49 (2009) (heightened scrutiny applies where a merchant transmission developer's affiliates are anchor customers due to ''concerns that a utility affiliate contract could shift costs to captive ratepayers of the affiliate and subsidize the merchant project inappropriately''); *Magellan,* 161 FERC ¶ 61,219 at P 14 (transactions between an oil pipeline and its marketing affiliate would violate the ICA's prohibition on rebates).

[22] *See Revisions to Oil Pipeline Regs. Pursuant to the Energy Pol'y Act of 1992,* Order No. 561, 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs. ¶ 30,985, at 30,960 (1993) (cross-referenced at 65 FERC ¶ 61,109) (recognizing ''a concern . . . with allowing a pipeline that may possess market power to control prices in a market to establish an initial rate through negotiations'' and requiring at least one nonaffiliated shipper to agree to a rate to ''provide some measure of protection against a pipeline exercising market power to dictate the rate it will charge''), *order on reh'g,* Order No. 561–A, 59 FR 40243 (Aug. 8, 1994), FERC Stats. & Regs. ¶ 31,000, at 31,106 (1994) (cross-referenced at 68 FERC ¶ 61,138) (''The purpose of requiring the one shipper who must agree to the initial rate to be unaffiliated with the pipeline is to ensure that the agreement is based upon arms-length negotiations.''), *aff'd sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996); *Seaway Crude Pipeline Co.,* 146 FERC ¶ 61,151 at P 30 (oil pipelines must show that a nonaffiliated entity agrees to a negotiated rate due to the ''concern that potential market power could be exercised against shippers who did not agree to the negotiated rate''); *Magellan,* 161 FERC ¶ 61,219 at P 21 (finding an oil pipeline's proposed affiliate transactions would ''violate the ICA's anti-discrimination provisions by offering pipeline transportation pursuant to customized terms, conditions, and rates unavailable to shippers who utilize [the] pipeline directly through nominating volumes under the pipeline's published tariff'').

[23] We observe that Congress brought oil pipelines under the ICA to address concerns regarding affiliate collusion and competitive imbalances caused by integrated ownership of transportation facilities. *See United States* v. *Champlin Refin. Co.,* 341 U.S. 290, 297–298 (1951) (''There is little doubt, from the legislative history, that the Act was passed to eliminate the competitive advantage which existing or future integrated companies might possess from exclusive ownership of a pipe line.''); *The Pipeline Cases (United States* v. *Ohio Oil Co.),* 234 U.S. 548, 559 (1914) (''Availing itself of its monopoly of the means of transportation the Standard Oil Company refused, through its subordinates, to carry any oil unless the same was sold to it or to them, and through them to it, on terms more or less dictated by itself.''); Opinion No. 154, 21 FERC at 61,582 (Standard Oil ''kept its crude pipeline rates high, thus enabling the railroads to hold on to business that they would have lost had Standard [Oil] passed the lower costs of pipeline transit on to unaffiliated shippers'' in exchange for preferential rates from the railroads).

[24] *See,* e.g., *Medallion,* 170 FERC ¶ 61,192; *Medallion Del. Express, LLC,* 163 FERC ¶ 61,170 at P 8; *Stakeholder,* 160 FERC ¶ 61,010 at P 4; *Medallion Pipeline Co.,* 157 FERC ¶ 61,075 at P 11; *EnLink Crude,* 157 FERC ¶ 61,120 at P 4.

[25] 49 U.S.C. app. 1, 2, 3(1), 5, 7, 15(1); *see also Tex. & Pac. Ry. Co.* v. *ICC,* 162 U.S. 197, 233 (1896) (explaining that the ICA's purpose is to ''make charges for transportation just and reasonable'' and ''forbid undue and unreasonable preferences or discriminations''); *ICC* v. *Balt. & Ohio R.R. Co.,* 145 U.S. 263, 276 (1892) (stating that the ''principal objects'' of the ICA include ''secur[ing] just and reasonable charges for the transportation'' and ''prohibit[ing] unjust discriminations in the rendition of like services under similar circumstances and conditions'').

[26] For instance, in the absence of a protest, the Commission's regulations allow pipelines to justify initial rates for new service by filing a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service in question. 18 CFR 342.2(b).

[27] *See Magellan,* 161 FERC ¶ 61,219 at P 19 (explaining that the ICA does not impose ''a blanket restriction on integrated company financing,'' but ''[t]he issue of integrated company finances is instead a ratemaking and accounting matter concerning the justness and reasonableness of a carrier's rates and rate structures'').

[28] We also recognize that in many circumstances, a pipeline has an incentive to obtain commitments from nonaffiliated shippers. Securing term commitments from nonaffiliated shippers can mitigate a pipeline's financial risk and provide the pipeline with a stable, assured revenue stream supporting the pipeline. E.g., *TransCan. Keystone Pipeline, LP,* 125 FERC ¶ 61,025, at P 21 (2008)

Continued

Proposed Policy Statement is intended to provide guidance regarding the policy the Commission intends to apply when evaluating Affiliate-Only Committed Service to ensure it is just, reasonable, and not unduly discriminatory or preferential under the ICA.

A. Affiliate-Only Committed Service Rates

12. The Commission's evaluation of whether the open season favored a pipeline's affiliate requires considering the contractual committed rate that was offered in the open season. During the open season process, a shipper must decide whether to commit to pay the contractual committed rate, including any rate increases permitted by the contract, over the entire term of the agreement (which may span several years).[29] If no nonaffiliate agrees to such a rate, the rate does not result from an arm's-length negotiation and there can be no presumption that the rate is just and reasonable.[30]

13. To provide greater certainty about how the Commission will evaluate proposed Affiliate-Only Committed Service rates in the absence of this presumption, we propose a safe-harbor mechanism for a pipeline proposing an Affiliate-Only Committed Service to show that the rate offered in the open season is just and reasonable and not designed to exclude nonaffiliates. Under this safe harbor, where a pipeline shows that it offered a rate at or below the cost-of-service over the full term of the agreement, the Commission would presume the rate offered in the open season was just, reasonable, and not unduly discriminatory. Because the shipper in the open season must consider the rate that applies over the full contract term, the safe harbor similarly considers the rate over the full contract term. We believe that it is appropriate for the proposed safe-harbor mechanism to rely on cost-of-service support for the Affiliate-Only Committed Service rate because it provides a method to demonstrate the open season was not structured to favor the pipeline's affiliate and that, on the contrary, the Affiliate-Only Committed Service rate is just and reasonable. In fact, the Commission has long recognized that cost-of-service ratemaking provides one mechanism for protecting against an exercise of market power.[31]

14. We propose two ways for satisfying the safe harbor. First, a pipeline could: (1) provide cost-of-service support for the initial rate; [32] (2) provide in the contract that adjustments to the rate over the term of the contract by the pipeline would be pursuant to the Commission's cost-of-service and indexing regulations; [33] (3) provide in the contract that the committed shipper has the right to directly challenge the committed rate on a cost-of-service basis during the term; [34] and (4) provide that whenever the rate is established or changed during the contract term on a cost-of-service basis, the cost of service will be set at a 100% load factor (or some other reasonable limit) as described below.

15. Alternatively, a pipeline could: (1) provide cost-of-service estimates to support the contract rate for the entire contract term; [35] (2) provide in the contract that the committed shipper may have a one-time right to challenge such cost-of-service showing made in the pipeline's initial filing for the service; and (3) apply a 100% load factor (or some other reasonable limit) as discussed below.

16. Regarding our proposal to require that the cost of service be based upon a 100% load factor or some other reasonable limit to satisfy the safe harbor, we are concerned that a cost of service that uses an unreasonably low load factor will not provide sufficient protections to nonaffiliated shippers. For instance, using actual throughput for any rate adjustments during the term of the agreement may place all of the risk for reductions in the pipeline's throughput on the committed shipper, which could deter participation by nonaffiliates.[36] Additionally, a cost of service based on a new pipeline's initially low throughput as it ramps up service may lead to a rate that is significantly above a cost of service over the full term of the contract.[37]

17. We recognize that using a 100% load factor may not be appropriate in all circumstances.[38] However, we propose that when a pipeline establishes or adjusts a contract rate on a cost-of-service basis, the cost of service should use either a 100% load factor or an

(committed rates ''support pipelines' efforts to attract shippers that will make long-term volume commitments to support the construction of new facilities.''); *Enbridge Pipelines (S. Lights) LLC,* 141 FERC ¶ 61,244, at P 4 (2012) (''[I]t was necessary to obtain financial support through long-term volume commitments without which the project could not move forward.''); *Express,* 76 FERC at 62,254 (''[L]onger term commitments provide greater assurances . . . and hence more long-term revenue stability'').

[29] *See,* e.g., *Medallion,* 170 FERC ¶ 61,192 at PP 7–8 (pipeline's TSA with its affiliate had a 10-year term); *ONEOK Elk Creek Pipeline, L.L.C.,* 167 FERC ¶ 61,277 at P 3 (pipeline's TSA with its affiliate had a 20-year term).

[30] Whereas an excessively high rate could preclude a nonaffiliate shipper from making a commitment, an affiliated shipper may be indifferent to any rate paid to its affiliated pipeline because the expenditures and earnings of the affiliates are combined at the parent-company level under integrated-company economics. *See supra* P 7 (citing *Magellan,* 161 FERC ¶ 61,219 at P 14; Opinion No. 154, 21 FERC at 61,587 n.115).

[31] *See ExxonMobil Oil Corp.* v. *FERC,* 487 F.3d 945, 961 (D.C. Cir. 2007) (''[T]he purpose of a cost-of-service rate . . . is to simulate what a pipeline's economic behavior would be in a competitive market.''); *SFPP, L.P.,* 121 FERC ¶ 61,240, at P 14 (2007) (stating that ''cost-of-service rate making seeks to replicate a competitive rate''). For this reason, § 342.2(a) of Commission's regulations requires oil pipelines to provide cost-of-service support for initial rates where the pipeline does not provide that at least one nonaffiliated shipper who intends to use the service has agreed to the rate. 18 CFR 342.2. When adopting the initial rate regulation, the Commission rejected the suggestion that an initial rate be entitled to a presumption of lawfulness. Instead, the Commission required initial rates to be supported by either agreement of a nonaffiliated shipper or a cost-of-service showing to protect against the pipeline exercising market power and potentially charging excessive rates to nonaffiliated shippers or unduly preferential rates to affiliated shippers contrary to the requirements of the ICA. *See* Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,960.

[32] The cost-of-service showing could be similar to the information required under § 346.2 with the exception that the rate would need to be based upon 100% load factor or some other reasonable throughput projection as discussed below. *See* 18 CFR 346.2(b).

[33] *Id.* 342.3, 342.4(a).

[34] *Id.* 343.2(c).

[35] The cost-of-service estimates could be similar to the information required under § 346.2 but estimating the costs over the full term of the contract. *See id.* 346.2. For example, in *Express,* 76 FERC ¶ 61,245, a pipeline provided cost-of-service estimates for each year its proposed contract rates would be in effect under the 15-year term of the agreement. Although the contract rates in *Express* were agreed to by a nonaffiliated shipper, commenters may address whether a similar showing could be used to support Affiliate-Only Committed Service rates.

[36] In particular, revising a contract rate using a cost of service that contains a reduced load factor could result in the rate increasing significantly during the contract term. Transportation rates are derived by dividing the pipeline's total costs by the pipeline's throughput; thus, using a reduced load factor (*i.e.,* reducing the throughput in the denominator) would result in a higher rate. Stipulating in the contract that any rate adjustments during the contract's term will use a 100% load factor or some other reasonable limit would safeguard shippers against this risk.

[37] *See White Cliffs Pipeline, L.L.C.,* 126 FERC ¶ 61,070, at P 32 (2009) (requiring cost of service for a new pipeline to be calculated based on design capacity rather than initial projected throughput and noting the use of design capacity results in a considerably lower rate); *Enbridge Energy Co., Inc.,* 110 FERC ¶ 61,211, at PP 44–46 (2005) (rejecting proposal to calculate cost of service using a projected throughput based only on initial volume commitments (excluding volume commitment ramp-ups and any uncommitted volumes), instead of design capacity).

[38] For example, a pipeline transporting crude oil from a production field with declining output may experience commensurate declines in throughput that justify using a load factor below 100%. Alternatively, pipelines transporting products with seasonal demand may operate at or near full capacity during certain periods and below capacity in other periods, which could make using a 100% load factor inappropriate.

alternative load factor that reasonably approximates the pipeline's expected throughput over the life of the contract.

18. As we consider this proposal, we recognize that § 342.2(a) of the Commission's existing regulations requires a pipeline to provide a cost of service when filing an initial rate.[39] However, the initial-rate filing requirement in § 342.2(a) does not incorporate the full set of rate-related issues the Commission must consider prior to concluding that the open season rate offering was consistent with the ICA and accepting tariff records implementing an Affiliate-Only Committed Service. As discussed above, the evaluation of the open season requires consideration of the contractual committed rate over the full term of the contract, not merely the initial rate at the time the committed service begins. The contractual committed rate may include escalation clauses[40] or, alternatively, the cost of service when the pipeline initiates service may not meaningfully correspond to the cost of service over the life of the agreement.[41] Therefore, filing requirements under § 342.2(a) for supporting initial rates with cost-of-service data are not sufficient to ensure that a pipeline's open season leading to an Affiliate-Only Committed Service is just, reasonable, and not unduly discriminatory.

19. We seek comment on the above proposed guidance for a safe harbor when a pipeline shows that it offered a rate at or below cost of service over the life of the contract. We recognize there may be other ways to provide cost-of-service support for an Affiliate-Only Committed Service rate over the full term of the contract than the approaches proposed above and seek comment on any other methods for making such cost-of-service showing.

20. Although we propose a cost-of-service safe harbor, we seek comment on any other methods for demonstrating that an Affiliate-Only Committed Service rate is not the product of undue discrimination designed to exclude nonaffiliate shippers. Comments proposing alternative methods for supporting Affiliate-Only Committed Service rates should: (1) provide a detailed description of the proposed method for justifying an Affiliate-Only Committed Service rate; (2) describe the information a pipeline would need to provide in order to support the proposed rate under the proposed method; (3) explain how such a showing would support a finding that the rate is just and reasonable and does not reflect undue discrimination towards potential nonaffiliated shippers; and (4) address whether such method is consistent with the Commission's regulations or, if not, changes that would be necessary to permit such method.

B. Affiliate-Only Committed Service Non-Rate Terms

21. Where an open season results in Affiliate-Only Committed Service, we also propose guidance and seek comment regarding the policies the Commission should apply to evaluate whether non-rate terms offered in the open season operated to exclude nonaffiliates from obtaining the capacity.

22. As discussed above, the Commission honors contract rates and terms that were agreed to in a transparent open season that involved arm's-length negotiations among sophisticated business entities, finding the rates and terms established by such contracts just and reasonable and not unduly discriminatory or preferential.[42] However, when only an affiliated shipper agrees to a particular contractual service, fairness cannot be inferred, and the Commission must evaluate whether the pipeline gave an undue preference to its affiliate.[43] As with contract rates, a pipeline may design non-rate terms such as minimum volume commitments,[44] minimum term-length requirements,[45] deficiency provisions,[46] or duty-to-support clauses[47] to make the contractual committed service onerous or uneconomic for nonaffiliate market participants. However, whereas the Commission may rely upon cost-of-service ratemaking as a substitute for arm's-length negotiations,[48] no similar single proxy exists for non-rate terms. Thus, the Commission may consider multiple factors in determining whether non-rate terms were structured to unduly discriminate against nonaffiliates, including whether the terms depart from industry standards, impose excessive burdens or risk on nonaffiliates, or do not appear reasonably tailored to further legitimate business objectives.

23. Furthermore, we propose to apply a rebuttable presumption that Affiliate-Only Committed Service is unduly discriminatory and not just and reasonable where the affiliate, any time before or shortly after the committed service begins,[49] remarkets the contracted capacity to one or more nonaffiliated third parties.[50] Given that

[39] 18 CFR 342.2(a); *see also Targa NGL Pipeline Co.,* 166 FERC ¶ 61,179 (2019), *reh'g denied,* 181 FERC ¶ 61,210 (2022).

[40] For example, a pipeline could offer a ten-year contract in an open season with a rate based on cost of service for the first year of service, but drastic rate increases to unreasonable levels for the remaining nine years in order to deter nonaffiliates from obtaining the contractual committed service. The pipeline could comply with § 342.2(a) by filing cost-of-service workpapers under 18 CFR part 346 that demonstrate the initial rate shown in its tariff upon commencing the committed service is at or below a cost-of-service ceiling level. Here, the pipeline's compliance with § 342.2 is insufficient to demonstrate that the pipeline's open season did not provide an undue preference to its affiliate.

[41] For example, a pipeline's throughput levels often ramp-up in the period after the pipeline begins service. As a result, throughput levels in the first 12 months of service may be significantly below the throughput levels over the subsequent years. For example, if a pipeline signs a 10-year contract for committed service and the pipeline's throughput levels in the first year are only 25% of the throughput levels in years two through 10 of the committed service contract, the cost of service based upon those low throughput levels does not establish that the pipeline's rate over a 10-year period is just, reasonable, and not unduly discriminatory. However, the initial rate regulation only considers a projection of the first 12 months of service. *See* 18 CFR 346.2(a)(3) (''For a carrier which is establishing rates for new service, the test period will be based on a 12-month projection of costs and revenues.'').

[42] E.g., *Tesoro High Plains Pipeline Co.,* 148 FERC ¶ 61,129 at P 23 (''The Commission honors the contract terms entered into by sophisticated parties that engage in an arms-length negotiation.''); Opinion No. 546, 154 FERC ¶ 61,070 at PP 40–42 (holding that a proper review of a pipeline's committed rates includes investigating whether the open season involved arm's-length negotiations); *Seaway Crude Pipeline Co.,* 146 FERC ¶ 61,151 at P 25 (''Absent a compelling reason, it would be improper to second guess the business and economic decisions made between sophisticated businesses when entering negotiated rate contracts.'').

[43] *New York* v. *United States,* 331 U.S. at 296 (''The principal evil at which the Interstate Commerce Act was aimed was discrimination in its various manifestations.'').

[44] *See Enterprise Crude,* 166 FERC ¶ 61,224 at P 8 (finding that a contract offered in an open season that included a large minimum volume requirement that was not justified by operational requirements and only allowed pipeline to accept one committed shipper ''had the effect of giving undue or unreasonable preference or advantage to large shippers'').

[45] Like minimum volume requirements, a long minimum term commitment that departs from industry standards without any explanation may be an indication that the pipeline intended to unduly discriminate in favor of its affiliate. For example, an affiliated shipper may incur no additional risk when agreeing to a 20-year contract with its affiliated pipeline, but a 20-year term could impose significant risk on a nonaffiliated shipper that would be required to pay the contract rate for its committed volumes (or incur significant shortfall penalties) throughout the term.

[46] As discussed above, an affiliate may not be meaningfully bound to deficiency or shortfall penalties because deficiency payments and penalties may be transfer payments within an integrated economic entity.

[47] *See Nexen,* 121 FERC ¶ 61,235 at PP 51–52 (finding invalid a duty-of-support provision that ''can be interpreted in a broad manner so as to limit a shipper's rights before the Commission'').

[48] *See supra* P 13.

[49] This would include the open season and the time around the open season.

[50] Remarketing may include partial assignments, buy-sells, capacity sales, or other similar

Continued

a nonaffiliated third party subsequently purchased the remarketed capacity, a nonaffiliated third party's decision not to make a commitment for capacity in the open season indicates that the terms offered in the open season were less favorable. This raises concerns as to whether the terms offered in the open season were consistent with the terms demanded by the market in an arm's-length transaction.[51] Moreover, the pipeline's apparent failure to offer terms in the open season consistent with market demand raises further concerns that the pipeline structured the open season offerings to ensure that the affiliate would emerge from the open season process as the only contractual committed shipper so that the affiliate could subsequently remarket the capacity without complying with the full requirements of the ICA that bind the pipeline itself.[52] In this situation, we are concerned that the open season and resulting Affiliate-Only Committed Service may be unjust, unreasonable, and unduly discriminatory or preferential.

24. Accordingly, where a pipeline's affiliate, any time before or shortly after the committed service begins, remarkets that capacity to a nonaffiliate in an agreement involving transportation service,[53] we propose to apply a rebuttable presumption that the open season and the ensuing Affiliate-Only Committed Service terms were unduly discriminatory and not just and reasonable. However, we recognize that this presumption will likely be rebuttable in some circumstances. Relevant considerations could potentially include, but are not limited to: (1) the affiliate's business purpose at the time of the open season; (2) whether the affiliate is acting as a marketer or simply selling the capacity in connection with the sale of all or part of its business; (3) whether the sale was a limited, one-time sale; and/or (4) how much time elapsed between the date of the open season and the affiliate's decision to sell the capacity.

25. We seek comment on this proposed presumption as well as the considerations that could rebut the presumption.[54] Moreover, commenters may address situations in which a nonaffiliated party may prefer to access capacity via a transaction with the pipeline's affiliate as opposed to entering a contract for committed-shipper service in the open season from the pipeline or requesting uncommitted service offered in the pipeline's tariff. In addition, we seek comments explaining whether any Commission policies or pipeline practices and tariffs present disadvantages or impediments that create incentives for entities to transact with a pipeline's affiliate rather than seek committed or uncommitted service directly from the pipeline. For any issues identified, we seek comment on potential actions that the Commission could take to alleviate such disadvantages or impediments while remaining consistent with our obligations under the ICA.

IV. Conclusion

26. We seek input on the above proposals or any other approaches for oil pipelines to demonstrate that Affiliate-Only Committed Service is just and reasonable and not the result of undue discrimination to exclude potential nonaffiliated committed shippers. We also invite comments on any other issues or factors related to affiliate preferences or affiliated shippers' activities on the secondary market that the Commission should consider for inclusion in the policy statement.

V. Comment Procedures

27. The Commission invites comments on this Proposed Policy Statement by February 13, 2023, and Reply Comments by March 30, 2023. Comments must refer to Docket No. PL23–1–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

28. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

29. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

VI. Information Collection Statement

30. The collection of information discussed in this Proposed Policy Statement is being submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3507(d) of the Paperwork Reduction Act of 1995 (PRA) and OMB's implementing regulations.[55] The following estimate of reporting burden is related only to this Proposed Policy Statement.

arrangements involving transportation service on the affiliated pipeline.

[51] *See Edgar,* 55 FERC at 62,169 (evidence of nonaffiliated buyers in the relevant market purchasing a similar service can be relevant to assessing whether a regulated entity's transaction with its affiliate was unduly discriminatory); *Seahawk,* 175 FERC ¶ 61,186 at P 15 (rejecting proposal to find an Affiliate-Only Committed Service rate reasonable based on the affiliate's sub-assigning the contract to a nonaffiliate under different terms).

[52] *See Magellan,* 161 FERC ¶ 61,219 at P 6 (describing how a pipeline's marketing affiliate could enter a contract in an open season for the pipeline's capacity and then remarket the capacity to third parties at different private rates and terms that would profit the integrated company (comprised of the affiliated pipeline and marketing arm)); *see also* Airlines for Am. and Nat'l Propane Gas Ass'n, Petition for Rulemaking, Docket No. RM18–10–000, at 11 (filed Feb. 1, 2018) (expressing concerns that ''pipelines and their marketing affiliates appear to be engaging in the practice of selling transportation service, on a non-transparent basis, to some but potentially not all would-be purchasers below or above the rate listed in the pipeline's FERC-jurisdictional tariff and thereby selling transportation services at a loss or gain, on a discriminatory and preferential basis, in order to benefit the bottom line of the integrated company''); *id.* at 24 (expressing concerns that pipelines are ''using their affiliate marketers to offer discounted service on their pipeline systems at non-transparent rates and terms unregulated by the Commission and not necessarily available to all shippers on the subject pipeline'').

[53] For example, if a pipeline indicated in a petition for declaratory order or tariff filing that the affiliate committed shipper intends to or has already entered an agreement with a nonaffiliate prior to the end of the open season, then such facts would lead to a rebuttable presumption that the open season and resulting Affiliate-Only Committed Service were unduly discriminatory and not just and reasonable.

[54] For instance, commenters could consider whether the presumption could be rebutted where the affiliate: (i) remarkets the capacity upon exiting the business several years after the open season concludes; (ii) intermittently sells relatively small amounts of excess capacity; or (iii) moves a third-party shipper's product as part of a larger transaction involving processing that product at the affiliate's processing facility.

[55] 5 CFR pt. 1320.

[56] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. *See* 5 CFR 1320 for additional information on the definition of information collection burden.

ESTIMATED ANNUAL BURDEN [56] DUE TO DOCKET NO. PL23–1
[Figures may be rounded]

Number of potential respondents	Annual number of responses per respondent	Total number of responses	Average burden hours & cost ($) [57] per response	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
20	1	20	10 hrs.; $910	200 hrs.; $18,200	$910

Title: FERC–550A, PL23–1–000, Oil Pipeline Affiliate Committed Service.

Action: Proposed information collection.

OMB Control No.: 1902–NEW.

Respondents: Oil pipelines.

Frequency of Information Collection: On occasion.

Necessity of Voluntary Information Collection: The information collected pursuant to this Proposed Policy Statement would help the Commission in evaluating whether contractual committed transportation service complies with the Interstate Commerce Act where the only shipper to obtain the contractual committed service is the pipeline's affiliate.

Internal Review: The opportunity to file the information conforms to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the opportunity to file the information.

31. Interested persons may provide comments on this information-collection by one of the following methods:

Electronic Filing (preferred): Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

USPS: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426.

Hard copy other than USPS: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

32. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

33. Please send comments concerning the collection of information and the associated burden estimates to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number 1902–NEW in the subject line.

34. *Instructions:* OMB submissions must be formatted and filed in accordance with submission guidelines at: *www.reginfo.gov/public/do/PRAMain;* using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission, click ''submit,'' and select ''comment'' to the right of the subject collection.

VII. Document Availability

35. 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*).

36. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

37. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission. Commissioner Danly is dissenting with a separate statement attached. Commissioner Christie is concurring with a separate statement attached.

Issued: December 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

Oil Pipeline Affiliate Committed Service

Docket No. PL23–1–000

DANLY, Commissioner, *dissenting:*

1. I dissent from today's order.[1] I would normally not oppose a proposed policy statement. There is often nothing wrong with seeking a record to consider reforms. I am also generally skeptical of affiliate transactions and think that the Commission should apply a heightened review as compared to non-affiliate transactions.

2. However, this proposal is, for the most part, not new. This is not a genuine request for comment. The policies proposed today (particularly the safe harbor) are nearly identical to those proposed two years ago in the policy statement on *Oil Pipeline Affiliate Contracts,*[2] which was withdrawn two days after the expiration of the initial comment deadline.[3] Were one unfamiliar with the Commission's oil docket one would not know this if all one had to rely upon was today's order. While that proceeding is mentioned in a footnote nearly a third of the way through the order,[4] there is ''nothing [in the order] so much as an acknowledgement of the views expressed.'' [5] The majority chooses to

[57] Commission staff believes the industry's average hourly cost for this information collection is approximated by the Commission's average hourly cost (for wages and benefits) for 2022, or $91.00/hour.

[1] *Oil Pipeline Affiliate Committed Service,* 181 FERC ¶ 61,206 (2022 Policy Statement).

[2] *Compare Oil Pipeline Affiliate Contracts,* 173 FERC ¶ 61,063 (2020) (2020 Policy Statement) *with* 2022 Policy Statement, 181 FERC ¶ 61,206 at PP 14–15. Other proposals also appear similar to the 2020 Policy Statement. For example, the 2022 Policy Statement proposes to consider whether the non-rate terms ''depart from industry standards'' and ''impose excessive burdens or risk on nonaffiliates,'' *id.* P 22, which are similar to the 2020 Policy Statement's request for comment on ''proposed guidance for a carrier seeking to implement rates and terms pursuant to an Affiliate Contract to demonstrate that it did not unduly discriminate in favor of an affiliate by offering excessively burdensome or uneconomic contract terms,'' 173 FERC ¶ 61,063 at P 35.

[3] *Oil Pipeline Affiliate Contracts,* 173 FERC ¶ 61,250 (2020) (Order Withdrawing 2020 Policy Statement).

[4] 2022 Policy Statement, 181 FERC ¶ 61,206 at P 5 n.14.

[5] Order Withdrawing 2020 Policy Statement, 173 FERC ¶ 61,250 (Glick, Comm'r, dissenting at P 1).

omit (and presumably ignore) comments that exposed profound weaknesses that counseled a more deliberate approach in that (and now this) proposed policy.

3. For example, commenters in the original proceeding alleged that there was (there still is) no record evidence supporting the Commission's premise that its policies—or the complaint mechanisms afforded by the statute—are inadequate to the task of preventing or remediating affiliate abuse in settlement rate negotiations, or for that matter, that such affiliate abuse even exists commonly enough to justify this proceeding at all.[6] One comment stated that of the 140 petitions for declaratory order that had been approved by the Commission from 2010 through 2020, ''*only one* . . . arguably included allegations of undue affiliate preference'' [7] and even in that case, ''the crux of the shipper's challenge did not hinge on affiliate concerns.'' [8] Another comment questioned the entire proceeding, explaining that the proceeding was based on a fundamental misapprehension as to how the business operates, stating that presumably other midstream companies ''invest significant capital in order to attract shippers, not keep shippers away.'' [9]

4. The majority does not acknowledge the comments from the earlier proceeding that state that there may not be a problem at all nor does it ask about whether there is a problem. Instead, the majority insists that ''parties have raised concerns,'' [10] citing the *very complaint proceeding* that commenters in the earlier docket explained does not support the majority's position,[11] a complaint proceeding where the Commission found no affiliate abuse.[12] The order also cites comments in *other* proceedings that simply ask hypotheticals [13] and express shippers' ''belie[f] this problem . . . exists.'' [14] In order to justify embarking on a new generic proceeding that proposes burdensome intrusions into the business of regulated entities, there must be *some* evidence that there is an actual problem to solve. And should this or any other policy be finalized, there must be at least substantial evidence. The Commission must eventually do more than ''[p]rofess[ ] that an order ameliorates a real industry problem'' [15] or cite parties' ''belie[f] that [a] problem . . . exists'' [16] in order to meet the statutory requirement of basing its decisions on substantial evidence or the APA's requirement to base orders on reasoned decision-making.

5. Commenters in the original docket identified other fatal weaknesses. The plain terms of the safe harbor, materially the same as that proposed today, contravenes the Commission's regulations by limiting the methodologies by which pipelines can adjust rates [17] and by requiring the use of a 100% load factor for cost-of-service-based rate adjustments.[18] This is an evident infirmity—agencies cannot amend their regulations without undergoing the notice-and comment procedures required by the Administrative Procedure Act (APA).[19]

6. Although not a threat to the proposal's legal durability, commenters also stated that, if implemented, the safe harbor proposal would result in the Commission ''interjecting itself into commercial negotiations,'' [20] ''imposing contractual terms that would otherwise not find themselves in contracts negotiated at arms' length between third parties.'' [21] Specifically, they explained that ''carriers and contract shippers typically do not agree to a contract rate while also providing a unilateral right to try to change the rate,'' [22] and that ''[m]ost carriers will be unwilling to invest hundreds of millions of dollars in new infrastructure if their rates—which are the sole means by which the carrier may recoup its investment—may be reduced at any time during the contract term pursuant to a cost-of service challenge.'' [23]

7. Despite this evidence that was brought before the Commission in the earlier docket, the majority does even mention it, let alone change course, continuing to propose a safe harbor policy that requires carriers to allow shippers to unilaterally challenge a rate.[24] Given the evidence already adduced in an earlier proceeding, one would be justified in having skepticisms of the majority's claim that this proposed policy ''will provide guidance to industry participants that will aid in the efficient deployment of capital.'' [25]

8. Perhaps worst of all, commenters offered alternative approaches for the Commission's consideration which the

[6] *See, e.g.,* Indicated Carriers December 14, 2020 Initial Comments, Docket No. PL21–1–000, at 1 (''[T]he Proposed Policy does not present any evidence demonstrating that the types of undue affiliate preferences that the Proposed Policy purportedly seeks to prevent are more than just a theoretical possibility.'') (Indicated Carriers Comments); Targa Resources Corp. December 14, 2020 Initial Comments, Docket No. PL21–1–000, at 8–9 (Targa Comments) (''An underlying predicate of the Proposed Policy Statement seems to be that carriers set rates at artificially high levels that only an affiliate would agree to pay in an effort to keep third-party shippers off of the pipeline. Targa does not believe that there is any evidence that this occurs in the marketplace. The idea that carriers set rates above the level that the market will support in order to keep third-parties from a given pipeline system simply does not make commercial sense.'') (footnote omitted).

[7] Indicated Carriers Comments at 10 (emphasis added).

[8] *Id.* 10 n.13.

[9] Enterprise Products Partners L.P. Initial Comments December 14, 2020 Docket No. PL21–1–000 at 4 (Enterprise Products Comments).

[10] 2022 Policy Statement, 181 FERC ¶ 61,206 at P 6.

[11] *Id.* P 6 n.15 (citing *Blue Racer NGL Pipelines, LLC,* 162 FERC ¶ 61,220 (2018)).

[12] *Id.* (citing *N.D. Pipeline Co.,* 147 FERC ¶ 61,121 (2014)).

[13] *Id.* (citing Magellan Midstream Partners, L.P., Request for Rehearing, Docket No. OR17–2–001, at 5 (filed Dec. 22, 2017) (Magellan Rehearing); Airlines for America and National Propane Gas Association, Petition for Rulemaking, Docket No. RM18–10–000, at 24 (filed Feb. 1, 2018) (referencing the Magellan Rehearing)).

[14] Shell Trading (US) Company, Comments, Docket No. OR17–2–001, at 7 (filed Mar. 14, 2018) (Shell Comments); *see also* 2022 Policy Statement, 181 FERC ¶ 61,206 at P 6 n.15 (citing Shell Comments at 7; Liquid Shippers Group, Comments, Docket No. OR17–2–000, at 4 (filed Dec. 14, 2016) (for purposes of this filing the Liquid Shippers Group includes ConocoPhillips Company, Cenovus Energy Marketing Services Ltd., Devon Gas Services, L.P., Marathon Oil Company, and Statoil Marketing & Trading, Inc.).

[15] *Nat'l Fuel Gas Supply Corp.* v. *FERC,* 468 F.3d 831, 843 (D.C. Cir. 2006); *see also id.* (''FERC has cited *no* complaints and provided *zero* evidence of actual abuse between pipelines and their non-marketing affiliates. FERC staked its rationale in part on a record of abuse, but that record is non-existent.'') (emphasis in original).

[16] 2022 Policy Statement, 181 FERC ¶ 61,206 at P 6 n.15 (citing Shell Comments at 7); Shell Comments at 7 (expressing ''belie[f] that [a] problem . . . exists'').

[17] *See* Tallgrass Pony Express Pipeline, LLC December 14, 2020 Initial Comments, Docket No. PL21–1–000, at 4–5.

[18] *See* Targa Comments at 16 & n.25 (citing 18 CFR 346.2). Section 346.2 of the Commission's regulations requires that a cost-of-service summary schedule contain ''[t]hroughput for the *test period* in both barrels and barrel-miles.'' 18 CFR 346.2 (emphasis added).

[19] 5 U.S.C. 553; *see also Shell Offshore Inc.* v. *Babbitt,* 238 F.3d 622, 629 (5th Cir. 2001) (''[T]he APA requires an agency to provide an opportunity for notice and comment before substantially altering a well established regulatory interpretation.'').

[20] Targa Comments at 10.

[21] Enterprise Products Comments at 2.

[22] Targa Comments at 15.

[23] Indicated Carriers Comments at 33; *see also id.* at 3 (stating the safe harbor policy ''has the very real potential to discourage such carriers from investing in new pipeline infrastructure'').

[24] 2022 Policy Statement, 181 FERC ¶ 61,206 at P 14 (providing that one way a pipeline could satisfy the safe harbor by ''provid[ing] in the contract that the committed shipper has the right to directly challenge the committed rate on a cost-of-service basis during the term'' along with the three other factors); *id.* P 15 (providing an alternative way a pipeline could satisfy the safe harbor by ''provid[ing] in the contract that the committed shipper may have a one-time right to challenge such cost-of-service showing made in the pipeline's initial filing for the service'' along with two other factors).

[25] *Id.* P 2. A majority has made similar claims before. *See, e.g., Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.,* 178 FERC ¶ 61,108, P 80 (2022) (''We believe that such clarity ultimately benefits both the regulated community and public by ensuring certainty regarding the Commission's process for reviewing applications for natural gas infrastructure.'').

majority declined to consider or, in fact, even mention. For example, one party suggested the imposition of a requirement that pipelines demonstrate that affiliate rates are aligned with those of competing pipelines or other modes of transportation.[26] Why not include seemingly reasonable alternatives for comment if you persist in your belief—despite the lack of evidence—that affiliate abuses are widespread in the industry? If the Commission is concerned that a carrier is offering non-market rates to its affiliate, a showing that the rate is consistent with market would seem to address the concern and do so far less invasively and without violating our own regulations.

9. It is a mistake for the majority to repropose a policy shown to have irremediable vulnerabilities under the APA and a near certain chilling effect on investment. The Commission has the benefit of an existing record. Rather than ignoring it, the Commission should have made use of that record to determine whether there is a problem at all and, if there is, use it to determine what additional evidence needs to be gathered, what policy goals it seeks to achieve, and what is the best, least invasive, and most defensible course of action. The Commission should not rush a policy only to have go back and fix known errors.

For these reasons, I respectfully dissent.

James P. Danly,

Commissioner.

UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

Oil Pipeline Affiliate Committed Service

Docket No. PL23–1–000

CHRISTIE, Commissioner, *concurring:*

1. I concur in order to put this draft policy statement out for further review and comment.

2. I fully agree that transactions between corporate affiliates are not arms-length transactions. In the regulated energy and utility field, such transactions raise a distinct threat of the exercise of market power. So affiliate transactions certainly require a higher level of scrutiny than those between unaffiliated entities.

3. That is a simple proposition, but this draft statement is not simple, and takes many pages and paragraphs to describe what it is requiring of regulated entities and affiliates, what and which degrees of scrutiny will be applied, when and where, and how the safe-harbor mechanisms will work. The devil is always in the details and whether this lengthy proposed new policy statement has got all the details right remains to be seen, as well as whether a new policy statement is even necessary or preferable to a case-by-case approach. I take seriously the points raised in Commissioner Danly's dissent, particularly on the history of this policy statement and its apparent predecessors.

4. I am willing, however, to put it out for comment and look forward to the comments that may come in from affected parties, including pipeline operators and shippers both affiliated and unaffiliated.

For these reasons, I respectfully concur.

Mark C. Christie,

Commissioner.

[FR Doc. 2022–27850 Filed 12–21–22; 8:45 am]

BILLING CODE 6717–01–P

[26] Association of Oil Pipelines December 14, 2020 Initial Comments, Docket No. PL21–1–000, at 33.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–646–000]

Wagon Wheel Wind Project Holdings 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 Wagon Wheel Wind Project Holdings 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 January 5, 2023.

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: December 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27853 Filed 12–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–645–000]

Wagon Wheel Wind Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

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Dated: December 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27854 Filed 12–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–647–000]

Diversion Wind Energy Holdings 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 Diversion Wind Energy Holdings 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 January 5, 2023.

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: December 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27852 Filed 12–21–22; 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 exempt wholesale generator filings:

Docket Numbers: EG23–32–000.

Applicants: Diversion Wind Energy Holdings LLC.

Description: Diversion Wind Energy Holdings LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/15/22.

Accession Number: 20221215–5134.

Comment Date: 5 p.m. ET 1/5/23.

Docket Numbers: EG23–33–000.

Applicants: Wagon Wheel Wind Project Holdings LLC.

Description: Wagon Wheel Wind Project Holdings LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/15/22.

Accession Number: 20221215–5144.

Comment Date: 5 p.m. ET 1/5/23.

Docket Numbers: EG23–34–000.

Applicants: Wagon Wheel Wind Project, LLC.

Description: Wagon Wheel Wind Project, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/15/22.

Accession Number: 20221215–5158.

Comment Date: 5 p.m. ET 1/5/23.

Docket Numbers: EG23–35–000.

Applicants: Diversion Wind Energy LLC.

Description: Diversion Wind Energy LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/15/22.
Accession Number: 20221215–5161.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: EG23–36–000.
Applicants: Paris Farm Solar, LLC.
Description: Paris Farm Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/16/22.
Accession Number: 20221216–5095.
Comment Date: 5 p.m. ET 1/6/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1085–003.
Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Virginia Electric and Power Company submits tariff filing per 35: Dominion submits Second Order No. 864 Compliance Filing to be effective 1/27/2020.
Filed Date: 12/15/22.
Accession Number: 20221215–5154.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: ER22–1612–001.
Applicants: Central Maine Power Company.
Description: Compliance filing: Compliance Filing-Second Amendment to Sappi North America, Inc. IA to be effective 11/17/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5157.
Comment Date: 5 p.m. ET 1/6/23.
Docket Numbers: ER22–2216–001.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Notice of Effective Date—Timing of the Day-Ahead Supply Adequacy Study to be effective N/A.
Filed Date: 12/16/22.
Accession Number: 20221216–5055.
Comment Date: 5 p.m. ET 1/6/23.
Docket Numbers: ER22–2726–002.
Applicants: AEP Texas Inc.
Description: Tariff Amendment: AEPTX-Electric Transmission Texas Interconnection Agreement—Amend Pending to be effective 7/29/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5111.
Comment Date: 5 p.m. ET 1/6/23.
Docket Numbers: ER22–2922–001.
Applicants: Southern California Edison Company.
Description: Tariff Amendment: Response to Deficiency Letter, TOT381–TOT405 Silver State South Solar_ER22–2290 to be effective 9/24/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5105.
Comment Date: 5 p.m. ET 1/6/23.
Docket Numbers: ER22–2984–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Responses to Deficiency Letter in ER22–2984 re Quadrennial Review to be effective 12/1/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5156.
Comment Date: 5 p.m. ET 1/6/23.
Docket Numbers: ER23–208–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 1276R29 Evergy Metro NITSA NOA to be effective 1/1/2023.
Filed Date: 12/16/22.
Accession Number: 20221216–5072.
Comment Date: 5 p.m. ET 1/6/23.
Docket Numbers: ER23–246–001.
Applicants: Happy Jack Windpower, LLC.
Description: Tariff Amendment: Amendment Filing to be effective 12/28/2022.
Filed Date: 12/15/22.
Accession Number: 20221215–5177.
Comment Date: 5 p.m. ET 12/27/22.
Docket Numbers: ER23–256–001.
Applicants: Silver Sage Windpower, LLC.
Description: Tariff Amendment: Amendment Filing to be effective 12/28/2022.
Filed Date: 12/15/22.
Accession Number: 20221215–5162.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: ER23–259–001.
Applicants: Three Buttes Windpower, LLC.
Description: Tariff Amendment: Amendment Filing to be effective 12/28/2022.
Filed Date: 12/15/22.
Accession Number: 20221215–5199.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: ER23–262–001.
Applicants: Top of the World Wind Energy, LLC.
Description: Tariff Amendment: Amendment Filing to be effective 12/28/2022.
Filed Date: 12/15/22.
Accession Number: 20221215–5192.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: ER23–269–001.
Applicants: Kit Carson Windpower, LLC.
Description: Tariff Amendment: Amendment Filing to be effective 12/28/2022.
Filed Date: 12/15/22.
Accession Number: 20221215–5185.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: ER23–642–000.
Applicants: Chaparral Springs, LLC.
Description: § 205(d) Rate Filing: Certificates of Concurrence for Shared Facilities Common Ownership Agreements to be effective 12/16/2022.
Filed Date: 12/15/22.
Accession Number: 20221215–5136.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: ER23–643–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5596; Queue No. AD1–020 (amend) to be effective 2/4/2020.
Filed Date: 12/15/22.
Accession Number: 20221215–5140.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: ER23–644–000.
Applicants: Diversion Wind Energy LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 2/14/2023.
Filed Date: 12/15/22.
Accession Number: 20221215–5169.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: ER23–645–000.
Applicants: Wagon Wheel Wind Project, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 2/14/2023.
Filed Date: 12/15/22.
Accession Number: 20221215–5170.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: ER23–646–000.
Applicants: Wagon Wheel Wind Project Holdings LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 2/14/2023.
Filed Date: 12/15/22.
Accession Number: 20221215–5173.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: ER23–647–000.
Applicants: Diversion Wind Energy Holdings LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 2/14/2023.
Filed Date: 12/15/22.
Accession Number: 20221215–5188.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: ER23–648–000.
Applicants: Consolidated Power Co., LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 12/16/2022.
Filed Date: 12/15/22.
Accession Number: 20221215–5195.
Comment Date: 5 p.m. ET 1/5/23.
Docket Numbers: ER23–649–000.
Applicants: Tucson Electric Power Company.
Description: § 205(d) Rate Filing: Concurrence to PNM Rate Schedule No. 180 to be effective 10/8/2022.
Filed Date: 12/16/22.

Accession Number: 20221216–5080.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–650–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6737; Queue No. AE1–160 to be effective 11/16/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5089.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–651–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 4010 Plum Nellie & ITC Great Plains Facilities Service Agr to be effective 2/14/2023.
Filed Date: 12/16/22.
Accession Number: 20221216–5094.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–652–000.
Applicants: Happy Solar 1, LLC.
Description: Baseline eTariff Filing: Petition for MBR Tariff, Waivers, Blanket Authority, and Expedited Treatment to be effective 2/1/2023.
Filed Date: 12/16/22.
Accession Number: 20221216–5127.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–653–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA No. 6728; Queue No. AE2–001 to be effective 11/16/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5128.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–654–000.
Applicants: AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: AEP Ohio Transmission Company, Inc. submits tariff filing per 35.13(a)(2)(iii: AEP submits OHTCo & DP&L Interconnection Agreement SA No. 6581 to be effective 12/1/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5135.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–655–000.
Applicants: San Diego Gas & Electric Company.
Description: § 205(d) Rate Filing: 2023 RS Filing to be effective 1/1/2023.
Filed Date: 12/16/22.
Accession Number: 20221216–5137.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–656–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 67 to be effective 2/14/2023.
Filed Date: 12/16/22.
Accession Number: 20221216–5142.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–657–000.
Applicants: Sunwave USA Holdings, Inc.
Description: Tariff Amendment: Sunwave USA MBR Cancellation Filing to be effective 12/16/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5159.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–658–000.
Applicants: Sunwave Gas & Power New York, Inc.
Description: Tariff Amendment: Sunwave GP NY MBR Cancellation Filing to be effective 12/16/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5160.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–659–000.
Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.
Description: § 205(d) Rate Filing: Revisions to FERC Electric Tariff No. 1—Formula Rate 12.16.22 to be effective 1/1/2023.
Filed Date: 12/16/22.
Accession Number: 20221216–5164.
Comment Date: 5 p.m. ET 1/6/23.

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD23–3–000.
Applicants: North American Electric Reliability Corporation.
Description: The North American Electric Reliability Corporation submits Petition for Approval of Proposed Reliability Standard CIP–003–9.
Filed Date: 12/6/22.
Accession Number: 20221206–5175.
Comment Date: 5 p.m. ET 1/5/23.

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: December 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27858 Filed 12–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–287–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—EQT SP77253 Neg-Non Conf Amend Exhibit A–4.1.1 to be effective 12/17/2022.
Filed Date: 12/15/22.
Accession Number: 20221215–5113.
Comment Date: 5 p.m. ET 12/27/22.

Docket Numbers: RP23–288–000.
Applicants: Portland Natural Gas Transmission System.
Description: § 4(d) Rate Filing: PNGTS—Castleton Negotiated Rate Agmt to be effective 12/15/2022.
Filed Date: 12/15/22.
Accession Number: 20221215–5166.
Comment Date: 5 p.m. ET 12/27/22.

Docket Numbers: RP23–289–000.
Applicants: Portland Natural Gas Transmission System.
Description: Compliance filing: 2022 Fuel Mechanism Report to be effective N/A.
Filed Date: 12/15/22.
Accession Number: 20221215–5174.
Comment Date: 5 p.m. ET 12/27/22.

Docket Numbers: RP23–290–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Compliance filing: Penalty Revenue Crediting Report 2022 to be effective N/A.
Filed Date: 12/16/22.
Accession Number: 20221216–5093.
Comment Date: 5 p.m. ET 12/28/22.

Docket Numbers: RP23–291–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Compliance filing: Penalty Revenue Crediting Report 2022 to be effective N/A.
Filed Date: 12/16/22.
Accession Number: 20221216–5107.
Comment Date: 5 p.m. ET 12/28/22.

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: December 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27857 Filed 12–21–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10509–01–OA]

Local Government Advisory Committee (LGAC) Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), EPA herby provides notice of a meeting for the Local Government Advisory Committee (LGAC) on the date and time described below. This meeting will be open to the public. For information on public attendance and participation, please see the registration information under **SUPPLEMENTARY INFORMATION**.

DATES: The LGAC will meet virtually January 13th, 2023, from 11:30 a.m. through 12:30 p.m. Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Paige Lieberman, Designated Federal Officer (DFO), at *LGAC@epa.gov* or 202–564–9957.

Information on Accessibility: For information on access or services for individuals requiring accessibility accommodations, please contact Paige Lieberman by email at *LGAC@epa.gov.* To request accommodation, please do so five (5) business days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION: The LGAC has been deliberating on the following sections of the Inflation Reduction Act and will discuss and vote on draft recommendations for each at this meeting.

Topic One: Climate Pollution Reduction Grants

EPA received $5 billion to assist states, air pollution control agencies, tribes and local governments to develop and implement strong, climate pollution reduction strategies. These eligible entities can apply for planning grants and then apply for grants to implement those plans. This is a new program that will be informed by comments received via this request for public comment in addition to other stakeholder engagement activities that the Agency will be conducting consistent with its Grant Competition policy.

Topic Two: Clean Heavy-Duty Vehicles

EPA received $4 billion for two new programs to reduce emissions from the transportation sector. The first program is the Clean Heavy-Duty Vehicle program that will invest $1 billion to help cover the costs of replacing dirty heavy-duty vehicles with clean alternatives, deploy supporting infrastructure, and/or train and develop the necessary workforce. At least $400 million must go to nonattainment areas. The application is open to states, municipalities, Indian tribes, nonprofit school transportation associations, and eligible contractors.

All interested persons are invited to attend and participate. The LGAC will hear comments from the public from approximately 12:20–12:30 p.m. (EDT). Individuals or organizations wishing to address the Committee or Subcommittee will be allowed a maximum of five (5) minutes to present their point of view. Also, written comments should be submitted electronically to *LGAC@epa.gov* for the LGAC and SCAS. Please contact the DFO at the email listed under **FOR FURTHER INFORMATION CONTACT** to schedule a time on the agenda by January 12, 2023. Time will be allotted on a first-come first-served basis, and the total period for comments may be extended if the number of requests for appearances requires it.

Registration: The meeting will be held virtually through an online audio and video platform. Members of the public who wish to participate should register by contacting the Designated Federal Officer (DFO) at *LGAC@epa.gov* by January 12, 2023. The agenda and other supportive meeting materials will be available online at *https://www.epa.gov/ocir/local-government-advisory-committee-lgac* and will be emailed to all registered. In the event of cancellation for unforeseen circumstances, please contact the DFO or check the website above for reschedule information.

Dated: December 19, 2022.

Paige Lieberman,

Designated Federal Officer, Local Government Advisory Council, Office of Congressional and Intergovernmental Relations.

[FR Doc. 2022–27860 Filed 12–21–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[NOTICE 2022–24]

Filing Dates for the Virginia Special Election in the 4th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Virginia has scheduled a special election on February 21, 2023, to fill the U.S. House of Representatives seat in the 4th Congressional District held by the late Representative A. Donald McEachin. Committees required to file reports in connection with the Special General Election on February 21, 2023, shall file a 12-day Pre-General and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Virginia Special General Election shall file a 12-day Pre-General Report on February 9, 2023, and a 30-day Post-General Report on March 23, 2023. (See charts below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See charts below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Virginia Special General Election by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Since disclosing financial activity from two different calendar years on one report would conflict with the calendar year aggregation requirements stated in the Commission's disclosure rules, unauthorized committees that trigger the filing of the Pre-General Report will be required to file this report on two separate forms: one form to cover 2022 activity, labeled as the Year-End Report; and the other form to cover only 2023 activity, labeled as the Pre-General Report. Both forms must be filed by February 9, 2023.

Committees filing monthly that make contributions or expenditures in connection with the Virginia General Election will continue to file according to the monthly reporting schedule.

Additional disclosure information for the Virginia special election may be found on the FEC website at *https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/*.

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of the lobbyist bundling disclosure threshold during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

The lobbyist bundling disclosure threshold for calendar year 2022 is $20,200. This threshold amount may increase in 2023 based upon the annual cost of living adjustment (COLA). Once the adjusted threshold amount becomes available, the Commission will publish it in the **Federal Register** and post it on its website.

CALENDAR OF REPORTING DATES FOR VIRGINIA SPECIAL ELECTION CAMPAIGN COMMITTEES INVOLVED IN THE SPECIAL GENERAL (02/21/2023) MUST FILE

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Year-End	—WAIVED—		
Pre-General	02/01/2023	02/06/2023	02/09/2023
Post-General	03/13/2023	03/23/2023	03/23/2023
April Quarterly	03/31/2023	04/15/2023	[2] 04/15/2023

PACS AND PARTY COMMITTEES NOT FILING MONTHLY INVOLVED IN THE SPECIAL GENERAL (02/21/2023) MUST FILE

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Year-End	—WAIVED—		
Pre-General	02/01/2023	02/06/2023	02/09/2023
Post-General	03/13/2023	03/23/2023	03/23/2023
Mid-Year	06/30/2023	07/31/2023	07/31/2023

Dated: December 16, 2022.

On behalf of the Commission.

Allen Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–27780 Filed 12–21–22; 8:45 am]

BILLING CODE 6715–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–XXXX; Docket No. 2022–0001; Sequence No. 18]

Information Collection; Federal Audit Clearinghouse

AGENCY: Technology Transformation Services (TTS), General Services Administration (GSA).

ACTION: Notice of request for comments regarding a request for a new OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (PRA), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement.

DATES: Submit comments on or before February 21, 2023.

ADDRESSES: Submit comments identified by Information Collection 3090–XXXX; Federal Audit Clearinghouse (FAC) to: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–XXXX; Federal Audit Clearinghouse''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–XXXX; Federal Audit Clearinghouse''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–XXXX; Federal Audit Clearinghouse'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite Information Collection

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed on paper by methods other than registered, certified or overnight mail must be received before the Commission's close of business on the last business day before the deadline.

3090–XXXX; Federal Audit Clearinghouse, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mary Katharine Koch, Senior Procurement Analyst, Federal Acquisition Service, GSA, at 202–501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Non-Federal entities (states, local governments, Indian tribes, institutions of higher education, and nonprofit organizations) are required by the Single Audit Act Amendments of 1996 (31 U.S.C. 7501, et. seq.) (Act) and 2 CFR part 200, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,'' (Uniform Guidance) to have audits conducted of their federal award expenditures, and to file the resulting reporting packages (Single Audit reports) and data collection Form SF–SAC (Form) with the Federal Audit Clearinghouse. The Form SF–SAC is Appendix X to 2 CFR part 200.

The Single Audit process is the primary method Federal agencies and pass-through entities use to provide oversight of Federal awards and reduce risk of non-compliance and improper payments. This oversight includes following up on audit findings and questioned costs.

The Office of Management and Budget has historically designated the U.S. Census Bureau (Census) as the FAC, to serve as the government-wide repository of record for Single Audit reports collected under OMB control number 0607–0518. At the direction of OMB, GSA will become the new FAC repository of record, beginning as early as spring 2023 with collection of Single Audit reports with fiscal periods ending in 2023 and later. On approximately October 1, 2023, GSA will also begin data collection of 2016–2022 Single Audit reports currently collected by Census. All these collections will be conducted under this PRA clearance application.

Single Audit reports under this clearance will be collected electronically through GSA's new FAC internet collection portal at *https://www.fac.gov/.*

There are few proposed changes to the existing data elements and data collection method in this clearance. Planned changes are intended to make the reporting process easier, improve data integrity, and ensure compliance with the GREAT Act. All changes listed below are intended to take effect for all audit years collected by GSA, unless specified otherwise.

The proposed changes include:

- end collection of the DUNS number
- upload the majority of data via templates rather than graphical user interface (GUI) in the initial GSA system, subject to creation of a GUI for additional data submission options before expiration of this proposed clearance (collection items are not changing, just the means of collection)
- collect auditee's Unique Entity Identifier (UEI) for audits with fiscal periods ending in 2016–2021 (already approved to be collected for audits with fiscal periods 2022 and future)
- import the auditee name and address directly from SAM.gov (when the auditee's UEI is entered, their auditee name and address will be pulled from *SAM.gov* into Part I of the Form)
- update terminology, similar to the following, in order to be in compliance with the GREAT Act: *change* ''*award*'' *to* ''*federal award*''*;* ''*CFDA*'' *to* ''*Assistance Listing*''*;* ''*sub-award*'' *to* ''*subaward*''*;* ''*sub-recipient*'' *to* ''*subrecipient*''
- clarify on-screen and/or Form instructions to improve data collection and accuracy, as part of the creation of an updated data collection and dissemination system

B. Annual Reporting Burden

Respondents: 80,000 (40,000 auditees and 40,000 auditors).

Responses per Respondent: 1.

Total Annual Responses: 80,000 (40,000 auditees and 40,000 auditors).

Hours per Response: 100 hours for each of the 400 large respondents and 21 hours for each of the 79,600 small respondents.

Total Burden Hours: 1,711,600.

C. Public Comments

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

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–XXXX, Federal Audit Clearinghouse, in all correspondence.

Beth Anne Killoran,

Deputy Chief Information Officer.

[FR Doc. 2022–27893 Filed 12–21–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10823 and CMS–588]

Agency Information Collection Activities: Proposed Collection; 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 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates 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 must be received by February 21, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and

recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

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 N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10823 End-stage Renal Disease (ESRD) Quality Incentive Program (QIP): Study of Quality and Patient Experience

CMS–588 Electronic Funds Transfer (EFT) Authorization Agreement

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. 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 requires federal agencies to publish a 60-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.

Information Collection

1. *Type of Information Collection Request:* New Collection *(*Request for new OMB control number); *Title of Information Collection:* End-stage Renal Disease (ESRD) Quality Incentive Program (QIP): Study of Quality and Patient Experience; *Use:* The Centers for Medicare & Medicaid Services (CMS) oversees the quality of care provided by dialysis facilities by administering the Quality Incentive Program (QIP). As part of the evaluation of this program, CMS seeks to gain a deeper understanding of emerging trends observed across the dialysis landscape by conducting qualitative data collection and analysis. These primary qualitative data collection activities seek to answer the following research questions related to dialysis quality, access to care, health equity, and quality of life:

1. What aspects of patient dialysis care do patients report as a priority?

2. How, if at all, do dialysis facilities evaluate the quality of care they provide?

3. What strategies do providers and dialysis facilities use to improve access to care for underserved populations?

4. What do patients, providers, and stakeholder organizations believe contributes to high quality of life for patients with ESRD? Do perceptions vary by respondent type or respondent characteristics?

5. How do dialysis facilities measure patient satisfaction and quality of life?

6. How do dialysis providers and stakeholder organizations think quality of life for dialysis patients has changed over time? What was the impetus for that change?

We are requesting to collect information through indepth interviews with stakeholders of the CMS end-stage renal disease (ESRD) Quality Incentive Program (QIP). The interviews will collect data from individuals with ESRD, dialysis facility administrators, dialysis social workers, transplant center administrators, corporate representatives from dialysis organizations, and patient advocacy organizations.

This data collection seeks to answer several research questions specific to health outcomes for dialysis patients, as measured by the QIP, that are not available through current literature or secondary data collection. In preparation for this study, the evaluation team conducted a scan of peer-reviewed literature and document review of previous ESRD QIP monitoring and evaluation reports and policy documents describing CMS priorities. Based on the results from this scan, the study team identified persistent knowledge gaps and opportunities for primary data collection. Drawing on high-quality data, empirical rigor, and knowledge of nonprogrammatic factors, the evaluation will benefit CMS by providing data-driven findings and recommendations to improve patient care, reduce health disparities, and promote health equity.

This primary data collection will allow CMS to more comprehensively understand the data being compiled and analyzed quantitatively and will provide more context related to dialysis quality, quality of life of individuals with ESRD, access to dialysis care, and the patient experience, which are current CMS priorities. *Form Number:* CMS–10823 (OMB control number: 0938–NEW); *Frequency:* Once; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions), Individuals and Households; *Number of Respondents:* 1,945; *Total Annual Responses:* 1,945; *Total Annual Hours:* 604. (For policy questions regarding this collection contact Christopher King at (410) 786–6972).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Electronic Funds Transfer Authorization Agreement; *Use:* Section 1815(a) of the Social Security Act provides the authority for the Secretary of Health and Human Services to pay providers/suppliers of Medicare services at such time or times as the Secretary determines appropriate (but no less frequently than monthly). Under Medicare, CMS, acting for the Secretary, contracts with Fiscal Intermediaries and Carriers to pay claims submitted by providers/suppliers who furnish services to Medicare beneficiaries. Under CMS' payment policy, Medicare providers/suppliers have the option of receiving payments electronically. The collection and verification of this information via Form CMS–588 protects our beneficiaries from illegitimate health care providers/suppliers. These procedures also protect the Medicare Trust Funds against fraud. *Form Number:* CMS–588 (OMB control number: 0938–0626); *Frequency:* Occasionally; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 115,833; *Total Annual Responses:* 115,833; *Total Annual Hours:* 57,917. (For policy questions regarding this collection contact Frank Whelan at (410) 786–1302.

Dated: December 19, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–27864 Filed 12–21–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Case Studies of Child Care and Development Fund Lead Agencies' Consumer Education Strategies (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) is proposing to collect qualitative data to examine innovative and promising consumer education strategies that Child Care and Development Fund (CCDF) Lead Agencies are using to help families search for and select child care and early education (CCEE). This information collection aims to present an internally valid description of the experiences of up to six, purposively selected case study sites, not to promote statistical generalization to different sites or service populations.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review-Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Consumer Education and Parental Choice in Early Care and Education project is proposing to conduct qualitative case studies to examine consumer education strategies in up to six sites. Sites will be selected based on a scan of innovative or promising strategies being used to help parents looking for and selecting CCEE.

In each site, we will conduct interviews with CCDF administrators and agency staff, consumer education services staff, and other key informants to collect information on select consumer education strategies and implementation successes and challenges. We will conduct focus groups with parents of young children to gather information about their experiences looking for CCEE.

The study will collect information about (a) the selected consumer education strategies; (b) implementation successes and challenges; and (c) parents' experiences looking for CCEE, including the resources they used and their awareness of and perspectives on state/local consumer education resources.

Respondents: State, Territory, and Tribal CCDF program administrators and agency staff, consumer education services staff, key informants who interact with parents and provide a state/local perspective, and parents/guardians of children under age 6.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Interview Guide for State, Tribal, and Territory CCDF Administrators	12	1	1	12
Interview Guide for Consumer Education Services Staff	30	1	1	30
Key Informant Interview Guide	18	1	.75	14
Parent Focus Group Facilitator's Guide	120	1	1.5	180
Focus Group Brief Questionnaire	120	1	.1	12

Estimated Total Annual Burden Hours: 248.

Authority: Child Care and Development Block Grant (CCDBG) Act of 1990, as amended (42 U.S.C. 9857 et seq.)

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–27808 Filed 12–21–22; 8:45 am]

BILLING CODE 4184–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0736]

Agency Information Collection Activities; Proposed Collection; Comment Request; Tracking Network for PETNet, LivestockNet, and SampleNet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on our use of a tracking network to collect and share safety information about animal food from Federal, State, and Territorial Agencies.

DATES: Either electronic or written comments on the collection of information must be submitted by February 21, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 21, 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.

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–2016–N–0736 for ''Tracking Network for PETNet, LivestockNet, and SampleNet.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Tracking Network for PETNet, LivestockNet, and SampleNet

OMB Control Number 0910–0680—Extension

The Center for Veterinary Medicine and the Partnership for Food Protection developed a web-based tracking network (the tracking network) to allow Federal, State, and Territorial regulatory and public health Agencies to share safety information about animal food. Information is submitted to the tracking network by regulatory and public health Agency employees with membership rights. The efficient exchange of safety information is necessary because it improves early identification and evaluation of a risk associated with an animal food product. We use the information to assist regulatory Agencies to quickly identify and evaluate a risk and take whatever action is necessary to mitigate or eliminate exposure to the risk. Earlier identification and communication with respect to emerging safety information may also mitigate the potential adverse economic impact for the impacted parties associated with such safety

issues. The tracking network was developed under the requirements set forth under section 1002(b) of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–085). Section 1002(b) of the FDAAA required FDA, in relevant part, to establish a pet food early warning alert system.

The tracking network collects: (1) reports of pet food-related illness and product defects associated with dog food, cat food, and food for other pets, which are submitted via the Pet Event Tracking Network (PETNet); (2) reports of animal food-related illness and product defects associated with animal food for livestock animals, aquaculture species, and horses (LivestockNet); and (3) reports about animal food laboratory samples considered adulterated by State or FDA regulators (SampleNet).

PETNet and LivestockNet reports share the following common data elements, the majority of which are drop down menu choices: product details (product name, lot code, product form, and the manufacturer or distributor/packer (if known)), the species affected, number of animals exposed to the product, number of animals affected, body systems affected, product problem/defect, date of onset or the date product problem was detected, the State where the incident occurred, the origin of the information, whether there are supporting laboratory results, and contact information for the reporting member (*i.e.,* name, telephone number will be captured automatically when member logs in to the system). For the LivestockNet report, additional data elements specific to livestock animals are captured: product details (indication of whether the product is a medicated product, product packaging, and intended purpose of the product), class of the animal species affected, and production loss. For PETNet reports, the only additional data field is the animal life stage. The SampleNet reports have the following data elements, many of which are drop down menu choices: product information (product name, lot code, guarantor information, date and location of sample collection, and product description); laboratory information (sample identification number, the reason for testing, whether the food was reported to the Reportable Food Registry, who performed the analysis); and results information (analyte, test method, analytical results, whether the results contradict a label claim or guarantee, and whether action was taken as a result of the sample analysis).

Description of Respondents: Voluntary respondents to this collection of information are Federal, State, and Territorial regulatory and public health agency employees with membership access to the Animal Feed Network.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
PETNet	5	5	25	0.25 (15 minutes)	6.25
LivestockNet	5	5	25	0.25 (15 minutes)	6.25
SampleNet	5	5	25	0.25 (15 minutes)	6.25
Total					18.75

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: December 16, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27825 Filed 12–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–3129]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, 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 Oncologic 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 February 9, 2023, from 12 to 5:30 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–3129. Please note that late, untimely filed comments will not be considered. The docket will close on February 8, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 8, 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 26, 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–3129 for ''Oncologic 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: Takyiah Stevenson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–2507, email: *ODAC@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 the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss investigational new drug application (IND) 157775, for dostarlimab for injection, submitted by GlaxoSmithKline LLC. The proposed indication (use) for this product is for monotherapy in patients with mismatch repair deficiency/microsatellite instability-high locally advanced rectal cancer. FDA would like to obtain the committee's input on the following: (1) the adequacy of the proposed trial(s) to evaluate the benefits and risks of dostarlimab for the proposed indication, including trial design, study population, clinical endpoint, and patient followup; and (2) the adequacy of the proposed data package to permit an assessment of the benefits and risks of dostarlimab for the proposed indication.

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 26, 2023, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 3:30 p.m. to 4:30 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 January 18, 2023. 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 January 19, 2023.

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 Takyiah Stevenson (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: December 16, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27834 Filed 12–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0417]

Request for Nominations of Voting Members on a Public Advisory Committee; National Mammography Quality Assurance Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the National Mammography Quality Assurance Advisory Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current and upcoming vacancies effective February 1, 2023, with this notice. FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before February 21, 2023, will be given first consideration for membership on the National Mammography Quality Assurance Advisory Committee. Nominations received after February 21, 2023, will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All nominations for membership should be submitted electronically by logging into the FDA Advisory Nomination Portal at *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *Regarding all nomination questions for membership:* James P. Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993, 301–796–6313, *James.Swink@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members to fill upcoming vacancies on the National Mammography Quality Assurance Advisory Committee.

I. General Description of the Committee Duties

The National Mammography Quality Assurance Advisory Committee advises the Commissioner of Food and Drugs (the Commissioner) or designee on: (1) developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging that should be considered in the oversight of mammography facilities; (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and (9) determining the costs and benefits of compliance with these requirements.

II. Criteria for Voting Members

The committee consists of a core of 15 members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography. Almost all non-Federal members of this committee serve as Special Government Employees. Members will be invited to serve for terms of up to 4 years.

III. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the advisory committee. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address, telephone number, and email address if available, and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**). Nominations must specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: December 16, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27883 Filed 12–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1167]

Controlled Correspondence Related to Generic Drug Development; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Controlled Correspondence Related to Generic Drug Development.'' This guidance provides information

regarding the process by which generic drug manufacturers and related industry can submit controlled correspondence to FDA requesting information related to generic drug development and the Agency's process for providing communications related to such correspondence. This guidance also describes the process by which generic drug manufacturers and related industry can submit requests to clarify ambiguities in FDA's controlled correspondence response and the Agency's process for responding to those requests. This draft guidance revises the guidance for industry entitled ''Controlled Correspondence Related to Generic Drug Development'' issued in December 2020.

DATES: Submit either electronic or written comments on the draft guidance by February 21, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–D–1167 for ''Controlled Correspondence Related to Generic Drug Development.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lisa Bercu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1672, Silver Spring, MD 20993–0002, 240–402–6902.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Controlled Correspondence Related to Generic Drug Development.'' This guidance provides information regarding the process by which generic drug manufacturers and related industry can submit to FDA controlled correspondence requesting information related to generic drug development and the Agency's process for providing communications related to such correspondence. This guidance also describes the process by which generic drug manufacturers and related industry can submit requests to clarify ambiguities in FDA's controlled correspondence response and the Agency's process for responding to those requests. In accordance with the Generic Drug User Fee Amendments (GDUFA) Reauthorization Performance Goals and Program Enhancements Fiscal Years 2023–2027 (GDUFA III commitment letter), FDA agreed to certain review goals and procedures for the review of controlled correspondence received on or after October 1, 2022.

The GDUFA III commitment letter defines level 1 controlled correspondence and level 2 controlled correspondence, and the draft guidance provides additional details and recommendations concerning what inquiries FDA considers controlled correspondence for the purposes of meeting the Agency's performance goals under the GDUFA III commitment letter. In addition, this guidance provides details and recommendations concerning what information requestors should include in a controlled correspondence to facilitate FDA's consideration of and response to a controlled correspondence and what information FDA will provide in its communications to requestors that have

submitted controlled correspondence. As described in the GDUFA III commitment letter, FDA has also agreed to review and respond to requests to clarify ambiguities in the controlled correspondence response, and the guidance provides information on how requestors can submit these requests and the Agency's process for responding to them.

This draft guidance revises the guidance for industry entitled ''Controlled Correspondence Related to Generic Drug Development'' issued in December 2020. When finalized, this updated guidance will replace the December 2020 guidance. Changes from the 2020 version include updating the guidance to reflect enhancements in the GDUFA III commitment letter (*e.g.,* including information on controlled correspondence that can be submitted during abbreviated new drug application assessment and after issuance of a complete response letter or a tentative approval or approval); providing additional recommendations on requests for information related to inactive ingredients; and other updates that are intended to clarify FDA's recommendations to industry.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Controlled Correspondence Related to Generic Drug Development.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0797, respectively.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents, or https://www.regulations.gov.*

Dated: December 16, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27827 Filed 12–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0530]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Q-Submission Program for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by January 23, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted 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 OMB control number for this information collection is 0910–0756. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Q-Submissions Program for Medical Devices

OMB Control Number 0910–0756—Revision

The guidance entitled ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program'' (*https://www.fda.gov/media/114034/download*) provides an overview of the mechanisms available to submitters through which they can request feedback from, or a meeting with, FDA regarding certain potential or planned medical device submissions reviewed by the Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER). The guidance provides recommendations regarding certain types of Q-Submissions, such as Pre-Submissions, Submission Issue Requests, Study Risk Determinations, Informational Meetings, and other Q-Submission types and other uses of the Q-Submission Program.

Respondents are medical device manufacturers subject to FDA's laws and regulations. FDA's annual estimate of 3,700 submissions is based on recent trends. FDA's administrative and technical staffs, who are familiar with Q-Submissions, estimate that an average of 137 hours is needed to prepare a Q-Submission.

Early Payor Feedback Program

Prior to submitting a Pre-Submission, medical device sponsors may request that one or more payor organizations join a Pre-Submission meeting. Payors include public payors such as Centers for Medicare & Medicaid Services, private health plans, health technology assessment groups, and others who provide input into coverage, procurement, and reimbursement decisions. To facilitate such opportunities to obtain payor input, FDA provides information about our Early Payor Feedback Program (EPFP) and a list of current payor participants on our website (*https://www.fda.gov/about-fda/cdrh-innovation/payor-communication-task-force*). For payors to decide which devices to provide feedback on, we have developed a voluntary form for manufacturers to provide basic information regarding their device. This form is shared with the payors from whom the manufacturer is requesting feedback. We expect preparation and submission of the form to take no more than 2 hours.

eSTAR for Q-Submissions

Under section 745A(b) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379k–1(b)), amended by

section 207 of the FDA Reauthorization Act of 2017 (Pub. L. 115–52), and consistent with the Medical Device User Fee Amendments 2017 (MDUFA IV) Commitment Letter and the FDA guidance document entitled ''Providing Regulatory Submissions for Medical Devices in Electronic Format—Submissions Under Section 745A(b) of the Federal Food, Drug, and Cosmetic Act'' (*https://www.fda.gov/media/131064/download*), FDA has developed an ''electronic Submission Template and Resource'' (eSTAR) for Q-submissions to facilitate the preparation of submissions in electronic format (*https://www.fda.gov/medical-devices/how-study-and-market-your-device/voluntary-estar-program*). The use of eSTAR for Q-Submissions is currently voluntary. We assume approximately 40 percent of Q-Submissions will use eSTAR and that preparation using eSTAR will take approximately half the time of preparing a submission without using eSTAR.

We estimate a setup burden of 5 minutes for new eSTAR users. Respondents will only need to set up eSTAR the first time they use it. We note that because some respondents may have already undergone eSTAR set up for other types of submission, *e.g.,* premarket notification, fewer respondents may need to undergo eSTAR setup than estimated.

In the **Federal Register** of August 9, 2022 (87 FR 48488), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''					
Q-Submissions:					
CDRH	2,160	1	2,160	137	295,920
CBER	60	1	60	137	8,220
Q-Submissions using eSTAR (21 CFR part 814, subparts A through E; section 745A(b) of the FD&C Act)					
CDRH	1,440	1	1,440	69	99,360
CBER	40	1	40	69	2,760
eSTAR setup	1,480	1	1,480	0.08 (5 minutes)	118
Manufacturer request to participate in EPFP	30	1	30	2	60
Total					406,438

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Including the EPFP form represents a revision to this information collection request. Our estimated burden for the information collection reflects the availability of eSTAR to assist electronic preparation of Q-submissions and addition of the EPFP form, resulting in an overall decrease of 85,803 hours.

Dated: December 16, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27815 Filed 12–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–3208]

Agency Information Collection Activities; Proposed Collection; Comment Request; Records and Reports Concerning Experiences With Approved New Animal Drugs: Adverse Event Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on adverse event reporting by FDA on new animal drugs and product manufacturing defects.

DATES: Either electronic or written comments on the collection of information must be submitted by February 21, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 21, 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.

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–3208 for ''Records and Reports Concerning Experiences with Approved New Animal Drugs: Adverse Event Reports.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Records and Reports Concerning Experiences With Approved New Animal Drugs: Adverse Event Reports

OMB Control Number 0910–0284—Extension

This information collection supports statutory and regulatory requirements governing reporting associated with certain animal drug products. With regard to adverse events and product/manufacturing defects associated with approved new animal drugs, section 512(l) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(l)) requires applicants with approved new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) to establish and maintain records and reports of data relating to experience with uses of such drug, or with respect to animal feeds bearing or containing such drug, to facilitate a determination under section 512(e) as to whether there may be grounds for suspending or withdrawing approval of the NADA or ANADA under section 512(e) or 512(m)(4).

In 2020, FDA amended § 514.80 (21 CFR 514.80) to require electronic submission of certain postmarketing safety reports for approved new animal drugs and to provide a procedure for requesting a temporary waiver of the requirement. We, therefore, retain use of certain paper-based forms. Section 514.80 requires applicants and nonapplicants to keep records of and report to us data, studies, and other information concerning experience with new animal drugs for each approved NADA and ANADA. Following complaints from animal owners or veterinarians, or following their own detection of a problem, applicants or nonapplicants are required to submit adverse event reports and product/manufacturing defect reports under § 514.80(b)(1), (b)(2)(i) and (ii), (b)(3), and (b)(4)(iv)(A) and (C) on Form FDA 1932.

The information collection includes electronic submission of adverse event reports and product/manufacturing defect reports under § 514.80(b)(1), (b)(2)(i) and (ii), (b)(3), and (b)(4)(iv)(A) and (C) using Form FDA 1932.

The information collection also includes submissions under § 514.80(d)(2), by an applicant or nonapplicant requesting, in writing, a temporary waiver of the electronic submission requirements. The initial request may be by telephone or email to CVM's Division of Pharmacovigilance and Surveillance, with prompt written follow-up submitted as a letter to the application(s). FDA will grant waivers

on a limited basis for good cause shown. If FDA grants a waiver, the applicant or nonapplicant must comply with the conditions for reporting specified by FDA upon granting the waiver.

Description of Respondents: Respondents to this collection of information are applicants and nonapplicants as defined in 21 CFR 514.3. Respondents include individuals and the private sector (for-profit businesses).

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Medicated feed reports, 510.301(a) and (b).	N/A	8	1	8	.25 (15 minutes) ..	2
Submission of postmarketing safety reports under § 514.80(b)(1), (2)(i) and (ii), (3), and (4)(iv)(A) and (C).	1932	85	1249	98,639	1	98,639
Voluntary reporting FDA Form 1932a for the public.	1932a	106	1	106	1	106
514.80(b)(4) Periodic Drug Experience Reports.	2301	79	20	1,582	16	25,312
514.80(b)(5)(i) Special Drug Experience Reports.	2301	78	215	16,790	2	33,580
514.80(b(5)(ii) Advertisement and Promotional labeling.	2301	38	192	7,282	2	14,564
514.80(b)(5)(iii) Distributor's Statements ...	2301	22	2	36	2	72
514.80(d)(2)	N/A	1	1	1	1	1
Total	.....	.....	.....	.....	.....	172,276

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Recordkeeping, 510.301 [2]	8	1	8	4	32
Recordkeeping, 21 U.S.C. 360b(1) and 514.80(e) [3]	79	1,575.14	124,436	14	1,742,104
Total	.....	.....	.....	.....	1,742,136

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] This estimate includes all recordkeeping by licensed medicated feed manufacturers under § 510.301.
[3] This estimate includes all recordkeeping by applicants of approved NADAs, ANADAs, and conditional NADAs under § 514.80(e).

Upon review of the information collection, we have adjusted our estimated burden to reflect an overall increase of 136,029.75 hours and 1,677,019 responses/records, annually.

Dated: December 16, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27817 Filed 12–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–3054]

M11 Clinical Electronic Structured Harmonised Protocol; International Council for Harmonisation; Draft Guidance for Industry; Draft Template; and Technical Specification; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''M11 Clinical Electronic Structured Harmonised Protocol (CeSHarP),'' and two supplemental documents entitled ''M11 Template,'' and ''M11 Technical Specification.'' The draft guidance, template, and technical specification were prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH), formerly the International Conference on Harmonisation. The draft guidance provides recommendations for a harmonized clinical trial protocol including the organization of standardized content and formatting. The draft template identifies headers, common text, and a set of data fields and terminologies that will be the basis for efficiencies in data exchange. The technical specification recommends the use of an open, non-proprietary standard to enable electronic exchange of clinical protocol information. The intent of the draft guidance and supporting documents is to create an international standard for the content and exchange of clinical trial protocol information facilitating review and assessment by regulators, sponsors,

ethical oversight bodies, investigators, and other stakeholders.

DATES: Submit either electronic or written comments on the draft guidance by February 21, 2023 to ensure that the Agency considers your comment on this draft guidance, template, and technical specification before it begins work on the final versions.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions)*: Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–3054 for ''M11 Clinical Electronic Structured Harmonised Protocol (CeSHarP).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Veronica Pei, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5338, Silver Spring, MD 20993–0002, 240–402–7091, *Yangveronica.Pei@fda.hhs.gov.*

Regarding the ICH: Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993–0002, 301–796–5259, *Jill.Adleberg@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''M11 Clinical Electronic Structured Harmonised Protocol (CeSHarP),'' and two supplemental documents entitled ''M11 Template,'' and ''M11 Technical Specification.'' The draft guidance, template, and technical specification were prepared under the auspices of ICH. ICH has the mission of achieving greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, standardized marketing application submissions, and made many other improvements in the quality of global drug development and manufacturing and the products available to patients.

The six Founding Members of the ICH are FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. Additionally, the Membership of ICH has expanded to include other regulatory authorities and industry associations from around the world (refer to *https://www.ich.org/*).

ICH works by involving technical experts from both regulators and

industry parties in detailed technical harmonization work and the application of a science-based approach to harmonization through a consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In September 2022, the ICH Assembly endorsed the draft guideline entitled ''M11 Clinical Electronic Structured Harmonised Protocol (CeSHarP)'' and two supplemental documents entitled ''M11 Template,'' and ''M11 Technical Specification'' and agreed that the materials should be made available for public comment. The draft guideline and supplemental documents are the product of the Multidisciplinary Expert Working Group of the ICH. Comments about these draft guidances will be considered by FDA and the Multidisciplinary Expert Working Group.

The draft guidance provides recommendations for a harmonized clinical trial protocol including the organization of standardized content and formatting. The draft template identifies headers, common text, and a set of data fields and terminologies that will be the basis for efficiencies in data exchange. The technical specification recommends the use of an open, nonproprietary standard to enable electronic exchange of clinical protocol information. The intent of the draft guidance and supporting documents is to create an international standard for the content and exchange of clinical trial protocol information facilitating review and assessment by regulators, sponsors, ethical oversight bodies, investigators, and other stakeholders.

The draft guidance has been left in the original ICH format. The final guidance and supporting materials will be reformatted and edited to conform with FDA's good guidance practices regulation (21 CFR 10.115) and style before publication. The draft guidance, template, and technical specification when finalized, will represent the current thinking of FDA on the topics they address. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 pertaining to clinical trial design and protocols have been approved under OMB control number 0910–0014. The collections of information pertaining to good clinical practice and for the implementation of improved and efficient approaches to clinical trial design have been approved under OMB control number 0910–0843.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance, template, and technical specification at *https://www.regulations.gov, https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.*

Dated: December 16, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27832 Filed 12–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Fellowships in Digestive Diseases and Nutrition.

Date: February 16–17, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7011, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 16, 2022.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27823 Filed 12–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice To Announce the Updated Significant Changes to the Revised NIH Grants Policy Statement for Fiscal Year 2023

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces publication of the updated Significant Changes that have already been made to the NIH Grants Policy Statement (NIHGPS) in fiscal year 2022 that will be reflected in the GPS for fiscal year 2023. The NIHGPS provides both up-to-date policy guidance that serves as NIH standard terms and conditions of award for all NIH grants and cooperative agreements, and extensive guidance to those who are interested in pursuing NIH grants. This update incorporates significant changes for FY 2023, such as new and modified

requirements, clarifies certain policies, and implements changes in statutes, regulations, and policies that have been implemented through appropriate legal and/or policy processes since the previous version of the NIHGPS dated December 2021.

DATES: The Significant Changes to the revised NIHGPS for Fiscal Year 2023 is now available for viewing.

ADDRESSES: Please visit our website to view the updated Significant Changes for Fiscal Year 2023 and NIHGPS at *https://grants.nih.gov/policy/nihgps/index.htm.*

FOR FURTHER INFORMATION CONTACT: Xanthia James, Director, Division of Grants Policy, Office of Policy for Extramural Research Administration, NIH, Rockledge I, Suite 350, Bethesda, MD 20817. Email: *Xanthia.James@nih.gov*. Phone number (301) 435–0949.

SUPPLEMENTARY INFORMATION: The requirements set out in the NIHGPS are aligned with 2 CFR part 200, as implemented for the Health and Human Services (HHS) at 45 CFR part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards. This update is applicable to all NIH grants and cooperative agreements with budget periods beginning on or after October 1, 2022. This update supersedes, in its entirety, the NIHGPS dated December 2021. Previous versions of the NIHGPS remain applicable as standard terms and conditions of award for all NIH grants and cooperative agreements with budget periods that began prior to October 1, 2022. This update incorporates new and modified requirements, clarifies certain policies, and implements changes in statutes, regulations, and policies that have been implemented through appropriate legal and/or policy processes since the previous version of the NIHGPS dated December 2021. The current version of the NIHGPS, in both HTML and PDF formats, as well as previous versions of the NIHGPS and documents summarizing significant changes implemented with each revision, are available at *https://grants.nih.gov/policy/nihgps/index.htm.*

Dated: December 1, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–27770 Filed 12–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Support for Research Excellence (SuRE) Program (R16).

Date: March 23, 2023.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medicine Science, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health 45, Center Drive, Room 3AN12, Bethesda, MD 20892, 301–435–0807, *slicelw@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 16, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27829 Filed 12–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Using the Science of Science to Accelerate Progress on Alzheimer's Disease.

Date: January 24, 2023.

Time: 12:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joshua Jin-Hyouk Park, Ph.D., Scientific Review Officer, National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–6208 *joshua.park4@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 16, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27822 Filed 12–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR22–069: High Impact, Interdisciplinary Science in NIDDK in Kidney related Research (RC2 Clinical Trial Optional).

Date: February 15, 2023.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 16, 2022.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27824 Filed 12–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Health Outcomes in Aging Populations with Dementia.

Date: January 20, 2023.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building 7201, Wisconsin Avenue Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building 7201, Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 16, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27833 Filed 12–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Special Volunteer and Guest Researcher Assignment (Office of Intramural Research, Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Arlyn Garcia-Perez, Director of Policy and Analysis, Office of Intramural Research, Office of the Director, National Institutes of Health, 1 Center Drive MSC 0140, Building 1, Room 160, MSC–0140, Bethesda, Maryland 20892 or call non-toll-free number (301) 496–1921 or (301) 496–1381 or Email your request, including your address to: *GarciaA@od.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on October 4, 2022, pages 60179–60180 (87 FR 60179) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of Intramural Research (OIR), Office of the Director, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Special Volunteer and Guest Researcher Assignment form—REVISION OMB # 0925–0177, exp., date April 30, 2024, Office of Intramural Research (OIR), Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: Form Number: NIH–590 is a single form completed by an NIH official for each Guest Researcher or Special Volunteer prior to his/her arrival at NIH. The information on the form is necessary for the Special Volunteer to acknowledge and agree to the conditions and responsibilities of their volunteer services at NIH via the Special Volunteer Agreement as the legal instrument. The DHHS Office of General Counsel, in consultation with the Department of Justice, now requires that revisions be made to items 7 and 8 of the Special Volunteer Agreement, NIH Form 590–2. Special Volunteers and Guest Researchers both fill the main collection instrument, NIH Form 590; and Guest Researchers fill a separate Guest Researcher Agreement, NIH Form 590–1. No revisions are proposed for these other forms currently. Form NIH–590 is a single form completed by an NIH official for each Special Volunteer or Guest Researcher prior to her/his arrival at NIH. The information on the form is necessary for the approving official to reach a decision on whether to allow a Guest researcher to use NIH facilities, or whether to accept volunteer services offered by a Special Volunteer. If the original assignment is extended, another form notating the extension is completed to update the file. In addition, each Special Volunteer and

Guest Researcher reads and signs an NIH Agreement.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 652.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual hour burden hours
Special Volunteer and Guest Researcher Assignment.	Special Volunteers and Guest researchers.	2,300	2	6/60	460
NIH Special Volunteer Agreement	Special Volunteers	2,100	1	5/60	175
NIH Guest Researcher Agreement ...	Guest Researchers	200	1	5/60	17
Totals	.....	2,300	6,900	.....	652

Dated: December 14, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–27759 Filed 12–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0707]

Application for Recertification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard seeks comments on, the application for recertification submitted by the Prince William Sound Regional Citizen's Advisory Council (PWSRCAC) for March 1, 2022, through February 28, 2023. Under the Oil Pollution Act of 1990 (OPA 90), the Coast Guard may certify on an annual basis, the PWSRCAC. This advisory group monitors the activities of terminal facilities and crude oil tankers under the Prince William Sound program established by the statute. The Coast Guard may certify an alternative voluntary advisory group in lieu of the PWSRCAC. The current certification for the PWSRCAC will expire February 28, 2023.

DATES: Public comments on PWSRCAC's recertification application must reach the Seventeenth Coast Guard District on or before February 8, 2023.

ADDRESSES: You may submit comments identified by docket number USCG-2022–0707 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this recertification, call or email LT Benjamin Bauman, Seventeenth Coast Guard District (dpi); telephone (907)463–2809; email *benjamin.a.bauman@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0707 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Public meeting. We do not plan to hold a public meeting. But you may submit a request for one on or before January 15, 2023, using the method specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid the process of thoroughly considering the application for recertification, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 62600), to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36504), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act.

Most recently, on September 16, 2002 (67 FR 58440), the Coast Guard changed its policy on recertification procedures

for regional citizen's advisory council by requiring applicants to provide comprehensive information every three years. For the two years in between, applicants only submit information describing substantive changes to the information provided at the last triennial recertification. This is the year in this triennial cycle that PWSRCAC must provide comprehensive information.

The Coast Guard is accepting comments concerning the recertification of PWSRCAC. At the conclusion of the comment period, February 8, 2023, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify PWSRCAC by letter of the action taken on their respective applications. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: December 16, 2022.

N. A. Moore,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 2022–27895 Filed 12–21–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–59]

60-Day Notice of Proposed Information Collection: FHA TOTAL Mortgage Scorecard; OMB Control No.: 2502–0556

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 21, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at Colette. *Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: FHA TOTAL Mortgage Scorecard.

OMB Approval Number: 2502–0556.

Type of Request: Extension of currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: FHA-approved mortgagees must certify compliance with HUD regulations, Handbooks, Guidebooks, and Mortgagee Letters. Within this scope, mortgagees must certify compliance with FHA TOTAL Mortgage Scorecard requirements at 24 CFR 203.255(b)(5). This certification is performed electronically for initial access and annual ongoing access to FHA TOTAL Mortgage Scorecard.

Respondents: Business or other for-profit (lenders).

Estimated Number of Respondents: 2,343.

Estimated Number of Responses: 2,343.

Frequency of Response: One per FHA-approved mortgagee.

Average Hours per Response: 0.05 hour.

Total Estimated Burdens: 117.15.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Jeffrey D. Little,

General Deputy Assistant Secretary, Office of Housing.

[FR Doc. 2022–27768 Filed 12–21–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–67]

30-Day Notice of Proposed Information Collection: Evaluation of Moving To Work Cohort 4 Landlord Incentives; OMB Control No.: 2528–New

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below

will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 23, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 1, 2022, at 87 FR 46991.

A. Overview of Information Collection

Title of Information Collection: Evaluation of Moving to Work Cohort 4 Landlord Incentives.

OMB Approval Number: 2528–New.

Type of Request: New collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Office of Policy Development and Research at the Department of Housing and Urban Development (HUD) is proposing the collection of information for the Evaluation of Moving to Work Cohort 4 Landlord Incentives.

Congress authorized HUD in 2016 to add 100 PHAs to the Moving to Work Demonstration and mandated that HUD use the expansion to test the impact of specific policies intended to improve the efficacy of PHA programs. The Moving to Work Cohort 4 Landlord Incentives will investigate whether offering incentives to landlords to participate in the Housing Choice Voucher (HCV) program will increase the number of participating landlords and improve the lease-up rate of households with a housing choice voucher.

This **Federal Register** Notice provides an opportunity to comment on the information collection for the Evaluation of Moving to Work Cohort 4 Landlord Incentives.

After OMB approval of the Paperwork Reduction Act package, Abt Associates will conduct the research over a 3-year period, including the following: conduct a baseline web-based survey of sampled PHAs, baseline site interviews with PHA staff, phone interviews with PHA staff, a follow-up web survey with PHA staff, follow-up site visits at PHA locations, and interviews with landlords in sampled cities.

Information collection	Assumption	Estimated respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Hourly cost per response	Annual cost
Baseline 05_Web Survey Treatment PHA 10.05.2022.	All PHAs	140.00	0.33	46.67	0.50	$23.33	$54.96	$1,282.43
06_Baseline Web Survey Comparison PHA 10.05.2022.								
09_Baseline Site Visit Interviews Y2 10.05.2022.	29 PHAs, 4 interviews per PHA.	112.00	0.33	37.33	1.00	37.33	54.96	2,051.88
10_Phone Interviews Y3 10.05.2022.	29 PHAs, 3 interviews per PHA.	84.00	0.33	28.00	0.75	21.00	54.96	1,154.18
07_Follow-up Web Survey Treatment PHA 10.05.2022.	All PHAs	140.00	0.33	46.67	0.50	23.33	54.96	1,282.43
08_Follow-up Web Survey Comparison PHA 10.05.2022.								
11_Follow-up Site Visit Interviews Treatment PHA Y5 10.05.2022.	50 PHAs, 4 interviews per PHA.	200.00	0.33	66.67	1.00	66.67	54.96	3,664.07
12_Follow-up Site Visit Interviews Comparison PHA Y5 10.05.2022.								
14_Landlord Interviews TIA 10.05.2022.	All landlords	400.00	0.33	133.34	1.00	133.34	35.20	4,693.43
15_Landlord Interviews QuIP 10.05.2022.								
Total Annual Cost								14,128.42
Total Cost for 3 Years								42,385.25

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Departmental PRA Clearance Officer, Office of the Chief Data Officer.

[FR Doc. 2022–27796 Filed 12–21–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–58]

60-Day Notice of Proposed Information Collection: Nonprofit Application and Recertification for FHA Mortgage Insurance Programs; OMB Control No.: 2502–0540

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 21, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Nonprofit Application and Recertification for Mortgage Insurance Programs.

OMB Approval Number: 2502–0540.

OMB Expiration Date: April 30, 2023.

Type of Request: Extension of currently approved collection.

*Form Number*s: None.

Description of the need for the information and proposed use: Specific information and related documents are needed to determine the eligibility of Nonprofit organizations for the participation in FHA-insured mortgage transactions.

Respondents: Nonprofit organizations.

Estimated Number of Respondents: 173.

Estimated Number of Responses: 173.

Frequency of Response: Annually.

Average Hours per Response: 60.

Total Estimated Burden: 9,398.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Jeffrey D. Little,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2022–27767 Filed 12–21–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–53]

60-Day Notice of Proposed Information Collection: Housing Counseling Federal Advisory Committee (HCFAC); Forms: HUD–90005, Application for Membership on the Housing Counseling Federal Advisory Committee and OGE–450, Confidential Financial Disclosure Report; OMB Control No.: 2502–0606

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 21, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. HUD welcomes and is

prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Housing Counseling Federal Advisory Committee (HCFAC).

OMB Approval Number: 2502–0606.

OMB Expiration Date: September 30, 2023.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–90005; OGE–450.

Description of the need for the information and proposed use: The Expand and Preserve Homeownership through Counseling Act (Pub. L. 111–203, 1441, July 21, 2010) (Act), added 42 U.S.C. 3533(g)(4) to direct the Office of Housing Counseling to form a Housing Counseling Federal Advisory Committee (HCFAC) with members equally representing the mortgage and real estate industries, including housing consumers and housing counseling agencies certified by the Secretary. The HUD–90005 Application for Membership on the Housing Counseling Federal Advisory Committee will collect information for individuals in those groups who want to serve on the HCFAC. The information will be used by HUD's Office of Housing Counseling to review and recommend to the Secretary for appointment the members of the Housing Counseling Federal Advisory Committee to ensure the members meet the requirements of the Expand and Preserve Homeownership through Counseling Act and of the Federal Advisory Committee Act.

Additionally, HCFAC members must adhere to the conflict-of-interest rules applicable to Special Government Employees as such employees are defined in 18 U.S.C. 202(a). The rules include relevant provisions in 18 U.S.C. related to criminal activity, Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635) and Executive Order 12674 (as modified by Executive Order 12731). Therefore, applicants will be required to submit to pre-appointment screenings relating to identity of interest and financial interests that HUD might require. If selected, HCFAC members will also be asked to complete OGE–450 Confidential Financial Disclosure Report (OGE–450).

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Number of Respondents: 162.

Estimated Number of Responses: 162.

Frequency of Response: Once.

Average Hours per Response: 1.61.

Total Estimated Burden: 261 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Jeffrey D. Little,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2022–27760 Filed 12–21–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–65]

30-Day Notice of Proposed Information Collection: American Housing Survey; OMB Control No.: 2528–0017

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 23, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has

submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 19, 2022 at 87 FR 57215.

A. Overview of Information Collection

Title of Information Collection American Housing Survey.

OMB Approval Number: 2528–0017.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use:

The purpose of the American Housing Survey (AHS) is to supply the public with detailed and timely information about housing quality, housing costs, and neighborhood assets, in support of effective housing policy, programs, and markets. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1710Z–10a mandates the collection of this information.

Like the previous surveys, the 2023 AHS will collect ''core'' data on subjects, such as the amount and types of changes in the housing inventory, the physical condition of the housing inventory, the characteristics of the occupants, housing costs for owners and renters, mortgages, the persons eligible for and beneficiaries of assisted housing, remodeling and repair frequency, reasons for moving, the number and characteristics of vacancies, and characteristics of resident's neighborhood. In addition to the ''core'' data, HUD plans to collect supplemental data on potential health and safety hazards in the home, housing insecurity, perceptions of urbanization, sexual orientation and gender identity, parent's country of birth, first-generation home ownership, housing characteristics that increase heat vulnerability, and experience and consequences of power outages.

In 2015, the AHS began a new longitudinal panel. The sample design has two components: an integrated longitudinal national sample, and an independent metropolitan areas longitudinal sample. The integrated longitudinal national sample includes three parts: (1) 36,610 national cases representative of the U.S. and 9 Census Divisions outside the top 15 metropolitan areas; (2) 12,068 HUD-assisted oversample cases; and (3) 48,273 sample cases of the top 15 metropolitan areas in the U.S. The total integrated longitudinal national sample for 2021 will consist of 96,951 housing units. In addition to the integrated national longitudinal sample, HUD plans to conduct 10 additional metropolitan area longitudinal samples, each with approximately 3,000 housing units (for a total 32,830 metropolitan area housing units). The 10 additional metropolitan area longitudinal samples were last surveyed in 2019.

To help reduce respondent burden on households in the longitudinal sample, the 2023 AHS will make use of dependent interviewing techniques, which will decrease the number of questions asked. Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

HUD needs the AHS data for the following two reasons:

1. With the data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Occupied Interviews	88,251	1	88,251	.75	66,188	$22	$1,456,142
Vacant Interviews	12,978	1	12,978	.08	1,038	22	22,841
Non-interviews	24,659	1	24,659	.00	0	0	0
Ineligible	3,893	1	3,893	.00	0	0	0
Subtotal	129,781	1	129,781	.00	67,226	0	1,478,983
Reinterviews	9,084	1	9,084	.17	1,544	22	33,974
Total	138,865	.....	138,865	.....	68,770	.....	1,512,957

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Departmental PRA Clearance Officer, Office of the Chief Data Officer.

[FR Doc. 2022–27781 Filed 12–21–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L14400000 PN0000 HQ350000 212; OMB Control No. 1004–0009]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Land Use Application and Permit

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management

(BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 23, 2023.

ADDRESSES: Written comments and recommendations for this information collection request (ICR) should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Grace M. Wagstaff by email at *gwagstaff@blm.gov,* or by telephone at (279) 202–4627. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided 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 22, 2022 (87 FR 57920). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on the proposed ICR described below. The BLM is especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) The accuracy of 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 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 submitted 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: The BLM uses the information to determine whether private citizens, State and local governments, and businesses are qualified to use, occupy, or develop the public lands under certain conditions. The land uses that may be authorized are agricultural development, residential, recreation concessions, business, industrial, and commercial. This OMB Control Number is currently scheduled to expire on June 30, 2023. The BLM request that OMB renew this OMB Control Number for an additional three years.

Title of Collection: Land Use Application and Permit (43 CFR part 2920).

OMB Control Number: 1004–0009.

Form Numbers: Form 2920–1.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals, State and local governments, and businesses that wish to use public lands.

Total Estimated Number of Annual Respondents: 407.

Total Estimated Number of Annual Responses: 407.

Estimated Completion Time per Response: Varies from 1 to 120 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 2,455.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $145,760.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, 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 PRA of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin King,

Information Collection Clearance Officer.

[FR Doc. 2022–27863 Filed 12–21–22; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-35023; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before December 10, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by January 6, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before December 10, 2022. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations Submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

GEORGIA

Fulton County

Washington Carver Homes, 1100 Washington Cir., East Point, SG100008543

MINNESOTA

Clay County

District No. 3 School, 10389 280th St. South, Parke Township, SG100008545

Pipestone County

Poorbaugh, John M., Block, 102 East Wall St., Jasper, SG100008546

Scott County

Schroeder, Herman, House and Livery, 717 Bluff Ave. East (current address 717–719 Bluff Ave. East), Shakopee, SG100008547

NEW YORK

Ontario County

Central Naples Historic District, Portions of Academy, Cross, Dumond, Elizabeth, Lyon, Mechanic, Mill, Monier, Ontario, North Main, Reed, South Main, Thrall, and Wall Sts., East and West Aves., Naples, SG100008554

OHIO

Hamilton County

St. Mark's Church and Rectory, 3500 Montgomery Rd., Cincinnati, SG100008544

PENNSYLVANIA

Philadelphia County

Penn Asylum for Indigent Widows and Single Women, 1401 East Susquehanna Ave., Philadelphia, SG100008541

TEXAS

Bexar County

Heermann Store, (Farms and Ranches of Bexar County, Texas), 4738 West Loop 1604, Von Ormy vicinity, MP100008551

Dallas County

Garland Bank & Trust Company, 111 South Garland Ave., Garland, SG100008552

Smith County

Campbell Building-Union Bus Station, 311 North Bois d' Arc Ave., Tyler, SG100008548

WISCONSIN

Brown County

Mason Manor, 1424 Admiral Ct., Green Bay, SG100008555

A request for removal has been made for the following resources:

PENNSYLVANIA

Chester County

Rudolph and Arthur Covered Bridge, (Covered Bridges of Chester County TR), North of Lewisville on T 307, New London/Elk Townships, West Grove vicinity, OT80003473

Lebanon County

Immel, John, House, East of Myerstown on Flanagan Rd., Myerstown vicinity, OT80003548

A request to move has been received for the following resource:

IOWA

Polk County

Southeast Water Trough, 1000 Scott Ave., Des Moines, MV76000801

Nomination Submitted by Federal Preservation Officer

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

MONTANA

Powell County

Monture Guard Station, Lolo NF, Seeley Lake Ranger Dist., Ovando vicinity, SG100008550

Authority: Section 60.13 of 36 CFR part 60.

Dated: December 14, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–27896 Filed 12–21–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1330 (Review)]

Dioctyl Terephthalate From South Korea; Scheduling of a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on dioctyl terephthalate from South Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: December 16, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher S. Robinson ((202) 205–2602), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: Background.—On October 4, 2022, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review should proceed (87 FR 75067, December 7, 2022); accordingly, a full review is being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207,

subparts A, D, E, and F (19 CFR part 207).

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.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on April 12, 2023, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.— The Commission will hold an in-person hearing in connection with this review beginning at 9:30 a.m. on April 27, 2023. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 21, 2023. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the review, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on April 26, 2023. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on April 26, 2023. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 20, 2023. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 5, 2023. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before May 5, 2023. On May 30, 2023, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 1, 2023, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 19, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–27873 Filed 12–21–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1281]

Certain Video Security Equipment and Systems, Related Software, Components Thereof, and Products Containing Same; Clarification Concerning Commission Issuance of a Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

The U.S. International Trade Commission (the Commission) issued a Notice, 86 FR 51182–83, which was published in the **Federal Register** on Tuesday, September 14, 2021. The Commission clarifies that the Office of Unfair Import Investigations is not a party to the investigation referenced in the Notice.

Issued: December 16, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–27802 Filed 12–21–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0004]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection; Interstate Firearms Shipment Theft/Loss Report—ATF F 3310.6

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0004 (Interstate Firearms Shipment Theft/Loss Report—ATF F 3310.6) is being revised to include minor edits, formatting changes and addition of the Privacy Act Notice to the form.

DATES: Comments are encouraged and will be accepted for an additional 30 days until January 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

Type of Information Collection: Revision of a Currently Approved Collection.

The Title of the Form/Collection: Interstate Firearms Shipment Theft/Loss Report.

The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form number: ATF F 3310.6.

Component Sponsor: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: Federal Government.

Abstract: Shipping/Carrier companies can submit a voluntary report of a firearm(s) lost in shipment to the ATF Stolen Firearms Program. Reports can be filed using the Interstate Firearms Shipment Theft/Loss Report—ATF Form 3310.6.

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: An estimated 950 respondents will utilize the form once annually, and it will take each respondent approximately 20 minutes to complete their responses.

An estimate of the total public burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 317 hours, which is equal to 950 (total respondents) * 1 (# of response per respondent) * .3333 (20 minutes).

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, 3.E–206, Washington, DC 20530.

Dated: December 16, 2022.

Robert Houser,

Department Clearance Officer, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2022–27800 Filed 12–21–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On December 16, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of New Jersey in *United States* v. *Alden Leeds, Inc., et al.,* Civil Action No. 2:22–cv–07326. The proposed Consent Decree resolves the United States' claim against 85 defendants under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9607(a), relating to Operable Unit 2 and Operable Unit 4 of the Diamond Alkali Superfund Site (''Site'') in New Jersey.

In the proposed Consent Decree, the 85 Settling Defendants agree to pay $150 million in cleanup costs. EPA Region 2's estimated future cleanup costs for Operable Unit 2 and Operable Unit 4 of the Site are $1.82 billion. EPA sponsored an allocation process, which involved hiring a third party neutral to perform an allocation. The process concluded in December 2020 with a Final Allocation Recommendation Report that recommends relative shares of responsibility for each allocation party's facility or facilities evaluated in the allocation. After review of the Final Allocation Recommendation Report, EPA identified the parties who were eligible to participate in the proposed Consent Decree. Based on the results of the allocation, the United States concluded that the Settling Defendants, individually and collectively, are responsible for a minor share of the response costs incurred and to be incurred at or in connection with the cleanup of Operable Unit 2 and Operable Unit 4, for releases from the facilities identified in the proposed Consent Decree. Certain Settling Defendants had previously resolved their liability for Operable Unit 2, and so were not evaluated in the allocation, but are participating in the proposed Consent Decree in order to resolve their liability for Operable Unit 4. The Consent Decree includes covenants not to sue related to Operable Unit 2 and Operable Unit 4 under sections 106 and 107(a) of CERCLA, as well as contribution protection under section 113 of CERCLA. The consent decree does not include reopeners for previously unknown conditions or information, or for cost overruns, but the settlement amount collectively paid by the Setting Defendants protects against the risk that future costs will exceed EPA's estimate of the future cleanup costs for Operable Unit 2 and Operable Unit 4.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Alden Leeds, Inc., et al.,* Civil Action No. 2:22–cv–07326, D.J. Ref. No. 90–11–3–07683/1. All comments must be submitted no later than forty-five (45) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed modification upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $36.25 (25 cents per page reproduction cost) payable to the United States Treasury. In addition, the Final Allocation Recommendation Report may be examined at this EPA website: *https://semspub.epa.gov/src/collection/02/SC41378.*

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–27821 Filed 12–21–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0005]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection; Application and Permit for Importation of Firearms, Ammunition, and Defense Articles—ATF Form 6—Part I (5330.3A)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0005 (Application and Permit for Importation of Firearms, Ammunition, and Defense Articles) is being revised due to minor material changes to the form, such as formatting and an additional sub question.

DATES: Comments are encouraged and will be accepted for an additional 30 days until January 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

Type of Information Collection: Revision of a currently approved collection.

The Title of the Form/Collection: Application and Permit for Importation of Firearms, Ammunition and Defense Articles.

The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form number: Form Number ATF Form 6—Part I (5330.3A).

Component Sponsor: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Businesses or other for-profit.

Other: Federal Government, State, Local or Tribal Government, and individuals or households.

Abstract: The Application and Permit for Importation of Firearms, Ammunition, and Defense Articles—ATF Form 6—Part I (5330.3A) allows ATF to determine if the article(s) described on the application qualifies for importation and serves as authorization for the importer.

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: An estimated 10,000 respondents will utilize the form once annually, and it will take each respondent approximately 39 minutes to complete their responses.

An estimate of the total public burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 6500 hours, which is equal to 10,000 (# respondents) * 1 (# of response per respondent) * .65 (39 minutes).

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, 3.E–206, Washington, DC 20530.

Dated: December 16, 2022.

Robert Houser,

Department Clearance Officer, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2022–27797 Filed 12–21–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Technical Advisory Committee; Request for Nominations

AGENCY: Bureau of Labor Statistics (BLS), Department of Labor.

ACTION: Request for nominations for membership on the BLS Technical Advisory Committee.

SUMMARY: The BLS is soliciting new members for the Technical Advisory Committee (TAC) to address five member terms expiring on April 27, 2023, one current vacancy, and any additional vacancies that may occur on the TAC between the date of publication of this notice and April 27, 2023.

DATES: Nominations for the TAC membership should be transmitted by January 23, 2023.

ADDRESSES: Nominations for the TAC membership should be emailed to *BLSTAC@bls.gov.* Nominations are only being accepted through email as BLS is in maximum telework status pending its relocation to Suitland.

FOR FURTHER INFORMATION CONTACT: Jay Stewart, Senior Research Economist, U.S. Bureau of Labor Statistics. Telephone: 202–691–7376. This is not a toll-free number. Email: *BLSTAC@bls.gov.*

SUPPLEMENTARY INFORMATION: The TAC provides advice to the Bureau of Labor Statistics on technical aspects of data collection and the formulation of economic measures and makes recommendations on areas of research. On some technical issues, there are differing views and receiving feedback at public meetings provides BLS with the opportunity to consider all viewpoints.

The Committee consists of approximately 16 members who serve as Special Government Employees. Members are appointed by the BLS and are approved by the Secretary of Labor. Committee members are experts in economics, statistics, data science, and survey design. They are prominent experts in their fields and recognized for their professional achievements and objectivity. The economic experts will have research experience with technical issues related to BLS data and will be familiar with employment and unemployment statistics, price index numbers, compensation measures, productivity measures, occupational and health statistics, or other topics relevant to BLS data series. The statistical experts will have experience with sample design, data analysis, computationally intensive statistical methods, non-sampling errors or other areas which are relevant to BLS work. The data science experts will have experience compiling, modeling, analyzing, and interpreting large sets of structured and unstructured data. The survey design experts will have experience with questionnaire design, usability, or other areas of survey development. Collectively, the members will provide a balance of expertise in all of these areas.

BLS invites persons interested in serving on the TAC to submit their names for consideration for committee membership. Typically, TAC members are appointed to three-year terms, and serve as Special Government Employees.

The Bureau often faces highly technical issues while developing and maintaining the accuracy and relevancy of its data on employment and unemployment, prices, productivity, and compensation and working conditions. These issues range from how to develop new measures to how to make sure that existing measures account for the ever-changing economy. BLS presents issues and then draws on the specialized expertise of Committee members representing specialized fields within the academic disciplines of economics, statistics and data science, and survey design. Committee members are also invited to bring to the attention of BLS issues that have been identified in the academic literature or in their own research.

The TAC was established to provide advice to the Commissioner of Labor Statistics on technical topics selected by the BLS. Responsibilities include, but are not limited to providing comments on papers and presentations developed by BLS research and program staff, conducting research on issues identified by BLS on which an objective technical opinion or recommendation from outside of BLS would be valuable, recommending BLS conduct internal research projects to address technical problems with BLS statistics that have been identified in the academic literature, participating in discussions of areas where the types or coverage of economic statistics could be expanded or improved and areas where statistics are no longer relevant, and establishing working relationships with professional associations with an interest in BLS statistics, such as the American Statistical Association and the American Economic Association.

Nominations: BLS is looking for committed TAC members who have a strong interest in, and familiarity with, BLS data. The Agency is looking for nominees who use and have a comprehensive understanding of economic statistics. BLS is committed to bringing greater diversity of thought, perspective, and experience to its advisory committees. Nominees from all races, gender, age, and disabilities are encouraged to apply. Interested persons may nominate themselves or may submit the name of another person who they believe to be interested in and qualified to serve on the TAC. Nominations may also be submitted by organizations.

Nominations should include the name, address, and telephone number of the candidate. Each nomination should include a summary of the candidate's training or experience relating to BLS data specifically, or economic statistics more generally, and a curriculum vitae. In selecting TAC members, BLS will consider individuals nominated in response to this notice, as well as other qualified individuals. Candidates should not submit information they do not want publicly disclosed. BLS will conduct a basic background check on candidates before their appointment to the TAC. The background check will involve accessing publicly available, internet-based sources. BLS will contact nominees for information on their status as registered lobbyists. Anyone currently subject to federal registration requirements as a lobbyist is not eligible for appointment to the TAC. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the TAC. Historically, this has meant a commitment of at least two days per year.

Authority: This notice was prepared in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

Signed at Washington, DC, this 15th day of December 2022.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2022–27831 Filed 12–21–22; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Inflation Reduction Act Wage Rates and Wage Determinations

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department) is soliciting comments concerning a proposed extension of the information collection request (ICR) titled ''Inflation Reduction Act Wage Rates and Wage Determinations.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA). The Department proposes to extend the approval of this existing information collection without change to existing requirements. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the

ADDRESSES section below on or before February 21, 2023.

ADDRESSES: You may submit comments identified by Control Number 1235–0034, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 2022, President Biden signed H.R. 5376 (Pub. L. 117–169), a budget reconciliation measure commonly referred to as the ''Inflation Reduction Act of 2022'' (IRA). The IRA contains several sections that provide enhanced tax incentives to pay prevailing wages.

The increased credit and deduction amounts generally become effective for qualified facilities, projects, property, or equipment that begin construction (or begin installation under IRC 179D) 60 days after publication of guidance by the Secretary of the Treasury. The guidance states, in part:

> To rely on the procedures to request a wage determination or wage rate, and to rely on the wage determination or rate provided in response to the request, the taxpayer must contact the Department of Labor, Wage and Hour Division via email at *IRAprevailingwage@dol.gov* and provide the Wage and Hour Division with the type of facility, facility location, proposed labor classifications, proposed prevailing wage rates, job descriptions and duties, and any rationale for the proposed classifications. After review, the Department of Labor, Wage and Hour Division will notify the taxpayer as to the labor classifications and wage rates to be used for the type of work in question in the area in which the facility is located.

The IRA allows taxpayers to claim enhanced tax credit and deduction amounts in situations in which Davis-Bacon Act (DBA) prevailing wage rates are not required but are voluntarily paid as a condition of claiming the enhanced amount. The purpose of this ICR is to obtain approval to collect the data needed to issue wage rates for the universe of respondents who are not already included in the collection approved under 1235–0023 (those who are subject to the DBA and the Davis-Bacon Related Acts (DBRA)). This collection applies to those outside the scope of DBA/DBRA who will need an applicable wage determination or wage rates for classifications that are not in an applicable wage determination to satisfy prevailing wage requirements and thereby take the enhanced tax credit and deduction amounts under the IRA.

This information collection is subject to the PRA. A federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The Department obtains OMB approval for this information collection under Control Number 1235–0034.

OMB authorization for an ICR cannot be for more than 3 years without renewal, and the current approval for this collection will expire on May 31, 2023. The Department seeks to extend PRA authorization for this information collection for 3 more years, without any change to existing requirements. The Department notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Interested parties are encouraged to send comments to the Department at the address shown in the **ADDRESSES** section within 60 days of publication of this notice in the **Federal Register**. To help ensure appropriate consideration, comments should mention OMB Control Number 1235–0034.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- 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;
- Enhance the quality, utility, and clarity of the information to be collected;
- 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;
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for an extension of this information collection to ensure taxpayers may take advantage of the enhanced tax provisions of the Inflation Reduction Act.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Inflation Reduction Act Wage Rates and Wage Determinations.

OMB Control Number: 1235–0034.

Affected Public: Private Sector: Businesses or other for-profits; not-for-profit institutions.

Total Respondents: 1,727.

Total Annual Responses: 1,727.

Estimated Total Burden Hours: 432.

Estimated Time per Response: 15 minutes per response.

Frequency: On occasion.

Total Burden Costs: $22,943.

Total Burden Costs (Operations/Maintenance): $0.

Dated: December 14, 2022.

Amy DeBisschop,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2022–27830 Filed 12–21–22; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22–100)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the NASA Advisory Council (NAC).

DATES: Tuesday, January 17, 2023, 10:15 a.m.–4:30 p.m. eastern time; and Wednesday, January 18, 2023, 8:00 a.m.–12:00 p.m. eastern time.

ADDRESSES: Virtual meeting via telephone and WebEx.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia Guignard, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, *marcia.guignard@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will only be available by Webex or telephonically for members of the public. If dialing in via toll number, you must use a touch-tone phone to participate in this meeting. Any interested person may join via Webex on Tuesday, January 17th at *https://nasaenterprise.webex.com,* the meeting number is 2760 679 3993, and the password is iuC6JKkc*22. To join by telephone call, use US Toll +1–415–527–5035 (Access code: 2760 679 3993). You may join via Webex on Wednesday, January 18th at *https://nasaenterprise.webex.com,* the meeting number is 2760 606 6610, and the password is RDvdr4NG@73. To join by telephone call, use US Toll +1–415–527–5035 (Access code: 2760 606 6610).

The agenda for the meeting will include reports on the following NAC priority focus areas:

—Climate Change
—Commercial and Industry Partnerships
—Diversity, Equity, Inclusion and Accessibility
—International Collaboration
—Program Management and Acquisition

The agenda for the meeting will also include reports from the following NAC committees:

—Aeronautics Committee
—Human Exploration and Operations Committee
—Science Committee
—STEM Engagement Committee
—Technology, Innovation and Engineering Committee

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Carol Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2022–27753 Filed 12–21–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Service Contract Inventory; Notice of Availability

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The Division of Acquisition and Cooperative Support within the National Science Foundation (NSF) is publishing this notice to advise the public of the availability of its Fiscal Year (FY) 2022 Service Contracts Inventory Analysis Report.

FOR FURTHER INFORMATION CONTACT: Raymond McCollum, Policy Branch Chief, Division of Acquisition and Cooperative Support, National Science Foundation. Phone: 703–292–4225; email: *rmccollu@nsf.gov.*

SUPPLEMENTARY INFORMATION: NSF's FY 2022 Service Contract Inventory Analysis Report is included as part of a governmentwide service contract inventory. The inventory includes covered service contracts that were awarded in FY 2022. The NSF analyzes this data for the purpose of determining whether its contract labor is being used in an effective and appropriate manner and if the mix of Federal employees and contractors in the agency is effectively balanced. The report does not include contractor proprietary or sensitive information.

The FY 2022 Service Contract Inventory Analysis Report is provided at the following link: *https://www.nsf.gov/bfa/dcca/contracts/index.jsp.*

Authority: 42 U.S.C. 1861, *et seq.*

Dated: December 16, 2022.

Raymond L. McCollum,

Policy Branch Chief, National Science Foundation.

[FR Doc. 2022–27792 Filed 12–21–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456 and 50–457; NRC–2021–0200]

Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Constellation Energy Generation, LLC, to withdraw its application dated August 2, 2021, as supplemented by letter dated June 6, 2022, for proposed amendments to Renewed Facility Operating License Nos. NPF–72 and NPF–77, issued to the licensee for operation of the Braidwood Station, Units 1 and 2, located in Will County, Illinois. The proposed amendments would have revised Technical Specification (TS) 3.7.9, ''Ultimate Heat Sink [UHS]'' for an inoperable UHS due to the average water temperature to allow utilization of existing margin in the design analysis to offset the increase in the TS UHS temperature. The proposed amendments also would have revised TS 3.7.9 Surveillance Requirement (SR) 3.7.9.2 to delete the temporary allowance for the UHS average water temperature of 102.8 degrees Fahrenheit (°F) until September 30, 2021.

DATES: December 22, 2022.

ADDRESSES: Please refer to Docket ID NRC–2021–0200 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–2021–0200. 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 ADAMS accession number for each document referenced is provided the first time that it is mentioned in this document.

• NRC's PDR: You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel S. Wiebe, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6606, email: *Joel.Wiebe@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the request by Constellation Energy Generation, LLC, (the licensee) to withdraw its August 2, 2021 (ADAMS Accession No. ML21214A331), as supplemented by letter dated June 6, 2022 (ADAMS Accession No. ML22157A438), application for proposed amendments to Renewed Facility Operating License Nos. NPF–72 and NPF–77 issued to the licensee for operation of the Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendments would have revised TS 3.7.9, ''Ultimate Heat Sink [UHS]'' for an inoperable UHS due to the average water temperature to allow utilization of existing margin in the design analysis to offset the increase in the TS UHS temperature. These amendments would have also revised TS 3.7.9 SR 3.7.9.2 to delete the temporary allowance for the UHS average water temperature of 102.8 °F until September 30, 2021.

On November 2, 2021, the NRC published in the **Federal Register** a notice (86 FR 60484) that the NRC would consider the amendment request.

Dated: December 19, 2022.

For the Nuclear Regulatory Commission.

Joel S. Wiebe,

Senior Project Manager, Licensing Projects Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–27894 Filed 12–21–22; 8:45 am]

BILLING CODE 7590–01–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:* December 22, 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 December 12, 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 98 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–80, CP2023–81.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27752 Filed 12–21–22; 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:* December 22, 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 December 14, 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 104 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–91, CP2023–92.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27762 Filed 12–21–22; 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:* December 22, 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 December 14, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 773 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–90, CP2023–91.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27763 Filed 12–21–22; 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:* December 22, 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 December 12, 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 102 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–84, CP2023–85.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27757 Filed 12–21–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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:* December 22, 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 December 14, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select Contract 55 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–92, CP2023–93.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27766 Filed 12–21–22; 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:* December 22, 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 December 12, 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 103 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–85, CP2023–86.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27758 Filed 12–21–22; 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:* December 22, 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 December 12, 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 100 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–82, CP2023–83.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27755 Filed 12–21–22; 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:* December 22, 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 December 12, 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 99 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–81, CP2023–82.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27754 Filed 12–21–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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:* December 22, 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 December 14, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select Contract 56 to Competitive Product List.* Documents are available at

www.prc.gov, Docket Nos. MC2023–93, CP2023–94.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27769 Filed 12–21–22; 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:* December 22, 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 December 12, 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 101 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–83, CP2023–84.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27756 Filed 12–21–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96519; File No. SR–GEMX–2022–13]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Functionality in Connection With a Technology Migration

December 16, 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 December 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 Options 3, Section 12, Crossing Orders and Options 3, Section 13, Price Improvement Mechanism for Crossing Transactions.

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 an enhanced Nasdaq, Inc. (''Nasdaq'') functionality which will result in higher performance, scalability, and more robust architecture, the Exchange intends to adopt certain trading functionality currently utilized at Nasdaq affiliate exchanges. Specifically, the Exchange proposes to amend Options 3, Section 12, Crossing Orders and Options 3, Section 13, Price Improvement Mechanism for Crossing Transactions. The changes proposed herein are identical to changes that were recently proposed for MRX.[3] Each change will be described below.

[3] *See* Securities Exchange Act Release No. 95854 (September 21, 2022), 87 FR 58571 (September 27, 2022) (Order Approving SR–MRX–2022–10).

Changes to the Price Improvement Mechanism for Crossing Transactions

The Price Improvement Mechanism (''PIM'') is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent (a ''Crossing Transaction'').

The Exchange proposes to amend PIM in Options 3, Section 13(d)(4) which currently provides,

> When a market order or marketable limit order on the opposite side of the market from the Agency Order ends the exposure period, it will participate in the execution of the Agency Order at the price that is mid-way between the best counter-side interest and the NBBO, so that both the market or marketable limit order and the Agency Order receive price improvement. Transactions will be rounded, when necessary, to the $.01 increment that favors the Agency Order.

Today, unrelated interest in the form of a market order or marketable limit order, on the opposite side of the market from an Agency Order,[4] may end an exposure period [5] within a PIM and participate in the execution of the Agency Order. The unrelated order would participate at the price that is mid-way between the best counter-side interest and the NBBO, so that both the market order or marketable limit order

[4] An Agency Order is the part of a Crossing Transaction that an Electronic Access Member represents as agent. *See* GEMX Options 3, Section 13(b).

[5] Upon entry of a Crossing Transaction into the Price Improvement Mechanism, a broadcast message that includes the series, price and size of the Agency Order, and whether it is to buy or sell, will be sent to all Members. The Exchange designates a time of no less than 100 milliseconds and no more than 1 second for Members to indicate the size and price at which they want to participate in the execution of the Agency Order (''Improvement Orders''). Improvement Orders may be entered by all Members in one-cent increments at the same price as the Crossing Transaction or at an improved price for the Agency Order, and will only be considered up to the size of the Agency Order. During the exposure period, Improvement Orders may not be canceled, but may be modified to (i) increase the size at the same price, or (ii) improve the price of the Improvement Order for any size up to the size of the Agency Order. During the exposure period, responses (including the Counter-Side Order, Improvement Orders, and any changes to either) submitted by Members shall not be visible to other auction participants. The exposure period will automatically terminate (i) at the end of the time period designated by the Exchange pursuant to Options 3, Section 13(c)(1) above, (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series, or (iii) upon the receipt of a non-marketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange. *See* GEMX Options 3, Section 13(c).

and the Agency Order receive price improvement.

First, the Exchange proposes to *not* permit unrelated marketable interest on the opposite side of the market from the Agency Order, which is received during a PIM, to early terminate a PIM. The Exchange proposes to amend GEMX Options 3, Section 13(d)(4) to instead provide,

> Unrelated market or marketable interest (against the GEMX BBO) on the opposite side of the market from the Agency Order received during the exposure period will not cause the exposure period to end early and will execute against interest outside of the Crossing Transaction. If contracts remain from such unrelated order at the time the auction exposure period ends, they will be considered for participation in the order allocation process described in sub-paragraph (3).[6]

This amendment is identical to a change recently adopted for MRX.[7] Additionally, Nasdaq Phlx LLC (''Phlx'')[8] and Nasdaq BX, Inc. (''BX'')[9] similarly do not permit unrelated interest on the opposite side of the market from the Agency Order to early terminate their price improvement auctions. With this proposed change, the PIM exposure period would continue for the full period despite the receipt of unrelated marketable interest on the opposite side of the market from the Agency Order. Allowing the PIM to run its full course would provide an opportunity for additional price improvement to the Crossing Transaction. Further, the unrelated interest would participate in the PIM allocation with any residual contracts remaining after interacting with the order book pursuant to GEMX Options 3, Section 13(d). The aforementioned residual contracts are contracts that remain available for execution after the unrelated order on the opposite side of market as the Agency Order, which was marketable with bids and offers on the same side of the market as the Agency Order, executed against bids and offers on the Exchange's order book.

Second, the Exchange also proposes to amend current GEMX Options 3, Section 13(c)(5) which states,

> The exposure period will automatically terminate (i) at the end of the time period designated by the Exchange pursuant to Options 3, Section 13(c)(1) above, (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series, or (iii) upon the receipt of a non-marketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange.

Specifically, the Exchange proposes to remove ''(ii),'' which provides the exposure period will automatically terminate ''. . . (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series. . .''. The Exchange notes that this sentence applies to the receipt of marketable orders both on the same side and opposite side of the Agency order. As described above, the Exchange proposes to *not* permit unrelated marketable interest on the opposite side of the market from the Agency Order, which is received during a PIM, to early terminate a PIM. Therefore, with respect to the opposite side of the Agency Order, the termination of the auction will no longer be possible with the proposed change to GEMX Options 3, Section 13(d)(4). With respect to the same side of the Agency Order, today, an unrelated market or marketable limit order in the same series on the same side of the Agency Order would cause the PIM to early terminate as well. At this time the Exchange proposes to *not* permit an unrelated market or marketable limit order in the same series *on the same side* of the Agency Order to cause the PIM to early terminate. This proposed change will align the functionality of GEMX's PIM to that of MRX's PIM,[10] BX's PRISM and Phlx's PIXL,[11] which do not permit an unrelated market or marketable limit order in the same series on the same side of the Agency Order to cause the PRISM or PIXL to early terminate, unless the BBO improves beyond the price of the Crossing Transaction on the same side. The Exchange notes that a market or marketable limit order in the same series on the same side of the Agency Order cannot interact with a PIM auction. The market or marketable limit order may interact with the order book, and if there are residual contracts that remain from the market or marketable limit order in the same series on the same side of the Agency Order, they could rest on the order book and improve the BBO beyond the price of the Crossing Transaction which would cause early termination pursuant to proposed Options 3, Section 13(c)(5)(ii) as discussed below. In this instance, residual contracts are contracts that remain available for execution after the unrelated order on the same side of market as the Agency Order, which was marketable with bids and offers on the opposite side of the market as the Agency Order, executed against bids and offers on the Exchange's order book. The Exchange believes that this outcome would allow for the PIM exposure period to continue for the full period despite the receipt of unrelated marketable interest on the same side of the market from the Agency Order, provided residual interest does not go on to rest on the order book, improving the BBO beyond the price of the Crossing Transaction. Allowing the PIM to run its full course (unless the BBO improves beyond the price of the Crossing Transaction on the same side), rather than early terminate, would provide an opportunity for price improvement to the Agency Order.

Third, the Exchange proposes to amend current GEMX Options 3, Section 13(c)(5)(iii) to align the rule text to a recent change adopted on MRX.[12] Additionally, BX Options 3, Section 13(ii)(B)(2) has similar language.[13]

[6] Subparagraph (3) of Options 3, Section 13(d) describes the manner in which a Counter-Side Order would be allocated. The Counter Side Order is one part of a Crossing Transaction and represents the full size of the Agency Order. The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both. *See* GEMX Options 3, Section 13(b).

[7] *See* note 3 above. MRX amended Options 3, Section 13(d)(4).

[8] Phlx Options 3, Section 13(b)(4) provides that an unrelated market or marketable Limit Order (against the PBBO) on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. *See* Securities Exchange Act Releases No. 79835 (January 18, 2017), 82 FR 8445 (January 25, 2017) (SR–Phlx–2016–119) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the PIXL Price Improvement Auction in Phlx Rule 1080(n) and To Make Pilot Program Permanent) and 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108) (''PIXL Approval Order''). The Commission noted in SR–Phlx–2016–119 that, ''In approving this feature on a pilot basis, the Commission found that 'allowing the PIXL auction to continue for the full auction period despite receipt of unrelated orders outside the Auction would allow the auction to run its full course and, in so doing, will provide a full opportunity for price improvement to the PIXL Order. Further, the unrelated order would be available to participate in the PIXL order allocation.' The Exchange does not believe that this provision has had a significant impact on either the unrelated order or the PIXL Auction process, either for simple or Complex PIXL Orders. The Exchange therefore has requested that the Commission approve this aspect of the Pilot on a permanent basis for both simple and Complex PIXL Orders.''

[9] BX Options 3, Section 13(ii)(D) provides that unrelated market or marketable interest (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction.

[10] *See* MRX Options 3, Section 13(d)(4).

[11] *See* BX Options 3, Section 13(ii)(D) and Phlx Options 3, Section 13(b)(4).

[12] *See* note 3 above. MRX amended Options 3, Section 15(c)(5)(iii).

[13] BX Options 3, Section 13(ii)(B) provides ''Conclusion of Auction. The PRISM Auction shall conclude at the earlier to occur of (1) through (3) below, with the PRISM Order executing pursuant to paragraph (C)(1) or (C)(2) below if it concludes pursuant to (2) or (3) of this paragraph. (1) The end

Specifically, the Exchange proposes to amend Options 3, Section 13(c)(5) to delete current ''iii'' and renumber as ''ii''. Proposed new Options 3, Section 13(c)(5)(ii) would state, ''The exposure period will automatically terminate . . . (ii) any time the Exchange best bid or offer improves beyond the price of the Crossing Transaction on the same side of the market as the Agency Order. . .'' The proposed rule is designed to align to MRX's and BX's rule text to remove any ambiguity that a market or marketable limit order priced more aggressively than the Agency Order could ultimately rest on the order book, improving the BBO beyond the price of the Crossing Transaction and, therefore, cause the early termination of a PIM auction.

By way of example, assume: GEMX 1.00 × 2.00 (10) and a second GEMX Market Maker's quote is 1.00 × 2.10 (10). If a PIM auction starts with a buy at 1.50, and subsequently an order to buy for 20 @ 2.00 arrives, the incoming order would trade with the quote, and the remaining 10 contracts would rest on the order book. Thereafter, the GEMX BBO would update to 2.00 × 2.10 and trigger the early termination of the PIM pursuant to Options 3, Section 13(c)(5)(iii), which is being renumbered to Options 3, Section 13(c)(5)(ii). Early terminating the PIM in this example is necessary because the price of the PIM is no longer at the top of book (best price) and would not have execution priority with respect to responses or unrelated interest that arrive. By early terminating the PIM auction, GEMX allows responses to the PIM, which arrived prior to the time the Exchange's best bid and offer improved beyond the Crossing Transaction, to execute.

The Exchange believes the proposed rule text will provide greater clarity to the manner in which the System operates today with respect to early termination of PIMs when the BBO on the same side improves beyond the price of the Crossing Transaction. The proposed amendment to the rule text is not intended to amend the current System functionality, rather it is intended to make clear that a market or marketable limit order could ultimately rest on the order book with residual interest and improve the BBO on the same side as the Agency Order beyond the price of the Crossing Transaction and cause the PIM to early terminate.

Fourth, the Exchange proposes to add a new GEMX Options 3, Section 13(c)(5)(iii) which states, ''. . . (iii) any time there is a trading halt on the Exchange in the affected series. . .''. This proposed rule text is not modifying how the System currently operates.[14] Today, a trading halt would cause a PIM to early terminate. Current GEMX Options 3, Section 13(d)(5) notes such an early termination as a result of the aforementioned trading halt. Adding this circumstance to the list of events that would terminate the exposure period would make the list complete and add clarity to the rule. Furthermore, the Exchange notes that in a separate rule change, SR–GEMX–2022–6P [15] the Exchange is proposing to amend Options 3, Section 13(d)(5) to change the System behavior such that if a trading halt is initiated after an order is entered into the PIM, such auction will be automatically terminated with execution solely with the Counter-Side Order. Today, if a trading halt is initiated after an order is entered into the PIM, such auction will be automatically terminated without execution.[16] This amendment is identical to a change recently adopted for MRX.[17]

Re-Pricing

In connection with the technology migration, the Exchange recently adopted re-pricing functionality for certain quotes and orders that lock or cross an away market's price.[18] With the recent change within SR–GEMX–2022–10, the System will re-price certain quotes and orders that lock or cross an away market's price. Specifically, quotes and orders which lock or cross an away market price will be automatically re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed one minimum price variance (''MPV'') above (for offers) or below (for bids) the national best price. The re-priced quotes and orders will be displayed on OPRA at its displayed price and placed on the Exchange's order book at its re-priced, non-displayed price, which may be priced better than the NBBO. The quotes and orders will remain on the Exchange's order book and will be accessible at their non-displayed price. With this change, a non-displayed limit order or quote may be available on the Exchange at a price that is better than the NBBO. The following example illustrates how the proposed re-pricing mechanism would work:

Symbol ABCD in a Non-Penny name
CBOE BBO at 1.00 × 1.20
DNR order to buy ABCD for 1.30 arrives
DNR buy order books at 1.20 (current national best offer) and displays at 1.15 (one MPV below national best offer) *
CBOE BBO adjusts to 1.00 1.25
DNR buy order adjusts to book at 1.25 (current national best offer) and displays at 1.20 (one MPV below national best offer) *
* OPRA will show the displayed price, not the booked price

Recently amended Options 3, Section 5(c) provides that the System automatically executes eligible orders using the Exchange's displayed best bid and offer (*i.e.,* BBO) or the Exchange's non-displayed order book (''internal BBO'') if the best bid and/or offer on the Exchange has been re-priced pursuant to Options 3, Section 5(d).[19] The definition of an ''internal BBO'' covers re-priced quotes and orders that remain on the order book and are available at non-displayed prices while resting on the order book.[20]

of the Auction period; (2) For a PRISM Auction any time the BX BBO crosses the PRISM Order stop price on the same side of the market as the PRISM Order; (3) Any time there is a trading halt on the Exchange in the affected series.''

[14] GEMX Options 3, Section 13(d)(5) currently states that, ''If a trading halt is initiated after an order is entered into the Price Improvement Mechanism, such auction will be automatically terminated without execution.'' Of note, the Exchange is proposing to amend GEMX's PIM within a separate rule change, SR–GEMX–2022–6P. Among other things, the Exchange proposes to amend the PIM functionality so that if a trading halt is initiated after an order is entered into the PIM, the auction will be automatically terminated with an execution. Specifically, SR–GEMX–2022–6P proposes to renumber current GEMX Options 3, Section 13(d) to Options 3, Section 13(d)(6) and proposes to state, ''If a trading halt is initiated after an order is entered into the Price Improvement Mechanism, such auction will be automatically terminated with execution solely with the Counter-Side Order.''

[15] GEMX has separately filed to amend Options 3, Section 13(d)(5) within SR–GEMX–2022–6P. SR–GEMX–2022–6P amended, among other things, the rule text in Options 3, Section 13, except that it does not amend Options 3, Section 13(c)(5).

[16] *See* current GEMX Options 3, Section 13(d)(5).

[17] *See* note 3 above. MRX amended Options 3, Section 13(c)(5)(iii).

[18] *See* Securities Exchange Act. No. 96363 (November 18, 2022), 87 FR 72556 (November 25, 2022) (SR–GEMX–2022–10). This rule change is effective, but not yet operative. SR–GEMX–2022–10 would be implemented as part of the same technology migration as the changes proposed herein.

[19] A similar change was made for quotes within Options 3, Section 4(b)(7). The Exchange added the following new rule text to Options 3, Section 4(b)(7), ''The System automatically executes eligible quotes using the Exchange's displayed best bid and offer (''BBO'') or the Exchange's non-displayed order book (''internal BBO'') if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) below and subsection (6) above.''

[20] The Exchange amended the rule text within Options 3, Section 4 and Options 3, Section 5, within SR–GEMX–2022–10, to describe the manner in which a non-routable quotes and orders would be re-priced, respectively. The Exchange added rule text within Options 3, Section 4(b)(6) to state, ''A quote will not be executed at a price that trades through another market or displayed at a price that

Continued

In connection with the foregoing changes, the Exchange proposes to add references to ''internal BBO'' within Options 3, Section 12(c) which describes the Qualified Contingent Cross Orders, to conform with the concept of re-pricing at an internal BBO as provided in Options 3, Sections 4(b)(6) and 4(b)(7) and Options 3, Section 5(c) and (d) within SR–GEMX–2022–10. This amendment is identical to a change recently adopted for MRX.[21]

As noted above, the internal BBO could be better than the NBBO. The Exchange believes that adding references to the internal BBO to Options 3, Section 12(c) would continue to require Members to be at or between the best price, that is not at the same price as a Priority Customer Order on the Exchange's limit order book, to execute a Qualified Contingent Cross Order. The Exchange believes that the addition of ''internal BBO'' is consistent with the intent of these order types, which is to require Members [sic] submit these orders at the best price and not execute ahead of better-priced quotes or orders.

Specifically, the Exchange proposes to amend Options 3, Section 12(c), which describes the conditions under which a Qualified Contingent Cross Order may be entered into the System for execution, to state that a Qualified Contingent Cross Order may be executed upon entry provided the execution is at or between the *better of the internal BBO* or the NBBO.[22] This amendment is identical to a change recently adopted for MRX.[23]

Implementation

The Exchange intends to begin implementation of the proposed rule change prior to September 1, 2023. The implementation would commence with a limited symbol migration and continue to migrate symbols over several weeks. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Section 6(b)(5) of the Act,[25] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest for the reasons discussed below.

Changes to the Price Improvement Mechanism for Crossing Transactions

The Exchange's proposal to amend GEMX Options 3, Section 13(d)(4), related to PIM, to not permit unrelated marketable interest, on the opposite side of the market from the Agency Order, which is received during a PIM to early terminate a PIM is consistent with the Act and promotes just and equitable principles because allowing the auction to run its full course would provide a full opportunity for price improvement to the Crossing Transaction. The unrelated interest would participate in the PIM allocation pursuant to GEMX Options 3, Section 13(d), if residual contracts remain after executing with interest on the order book. This amendment is identical to a change recently adopted for MRX.[26] Additionally, Phlx[27] and BX[28] do not permit unrelated interest on the same or opposite side of an Agency Order to early terminate their price improvement auctions.

The proposed amendment in GEMX Options 3, Section 13(c)(5)(ii), related to PIM, applies to the receipt of marketable orders both on the same side and opposite side of the Agency order. With respect to the same side of the Agency Order, today, an unrelated market or marketable limit order in the same series on the same side of the Agency Order would cause the PIM to early terminate as well. The proposal promotes just and equitable principles of trade because a market or marketable limit order in the same series on the same side of the Agency Order cannot interact with a PIM auction. The market or marketable limit order may interact with the order book, and if there are residual contracts that remain from the market or marketable order in the same series on the same side of the Agency Order, they will rest on the order book and could improve the BBO beyond the price of the Crossing Transaction which will cause early termination of the PIM pursuant to proposed GEMX Options 3, Section 13(c)(5)(ii). The Exchange believes that this outcome would allow for the PIM exposure period to continue for the full period despite the receipt of unrelated marketable interest on the same side of the market from the Agency Order, provided residual interest does not go on to rest on the order book improving the BBO beyond the price of the Crossing Transaction of the PIM. Allowing the PIM to run its full course protects investors and the general public because it would provide an opportunity for price improvement to the Agency Order. This amendment is identical to a change recently adopted for MRX.[29]

Amending current GEMX Options 3, Section 13(c)(5)(iii) to align the rule text with MRX[30] and also more closely with BX Options 3, Section 13(ii)(B)(2)[31] is consistent with the Act because it removes any ambiguity that a market or marketable limit order priced more aggressively than the Agency Order on the same side could ultimately rest on the order book, improving the BBO beyond the price of the Crossing Transaction of the PIM and, therefore, cause the early termination of a PIM. Continuing to permit a PIM to early terminate any time the Exchange best bid or offer improves beyond the price of the Crossing Transaction on the same side of the market as the Agency Order protects investors and the general public because the Crossing Transaction Agency Order's price is inferior to the Exchange's best bid or offer on the same side of the market as the Agency Order. Upon early termination of the PIM, the Crossing Transaction would execute against responses that arrived prior to the time the Exchange's best bid or offer improved beyond the Crossing Transaction. The proposed amendment to the rule text is not intended to amend the current System functionality, rather it is intended to make clear that a market or marketable limit order could ultimately rest on the order book and

would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced *to the current national best offer (for bids) or the current national best bid (for offers)* and displayed at one minimum price variance above (for offers) or below (for bids) the national best price, or immediately cancelled, as configured by the Member.'' The Exchange amended the rule text within Options 3, Section 5(d) to state, ''An order that is designated by a Member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions. If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.''

[21] *See* note 3 above. MRX amended Options 3, Section 12(c) and (d).

[22] The Qualified Contingent Cross Order must also not be at the same price as a Priority Customer Order on the Exchange's limit order book. *See* Options 3, Section 12(c).

[23] *See* note 3 above. MRX amended Options 3, Section 12(c).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] *See* note 3 above. MRX amended Options 3, Section 13(d)(4).

[27] *See* note 17 above.

[28] *See* note 18 above.

[29] *See* note 3 above. MRX amended Options 3, Section 13(c)(5)(ii).

[30] *See* MRX Options 3, Section 13(c)(5)(iii).

[31] *See* note 13 above.

improve the BBO beyond the price of the Crossing Transaction.

Adding proposed new GEMX Options 3, Section 13(c)(5)(iii), which describes the automatic termination of the exposure period resulting from a trading halt on the Exchange in the affected series, is consistent with the Act because a trading halt would cause an option series to stop trading on GEMX and thereby impact the PIM auction. Today, if a trading halt is initiated after an order is entered into the PIM, such auction will be automatically terminated without execution. Of note, the Exchange is separately proposing to amend GEMX Options 3, Section 13(d)(5)[32] to change System behavior such that if a trading halt is initiated after an order is entered into the PIM, such auction will be automatically terminated with execution solely with the Counter-Side Order.[33] The proposed amendment to GEMX Options 3, Section 13(c)(5)(iii) protects investors and the general public by making clear that a trading halt would lead to early termination of a PIM. This amendment is not intended to amend the current System functionality, rather it is intended to make clear that a trading halt will cause the PIM to early terminate. This amendment is identical to a change recently adopted for MRX.[34]

Re-Pricing

The Exchange believes that amending Options 3, Section 12(c) to account for re-pricing of quotes and orders that would otherwise lock or cross an away market, as provided in GEMX Options 3, Section 4(b)(6) and (7) and Options 3, Section 5(c) and (d), is consistent with the Act.

As discussed above with the implementation of re-pricing as provided in Options 3, Section 4(b)(6) and (7) and Options 3, Section 5(c) and (d), interest could be available on the Exchange at a price that is better than the NBBO but is non-displayed (*i.e.,* the Exchange's non-displayed order book or internal BBO). The proposed addition of ''internal BBO'' to Options 3, Section 12(c) will ensure that Members continue to submit Qualified Contingent Cross Orders at prices equal to or better than the best prices available in the market and ensure that these orders are not executed ahead of better-priced interest. By including ''internal BBO'' the Exchange ensures that such Qualified Contingent Cross Orders will continue to be executed at the best price and would not be executed ahead of better-priced interest. This amendment is identical to a change recently adopted for MRX.[35]

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. MRX recently made identical changes to the amendments proposed herein.[36]

Changes to the Price Improvement Mechanism for Crossing Transactions

The Exchange's proposal to amend GEMX Options 3, Section 13(d)(4), GEMX Options 3, Section 13(c)(5)(ii) and (iii), and add a proposed new GEMX Options 3, Section 13(c)(5)(iii), related to PIM, does not impose an undue burden on intra-market competition because the proposed amendments will apply equally to all Members. All Members may utilize PIM.

The Exchange's proposal to amend GEMX Options 3, Section 13(d)(4), GEMX Options 3, Section 13(c)(5)(ii) and (iii), and add a proposed new GEMX Options 3, Section 13(c)(5)(iii), related to PIM, does not impose an undue burden on inter-market competition because other options exchanges may adopt similar rules. In addition to mirroring to MRX Options 3, Section 13, Phlx[37] and BX[38] do not permit unrelated marketable interest on either the same or opposite side of the market from an Agency Order to early terminate their price improvement auctions.

Re-Pricing

Adding language consistent with re-pricing within Options 3, Section 12(c) does not impose an undue burden on competition, rather it will ensure that the rules conform to the concept of re-pricing at an internal BBO within Options 3, Section 4(b)(6) and (7) and Options 5(c) and (d) which recently became effective.[39] With this recent change, re-priced quotes and orders are accessible on the Exchange's order book at the non-displayed price. Amending Options 3, Section 12(c) to utilize the ''internal BBO'' language would continue to require Members to submit Qualified Contingent Cross Orders at the best price to receive an execution. The introduction of ''internal BBO'' will ensure that Qualified Contingent Cross Orders do not execute if better-priced interest is available.

The re-pricing proposal within Options 3, Section 12(c) does not impose an undue burden on inter-market competition because this rule continues to support executions at the best price.

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[40] and subparagraph (f)(6) of Rule 19b–4 thereunder.[41]

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:

[32] *See* note 14 above.

[33] SR–GEMX–2022–6P proposes to renumber GEMX Options 3, Section 13(d)(5) as Options 3, Section 13(d)(6), and proposes to amend the rule text to state, ''If a trading halt is initiated after an order is entered into the Price Improvement Mechanism, such auction will be automatically terminated with execution solely with the Counter-Side Order.''

[34] *See* note 3 above. MRX amended Options 3, Section 13(c)(5)(iii).

[35] *See* note 3 above. MRX amended Options 3, Section 12(c) and (d).

[36] *See* note 3.

[37] *See* note 8 above.

[38] *See* note 9 above.

[39] *See* Securities Exchange Act. No. 96363 (November 18, 2022), 87 FR 72556 (November 25, 2022) (SR–GEMX–2022–10).

[40] 15 U.S.C. 78s(b)(3)(A)(iii).

[41] 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.

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–2022–13 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–2022–13. 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–GEMX–2022–13, and should be submitted on or before January 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27786 Filed 12–21–22; 8:45 am]

BILLING CODE 8011–01–P

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 87 FR 77648, December 19, 2022.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Monday, December 19, 2022 at 4:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Monday, December 19, 2022 at 4:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: December 19, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–27921 Filed 12–20–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34775; File No. 812–15326]

Golub Capital BDC, Inc., et al.

December 16, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Golub Capital BDC, Inc., Golub Capital BDC 3, Inc., Golub Capital Direct Lending Corporation, Golub Capital BDC 4, Inc., Golub Capital Direct Lending Unlevered Corporation, Golub Capital Private Credit Fund, GBDC Holdings Coinvest, Inc., GBDC Holdings ED Coinvest, Inc., GBDC Quick Quack Coinvest LLC, GCIC CLO II Depositor LLC, GCIC CLO II LLC, GCIC Funding LLC, GCIC Holdings LLC, GCIC North Haven Stack Buyer Coinvest Inc., GCIC Quick Quack Coinvest LLC, Golub Capital BDC CLO 2014 LLC, Golub Capital BDC CLO III Depositor LLC, Golub Capital BDC CLO III LLC, Golub Capital BDC Holdings LLC, GBDC 3 Funding II LLC, GBDC 3 Funding LLC, GBDC 3 Holdings Coinvest, Inc., GBDC 3 Holdings ED Coinvest, Inc., GBDC3 Quick Quack Coinvest LLC, GBDC3F Loan Subsidiary A LLC, GCBH 3 North Haven Stack Buyer Coinvest Inc., Golub Capital 3 Holdings LLC, Golub Capital BDC 3 CLO 1 Depositor LLC, Golub Capital BDC 3 CLO 1 LLC, Golub Capital BDC 3 ABS 2022–1 Depositor LLC, Golub Capital BDC 3 ABS 2022–1 LLC, Golub Capital BDC 3 CLO 2 Depositor LLC, Golub Capital BDC 3 CLO 2 LLC, GDLC Funding LLC, GDLC Holdings LLC, GDLC Holdings Coinvest Inc., Golub Capital 4 Holdings LLC, Golub Capital BDC 4 Funding LLC, Golub Capital 4 Holdings Coinvest, Inc., Golub Capital Direct Lending Unlevered Holdings LLC, Golub Capital Direct Lending Unlevered Holdings Coinvest, Inc., GC Advisors LLC, Golub Capital LLC, GC OPAL Advisors LLC, OPAL BSL LLC, GC Investment Management LLC, Golub Capital Partners 9, L.P., Golub Capital Partners 10, L.P., Golub Capital Partners 12 Feeder Fund, L.P., Golub Capital Partners 12, L.P., Golub Capital Partners 14, L.P., Golub Capital Partners International 9, L.P., Golub Capital Partners International 10, L.P., Golub Capital Partners International 12, L.P., Golub Capital Partners International 14, L.P., Golub Capital Partners International Rollover Fund 2, L.P., Golub Capital Partners Private Credit Trust, Golub Capital Partners Rollover Fund 2, L.P., Golub Capital Partners TALF 2020–1, L.P., GPCT Holdings 1, L.P., Golub Capital PEARLS Direct Lending Program, L.P., OPAL BSL LLC (EU Origination Series), OPAL BSL LLC (Retention Series), Golub Capital International, Ltd., GEMS Fund, L.P., GEMS Fund 4, L.P., GEMS Fund 5 International, L.P., GEMS Fund 5, L.P., Golub Capital Partners ABS Funding 2019–1, L.P., Golub Capital Partners ABS Funding 2020–1, L.P., Golub Capital Partners ABS Funding 2021–1, L.P., Golub Capital Partners ABS Funding 2021–2, Golub Capital Partners ABS Funding 2022–1, Golub Capital Partners CLO 16(M)–R2, L.P., Golub Capital Partners CLO 17(M)–R, Ltd., Golub Capital Partners CLO 18(M)–R2, Golub Capital Partners CLO 19(B)–R2, Ltd., PEARLS IX, L.P., PEARLS X, L.P., Golub Capital Partners CLO 21(M)–R, Ltd., Golub Capital Partners CLO 22(B)–R, Ltd., Golub Capital Partners CLO

23(B)–R, Ltd., Golub Capital Partners CLO 24(M)–R, Ltd., Golub Capital Partners CLO 25(M)–R, Ltd., Golub Capital Partners CLO 26(B)–R, Ltd., Golub Capital Partners CLO 28(M)–R, L.P., Golub Capital Partners CLO 30(M)–R, Golub Capital Partners CLO 31(M)–R, Ltd., Golub Capital Partners CLO 33(M)–R2, L.P., GCP Finance 2 L.P., GCPF 7 Loan Funding A L.P., Golub Capital Partners CLO 34(M)–R, Ltd., GC International Ladder Ltd., Golub Capital Partners CLO 35(B), Ltd., Golub Capital Partners CLO 36(M), Ltd., Golub Capital Partners CLO 37(B), Ltd., Golub Capital Partners CLO 38(M), Ltd., GCP International Tranches Ltd., GCP Master Holdings, LP, GDLC Feeder Fund, L.P., GCP Finance 5 L.P., GCP Finance 6 L.P., GCP Finance 7 L.P., GCP Finance 8 L.P., GCP Finance 9 L.P., GCP Finance L.P., Golub Capital Partners 11, L.P., Golub Capital Partners International 11, L.P., Golub Capital Partners 11 Rollover Fund, L.P., GC Finance Operations Multicurrency Trust, Golub Capital Partners CLO 62(B), Ltd., Golub Capital Partners CLO 64(B), Ltd., GCP CLO Warehouse BSL 2022, Ltd., Golub Capital Coinvestment L.P., Golub Capital Finance Funding III Trust, Golub Capital Finance Funding IV Trust, Golub Capital Finance Funding Trust, Golub Capital Partners CLO 39(B), Ltd., Golub Capital Partners CLO 40(B), Ltd., Golub Capital Partners CLO 41(B)–R, Ltd., Golub Capital Partners CLO 42(M), Ltd., Golub Capital Partners CLO 43(B), Ltd., Golub Capital Partners CLO 44(M), Ltd., Golub Capital Partners CLO 45(M), Ltd., Golub Capital Partners CLO 46(M), L.P., Golub Capital Partners CLO 47(M), L.P., Golub Capital Partners CLO 48(B), Ltd., Golub Capital Partners CLO 49(M)–R, Golub Capital Partners CLO 50(B)–R, Ltd., Golub Capital Partners CLO 51(M), L.P., Golub Capital Partners CLO 52(B), Ltd., Golub Capital Partners CLO 53(B), Ltd., Golub Capital Partners CLO 54(M), L.P., Golub Capital Partners CLO 55(B), Ltd., Golub Capital Partners CLO 56(M), Golub Capital Partners CLO 57(M), Golub Capital Partners CLO 58(B), Ltd., Golub Capital Partners CLO 59(M), Golub Capital Partners CLO 61(M), GCP HS Fund, GCPF 1 Loan Funding F, L.P., GCPF Loan Funding E, Golub Capital Amber Partners Fund, L.P., Golub Capital Partners CLO 60(B), Ltd., Golub Capital Strategic Partners Fund 1, L.P., Golub Capital Strategic Partners Fund 2, L.P., Golub Capital Partners Short Duration 2022–1, Golub Emerald Fund, L.P., Golub Sapphire Fund, L.P., GEMS Fund 6, L.P., GEMS Fund 6 International, L.P., and GCPF Loan Funding F.

FILING DATES: The application was filed on April 22, 2022, and amended on July 5, 2022 and December 8, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on January 9, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Matthew Carter, Esq. at *Matthew.Carter@dechert.com.*

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated December 8, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27793 Filed 12–21–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34777; File No. 812–15285]

ACAP Strategic Fund, et al.

December 16, 2022.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: ACAP Strategic Fund, Innovation Access Fund, SilverBay Capital Management LLC, Alkeon Capital Management, LLC, SALI Fund Management, LLC, Alkeon Growth Partners, LP, Alkeon Growth Offshore Fund, Ltd., Alkeon Growth Master Fund, Ltd., Alkeon Growth Partners II, LP, Alkeon Growth Offshore Fund II, Ltd., Alkeon Growth PW Partners, LP, Alkeon Growth RJ Partners, LP, Alkeon Select Series SPC Fund, Ltd., Alkeon Select Partners, LP, Alkeon Select Offshore Fund, Ltd., SALI Multi-Series Fund, LP—Alkeon Insurance Growth Fund Series, Alkeon Innovation Fund, LP, Alkeon Innovation Offshore Fund Ltd., Alkeon Innovation Master Fund, LP, Alkeon Innovation Opportunity Fund, LP, Alkeon Innovation Opportunity Offshore Fund, LP, Alkeon Innovation Opportunity Master Fund, LP, Alkeon Innovation Fund II, LP, Alkeon Innovation Offshore Fund II, LP, Alkeon Innovation Master Fund II, LP, Alkeon Innovation Fund II, Private Series, LP, Alkeon Innovation Offshore Fund II, Private Series, LP, Alkeon Innovation Master Fund II, Private Series, LP, Alkeon Innovation Lux, SCSp SICAV–RAIF, Alkeon Innovation II Private Client Fund, LP, Alkeon Innovation II Private Client Offshore Fund, LP, and IJS Global Holdings, Ltd.

FILING DATES: The application was filed on December 1, 2021, and amended on June 13, 2022, October 12, 2022 and December 6, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by

emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on January 9, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, *Secretarys-Office@sec.gov.* Applicants: *GSilfen@KRAMERLEVIN.com.*

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' third amended and restated application, dated December 6, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27794 Filed 12–21–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96524; File No. SR–NYSEAMER–2022–13]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Make Certain Amendments to the Preamble to Rule 9217 and To Add Rule 2.1210 to the Exchange's Minor Rule Violation Plan for Equities and Options

December 16, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 8, 2022, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes (1) certain amendments to the preamble to Rule 9217; (2) to add Rule 2.1210 (Registration Requirements) of the Office Rules to the list of minor rule violations in Rule 9217 for both the equities and options markets; and (3) certain non-substantive clarifying changes to the list of eligible equities and options rules. 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes (1) certain amendments to the preamble to Rule 9217; (2) to add Rule 2.1210 (Registration Requirements) of the Office Rules to the list of minor rule violations in Rule 9217 for both the equities and options markets; and (3) certain non-substantive clarifying changes to the list of eligible equities and options rules.

Preamble to Rule 9217

The preamble to current Rule 9217 consists of two paragraphs. The first provides that any member organization or covered person [4] may be subject to a fine under Rule 9216(b) with respect to any rules listed therein and that the fine amounts and fine levels set forth therein shall apply to the fines imposed. The second paragraph provides that nothing in the rule requires the Exchange to impose a fine for a violation of any rule under the Minor Rule Plan and that if the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the Rule 9000 Series rather than under Rule 9217.

The Exchange proposes to add two additional paragraphs to the preamble based on the preamble to the version of Rule 9217 adopted by the Exchange's affiliate NYSE Arca, Inc. (''NYSE Arca'') and to reorder the paragraphs as subsections (a) through (d), as follows.

The current first paragraph of the preamble to Rule 9217 would become new subsection (a). The text would be unchanged except that the Exchange would add '', not to exceed $5,000,''

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For purposes of the Exchange's rules, the term member organization encompasses both equity permit holders (ETP Holders) and options permit holders (ATP Holders). *See* Rule 1.1E(n) (ETP Holder ''means a member organization that has been issued an ETP''); Rule 900.2NY(5) (ATP Holder refers to a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP, and references to member, member organization and 86 Trinity Permit Holder as those terms are used in the Rules of the Exchange are deemed to be references to ATP Holders. ATP Holders have status as a ''member'' of the Exchange as that term is defined in Section 3 of the Act). Rule 9120(g) defines covered person to mean a member, principal executive, approved person, registered or non-registered employee of a member organization or an ATP Holder, or other person (excluding a member organization) subject to the jurisdiction of the Exchange.

after fine to clarify that a minor rule fine on the Exchange cannot exceed $5,000.[5]

The Exchange would add a new subsection (b) that would provide that Regulatory Staff designated by the Exchange shall have the authority to impose a fine pursuant to this Rule. Proposed Rule 9217(b) is identical to NYSE Arca Rule 10.9217(b).

The Exchange would also add the following text as new subsection (c) to Rule 9217:

> Any member organization or covered person found in violation of a minor rule is not required to report such violation on SEC Form BD or Form U–4 if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned member organization or covered person has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Any fine imposed in excess of $2,500 is subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d–1 under the Act.

Except for substituting ''member organization or covered person'' for ''person or organization,'' proposed subsection (c) is identical to NYSE Arca Rule 10.9217(c).

Finally, the current second paragraph of the preamble to Rule 9217 would become new subsection (d). The text of proposed Rule 9217(d) would be unchanged.

Addition of Rule 2.1210 to the List of Rules Eligible for a Minor Fine

The Exchange proposes to add Rule 2.1210 the list of rules in Rule 9217 eligible for disposition pursuant to a minor fine under Rule 9216(b) for its equities and options markets.

Rule 2.1210, which was adopted in 2018,[6] sets forth the requirements for persons engaged in the investment banking or securities business of a member organization or ETP Holder[7] to be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 2.1220.

The Exchange proposes to add Rule 2.1210 to the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b). Specifically, the Exchange proposes to add Rule 2.1210 to the ''List of Equities Rule Violations and Fines Applicable Thereto'' under current subsection (b), titled ''Record Keeping and Other Minor Rule Violations,'' and to the ''List of Options Rule Violations and Fines Applicable Thereto'' under current subsection (ii) titled ''List of Options Rule Violations and Fines Applicable Thereto.'' The substantially similar version of Rule 2.1210 was adopted by the Exchange's affiliate New York Stock Exchange LLC (''NYSE'') in 2018[8] and is currently eligible for minor rule fines under the NYSE's version of Rule 9217.[9] The Exchange believes that having the ability to issue a minor rule fine for failing to comply with the registration requirements of Rule 2.1210 would be consistent with and complement the Exchange's current ability to issue minor rule fines for other registration violations (*e.g.,* Rule 2.21E (Employees of ETP Holders Registration) and Rule 341 (Approval of Registered Employees and Officers)). The Exchange further believes that the violations of the registration requirements are particularly suited to minor rule fines because minor fines provide a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations.

The Exchange further proposes to add fine levels for violations of Rule 2.1210 to both the equities and the options fine schedules. First, the Exchange would add proposed first, second and third level fines for violations of Rule 2.1210 to the equities fine schedule of $1,000 for the first violation, $2,500 for the second violation and $3,500 for the third and subsequent violations. The proposed fine levels would be the same as those in the Exchange's current Rule 10.9217(d)(2)(3) for violations of Rule 2.21E. Second, the Exchange would add proposed first, second and third level fines for violations of Rule 2.1210 to the options fine schedule of $1,000 for the first violation, $2,500 for the second violation and $3,500 for the third and subsequent violations. The proposed fine levels would be the same as those in the Exchange's current Rule 10.9217(ii)(11) for violations of Rule 341.

The Exchange believes that the proposed change would strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

Non-Substantive Clarifying Changes

The Exchange also proposes the following non-substantive clarifying changes to the list equities and options rules eligible for a minor fine.

Equities Rules and Applicable Fines

- Under the heading ''List of Equities Rule Violations and Fines Applicable Thereto,'' the Exchange would delete ''(a)'', ''(b)'', ''(c),'' ''(d)'' and ''(e)''.
- When the Exchange added the Rule 6800 Series to the list of minor rule violations, violations of the Rule 6800 Series and the corresponding fine levels were inadvertently placed under the legacy minor rules sections of Rule 9217 and omitted from current Rule 9217(b) (Record Keeping and Other Minor Rule Violations) and (d) (Fine Schedule).[10] To address this oversight, the Exchange would amend current Rules 9217(b) and (d) as follows.

First, the following bullet would be added under to current Rule 9217(b) immediately after the newly added violations of Rule 2.1210: ''Rule 6800—Series of the Office Rules—Failure to comply with the Consolidated Audit Trail Compliance Rule requirements.''

Second, the following bullet would be added at the end of current Rule 9217(d)(2): ''Failure to comply with the Consolidated Audit Trail Compliance Rule requirements set forth in the Rule 6800 Series of the Office Rules.[2]'' Proposed footnote 2 would read ''For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6800 Series, the Exchange may impose a

[5] *See* Securities Exchange Act Release No. 77241 (February 26, 2016), 81 FR 11311, 11325 n.50 (March 3, 2016) (SR–NYSEMKT–2016–30) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the New York Stock Exchange LLC and Certain Conforming and Technical Changes) (noting that proposed NYSE American Rule 9216(b) would retain the Exchange's maximum fine for minor rule violations of $5,000).

[6] *See* Securities Exchange Act Release No. 84388 (October 10, 2018), 83 FR 52287 (October 16, 2018) (SR–NYSEAmer–2018–46) (Notice of Filing and Immediate Effectiveness of Amendments to Rules Regarding Qualification, Registration and Continuing Education Applicable to Member Organizations, Equity Trading Permit Holders, and American Trading Permit Holders).

[7] Since member organizations encompass ETP Holders, the current formulation in Rule 2.1210 is redundant. *See* note 4, *supra.* The Exchange will submit a proposed rule change to clarify Rule 2.1210. The Exchange also notes that persons engaged in the investment banking or securities business of a member organization or ETP Holder would also be covered persons for purposes of the Exchange's disciplinary rules.

[8] *See* Securities Exchange Act Release No. 84336 (October 2, 2018), 83 FR 50727 (October 9, 2018) (SR–NYSE–2018–44) (Notice of Filing and Immediate Effectiveness of Amendments To Rules Regarding Qualification, Registration and Continuing Education Applicable to Members and Member Organizations).

[9] *See* NYSE Rule 9217.

[10] *See* Securities Exchange Act Release No. 89402 (July 27, 2020), 85 FR 46203 (July 31, 2020) (SR–NYSEAMER–2020–52) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Adding the Consolidated Audit Trail Industry Member Compliance Rules to the List of Minor Rule Violations in Rule 9217). Rules 9217(c) and (e) relate to legacy minor rules and associated fine levels.

minor rule violation fine of up to $2,500. For more serious violations, other disciplinary action may be sought.''

The proposed changes to current Rules 9217(b) and (d) are not intended to make substantive changes. Violations of the CAT Compliance Rules are currently eligible for minor rule fines and $2,500 is currently the maximum eligible fine. The text proposed to be added to Rules 9217(b) and (d) is identical to text in current Rules 9217(c) and (e). Proposed footnote 2 is identical to text at the end of current Rule 9217(e) (Legacy Minor Rules Fine Schedule) as well as that adopted by the Exchange's affiliates NYSE and NYSE Chicago, Inc.[11] As discussed below, the same footnote would be added to the options list of minor rule violations as new footnote 4.

• Under the first paragraph in current Rule 9217(d) (Fine Schedule), the Exchange proposes to add the clause '', with the exception of fines pursuant to the Rule 6800 Series'' to the first sentence. As proposed, the sentence would read ''These fines are intended to apply to minor violations, with the exception of fines pursuant to the Rule 6800 Series.'' The proposed change would render the sentence in current subsection (d) identical to the sentence at the end of current subsection (c). In addition to making the Exchange's rules more internally consistent and more like those of its affiliates,[12] the proposed change would clarify that minor rule fines for violations of the Rule 6800 Series cannot exceed $2,500. As discussed below, the Exchange would add the same clause to the same sentence that appears in the options rules section.

• The Exchange proposes the following additional change to the equities fine schedule set forth in current Rule 9217(d):

○ The number ''1'' would be deleted from the first heading ''Trading Rule Violations Fine Levels.'' Underneath that heading, numbering would be replaced with bullets to conform with current subsections (a), (b) and (c) of Rule 9217 governing equities rules violations.

○ The number ''2'' would be deleted from the second heading ''Record Keeping and Other Minor Rule Violations Fine Levels.'' Underneath that heading, the Exchange would similarly replace numbering with bullets to conform with current subsections (a), (b) and (c) of Rule 9217 governing equities rules violations.

Options Rules and Applicable Fines

• Under the heading ''List of Options Rule Violations and Fines Applicable Thereto,'' the Exchange would delete ''(i),'' ''(ii)'' and ''(iii)''. The Exchange would also replace all numbering and lettering with bullets in the list of eligible options rules and recommended fine levels.

• Current subsection (i) would be renamed ''Trading Rule Violations and Options Floor Decorum'' to more accurately reflect the eligible listed rules.

• Under current subsection (ii) (Minor Rule Plan: Record Keeping and Other Minor Rule Violations), the Exchange would add a new footnote 4 at the end of current item 13 that relates to failure to comply with the Consolidated Audit Trail Compliance Rule requirements set forth in the Rule 6800 Series of the Office Rules. Proposed footnote 4 would be identical to footnote 2 described above that the Exchange would add to Rule 9217(d)(2) in the equities rules section.

• Similar to the change described above for the equities list, the Exchange would add the clause '', with the exception of fines pursuant to the Rule 6800 Series'' to the first sentence in the second paragraph under current subsection (iii) (Minor Rule Plan: Recommended Fine Schedule).

• The Exchange would move footnote 1 that appears in the Options Floor Decorum and Minor Trading Rule Violations fine levels under current subsection (iii) to the end of the options list rule with the other footnotes.

• The Exchange would delete ''(ii)'' before ''Record Keeping and Other Minor Rule Violations.''

• Finally, the Exchange would add a reference to proposed footnote 4 at the end of current item 13 under ''Record Keeping and Other Minor Rule Violations.'' In addition, ''Up to $2,500.00'' would be deleted from the chart as redundant of proposed footnote 4.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5),[14] in particular, because 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.

Preamble to Rule 9217

The Exchange believes that harmonizing the preamble to Rule 9217 with that of its affiliates would remove impediments to and perfect the mechanism of a free and open market and a national market system by a providing greater harmonization between Exchange rules and those of its affiliates in connection with minor rule fines, thereby fostering cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system. Moreover, by adopting the same applicable minor rule standards for violations of those standards as its affiliates, the Exchange would promote regulatory consistency.

Addition of Rule 2.1210 to the List of Eligible Rules

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in Rule 9217 does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through formal disciplinary action if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. The option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. The proposed rule change is thus designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the

[11] *See* NYSE Rule 9217(d) (''For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6800 Series, the Exchange may impose a minor rule violation fine of up to $2,500. For more serious violations, other disciplinary action may be sought.''); NYSE Chicago 10.9217(f), n. ** (same).

[12] *See, e.g.,* NYSE Rule 9217.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

registration requirements set forth in Rule 2.1210 where a more formal disciplinary action may not be warranted or appropriate. In addition, the Exchange believes that adding rules based on the rules of its affiliate to the Exchange's minor rule plan would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are already eligible for minor rule treatment, thereby harmonizing rules eligible for minor rule fines across affiliated exchanges.

The Exchange further believes that the proposed amendments to Rule 9217 are consistent with Section 6(b)(6) of the Act,[15] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the Act, the rules and regulations thereunder, and the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of proposed Rule 2.1210 pursuant to the Exchange's rules. Finally, the Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[16] Rule 9217 does not preclude a member organization or covered person from contesting an alleged violation and receiving a hearing on the matter with procedural rights through a litigated disciplinary proceeding.

Non-Substantive Clarifying Changes

The Exchange believes that the proposed reorganization, renaming and replacement of numbers with bullets in Rule 9217 and related changes described above would add clarity and consistency to the Exchange's rules. The Exchange believes that adding such clarity would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion. In addition, the Exchange believes that moving text to achieve internal consistency and address inadvertent errors relating to violations of the CAT Compliance Rules also adds clarity to the Exchange's rules. Finally, the Exchange believes that harmonizing the preamble to Rule 9217 with that of its affiliates would promote fairness and consistency in the marketplace by eliminating differences and harmonizing language related to minor rule treatment of similar rule violations across affiliates. The proposed change is not intended to make any substantive change to the applicability of minor rule fines to violations of the CAT Compliance Rules or the amount of those fines.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to update the Exchange's rules to strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct and to align the Exchange's rule setting forth violations eligible for a minor rule fine more closely with that of its affiliates.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2022–13 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–NYSEAMER–2022–13. 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–NYSEAMER–2022–13 and should be submitted on or before January 12, 2023.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act[19] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the

[15] 15 U.S.C. 78f(b)(6).

[16] 15 U.S.C. 78f(b)(7) and 78f(d).

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[20] which governs minor rule violation plans.

As stated above, the Exchange proposes to (1) make certain revisions to the preamble to Rule 9217 (Violations Appropriate for Disposition Under Rule 9216(b)); (2) add Rule 2.1210 (Registration Requirements) to the list of minor rule violations in Rule 9217 and associated fine levels for its equities and options markets; and (3) make certain non-substantive clarifying changes to Rule 9217.

The Commission believes that Rules 9216(b) and 9217 are an effective way to discipline a member for a minor violation of a rule. More specifically, the Commission believes that the proposed revisions to the preamble of Rule 9217 are consistent with the Act because they would add clarity to the Exchange's rules and may help the Exchange's ability to better carry out its oversight and enforcement responsibilities. The proposed revisions to the preamble of Rule 9217 also would align Rule 9217 with the rules of the Exchange's affiliates. The Commission believes that the proposed addition of Rule 2.1210 (Registration Requirements) to the Exchange's list of current minor rule violations provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. Furthermore, the Commission believes that amending the associated fine schedule is consistent with the Act because it may help the Exchange's ability to better carry out its oversight and enforcement responsibilities by levying appropriate fines for minor violations of the rules included in Rule 9217, including minor violations of Rule 2.1210. Finally, the Commission believes that the Exchange's proposal to make certain non-substantive changes to Rule 9217 are consistent with the Act because these changes will add clarity to the Exchange's rules.

In approving the proposed rule change, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under Rules 9216(b) and 9217. The Commission believes that a violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rules 9216(b) and 9217 provide a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rules 9216(b) and 9217 or whether a violation requires formal disciplinary action.

For the same reasons as discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[21] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal will assist the Exchange in preventing fraudulent and manipulative practices by allowing the Exchange to adequately enforce compliance with, and provide appropriate discipline for, violations of Exchange rules. Moreover, the proposed changes raise no new or novel issues. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[22] and Rule 19d–1(c)(2) thereunder,[23] that the proposed rule change (SR–NYSEAMER–2022–13) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

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[20] 17 CFR 240.19d–1(c)(2).

[21] 15 U.S.C. 78s(b)(2).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 240.19d–1(c)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96521; File No. SR–EMERALD–2022–36]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Relating to FINRA Fees

December 16, 2022.

Pursuant to the provisions of 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 December 8, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to reflect adjustments to the Financial Industry Regulatory Authority, Inc. (''FINRA'') Registration Fees and Fingerprinting Fees.

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.[3] 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 *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* 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).

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 Section 2)c) of the Fee Schedule, Web CRD Fees, to reflect adjustments to the FINRA Registration Fees and Fingerprinting Fees.[4] The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of MIAX Emerald Members [5] organizations that are not also FINRA members (''Non-FINRA members''). The Exchange merely lists these fees in its Fee Schedule. 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 Section 2(c) of the Fee Schedule, Web CRD Fees. 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 the proposal is consistent with Section 6(b) of the Act,[14] in general, and 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.

Those 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 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 MIAX Emerald Electronic Exchange Member and Market Maker 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 that is 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

[4] 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 or registered associated persons of broker-dealers.

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] *See* note 3. 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 $30.00 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 $30.00 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 3.

[13] *See* 2012 Rule Change at note 11. 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)(5).

[16] The $20 FINRA Fee is in addition to the $11.25 FBI Fee except for the second fingerprint transaction.

[17] *See* note 3.

[18] *See* 2012 Rule Change at note 11. 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 11. 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.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[22] and Rule 19b–4(f)(2) [23] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2022–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2022–36. 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–EMERALD–2022–36 and should be submitted on or before January 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

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[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 240.19b–4(f)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96516; File No. SR–MSRB–2022–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MSRB Rule A–12, on Registration, and Accompanying Form A–12 Changes

December 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2022 the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') 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 MSRB. 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 MSRB filed with the Commission a proposed rule change consisting of amendments to MSRB Rule A–12, on registration, and accompanying Form A–12 [3] changes that are intended to modernize and streamline the MSRB registration process for brokers, dealers and municipal securities dealers (collectively, a ''dealer'' or ''dealers'') and municipal advisors, (together with dealers, a ''registrant,'' ''registrants'' or ''regulated entities'') and provide additional information to the MSRB and examining authorities for regulatory purposes. Specifically, the proposed rule change consists of amendments to Rule A–12 to (i) remove a PDF upload requirement for notification to the appropriate regulatory agency or registered securities association and replace it with a requirement to provide the required notice information directly on Form A–12; (ii) make explicit the notification requirement for dealers when adding a new line of business via Form A–12; (iii) require registrants to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Form A–12 is the MSRB's single, consolidated registration form used for initial registration as a dealer or municipal advisor, all registration amendments, including withdrawal from registration, and the annual affirmation process. Prior to registration with the MSRB, each dealer and municipal advisor must first register with, and receive approval from, the Commission.

provide, as applicable, information about predecessor firm registrations; (iv) require municipal securities dealers to identify the appropriate regulatory agency that is their designated examining authority; (v) require the primary regulatory contact of a municipal advisor firm to be duly qualified as a municipal advisor principal by having passed the Municipal Advisor Principal Qualification Examination (Series 54); (vi) extend the time period for regulated entities to annually affirm the information on Form A–12; (vii) make technical amendments to Rule A–12; and finally, make accompanying amendments to Form A–12 (collectively, the ''proposed rule change'').

The MSRB has designated the proposed rule change as constituting a ''non-controversial'' rule change under Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The MSRB proposes an operative date of January 1, 2023.

The text of the proposed rule change is available on the MSRB's website at *https://msrb.org/2022-SEC-Filings,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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 proposed rule change would amend Rule A–12, on registration, to modify certain MSRB registration requirements. In addition, the rule change reflects accompanying Form A–12 changes that are designed to modernize, streamline and improve the data collected when registrants complete, update or annually affirm their Form A–12 information. The MSRB believes that these changes will make it more efficient and less burdensome for regulated entities to complete the form. Also, the proposed rule change would make clarifying changes to Form A–12, in furtherance of form modernization.[6] The MSRB also believes the proposed rule change would provide additional information to support the MSRB and the appropriate regulatory agencies in their regulatory purposes.

Proposed Rule Change and Accompanying Form A–12 Changes

Rule A–12 requires regulated entities to register with the MSRB prior to engaging in any municipal securities business or municipal advisory activities and to complete Form A–12 in the designated electronic format.[7] The MSRB proposed, and the SEC approved, amendments to Rule A–12 in 2014 to streamline MSRB registration requirements into one rule and simplify and clarify the MSRB registration process and rule requirements for registrants.[8] As part of its ongoing retrospective review, the MSRB has identified aspects of the rule and the accompanying proposed Form A–12 changes that can benefit from greater clarity, simplification, and modernization, as discussed below.

Remove Separate Documentation for the Notice Requirement

Rule A–12(a) requires that prior to registering with the MSRB, regulated entities must register with, and be approved by the SEC. In addition, Rule A–12(a) requires, as applicable, that notification be made to the appropriate regulatory agency or registered securities association of the intent to engage in municipal securities and/or municipal advisory activities and then provide written evidence of such notice to the MSRB.[9] Because approval of registration with the SEC is a prerequisite to registration with the MSRB, Rule A–12 does not require registrants to evidence such notice to the SEC. Currently dealers provide written evidence to the MSRB of notice having been provided to FINRA or, as applicable, the FRB, FDIC, or OCC by uploading a PDF document to Form A–12.[10]

The proposed rule change to add Supplementary Material .02, on notification requirements, would specify that dealers that, after initial registration, subsequently amend their registration status to add municipal advisory activities as a line of business must provide notice to FINRA or, as applicable, the FRB, FDIC, or OCC of the dealer's intent to conduct the new business activity. This aligns with the goal that the appropriate regulatory authority primarily responsible for examining dealers' compliance with MSRB rules is continuously kept abreast of such line of business changes that subsequently add a new registration category for a firm post the dealer's initial registration.[11]

The proposed rule change also would streamline the process for a dealer to inform the MSRB that the requisite notification was made. Rather than creating a separate written statement, the proposed rule change would require information relevant to the requisite notification be provided on Form A–12. Specifically, rather than uploading a PDF document, dealers will be required to input the requisite information (the name of the person who is the firm's point of contact at the registered

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The MSRB's Registration Manual would be updated to reflect the proposed rule change and proposed Form A–12 changes. The MSRB Registration Manual is available at *https://www.msrb.org/sites/default/files/MSRB-Registration-Manual.pdf.*

[7] The information required by Form A–12 must be submitted electronically through a web portal located on the MSRB's website. Registration with the MSRB does not become effective until the regulated entity is notified by the MSRB that its Form A–12 is complete, and its initial registration and annual registration fees have been received and processed.

[8] *See* Exchange Act Release No. 71255 (January 8, 2014), 79 FR 2483 (January 14, 2014) (File No. SR–MSRB–2013–09) (Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1), available at *https://www.sec.gov/rules/sro/msrb/2014/34-71255.pdf; See* Exchange Act Release No. 71616 (February 26, 2014), 79 FR 12254 (March 4, 2014) (File No. SR–MSRB–2013–09) (Order Granting Approval of Proposed Rule Change), available at *https://www.sec.gov/rules/sro/msrb/2014/34-71616.pdf.*

[9] The term ''appropriate regulatory agency,'' with respect to a municipal securities dealer, means the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), or the Federal Deposit Insurance Corporation (FDIC), and the SEC. With respect to municipal advisors, ''appropriate regulatory agency'' means the SEC. *See* 15 U.S.C. 78c(a)(34)(A) and MSRB Rule D–14. The appropriate registered securities association for broker-dealers is the Financial Industry Regulatory Authority (FINRA), as defined in 15 U.S.C. 78*o*–3.

[10] Pursuant to Rule A–12(l), the MSRB Registration Manual, as updated or amended from time to time, is comprised of the specifications for the reporting of information required under Rule A–12. The Registration Manual notes that a signed written notice must be uploaded as a PDF document and should include, among other things, the regulatory agency that was notified and the date notification was given. *See* MSRB Registration Manual at 13.

[11] In instances where a FINRA-member firm may have initially registered with the MSRB only as a municipal advisor (*i.e.,* the firm is not registered as a dealer firm with the MSRB) and then subsequently amends its registration status to add the dealer registration category and municipal securities business, notification must be provided to FINRA and evidenced to the MSRB via a Form A–12 amended filing.

securities association or appropriate regulatory agency, the email address where the notification was sent, the date of such notification and the intended effective date the firm intends to begin engaging in municipal securities and/or municipal advisory activities) directly into proposed Form A–12.

The MSRB believes that removing the requirement to upload a PDF would simplify completion of Form A–12 without diminishing the information provided on the form. In addition, removing the PDF upload requirement and replacing it with the requirement to provide the name and contact information for a contact person at the registered securities association or appropriate regulatory agency would provide the MSRB with more fulsome and relevant information.

Succession Information

Presently, Rule A–12 does not require, and Form A–12 does not collect, information about successor firms. The proposed rule change would amend Rule A–12 to require regulated entities to provide, as applicable, information on successor firms on Form A–12. The SEC's applications for registration, Form MA, application for municipal advisor registration; Form BD, application for broker-dealer registration; and Form MSD, application for registration as a municipal securities dealer all contain questions about successor registrations that must be completed as part of the SEC registration process.[12] As SEC registration is a prerequisite to registration with the MSRB, the collection of this information would align the collection of succession information on Form A–12 with the SEC, which would provide more comprehensive and complete registration information for the MSRB in furtherance of regulatory consistency.

Proposed Form A–12 changes would capture the required new succession information by including a question asking regulated entities to identify whether it is a successor firm and if yes, to provide the prior SEC and/or MSRB identification number(s) of the predecessor firm. The MSRB believes that this information will support the examination and enforcement activities of other regulators by combining such information with other information on Form A–12 in one convenient location accessible to such staff.

Appropriate Regulatory Agency

New subparagraph A–12(f) would be added to require a municipal securities dealer to provide the name of the firm's appropriate regulatory agency (*i.e.,* OCC, FRB, or FDIC) and proposed Form A–12 changes would capture this information. This new requirement would ensure that the MSRB is kept informed of the appropriate regulatory agency that is responsible for examining the registrant's compliance with MSRB rules and any changes thereto.

Designated Contacts

Pursuant to A–12(f), on designated contacts, registrants must designate, on Form A–12, a primary regulatory contact, master account administrator, billing contact, compliance contact, and primary data quality contact.[13] Registrants are required to provide the name, title, address, phone number, and email address of each of these designated contacts on Form A–12 and are permitted to designate one individual for any or all the required contacts.

The proposed rule change does not alter any obligations of each of the designated contacts, but promotes consistency across the regulatory framework, and makes technical amendments to the rule to aid registrants in the registration process. Specifically, the proposed rule change would create a similar requirement as that under current subparagraph A–12(f) for dealers by requiring the primary regulatory contact [14] of a municipal advisor firm (and optional regulatory contact, if the firm opts to include this contact on Form A–12) to be a duly qualified municipal advisor principal by having taken and passed the ''Series 54.'' [15] The proposed rule change is not establishing a new regulatory or compliance obligation since persons associated with a municipal advisor who are directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons have been required to be qualified with the Series 54 since November 30, 2021. The proposed rule change is solely specifying that the designated primary regulatory contact and, if applicable, the optional regulatory contact, who are persons with the authority to receive official communications from the Board are qualified as a municipal advisor principal. Additionally, the proposed rule change aligns with existing requirements for the primary regulatory contact and optional regulatory contact, as applicable, of dealers pursuant to Rule A–12(f).

The proposed amendments to current subparagraph A–12(f) would result in the subparagraph being re-lettered as Rule A–12(g) and current subparagraphs A–12(g)–(l) would be re-lettered to subparagraphs (h)–(m).

Form A–12 Annual Affirmation

The proposed rule change to current subparagraph A–12(k), on Form A–12 annual affirmation, would extend and set the dates for the annual affirmation period. As a result, the current regulatory requirement, which has the annual affirmation period beginning on January 1st and ending 17 business days after that date each year, would be amended to reflect an annual affirmation period that runs from January 1 to January 31 each year. This proposed rule change would alleviate confusion about the annual affirmation filing deadline and simplify the affirmation obligation to provide more regulatory certainty for registrants. Additionally, under this subparagraph, any regulated entity that submits its initial Form A–12 during the annual affirmation period would not be required to affirm Form A–12 during that period for that calendar year. The proposed rule change would reduce regulated entities' burdens and provide greater certainty in the filing requirements by providing that any Form A–12 amendments made by regulated entities during the month of January would be deemed an annual affirmation.[16]

Other Form A–12 Changes

In addition to the Rule A–12 and accompanying Form A–12 changes noted above, Form A–12 would include the revisions identified below.

- *General Information regarding Registrant:*
  - *Name:* The field for ''Name'' would be renamed to ''Firm's Legal Name.''
  - *Doing-Business-As (DBA) Name:* The MSRB would add an optional text field to Form A–12 for registrants to include a ''doing business as'' name that may differ from the firm's legal name provided on Form A–12.
- *Types of Business Activity:* Each registrant is presently required to identify its types of business activities and multiple activities may be selected.

[12] *See* Form MA Item 3: Successions; Form BD Section III; Form MSD Item 1(a).

[13] Registrants may also provide an optional regulatory contact, optional data quality contact and/or optional technical contact.

[14] The primary regulatory contact is charged with receiving official communications from the MSRB.

[15] As of November 30, 2021, all individuals acting in the capacity of a municipal advisor principal were required to become duly qualified with the Series 54.

[16] The annual affirmation is required to be completed by the designated primary regulatory contact, optional regulatory contact or compliance contact.

The following reflects the proposed changes to the business activities section of Form A–12 for the specified registration categories.

○ *Broker/Dealer—Municipal Fund Securities:* ''ABLE Program Underwriting'' and ''ABLE Program Sales'' would be added to the list of business activities from which to select.

○ *Broker/Dealer—Other:* If registrants select ''Alternate Trading System'' from the existing list of business activities, a new field ''SEC Form ATS has been filed'' would then be displayed. Registrants to whom such business activity applies would check the box affirming that the dealer is an SEC Form ATS filer.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)) of the Act,[17] which provides that the Board shall propose and adopt rules to effect the purposes of the Exchange Act with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Act [18] provides that the MSRB's rules shall 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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act [19] because the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by streamlining and simplifying the registration process for new registrants and the annual affirmation process for existing regulated entities. Similarly, the proposed rule change would remove impediments by streamlining certain registration-related processes, such as removing the PDF upload requirement and replacing it with a requirement to complete requisite fields on Form A–12, which would be a simpler and less onerous component of the MSRB registration process. Additionally, the proposed rule change would promote just and equitable principles of trade because reducing burdens in the registration process and annual affirmation process would facilitate better and timelier compliance with Rule A–12 without negatively impacting investors, issuers, or the public interest. Moreover, the inclusion of a few additional fields on Form A–12 would promote clarity and ease in completing Form A–12 during the initial registration process and the subsequent review, updating and affirming of such information thereby removing impediments to a free and open municipal securities market by creating a more efficient process.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Act,[20] which requires that rules adopted by the Board not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud. The MSRB believes the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) [21] because the proposed rule change would clarify and simplify the registration process, as well as the annual affirmation process, for all municipal advisors, including small municipal advisors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[22] Section 15B(b)(2)(L)(iv) of the Act,[23] requires that rules adopted by the Board not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud. The Board's policy on the use of economic analysis limits its application regarding those rules for which the Board seeks immediate effectiveness.[24] The MSRB believes that on aggregate, with offsetting impacts from various components, the proposed rule changes and proposed Form A–12 changes would reduce the compliance burden for regulated entities because the proposed rule change would clarify and simplify the registration process, as well as the annual affirmation process, for all municipal advisors, including small municipal advisors. Small municipal advisors typically have fewer associated persons and, as a result, their resources may be more limited, and the benefits of the proposed rule change may provide smaller municipal advisors a greater benefit given their limited resources. Finally, the proposed changes to Form A–12 are designed to promote the collection of information from all municipal advisors so that the MSRB and appropriate regulatory authorities have more fulsome and useful information from the Form A–12 data submitted by registrants. Therefore, the proposed rule change would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed rule change would modify Rule A–12 and Form A–12 for the purposes of reducing regulatory burdens, clarifying relevant information, and enhancing usability for regulated entities. First, on reducing regulatory burdens, the proposed rule change would extend the annual affirmation period allowing regulated entities added time to comply with the rule's requirements, and the proposed Form A–12 changes are designed to reduce the complexity of the form format. Additionally, regulatory burdens are reduced by simplification and clarification of the regulatory requirement—that being making the annual affirmation period the whole month of January (*i.e.,* January 1 to January 31 of each calendar year) rather than seventeen business days after January 1 of each calendar year. The proposed rule change would also streamline the process of notification to the MSRB that the applicable appropriate regulatory agency or registered securities association has been notified of the regulated entities intent to engage in municipal securities

[17] 15 U.S.C. 78*o*–4(b)(2).

[18] 15 U.S.C. 78*o*–4(b)(2)(C).

[19] *Id.*

[20] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[21] *Id.*

[22] 15 U.S.C. 78*o*–4(b)(2)(C).

[23] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[24] Policy on the Use of Economic Analysis in MSRB Rulemaking, available at *http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx.*

and/or municipal advisor activities by removing the prescribed requirement of uploading a PDF document. In place of a document upload feature, Rule A–12 would require dealers to complete the requisite fields on Form A–12 to fulfill the notification requirement.

Next, the proposed changes specific to Form A–12 would, among other things, require municipal securities dealers to identity the appropriate regulatory agency that is the firm's designated examining authority.[25] Also, proposed form changes would require registrants to provide the information for any applicable predecessor firm as well as optionally providing a ''doing business as'' name that differs from a firm's legal name. All of the aforementioned required information should be readily available to regulated entities and thus would not impose much burden on regulated entities. Finally, on enhancing usability, the proposed changes to Form A–12 would also provide clearer language to improve form usability for regulated entities.

Finally, with respect to the proposed rule change prescribing that the primary regulatory contact and optional regulatory contact, as applicable, be qualified with the Series 54, the proposed rule change is not establishing a new regulatory nor compliance obligation for municipal advisors. Individuals associated with a municipal advisor firm who are directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons have been required to be qualified with the Series 54 since November 30, 2021. Thus, the proposed rule change is only specifying that the persons with the authority to receive official communications from the Board are qualified as a municipal advisor principal. Additionally, the proposed rule change aligns with existing requirements for the primary regulatory contact and optional regulatory contact, as applicable, of dealers pursuant to Rule A–12(f).

The MSRB believes that the proposed rule change may improve the operational efficiency of the municipal securities market by eliminating complexity concerning the annual affirmation period, modifying outdated requirements in the registration process, and improving the usability of Form A–12. Additionally, the proposed rule change would lead to providing more streamlined information to the SEC, FINRA and other appropriate regulatory agencies. Finally, the MSRB believes the proposed rule change would not impose any burden on competition, as the proposed rule change is equally applicable to all regulated entities. The MSRB does not believe that small, regulated entities would be disadvantaged by the proposed rule change.

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 on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)[26] of the Act and Rule 19b–4(f)(6)[27] thereunder, the MSRB has designated the proposed rule change as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate. A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.[28] However, Rule 19b–4(f)(6)(iii)[29] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[30] The MSRB has requested that the Commission designate the proposed rule change operative on January 1, 2023,[31] as specified in Rule 19b–4(f)(6)(iii).[32]

The MSRB notes that the proposed rule change would not significantly alter the substantive or underlying regulatory obligations of regulated entities, and would not require regulated entities to make material changes to current procedures. The proposed amendments are designed to reduce compliance burdens for regulated entities by modernizing Rule A–12 and enhancing the usability of Form A–12. The MSRB further believes that an operative date of January 1, 2023 would allow regulated entities to benefit from the enhancements to Form A–12 and would promote regulatory consistency; as Form A–12 data collected during the 2023 affirmation period will be consistent whether a registrant completes the annual affirmation on January 1, 2023, or on or after January 12, 2023 (*i.e.,* 30 days from the date of the filing). In addition, the MSRB notes that a January 1st effective date would alleviate any confusion about when the annual affirmation period ends.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. An operative date of January 1, 2023 will alleviate operational challenges and confusion for regulated entities by allowing the proposed rule change to become operative on the first day of the calendar year. Accordingly, the Commission hereby waives the 30-day operative delay specified in Rule 19b–4(f)(6)(iii) and designates the proposed rule change to be operative on January 1, 2023.[33]

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.

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–MSRB–2022–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[25] For example, for municipal securities dealers, the appropriate regulatory agency would be FDIC, OCC, or the FRB.

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6).

[28] *Id.*

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change, along with a brief description and text of such proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Commission has designated a shorter time for delivery of such written notice.

[31] *See* SR–MSRB–2022–10 available at *https://msrb.org/sites/default/files/2022-12/SR-MSRB-2022-10.pdf.*

[32] 17 CFR 240.19b–4(f)(6)(iii).

[33] For the purpose of waiving the 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2022–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2022–10 and should be submitted on or before January 12, 2023.

For the Commission, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27783 Filed 12–21–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96523; File No. SR–PEARL–2022–58]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Relating to FINRA Fees

December 16, 2022.

Pursuant to the provisions of 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 December 8, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to reflect adjustments to the Financial Industry Regulatory Authority, Inc. (''FINRA'') Registration Fees and Fingerprinting Fees.

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.[3] 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 *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 2)c) of the Fee Schedule, Web CRD Fees, to reflect adjustments to the FINRA Registration Fees and Fingerprinting Fees.[4] The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of Exchange Members[5] organizations that are not also FINRA members (''Non-FINRA members''). The Exchange merely lists these fees in its Fee Schedule. 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 Section 2)c) of the Fee Schedule, Web CRD Fees. 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

[34] 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. 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).

[4] 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 or registered associated persons of broker-dealers.

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] *See* note 3. 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 $30.00 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 $30.00 FINRA fee and a $11.25 FBI fee. *See https://www.finra.org/*

Continued

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 the proposal is consistent with Section 6(b) of the Act,[14] in general, and 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.

Those 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 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 MIAX Pearl Options Electronic Exchange Member and Market Maker 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 that is 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[22] and Rule 19b–4(f)(2) [23] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

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 3.

[13] *See* 2012 Rule Change at note 11. 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)(5).

[16] The $20 FINRA Fee is in addition to the $11.25 FBI Fee except for the second fingerprint transaction.

[17] *See* note 3.

[18] *See* 2012 Rule Change at note 11. 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 11. 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 240.19b–4(f)(2).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2022–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2022–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–58 and should be submitted on or before January 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27790 Filed 12–21–22; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96520; File No. SR–FINRA–2022–021]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Partial Amendment No. 1 to Proposed Rule Change To Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision)

December 16, 2022.

I. Introduction

On July 28, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–FINRA–2022–021) to amend FINRA Rule 3110 (Supervision) to adopt a voluntary, three-year remote inspection pilot program to allow member firms to elect to fulfill their obligation under Rule 3110(c) (Internal Inspections) by conducting inspections of some or all branch offices and locations remotely without an on-site visit to such office or location, subject to specified terms.

The proposed rule change was published for public comment in the **Federal Register** on August 15, 2022.[3] On September 23, 2022, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 11, 2022.[4] On November 9, 2022, FINRA filed a letter stating that it was considering comments received in response to the Notice, and anticipated submitting a response and amendments to the proposed rule change in the near future.[5] On November 10, 2022, the Commission filed an order instituting proceedings to determine whether to approve or disapprove the proposed rule change.[6] The Commission received several comments on the proposed rule change.[7]

On December 15, 2022, FINRA responded to the comment letters received on the Notice and OIP [8] and filed a partial amendment to the proposed rule change in response to certain comments on the proposed rule change (''Partial Amendment No. 1''). Partial Amendment No. 1 is described in Item II below, which has been substantially prepared by FINRA.[9] The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons.[10]

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Partial Amendment

FINRA is proposing the following amendments to the filing:

1. FINRA Proposes To Amend Proposed Rule 3110.18(b) by Adding Subpart (2)

In light of concerns raised by commenters that a firm might not appropriately consider certain higher risk criteria in conducting its risk assessment, FINRA is proposing to add new paragraph (b)(2) to proposed Rule 3110.18 that would provide a non-exhaustive list of factors that a firm must consider and document. In addition, proposed new paragraph (b)(2) would further provide that consistent with Rule 3110.12, members should conduct on-site inspections or make more frequent use of unannounced, on-site inspections for high-risk locations or where there are ''red flags.'' Following are the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 1 is italicized; proposed deletions in this Partial Amendment No. 1 are in brackets:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 95452 (August 9, 2022), 87 FR 50144 (August 15, 2022) (File No. SR–FINRA–2022–021) (''Notice'').

[4] *See* letter from Sarah Kwak, Associate General Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated September 23, 2022.

[5] *See* letter from Sarah Kwak, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated November 9, 2022.

[6] *See* Exchange Act Release No. 96297 (November 10, 2022), 87 FR 68774 (November 16, 2022) (File No. SR–FINRA–2022–021) (''OIP'').

[7] Comments received on the Notice and OIP are available on the Commission's website at *https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021.htm.*

[8] *See* letter from Kosha Dalal, Vice President and Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated December 15, 2022, available at *https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20152889-320539.pdf.*

[9] The Commission has reformatted FINRA's presentation of its proposed modifications to, and descriptions of, the proposed rule change.

[10] Partial Amendment No. 1 is also available on FINRA's website at *https://www.finra.org/sites/default/files/2022-12/sr-finra-2022-021-amendment-no-1-proposed-rule-change.pdf.*

(2) In conducting the risk assessment of each office or location in accordance with Rule 3110.18(b)(1), a member shall consider, among other things, the following in making their risk-based evaluation of each office or location: (A) the volume and nature of customer complaints; (B) the volume and nature of outside business activities, particularly investment-related; (C) the volume and complexity of products offered; (D) the nature of the customer base, including vulnerable adult investors; (E) whether associated persons are subject to heightened supervision; (F) failures by associated persons to comply with the member's written supervisory procedures; and (G) any recordkeeping violations. In addition, consistent with Rule 3110.12, members should conduct on-site inspections or make more frequent use of unannounced, on-site inspections for high-risk locations or where there are ''red flags.''

FINRA expects a firm to carefully consider the proposed factors listed above and Rule 3110.12 for the risk assessment. The outcome of such assessment may raise red flags that should prompt a firm to consider, among other things, inspecting, remotely or on-site, its offices or locations more frequently than the schedule set forth under Rule 3110(c)(1) (on an announced or unannounced basis). Moreover, FINRA notes that Rule 3130 (Annual Certification of Compliance and Supervisory Processes) requires member firms to have processes to establish, maintain, review, test, and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable FINRA rules, Municipal Securities Rulemaking Board rules, and federal securities laws and regulations. FINRA expects firms to consider Rule 3110.18 as part of their Rule 3130 annual certification process.

2. FINRA Proposes To Amend Proposed Rule 3110.18(c) by Adding Subparts (1)(A)(iii)–(vi)

As proposed, the proposed rule change would exclude some member firms and their offices or locations from participating in the proposed pilot program based on events or activities of a member firm or its associated persons that FINRA believed were more likely to raise investor protection concerns based on the firm's or an associated person's record of specified regulatory or disciplinary events. In light of concerns raised by the commenters, FINRA is proposing to expand the list of events that would deem a member firm ineligible to participate in the pilot program. Following are the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 1 is italicized; proposed deletions in this Partial Amendment No. 1 are in brackets:

(c) Eligibility Exclusions and Conditions

(1) Firm Level

[2](A) A member shall not be eligible to conduct remote inspections of any of its offices or locations in accordance with this Supplementary Material if any time during the period of this Remote Inspections Pilot Program, the member[is or becomes]:

(i) *is or becomes* designated as Restricted Firm under Rule 4111; [or]

(ii) *is or becomes* designated as a Taping Firm under Rule 3170[.]*;*

(iii) receives a notice from FINRA under Rule 9557 under Rule 4110 (Capital Compliance), Rule 4120 (Regulatory Notification and Business Curtailment) or Rule 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties), unless FINRA has otherwise permitted activities in writing pursuant to such rule;

(iv) is or becomes suspended by FINRA;

(v) based on the date in the Central Registration Depository (CRD), had its FINRA membership become effective within the prior 12 months; or

(vi) is or has been found within the past three years by the SEC or FINRA to have violated Rule 3110(c) (Internal Inspections).

FINRA believes that a member firm that is experiencing issues complying with its capital requirements or has been suspended by FINRA is more likely to face significant operational challenges that may negatively impact the firm's inspection program. FINRA further believes that a firm that has been a FINRA member for less than 12 months is often still implementing its business plan and may not have sufficient experience to develop a sufficiently robust inspection program. With respect to a firm that is or has been found within the past three years by the SEC or FINRA to have violated Rule 3110(c), FINRA believes such firms have demonstrated challenges in developing or maintaining robust inspection programs. As such, FINRA believes that these proposed additional ineligibility criteria would appropriately limit the potential population of member firm pilot program participants to those firms that may be better positioned to conduct remote inspections. Moreover, FINRA believes these amendments more appropriately tailor the proposal to maintain investor protection.

3. FINRA Proposes To Amend Proposed Rule 3110.18(c) by Adding Subpart (1)(B)

To further address commenters' concerns pertaining to the proposed controls of the pilot program, FINRA is proposing to enhance those controls with respect to books and records and surveillance and technology tools. Following are the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 1 is italicized; proposed deletions in this Partial Amendment No. 1 are in brackets:

(c) Eligibility Exclusions and Conditions

(1) Firm Level

* * * * *

(B) In addition to the requirements of this Supplementary Material, during the period that a member is participating in this Remote Inspections Pilot Program the member must satisfy the following conditions to be eligible to conduct remote inspections of any of its offices or locations in accordance with this Supplementary Material:

(i)(a) the member must have a recordkeeping system to make and keep current, and preserve records required to be made and kept current, and preserved under applicable securities laws and regulations, FINRA rules, and the member's own written supervisory procedures under Rule 3110; (b) such records are not physically or electronically maintained and preserved at the office or location subject to the remote inspection; and (c) the member has prompt access to such records; and

(ii) as part of the requirement to develop a reasonable risk-based approach to using remote inspections, and the further requirement to conduct and document a risk assessment for each office or location, the member must determine that its surveillance and technology tools are appropriate to supervise the types of risks presented by each such office or location. These tools may include but are not limited to: (a) firm-wide tools such as, electronic recordkeeping system; electronic surveillance of email and correspondence; electronic trade blotters; regular activity-based sampling reviews; and tools for visual inspections; (b) tools specific to that office or location based on the activities of associated persons, products offered, restrictions on the activity of the office or location (including holding out to customers and handling of customer funds or securities); and (c) system tools such as secure network connections and effective cybersecurity protocols.

FINRA believes these proposed new eligibility conditions are appropriate to establish reasonable baseline requirements for remote inspections.

4. FINRA Proposes To Amend Proposed Rule 3110.18(c) by Adding Subparts (2)(A)(v)–(vii)

In light of the comment letters expressing concern about the discretion provided to firms to make risk assessments of the criteria specified earlier of their offices or locations, FINRA is proposing to expand the list of events or activities that would make specific offices or locations of a member firm ineligible for remote inspections.

Following are the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 1 is italicized; proposed deletions in this Partial Amendment No. 1 are in brackets:

(c) Eligibility Exclusions and Conditions

(1) Firm Level

* * * * *

[(B)](2) *Location Level*

(A) A specific office or location of a member shall not be eligible for a remote inspection in accordance with this Supplementary Material if any time during the period of this Remote Inspections Pilot Program[, an associated person at such office or location is or becomes]:

(i) *one or more associated persons at such office or location is or becomes* subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or *a* state regulatory agency;

(ii) *one or more associated persons at such office or location is or becomes* statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under paragraph [(b)(2)(B)(i)]*(c)(2)(A)(i)* of this Supplementary Material or otherwise as a condition to approval or permission for such association;

(iii) *the firm is or becomes* subject to Rule 1017(a)(7) as a result of one or more associated persons at such *office or* location; or

(iv) one or more associated persons at such *office or* location has an event in the prior three years that required a ''yes'' response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4[.]*;*

(v) one or more associated persons at such office or location is or becomes subject to a disciplinary action taken by the member that is or was reportable under Rule 4530(a)(2);

(vi) one or more associated persons at such office or location is a part of the member's trading desk (e.g., engaging in market making activities or having authority to enter proprietary trades on behalf of the member or as agent for other parties; or

(vii) the office or location handles customers' funds or securities.

FINRA believes the expanded list of exclusions for specific offices or locations of a member further strengthens the terms of the proposed pilot program by identifying additional offices or locations that may particularly benefit from in-person inspections and expressly excluding them, regardless of any individual firm's risk assessment.

5. FINRA Proposes To Amend Proposed Rule 3110.18(c) by Adding Subparts (2)(B)(i)–(iii)

To further address commenters' concerns regarding the proposed pilot program's controls, FINRA is proposing to add three new eligibility conditions to conduct a remote inspection during the pilot period. Following are the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 1 is italicized; proposed deletions in this Partial Amendment No. 1 are in brackets:

(c) Eligibility Exclusions and Conditions

(1) Firm Level

[(B)](2) *Location Level*

* * * * *

(B) In addition to the requirements of this Supplementary Material, during the period a member is participating in this Remote Inspections Pilot Program a specific office or location of the member must satisfy the following conditions to be eligible for a remote inspection in accordance with this Supplementary Material:

(i) electronic communications (e.g., email) are made through the member's electronic system;

(ii) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3110; and

(iii) no books or records of the member required to be made and kept current, and preserved under applicable securities laws and regulations, FINRA rules, and the member's own written supervisory procedures under Rule 3110 are physically or electronically maintained and preserved at such office or location.

6. FINRA Proposes To Amend Proposed Rule 3110.18 by Adding Subparts (k)

FINRA is also proposing to adopt new paragraph (k) to proposed Rule 3110.18 to allow FINRA to make a determination in the public interest and for the protection of investors that a member is no longer eligible to participate in the proposed pilot program if the member fails to comply with the requirements of Rule 3110.18. If warranted, FINRA would provide written notice to the member of such determination and such member would no longer be eligible to participate in the proposed pilot program and would be required to conduct on-site inspections of required offices and locations in accordance with Rule 3110(c). Following are the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 1 is italicized; proposed deletions in this Partial Amendment No. 1 are in brackets:

(k) *Determination of Ineligibility. FINRA may make a determination in the public interest and for the protection of investors that a member is no longer eligible to participate in the Pilot Program if the member fails to comply with the requirements of Rule 3110.18. In such instances, FINRA will provide written notice to the member of such determination and the member would no longer be eligible to participate in the Pilot Program and must conduct on-site inspections of required offices and locations in accordance with Rule 3110(c).*

FINRA believes this added authority would both align with FINRA's examination and risk monitoring programs for member firms and registered persons and allow FINRA to more effectively assess higher risk.

7. FINRA Proposes To Amend Proposed Rule 3110.18 To Make Other Non-Substantive, Technical Changes to the Proposed Rule Change

FINRA is also proposing to make other non-substantive, technical changes to the proposed rule change, including conforming changes to the numbering of the proposed rules and updating cross-references.

III. Date of Effectiveness of the Proposed Rule Change As Modified By Partial Amendment No. 1 and Timing for Commission Action

Within 45 days of the date of publication of the initial Notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve or disapprove such proposed rule change, as amended by Partial Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended by Partial Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2022–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2022–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FINRA–2022–021 and should be submitted on or before January 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27787 Filed 12–21–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96517; File No. SR–CboeBZX–2022–035]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

December 16, 2022.

On June 24, 2022, Cboe BZX Exchange, Inc. (''BZX'') 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 list and trade shares of the VanEck Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on July 13, 2022.[3]

On August 24, 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 October 4, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on July 13, 2022.[9] The 180th day after publication of the proposed rule change is January 9, 2023. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates March 10, 2023, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CboeBZX–2022–035).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27784 Filed 12–21–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95218 (July 7, 2022), 87 FR 41755.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 95596, 87 FR 53038 (Aug. 30, 2022).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 95978, 87 FR 61418 (Oct. 11, 2022).

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3 and accompanying text.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96518; File No. SR–ISE–2022–28]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain ISE Complex Order Functionalities in Connection With a Technology Migration

December 16, 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 December 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.

[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 Options 3, Section 7, Types of Orders and Order and Quote Protocols; Options 3, Section 10, Priority of Quotes and Orders; Options 3, Section 12, Crossing Orders; Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions; Options 3, Section 14, Complex Orders; and Options 3, Section 16, Complex Risk Protections.

The Exchange also proposes some technical amendments within Options 3, Section 6, Collection and Dissemination of Quotations, and Section 8, Options Opening Process.

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.

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 an enhanced Nasdaq, Inc. (''Nasdaq'') functionality which will result in higher performance, scalability, and more robust architecture, the Exchange intends to adopt certain trading functionality currently utilized at Nasdaq affiliate exchanges. Also, the Exchange intends to remove certain functionality. Specifically, the following sections would be amended: Options 3, Section 7, Types of Orders and Order and Quote Protocols; Options 3, Section 10, Priority of Quotes and Orders; Options 3, Section 12, Crossing Orders; Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions; Options 3, Section 14, Complex Orders; and Options 3, Section 16, Complex Risk Protections. The changes proposed herein are identical to changes that were recently proposed for MRX.[3] The Exchange also proposes some technical amendments specific to ISE within Options 3, Section 6, Collection and Dissemination of Quotations, and Section 8, Options Opening Process. Each change will be described below.

Legging Order

The Exchange proposes to amend Options 3, Section 7(k)(1) to add a provision which states that a Legging Order[4] will not be generated during a Posting Period, as described in detail below, in progress on the same side in the series pursuant to Options 3, Section 15 regarding Acceptable Trade Range (''ATR''). A Legging Order would not be generated because it would no longer be at the Exchange's displayed best bid or offer, therefore, generating a Legging Order during a Posting Period in progress, on the same side in the series, would lead to its immediate removal, making it superfluous to have been generated.

ATR is a risk protection, that sets dynamic boundaries within which quotes and orders may trade.[5] It is designed to guard the System[6] from experiencing dramatic price swings by preventing the immediate execution of quotes and orders beyond the thresholds set by this risk protection. The Exchange recently amended ATR to adopt an iterative process wherein an order/quote that reaches its ATR boundary is paused for a brief period of time to allow more liquidity to be collected, before the order/quote is automatically re-priced and a new ATR is calculated.[7]

Specifically, SR–ISE–2022–25 amended current Options 3, Section 15(a)(2)(A)(iii) to adopt an iterative process wherein an order or quote that reaches the outer limits of the ATR (''Threshold Price'') without being fully executed, will be posted at the Threshold Price for a brief period, not to exceed one second (''Posting Period''), to allow the market to refresh and determine whether or not more liquidity will become available (on the Exchange or any other exchange if the order is designated as routable) within the posted price of the order or quote before moving on to a new Threshold Price. With this change, upon posting, either the current Threshold Price of the order/quote or an updated NBB for buy orders/quotes or the NBO for sell orders/quotes (whichever is higher for a buy order/quote or lower for a sell order/quote) would become the reference price for calculating a new ATR. If the order/quote remains unexecuted after the Posting Period, a new ATR will be calculated and the order/quote will execute, route, or post up to the new Threshold Price. This process will repeat until either (1) the order/quote is executed, cancelled, or posted at its limit price or (2) the order/quote has been subject to a configurable number of instances of the ATR as determined by the Exchange (in which case it will be returned).

With this change, during the proposed Posting Period, an order would be in flux and would potentially increase (decrease) past the price of any Legging Order generated on the bid (offer) as the order works its way through the order book. Legging Orders are removed from the order book when they are no longer at the Exchange's displayed best bid or offer and, therefore, generating a Legging Order during a Posting Period in progress on the same side in the series would lead to its immediate removal. Accordingly, in the current proposal, the Exchange proposes to amend Options 3, Section 7(k)(1) to provide that a Legging Order would not be created during the Posting Period in progress on the same side in the series. By way of example, assume that the ATR is set for $0.05, the MPV is $0.01 and the following quotations are posted on ISE and away markets:

Away Exchange Quotes:

[3] *See* Securities Exchange Act Release No. 95854 (September 21, 2022), 87 FR 58571 (September 27, 2022) (Order Approving SR–MRX–2022–10).

[4] A Legging Order is a limit order on the regular limit order book that represents one side of a Complex Options Order that is to buy or sell an equal quantity of two options series resting on the Exchange's Complex Order Book. *See* Options 3, Section 7(k).

[5] *See* ISE Options 3, Section 15(a)(2)(A).

[6] The term ''System'' means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. *See* ISE Options 1, Section 1(a)(50).

[7] *See* Securities Exchange Act Release No. 96362 (November 18, 2022), 87 FR 72539 (November 25, 2022) (SR–ISE–2022–25). SR–ISE–2022–25 proposed an iterative process for ATR wherein the Exchange will attempt to execute interest that exceeds the outer limit of the ATR for a brief period of time while that interest is automatically re-priced as described herein. The Exchange also updated the reference price definition to provide that upon receipt of a new order or quote, the reference price will now be the better of the NBB or internal best bid for sell orders/quotes and the better of the NBO or internal best offer for buy orders/quotes or the last price at which the order/quote is posted, whichever is higher for a buy order/quote or lower for a sell order/quote. The additions of ''internal BBO'' were consistent with the re-pricing of orders. SR–ISE–2022–25 is effective, but not yet operative. SR–ISE–2022–25 would be implemented as part of the same technology migration as the changes proposed herein.

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

ISE Price Levels:

Exchange	Bid size	Bid price	Offer price	Offer size
ISE	10	$0.75	$0.90	10
ISE	10	0.75	0.95	10
ISE	10	0.75	1.00	10
ISE	10	0.75	1.05	10

ISE receives a routable order to buy 70 contracts at $1.10. The ATR is $0.05 and the reference price is the National Best Offer—$0.90. The ATR threshold is then $0.90 + $0.05 = $0.95 which is the Threshold Price. The order is allowed to execute up to and including $0.95.

- 10 contracts will be executed at $0.90 against ISE.
- 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 ISE.
- Then, after executing at multiple price levels, the order is posted at $0.95 for a brief period not to exceed one second (Posting Period) to determine whether additional liquidity will become available.
- During this pause, the ISE BBO for this option is 0.95×1.00.
- Assume the leg above with the Posting Period in progress is Leg A of an A–B complex strategy.
- Leg B has a BBO of 0.85×0.88
- Therefore, the cBBO[8] of this A–B complex strategy is 0.07×0.15
  - (Leg A Bid 0.95 − Leg B Offer 0.88 = 0.07)
  - (Leg A Offer 1.00 − Leg B Bid 0.85 = 0.15)
- Also during the pause, a Complex Options Order to buy A–B arrives for net price of $0.11.
- The Complex Options Order could generate a Legging Order at $0.96 on the bid of Leg A, relying on the $0.85 bid to sell Leg B and achieve a net price $0.11, however the Legging Order is not generated because Leg A has an order on the bid side in an ATR Posting Period which will continue to move through the order book, and would ultimately lead to the immediate removal of the Legging Order once it is no longer at the Exchange's displayed best bid.
- During the Posting Period, a new ATR Price of $1.00 is determined (new reference price $0.95 + $0.05 = $1.00).
- If, during the Posting Period (brief pause not to exceed 1 second), no liquidity becomes available within the order's posted price of $0.95, then at the conclusion of the Posting Period, the System will execute 10 contracts at $1.00.
- Then, after executing at multiple price levels, the order is posted at $1.00 for a brief period not to exceed one second to determine whether additional liquidity will become available.
- A new ATR Threshold Price of $1.05 is determined (new reference price of $1.00 + $0.05 = $1.05).
- During this time the ISE BBO would be $1.00 \times $1.05.
- If, during the brief pause not to exceed 1 second, no liquidity becomes available within the order's posted price of $1.00, the System will then execute 10 contracts at $1.05.

The Exchange believes from a System processing and user acceptance standpoint, the best practice is to wait for the ATR Posting Period to complete before attempting to generate a Legging Order on the same side in the series, as the time required to complete the ATR Posting Period is minimal. This amendment is identical to a change recently adopted for MRX.[9] Additionally, Nasdaq Phlx LLC's (''Phlx'') legging order rule in Options 3, Section 14(f)(iii)(C)(2) has the same restriction on generating legging orders during the ATR Posting Period as proposed to be added to ISE's Legging Order rule.[10]

Changes to the Single-Leg Price Improvement Mechanism for Crossing Transactions

The Price Improvement Mechanism (''PIM'') is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent (a ''Crossing Transaction''). The Exchange provides a PIM for single-leg[11] orders and for Complex Orders[12] and proposes to amend both single-leg and Complex PIM rules. The Exchange proposes to amend the single-leg PIM in Options 3, Section 13(d)(4) which currently provides,

> When a market order or marketable limit order on the opposite side of the market from the Agency Order ends the exposure period, it will participate in the execution of the Agency Order at the price that is mid-way between the best counter-side interest and the NBBO, so that both the market or marketable limit order and the Agency Order receive price improvement. Transactions will be rounded, when necessary, to the $.01 increment that favors the Agency Order.

Today, unrelated interest in the form of a market order or marketable limit order, on the opposite side of the market from an Agency Order,[13] may end an exposure period[14] within a single-leg

[8] The ''cBBO'' represents the net price of a complex strategy comprised of the best bids and offers of the individual legs.

[9] *See* note 3 above. MRX amended Options 3, Section 15(a)(2)(A)(iii).

[10] Phlx Options 3, Section 14(f)(iii)(C)(2) provides that a Legging Order will not be created, ''. . .(ii) if there is . . . a Posting Period under Options 3, Section 15 regarding Acceptable Trade Range on the same side in progress in the series. . .''.

[11] *See* ISE Options 3, Section 13(a)–(d).

[12] *See* ISE Options 3, Section 13(e).

[13] An Agency Order is the part of a Crossing Transaction that an Electronic Access Member represents as agent. *See* ISE Options 3, Section 13(b).

[14] Upon entry of a Crossing Transaction into the PIM, a broadcast message that includes the series, price and size of the Agency Order, and whether it is to buy or sell, will be sent to all Members. The Exchange designates a time of no less than 100 milliseconds and no more than 1 second for Members to indicate the size and price at which they want to participate in the execution of the Agency Order (''Improvement Orders''). Improvement Orders may be entered by all Members in one-cent increments at the same price

PIM and participate in the execution of the Agency Order. The unrelated order would participate at the price that is mid-way between the best counter-side interest and the NBBO, so that both the market order or marketable limit order and the Agency Order receive price improvement.

First, the Exchange proposes to *not* permit unrelated marketable interest on the opposite side of the market from the Agency Order, which is received during a single-leg PIM, to early terminate a PIM. The Exchange proposes to amend ISE Options 3, Section 13(d)(4) to instead provide,

> Unrelated market or marketable interest (against the ISE BBO) on the opposite side of the market from the Agency Order received during the exposure period will not cause the exposure period to end early and will execute against interest outside of the Crossing Transaction. If contracts remain from such unrelated order at the time the auction exposure period ends, they will be considered for participation in the order allocation process described in sub-paragraph (3).[15]

This amendment is identical to a change recently adopted for MRX.[16] Additionally, Phlx [17] and Nasdaq BX, Inc. (''BX'') [18] similarly do not permit unrelated interest on the opposite side of the market from the Agency Order to early terminate their price improvement auctions. With this proposed change, the single-leg PIM exposure period would continue for the full period despite the receipt of unrelated marketable interest on the opposite side of the market from the Agency Order. Allowing the single-leg PIM to run its full course would provide an opportunity for additional price improvement to the Crossing Transaction. Further, the unrelated interest would participate in the single-leg PIM allocation with any residual contracts remaining after interacting with the order book pursuant to ISE Options 3, Section 13(d). The aforementioned residual contracts are contracts that remain available for execution after the unrelated order on the opposite side of market as the Agency Order, which was marketable with bids and offers on the same side of the market as the Agency Order, executed against bids and offers on the Exchange's order book.

Second, the Exchange also proposes to amend current ISE Options 3, Section 13(c)(5) which states,

> The exposure period will automatically terminate (i) at the end of the time period designated by the Exchange pursuant to Options 3, Section 13(c)(1) above, (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series, or (iii) upon the receipt of a non-marketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange.

Specifically, the Exchange proposes to remove ''(ii),'' which provides the exposure period will automatically terminate ''. . . (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series . . .''. The Exchange notes that this sentence applies to the receipt of marketable orders both on the same side and opposite side of the Agency order. As described above, the Exchange proposes to *not* permit unrelated marketable interest on the opposite side of the market from the Agency Order, which is received during a single-leg PIM, to early terminate a PIM. Therefore, with respect to the opposite side of the Agency Order, the termination of the auction will no longer be possible with the proposed change to ISE Options 3, Section 13(d)(4). With respect to the same side of the Agency Order, today, an unrelated market or marketable limit order in the same series on the same side of the Agency Order would cause the PIM to early terminate as well. At this time the Exchange proposes to *not* permit an unrelated market or marketable limit order in the same series *on the same side* of the Agency Order to cause the PIM to early terminate. This proposed change will align the functionality of ISE's PIM to that of MRX's PIM,[19] BX's PRISM and Phlx's PIXL,[20] which do not permit an unrelated market or marketable limit order in the same series on the same side of the Agency Order to cause the PRISM or PIXL to early terminate, unless the BBO improves beyond the price of the Crossing Transaction on the same side. The Exchange notes that a market or marketable limit order in the same series on the same side of the Agency Order cannot interact with a PIM auction. The market or marketable limit order may interact with the single-leg order book, and if there are residual contracts that remain from the market or marketable limit order in the same series on the same side of the Agency Order, they could rest on the order book and improve the BBO beyond the price of the Crossing Transaction which would cause early termination pursuant to proposed Options 3, Section 13(c)(5)(ii) as discussed below. In this instance, residual contracts are contracts that remain available for execution after the unrelated order on the same side of market as the Agency Order, which was marketable with bids and offers on the opposite side of the market as the Agency Order, executed against bids and offers on the Exchange's order book. The Exchange believes that this outcome would allow for the single-leg PIM exposure period to continue for the full period despite the receipt of

as the Crossing Transaction or at an improved price for the Agency Order, and will only be considered up to the size of the Agency Order. During the exposure period, Improvement Orders may not be canceled, but may be modified to (i) increase the size at the same price, or (ii) improve the price of the Improvement Order for any size up to the size of the Agency Order. During the exposure period, responses (including the Counter-Side Order, Improvement Orders, and any changes to either) submitted by Members shall not be visible to other auction participants. The exposure period will automatically terminate (i) at the end of the time period designated by the Exchange pursuant to Options 3, Section 13(c)(1) above, (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series, or (iii) upon the receipt of a non-marketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange. *See* ISE Options 3, Section 13(c).

[15] Subparagraph (3) of Options 3, Section 13(d) describes the manner in which a Counter-Side Order would be allocated. The Counter Side Order is one part of a Crossing Transaction and represents the full size of the Agency Order. The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both. *See* ISE Options 3, Section 13(b).

[16] *See* note 3 above. MRX amended Options 3, Section 13(d)(4).

[17] Phlx Options 3, Section 13(b)(4) provides that an unrelated market or marketable Limit Order (against the PBBO) on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. *See* Securities Exchange Act Releases No. 79835 (January 18, 2017), 82 FR 8445 (January 25, 2017) (SR–Phlx–2016–119) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the PIXL Price Improvement Auction in Phlx Rule 1080(n) and To Make Pilot Program Permanent) and 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108) (''PIXL Approval Order''). The Commission noted in SR–Phlx–2016–119 that, ''In approving this feature on a pilot basis, the Commission found that 'allowing the PIXL auction to continue for the full auction period despite receipt of unrelated orders outside the Auction would allow the auction to run its full course and, in so doing, will provide a full opportunity for price improvement to the PIXL Order. Further, the unrelated order would be available to participate in the PIXL order allocation.' The Exchange does not believe that this provision has had a significant impact on either the unrelated order or the PIXL Auction process, either for simple or Complex PIXL Orders. The Exchange therefore has requested that the Commission approve this aspect of the Pilot on a permanent basis for both simple and Complex PIXL Orders.''

[18] BX Options 3, Section 13(ii)(D) provides that unrelated market or marketable interest (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction.

[19] *See* MRX Options 3, Section 13(d)(4).

[20] *See* BX Options 3, Section 13(ii)(D) and Phlx Options 3, Section 13(b)(4).

unrelated marketable interest on the same side of the market from the Agency Order, provided residual interest does not go on to rest on the order book, improving the BBO beyond the price of the Crossing Transaction. Allowing the single-leg PIM to run its full course (unless the BBO improves beyond the price of the Crossing Transaction on the same side), rather than early terminate, would provide an opportunity for price improvement to the Agency Order.

Third, the Exchange proposes to amend current ISE Options 3, Section 13(c)(5)(iii) to align the rule text to a recent change adopted on MRX.[21] Additionally, BX Options 3, Section 13(ii)(B)(2) has similar language.[22] Specifically, the Exchange proposes to amend Options 3, Section 13(c)(5) to delete current ''iii'' and renumber as ''ii''. Proposed new Options 3, Section 13(c)(5)(ii) would state, ''The exposure period will automatically terminate . . . (ii) any time the Exchange best bid or offer improves beyond the price of the Crossing Transaction on the same side of the market as the Agency Order . . .'' The proposed rule is designed to align to MRX's and BX's rule text to remove any ambiguity that a market or marketable limit order priced more aggressively than the Agency Order could ultimately rest on the order book, improving the BBO beyond the price of the Crossing Transaction and, therefore, cause the early termination of a PIM auction.

By way of example, assume: ISE 1.00 × 2.00 (10) and a second ISE Market Maker's quote is 1.00 × 2.10 (10). If a PIM auction starts with a buy at 1.50, and subsequently an order to buy for 20 @2.00 arrives, the incoming order would trade with the quote, and the remaining 10 contracts would rest on the order book. Thereafter, the ISE BBO would update to 2.00 × 2.10 and trigger the early termination of the single-leg PIM pursuant to Options 3, Section 13(c)(5)(iii), which is being renumbered to Options 3, Section 13(c)(5)(ii). Early terminating the single-leg PIM in this example is necessary because the price of the single-leg PIM is no longer at the top of book (best price) and would not have execution priority with respect to responses or unrelated interest that arrive. By early terminating the single-leg PIM, ISE allows responses to the single-leg PIM, which arrived prior to the time the Exchange's best bid and offer improved beyond the Crossing Transaction, to execute.

The Exchange believes the proposed rule text will provide greater clarity to the manner in which the System operates today with respect to early termination of single-leg PIMs when the BBO on the same side improves beyond the price of the Crossing Transaction. The proposed amendment to the rule text is not intended to amend the current System functionality, rather it is intended to make clear that a market or marketable limit order could ultimately rest on the order book with residual interest and improve the BBO on the same side as the Agency Order beyond the price of the Crossing Transaction and cause the single-leg PIM to early terminate.

Fourth, the Exchange proposes to add a new ISE Options 3, Section 13(c)(5)(iii) which states, ''. . . (iii) any time there is a trading halt on the Exchange in the affected series . . .''. This proposed rule text is not modifying how the System currently operates.[23] Today, a trading halt would cause a single-leg PIM to early terminate. Current ISE Options 3, Section 13(d)(5) notes such an early termination as a result of the aforementioned trading halt. Adding this circumstance to the list of events that would terminate the exposure period would make the list complete and add clarity to the rule. Furthermore, the Exchange notes that in a separate rule change, SR–ISE–2022–15P,[24] the Exchange is proposing to amend Options 3, Section 13(d)(5) to change the System behavior such that if a trading halt is initiated after an order is entered into the PIM, such auction will be automatically terminated with execution solely with the Counter-Side Order. Today, if a trading halt is initiated after an order is entered into the PIM, such auction will be automatically terminated without execution.[25] This amendment is identical to a change recently adopted for MRX.[26]

Changes to the Complex PIM

In accordance with the proposed rule change regarding the early termination provisions of a single-leg PIM auction explained above, the Exchange also proposes to remove a paragraph related to Complex PIM in current ISE Options 3, Section 13(e)(4)(vi) which provides,

> A Complex Price Improvement Mechanism in a complex strategy may be ongoing at the same time as a Price Improvement Auction pursuant to this Rule or during an exposure period pursuant to Supplementary Material .02 to Options 5, Section 2 in a component leg(s) of such Complex Order. If a Complex Price Improvement Mechanism is early terminated pursuant to paragraph (iv) above, and the incoming Complex Order that causes the early termination in the complex strategy is also marketable against a component leg(s) of the complex strategy that is the subject of a concurrent ongoing Price Improvement Auction pursuant to this Rule or an exposure period pursuant to Supplementary Material .02 to Options 5, Section 2, then the concurrent Complex Price Improvement Mechanism and component leg auction(s) are processed in the following sequence: (1) the Complex Price Improvement Mechanism is early terminated; (2) the component leg auction(s) are early terminated and processed; and (3) legging of residual incoming Complex Order interest occurs, except with respect to Stock Option Orders and Stock Complex Orders.

Today, unrelated marketable interest may cause the early termination of a single-leg PIM, if a component leg of a Complex Order is marketable against the order book in the same series as the single-leg PIM. An example is provided below.

Example #1 (Complex PIM early termination elimination—opposite side) [27]

Complex Order Strategy A–B
MM Quote Leg A 4.20 (100) × 4.50 (100)
MM Quote Leg B 4.00 (100) × 4.10 (100)
cBBO 0.10 × 0.50
(Leg A Bid 4.20 − Leg B Offer 4.10 = 0.10)
(Leg A Offer 4.50 − Leg B Bid 4.00 = 0.50)

[21] *See* note 3 above. MRX amended Options 3, Section 13(c)(5)(iii).

[22] BX Options 3, Section 13(ii)(B) provides ''Conclusion of Auction. The PRISM Auction shall conclude at the earlier to occur of (1) through (3) below, with the PRISM Order executing pursuant to paragraph (C)(1) or (C)(2) below if it concludes pursuant to (2) or (3) of this paragraph. (1) The end of the Auction period; (2) For a PRISM Auction any time the BX BBO crosses the PRISM Order stop price on the same side of the market as the PRISM Order; (3) Any time there is a trading halt on the Exchange in the affected series.''

[23] ISE Options 3, Section 13(d)(5) currently states that, ''If a trading halt is initiated after an order is entered into the Price Improvement Mechanism, such auction will be automatically terminated without execution.'' Of note, the Exchange is proposing to amend ISE's PIM within a separate rule change, SR–ISE–2022–15P. Among other things, the Exchange proposes to amend the PIM functionality so that if a trading halt is initiated after an order is entered into the PIM, the auction will be automatically terminated with an execution. Specifically, SR–ISE–2022–15 proposes to renumber current ISE Options 3, Section 13(d) to Options 3, Section 13(d)(6) and proposes to state, ''If a trading halt is initiated after an order is entered into the Price Improvement Mechanism, such auction will be automatically terminated with execution solely with the Counter-Side Order.''

[24] ISE has separately filed to amend Options 3, Section 13(d)(5) within SR–ISE–2022–15P. SR–ISE–2022–15P proposes to amend, among other things, the rule text in Options 3, Section 13, except that it does not amend Options 3, Section 13(c)(5).

[25] *See* current ISE Options 3, Section 13(d)(5).

[26] *See* note 3 above. MRX amended Options 3, Section 13(c)(5)(iii).

[27] Example 1 addresses an order on the opposite side of the Agency Order, although the same early termination would apply to an order on the same side of an Agency Order pursuant to ISE Options 3, Section 13(e)(4)(vi).

Complex PIM to Buy A–B 10 @0.20, with an election to automatically match to a net price of 0.10

Complex PIM Begins

Single-leg PIM Auction on Leg A to Buy 100 @4.25

Single-Leg PIM Begins

During both auction timers, an unrelated marketable Complex Order A–B to sell 50 @a net price of 0.10 arrives (the individual legs of the marketable Complex Order would be selling A @ 4.20 and buying B @4.10).

Complex Order PIM is early terminated and trades 4 with the Counter-Side Order @a net price of 0.10 and 6 with the unrelated Complex Order @a net price of 0.15.

Today, the unrelated Complex Order would have legged-in after trading with the Complex PIM and caused the single-leg PIM to early terminate because one leg of the Complex Order was marketable against the Leg A bid of 4.20.

With the proposed amendment, the unrelated Complex Order will not cause the single-leg PIM to early terminate as a result of trading with an unrelated order on the opposite side in the same series. The unrelated marketable Complex Order will trade with the Complex PIM as well as the best bids and offers from the single-leg order book. In this case, the remaining quantity of the unrelated Complex Order would leg-in and trade with the single-leg quotes without impacting the single-leg PIM; the single-leg PIM auction timer would conclude after running its full course. Thereafter, if there are no responses to the single-leg PIM, the Agency Order would trade 100 @4.25 with the Counter-Side Order.

Today, if a Complex PIM is early terminated pursuant to ISE Options 3, Section 14(e)(4)(iv) [28] and the incoming Complex Order that causes the early termination in the complex strategy is also marketable against a component leg(s) of the complex strategy that is the subject of a concurrent ongoing single-leg PIM, or an exposure period pursuant to flash functionality as provided for in Supplementary Material .02 to Options 5, Section 2,[29] then the concurrent Complex PIM and component leg auction(s) are processed in accordance with ISE Options 3, Section 14(e)(4)(vi).

With this proposed change, a single-leg PIM will no longer early terminate as a result of the arrival of unrelated marketable interest on either the same or the opposite side of the market from the Agency Order. Because a single-leg PIM will no longer early terminate from the arrival of unrelated marketable interest on either the same or the opposite side of the market from the Agency Order, and because the flash functionality will no longer exist,[30] the Exchange proposes to delete ISE Options 3, Section 13(e)(4)(vi) in its entirety. This amendment is identical to a change recently adopted for MRX.[31]

Additionally, the Exchange proposes to remove a related paragraph in current Supplementary Material .01(b)(iii) of ISE Options 3, Section 14 describing Complex Order Exposure, which states,

A Complex Order Exposure in a complex strategy may be ongoing in a complex strategy at the same time as a Price Improvement Auction pursuant to Options 3, Section 13 or during an exposure period pursuant to Supplementary Material .02 to Options 5, Section 2 in a component leg(s) of such complex strategy. If a Complex Order Exposure is early terminated pursuant to paragraph (ii) above, and the incoming Complex Order that causes the early termination in the complex strategy is also marketable against a component leg(s) of the complex strategy that is the subject of a concurrent ongoing Price Improvement Auction pursuant to Options 3, Section 13 or an exposure period pursuant to Supplementary Material .02 to Options 5, Section 2, then the concurrent Complex Order and component leg auction(s) are processed in the following sequence: (1) the Complex Order exposure is early terminated; (2) the component leg auction(s), which are early terminated and processed; and (3) legging of residual incoming Complex Order interest occurs.

Today, unrelated marketable interest may cause the early termination of a single-leg PIM, therefore, when a Complex Order legs into the single-leg order book, it may cause the early termination of a single-leg PIM if that leg was on either the same or the opposite side of the market from the single-leg PIM. An example is provided below.

Example #2 (Complex Exposure early termination elimination—opposite side) [32]

Complex Order Strategy A–B

MM Quote Leg A 4.20 (100) × 4.50 (100)

MM Quote Leg B 4.00 (100) × 4.10 (100)

cBBO 0.10 × 0.50

(Leg A Bid 4.20 − Leg B Offer 4.10 = 0.10)

(Leg A Offer 4.50 − Leg B Bid 4.00 = 0.50)

Complex Order in A–B Strategy marked for Complex Order Exposure to buy 10 @0.20

Complex Order Exposure Auction Begins

Single-leg PIM Auction on Leg A to Buy 100 @4.25

Single-Leg PIM Begins

During both auction timers, unrelated marketable Complex Order A–B Sell 50 @0.10 arrives Complex Order Exposure is early terminated and the exposed order to buy A–B 10 @0.20 and trades with the unrelated Complex Order 10 @ net price of 0.10.

Today, the unrelated marketable Complex Order would have legged-in after trading with the Complex Order Exposure and caused the single-leg PIM to early terminate because one leg of the marketable Complex Order on the opposite side was marketable against the Leg A bid of 4.20.

With the proposed amendment, the unrelated marketable Complex Order will not cause the single-leg PIM on the opposite side in the same series to early terminate as a result of the component leg of the Complex Order being marketable against the bid in the same series as the single-leg PIM. The unrelated marketable Complex Order will trade with the Complex Order Exposure order as well as the best bids and offers from the single-leg order book. In this case, the remaining quantity would leg-in and trade with the single-leg quotes without impacting the single-leg PIM; the auction timer would conclude after running its full course.

[28] ISE Options 3, Section 14(e)(4)(iv) provides, ''The exposure period will automatically terminate (A) at the end of the time period designated by the Exchange pursuant to subparagraph (4)(i) above, (B) upon the receipt of a Complex Order in the same complex strategy on either side of the market that is marketable against the Complex Order Book or bids and offers for the individual legs, or (C) upon the receipt of a non-marketable Complex Order in the same complex strategy on the same side of the market as the Agency Complex Order that would cause the execution of the Agency Complex Order to be outside of the best bid or offer on the Complex Order Book.''

[29] Pursuant to Supplementary Material .02 to ISE Options 5, Section 2, ISE permits certain orders to first be exposed at the NBBO to all Members for execution at the National Best Bid or Offer (''NBBO'') before the order would be routed to another market for execution (''flash functionality'').

[30] ISE filed a rule change to eliminate its flash functionality. *See* Securities Exchange Act Release No. 94897 (May 12, 2022), 87 FR 30294 (May 18, 2022) (SR–ISE–2022–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration). Therefore, eliminating the flash functionality from ISE Options 5 rules also eliminates the flash functionality from ISE's Options 5 rules. SR–ISE–2022–11 is effective but not yet operative. SR–ISE–2022–11 would be implemented as part of the same technology migration as the changes proposed herein.

[31] *See* note 3 above. MRX recently deleted Options 3, Section 13(e)(4)(vi) in its entirety.

[32] Example 2 addresses an order on the opposite side of the Agency Order, although the same early termination would apply to an order on the same side of the Agency Order pursuant to Supplementary Material .01(b)(iii) of ISE Options 3, Section 14.

Thereafter, the Crossing Transaction would trade 100 @4.25 Agency Order with the Counter-Side Order.

Today, when a Complex Order Exposure early terminates, as a result of the arrival of unrelated marketable Complex Order interest that trades against the exposed Complex Order and the best bids and offers on the single-leg order book (as described in Supplementary Material .01(b)(ii) of ISE Options 3, Section 14), the component legs of the unrelated marketable Complex Order on either the same or the opposite side of the single-leg PIM may leg-in and cause early termination of the single-leg PIM. Thereafter, the component leg auction(s) would be processed pursuant to Supplementary Material .01(b)(iii) of ISE Options 3, Section 14. With this proposed change to ISE Options 3, Section 13(d)(4), a single-leg PIM will no longer early terminate from the arrival of unrelated marketable interest on either the same or opposite side of the market from the Agency Order. Therefore, because a single-leg PIM will no longer early terminate from the arrival of unrelated marketable interest on either the same or opposite side of the market from the Agency Order, and because the flash functionality will no longer exist,[33] the early termination circumstances addressed in Supplementary Material .01(b)(iii) of ISE Options 3, Section 14 will no longer arise, accordingly, the Exchange proposes to delete Supplementary Material .01(b)(iii) of ISE Options 3, Section 14 in its entirety. This amendment is identical to a change recently adopted for MRX.[34]

Re-Pricing

In connection with the technology migration, the Exchange recently adopted re-pricing functionality for certain quotes and orders that lock or cross an away market's price.[35] As a result of the effectiveness of SR–ISE–2022–25, the Exchange proposes a number of corresponding amendments in Options 2, Section 12, as well as the proposed definition of Complex Preferenced Orders, which is discussed below, in connection with adopting the re-pricing mechanism. This amendment is identical to a change recently adopted for MRX.[36]

With the recent change within SR–ISE–2022–25, the System will re-price certain quotes and orders that lock or cross an away market's price. Specifically, quotes and orders which lock or cross an away market price will be automatically re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed one minimum price variance (''MPV'') above (for offers) or below (for bids) the national best price. The re-priced quotes and orders will be displayed on OPRA at its displayed price and placed on the Exchange's order book at its re-priced, non-displayed price, which may be priced better than the NBBO. The quotes and orders will remain on the Exchange's order book and will be accessible at their non-displayed price. With this change, a non-displayed limit order or quote may be available on the Exchange at a price that is better than the NBBO. The following example illustrates how the proposed re-pricing mechanism would work:

Symbol ABCD in a Non-Penny name
CBOE BBO at 1.00 × 1.20
DNR order to buy ABCD for 1.30 arrives
DNR buy order books at 1.20 (current national best offer) and displays at 1.15 (one MPV below national best offer) *
CBOE BBO adjusts to 1.00 × 1.25
DNR buy order adjusts to book at 1.25 (current national best offer) and displays at 1.20 (one MPV below national best offer) *
* OPRA will show the displayed price, not the booked price

Recently amended Options 3, Section 5(c) provides that the System automatically executes eligible orders using the Exchange's displayed best bid and offer (*i.e.,* BBO) or the Exchange's non-displayed order book (''internal BBO'') if the best bid and/or offer on the Exchange has been re-priced pursuant to Options 3, Section 5(d).[37] The definition of an ''internal BBO'' covers re-priced quotes and orders that remain on the order book and are available at non-displayed prices while resting on the order book.[38]

In connection with the foregoing changes, the Exchange proposes to add references to ''internal BBO'' within Options 3, Section 12(c) and (d) which describe the Qualified Contingent Cross Orders and Complex Qualified Contingent Cross Orders, respectively, to conform with the concept of re-pricing at an internal BBO as provided in Options 3, Sections 4(b)(6) and 4(b)(7) and Options 3, Section 5(c) and (d) within SR–ISE–2022–25. This amendment is identical to a change recently adopted for MRX.[39]

As noted above, the internal BBO could be better than the NBBO. The Exchange believes that adding references to the internal BBO to Options 3, Section 12(c) and (d) would continue to require Members to be at or between the best price, that is not at the same price as a Priority Customer Order on the Exchange's limit order book, to execute a Qualified Contingent Cross Order. Further, with respect to Complex Qualified Contingent Cross Orders, the Exchange would continue to require a Member to be at or between the best price for the individual series and comply with other relevant provisions noted within Options 3, Section 12(d) to execute a Complex Qualified Contingent Cross Order. The Exchange believes that the addition of ''internal BBO'' is consistent with the intent of these order types, which is to require Members submit these orders at the best price and not execute ahead of better-priced quotes or orders.

[33] *Id.* [sic].

[34] *See* note 3 above. MRX recently deleted Supplementary Material .01(b)(iii) of ISE Options 3, Section 14 in its entirety.

[35] *See* Securities Exchange Act Release No. 96362 (November 18, 2022), 87 FR 72539 (November 25, 2022) (SR–ISE–2022–25). This rule change is effective, but not yet operative. SR–ISE–2022–25 would be implemented as part of the same technology migration as the changes proposed herein.

[36] *See* note 3 above. MRX amended Options 2, Section 12(c) and (d) as well as Options 3, Section 14(b)(19).

[37] A similar change was made for quotes within Options 3, Section 4(b)(7). The Exchange added the following new rule text to Options 3, Section 4(b)(7), ''The System automatically executes eligible quotes using the Exchange's displayed best bid and offer (''BBO'') or the Exchange's non-displayed order book (''internal BBO'') if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) below and subsection (6) above.''

[38] The Exchange amended the rule text within Options 3, Section 4 and Options 3, Section 5, within SR–ISE–2022–25, to describe the manner in which a non-routable quotes and orders would be re-priced, respectively. The Exchange added rule text within Options 3, Section 4(b)(6) to state, ''A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced *to the current national best offer (for bids) or the current national best bid (for offers)* and displayed at one minimum price variance above (for offers) or below (for bids) the national best price, or immediately cancelled, as configured by the Member.'' The Exchange amended the rule text within Options 3, Section 5(d) to state, ''An order that is designated by a Member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions. If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.''

[39] *See* note 3 above. MRX amended Options 3, Section 12(c) and (d).

The Exchange proposes to amend Options 3, Section 12(c), which describes the conditions under which a Qualified Contingent Cross Order may be entered into the System for execution, to state that a Qualified Contingent Cross Order may be executed upon entry provided the execution is at or between the *better of the internal BBO* or the NBBO.[40] Similarly, the Exchange proposes to amend Options 3, Section 12(d), which describes the conditions under which a Complex Qualified Contingent Cross Order may be entered into the System for execution, to state that Complex Options Orders may be entered as Qualified Contingent Cross Orders to be automatically executed upon entry so long as the options legs can be executed at prices that are at or between the *better of the internal BBO* or the NBBO for the individual series.[41] This amendment is identical to a change recently adopted for MRX.[42]

The Exchange also proposes to add the ''internal BBO'' rule text in its description of Complex Preferenced Orders within new Options 3, Section 14(b)(19). This change is described below.

Other Complex Order Amendments

Opening Only Complex Order

Currently, ISE Options 3, Section 14(b)(10) states, ''An Opening Only Complex Order is a Limit Order that may be entered for execution during the Complex Opening Process described in Supplementary Material .04 to Options 3, Section 14. Any portion of the order that is not executed during the Complex Opening Process is cancelled.'' The Exchange proposes to amend ISE Options 3, Section 14(b)(10) to remove the word ''Limit'' within the description of the Opening Only Complex Order to allow Opening Only Complex Orders to be submitted as Market Orders or Limit Orders. This amendment is consistent with current System operations. The Exchange believes that both Market and Limit Orders should be permitted in the Complex Opening Process.[43] Market Orders are typically the most aggressively priced orders, while Limit Orders have a limit price contingency that Market Orders do not have. Allowing both of these order types to participate in the Complex Opening Process allows greater liquidity to be present to determine the Opening Price.[44] All Members may enter both Market Orders and Limit Orders during the Complex Opening Process, as well as intra-day. This amendment is identical to a change recently adopted for MRX.[45]

Complex QCC With Stock Orders

The Exchange proposes to correct a non-substantive citation with ISE Options 3, Section 14(b)(15) related to Complex QCC with Stock Orders. The current citation to ISE Options 3, Section 12(e) within the description of this order type is incorrect. The citation should be to ISE Options 3, Section 12(f). Correcting this cross reference will clarify the description of the order type.

Complex Preferenced Orders

The Exchange proposes to add ''Complex Preferenced Orders'' to the list of Complex Order Types in Options 3, Section 14(b). This proposal describes how Complex Preferenced Orders will work. ISE Options 2, Section 10 currently describes Preferenced Orders which may be Complex Preferenced Orders.[46] To complete the list of Complex Order types, the Exchange proposes to state in ISE Options 3, Section 14(b)(19) that,

[a] Complex Preferenced Order is a Complex Order for which an Electronic Access Member has designated a Preferred Market Maker as described in Options 2, Section 10. The component leg(s) of a Complex Order with a Preferenced Order instruction may allocate pursuant to Options 3, Section 10(c)(1)(C) when the Complex Preferenced Order legs into the single-leg market provided that the Preferred Market Maker is quoting at the better of the internal BBO or the NBBO for a component leg(s) of the Complex Preferenced Order at the time the Complex Preferenced Order is received. A Preferred Market Maker will not receive an allocation pursuant to Options 3, Section 10(c)(1)(C) for a component leg(s) of a Complex Preferenced Order if the Preferred Market Maker is not quoting at the better of the internal BBO or the NBBO for that leg at the time the Complex Preferenced Order is received.

Allocation of a leg(s) of a Complex Preferenced Order, pursuant to ISE Options 3, Section 10, would occur when a leg(s) of a Complex Order trades synthetically with the Preferred Market Maker's[47] quote that was at the better of the internal BBO or the NBBO on the single-leg order book in accordance with ISE Options 3, Section 10. A Preferred Market Maker must be quoting at the NBBO for a component leg(s) of the Complex Preferenced Order at the time the Complex Preferenced Order is received. As is the case for single-leg orders, a Preferred Market Maker will not receive an allocation pursuant to Options 3, Section 10(c)(1)(C) for a component leg(s) of a Complex Preferenced Order if the Preferred Market Maker is not quoting at the better of the internal BBO or NBBO for that leg at the time the Complex Preferenced Order is received.

The referenced internal BBO is being utilized within the description of the Complex Preferenced Order because the internal BBO for a leg component of Complex Order on the single-leg order book may be priced better than the NBBO. The Exchange notes that similar changes were recently made to the Preferenced Order type for single-leg orders within Options 7, Section 3.[48] The Exchange described re-pricing earlier in [sic] Purpose section.

With respect to orders which leg into the single-leg order book, ISE Options 3, Section 14(c) states that, ''Except as

[40] The Qualified Contingent Cross Order must also not be at the same price as a Priority Customer Order on the Exchange's limit order book. *See* ISE Options 3, Section 12(c).

[41] Currently, Options 3, Section 12(d) provides in its entirety that Complex Options Orders may be entered as Qualified Contingent Cross Orders, as defined in Options 3, Section 7(j). Such orders will be automatically executed upon entry so long as: (i) the price of the transaction is at or within the best bid and offer for the same complex options strategy on the Complex Order Book; (ii) there are no Priority Customer Complex Options Orders for the same strategy at the same price on the Complex Order Book; and (iii) the options legs can be executed at prices that (A) are at or between the NBBO for the individual series, and (B) comply with the provisions of Options 3, Section 14(c)(2)(i), provided that no legs of the Complex Options Order can be executed at the same price as a Priority Customer Order on the Exchange in the individual options series. Complex Qualified Contingent Cross Orders will be rejected if they cannot be executed. Complex Qualified Contingent Cross Orders may be entered in one cent increments. Each leg of a Complex Options Order must meet the 1,000 contract minimum size requirement for Qualified Contingent Cross Orders.

[42] *See* note 3 above. MRX amended Options 3, Section 12(c) and (d).

[43] The Complex Opening Process is described in Supplementary Material .04 of ISE Options 3, Section 14.

[44] The Opening Price is described in ISE Options 3, Section 14(a)(2).

[45] *See* note 3 above. MRX amended Options 3, Section 14(b)(10).

[46] ISE Options 2, Section 10 provides, ''Preferenced Orders. An Electronic Access Member may designate a ''Preferred Market Maker'' on orders it enters into the System (''Preferenced Orders''). (1) A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class. (2) If the Preferred Market Maker is not quoting at a price equal to the NBBO at the time the Preferenced Order is received, the allocation procedure described in Options 3, Section 10(c)(1)(C) shall not be applied to the execution of the Preferenced Order. (3) If the Preferred Market Maker is quoting at the NBBO at the time the Preferenced Order is received, the allocation procedure described in Options 3, Section 10(c)(1)(C) shall be applied to the execution of the Preferenced Order.''

[47] 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* ISE Options 2, Section 10(a)(1).

[48] *See* Securities Exchange Act Release No. 96362 (November 18, 2022), 87 FR 72539 (November 25, 2022) (SR–ISE–2022–25).

otherwise provided in this Rule, complex strategies shall be subject to all other Exchange Rules that pertain to orders and quotes generally.'' Additionally, the Exchange notes that orders that execute against interest on the single-leg order book, including the options leg of Complex Options Strategies are subject to the provisions of ISE Options 3, Section 5 which, among other things, describes the NBBO Price Protection and Trade-Through Compliance and Locked or Crossed Markets.

Further, Supplementary Material .01 to Options 9, Section 1 provides,

> [i]t will be a violation of this Rule for a Member to have a relationship with a third party regarding the disclosure of agency orders. Specifically, a Member may not disclose to a third party information regarding agency orders represented by the Member prior to entering such orders into the System to allow such third party to attempt to execute against the Member's agency orders. A Member's disclosing information regarding agency orders prior to the execution of such orders on the Exchange would provide an inappropriate informational advantage to the third party in violation of this Rule. For purposes of this paragraph .01, a third party includes any other person or entity, including affiliates of the Member. Nothing in this paragraph is intended to prohibit a Member from soliciting interest to execute against an order it represents as agent (a ''solicited order''), the execution of which is governed by Options 3, Section 22(e) and paragraph .02 of Supplementary Material to Options 3, Section 22.

This rule prohibits a Member from notifying a Preferred Market Maker of an intention to submit a Complex Preferenced Order so that the Preferred Market Maker could change its quotation to match the NBBO immediately prior to submission of the Complex Preferenced Order, and then fade its quote. The Exchange represents that it proactively conducts surveillance for, and enforces against, violations of Supplementary Material .01 to Options 9, Section 1.

The Exchange's proposal to add ''Complex Preferenced Orders'' to the list of Complex Order Types in ISE Options 3, Section 14(b) will continue to encourage Preferred Market Makers to quote aggressively in an effort to execute against the Complex Preferenced Order. Preferred Marker Makers are not able to ascertain if a particular order is a Complex Preferenced Order. The Exchange believes the proposal will encourage Market Makers to quote tighter and add a greater amount of liquidity on ISE in an attempt to interact with Complex Preferenced Orders that are sent to the Exchange. This order flow will benefit all market participants on the Exchange because any ISE Member may interact with that order flow.

The addition of Complex Preferenced Orders to the list of order types in ISE Options 3, Section 14(b) will make clear to Members the availability of Complex Preferenced Orders. This amendment is identical to a change recently adopted for MRX.[49] Additionally. [sic] Phlx[50] and MIAX[51] have a similar order type.

Complex Opening Price Determination

The Exchange proposes to amend the citation within Supplementary Material .05(d)(2) to Options 3, Section 14 which states, ''*Potential Opening Price.* The System will calculate the Potential Opening Price by identifying the price(s) at which the maximum number of contracts can trade (''maximum quantity criterion'') taking into consideration all eligible interest pursuant to Supplementary Material .06(b) to this Rule.'' The citation to Supplementary Material .06(b), related to Uncrossing is incorrect. The citation should be to Supplementary Material .05(b), related to Complex Opening Price Determination. The citation is referring is to eligible interest during the Complex Opening Price Determination.

The Exchange proposes to amend the Complex Opening Price Determination in Supplementary Material .05(d)(3) to Options 3, Section 14 to allow for additional contracts to be included in the Potential Opening Price calculation leading to better price discovery and more contracts executing as part of the Complex Opening Price Determination process. This amendment is identical to a change recently adopted for MRX.[52]

With this proposal, when the interest does not match the size and there is more than one Potential Opening Price at which the interest may execute, the Exchange would calculate a Potential Opening Price using the mid-point of the highest (lowest) executable offer (bid) price and the next available executable offer (bid) price rounded, if necessary, down (up) to the closest minimum trading increment. As a result, more options contracts are likely to be executed at better prices than under the current rule. Example number 3 below demonstrates this behavior. This behavior differs from current rules in that, today, the Exchange would calculate the Potential Opening Price as the highest (lowest) executable bid (offer) when there would be contracts left unexecuted on the bid (offer) side of the complex market.

Further, the proposed amendment will allow Market Complex Orders to participate in the Opening Price Determination process in a broader capacity than the rule allows for today. Today, if there are only Market Complex Orders on both sides of the market, or if there are Market Complex Orders on the bid (offer) side of the market for greater than the total size of Complex Orders on the offer (bid) side of the market, then ISE will not open pursuant to the Complex Opening Price Determination process and would instead open pursuant to an Uncrossing as provide for in Supplementary Material .06(b) of ISE Options 3, Section 14. With the proposed amendment Market Complex Orders will be included in the Complex Opening Price Determination process in both situations described above, leading to more contracts being able to trade in the Complex Opening Price Determination with better price discovery. Example 5 below illustrates this point.

Finally, the proposed amendment considers the Boundary Price earlier in the Complex Opening Process. Today, the rule seeks to satisfy the maximum quantity criterion first and then consider Boundary Prices. With the proposed change, the Exchange will consider the Boundary Price while determining the Potential Opening Price, thereby enabling as many contracts as possible to trade sooner, which reduces risk for market participants awaiting executions. With this proposal, the Complex Opening Process considers the Boundary Price earlier in the process and the Boundary Price becomes the limit price for Market Complex Orders. This proposal should maximize the number of contracts executed, to the benefit of those

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[49] *See* note 3 above. MRX amended Options 3, Section 14(b).

[50] *See* Phlx Options 3, Section 14(b)(v) which specifies that a Directed Order may be submitted as a Complex Order. *See also* Phlx Options 3, Section 7(b)(11) which describes a Directed Order. Phlx's Options 2, Section 10 Directed Order rule is similar to ISE's Options 2, Section 10 Preferenced Order rule.

[51] A ''Directed Order'' is an order entered into the System by an Electronic Exchange Member with a designation for a Lead Market Maker (referred to as a ''Directed Lead Market Maker''). Only Priority Customer Orders will be eligible to be entered into the System as a Directed Order by an Electronic Exchange Member. *See* MIAX Rule 100. *See also* MIAX Rule 514(h) which describes allocation. Today, MIAX permits Directed Orders to be submitted as a New Order—Multileg. *See https://www.miaxoptions.com/sites/default/files/page-files/FIX%20Order%20Interface_FOI_v2.5a_re.pdf.* Pursuant to MIAX's specifications, ''AllocAccount (Tag 79) is defined as MIAX assigned directed firm code of the designated participant for directed order flow.''

[52] *See* note 3 above. MRX amended Supplementary Material .05(d)(3) to Options 3, Section 14.

Members participating in that complex strategy.

Current Supplementary Material .05 of ISE Options 3, Section 14 describes how Complex Orders arrive at an Opening Price. Specifically, Supplementary .05(b) of ISE Options 3, Section 14 describes the interest that is eligible within the Complex Opening Price Determination. The rule text provides that the System would calculate Boundary Prices [53] at or within which Complex Orders may be executed during the Complex Opening Price Determination.[54] Current Supplementary Material .05(d)(2) of ISE Options 3, Section 14 provides, ''The System will calculate the Potential Opening Price [55] by identifying the price(s) at which the maximum number of contracts can trade (''maximum quantity criterion'') taking into consideration all eligible interest pursuant to Supplementary Material .06(b) to this Rule.'' [56] The System takes into consideration all Complex Orders, identifies the price at which the maximum number of contracts can trade, and calculates the Potential Opening Price as described in Supplementary Material .05(d)(2) of ISE Options 3, Section 14. Supplementary Material .05(d)(3) of ISE Options 3, Section 14 further describes the way the System handles more than one Potential Opening Price. Current Supplementary Material .05(d)(3) of ISE Options 3, Section 14 states,

When two or more Potential Opening Prices would satisfy the maximum quantity criterion: (A) without leaving unexecuted contracts on the bid or offer side of the market of Complex Orders to be traded at those prices, the System takes the highest and lowest of those prices and takes the mid-point; provided that (1) if the highest and/or lowest price described above is through the price of a bid or offer that is priced to not allocate in the Complex Opening Price Determination, the highest and/or lowest price will be rounded to the price of such bid or offer that is priced to not allocate before taking the mid-point, and (2) if the midpoint is not expressed as a permitted minimum trading increment, it will be rounded down to the nearest permissible minimum trading increment; or (B) leaving unexecuted contracts on the bid (offer) side of the market of Complex Orders to be traded at those prices, the Potential Opening Price is the highest (lowest) executable bid (offer) price. Notwithstanding the foregoing: (C) if there are Market Complex Orders on the bid (offer) side of the market that would equal the full quantity of Complex Orders on offer (bid) side of the market, the limit price of the highest (lowest) priced Limit Complex Order is the Potential Opening Price; and (D) if there are only Market Complex Orders on both sides of the market, or if there are Market Complex Orders on the bid (offer) side of the market for greater than the total size of Complex Orders on the offer (bid) side of the market, there will be no trade in the Complex Opening Price Determination and the complex strategy will open pursuant to the Complex Uncrossing Process described in Supplementary Material .06(b) to this Rule.

At this time, the Exchange proposes to amend the System handling within the Complex Opening Process by replacing Supplementary Material .05(d)(3) of ISE Options 3, Section 14 with the following proposed rule text,

Opening Price Determination. When interest crosses and does not match in size, the System will calculate the Potential Opening Price based on the highest (lowest) executable offer (bid) price when the larger sized interest is offering (bidding), provided, however, that if there is more than one price at which the interest may execute, the Potential Opening Price when the larger sized interest is offering (bidding) shall be the mid-point of the highest (lowest) executable offer (bid) price and the next available executable offer (bid) price rounded, if necessary, down (up) to the closest minimum trading increment; or

When interest crosses and is equal in size, the System will calculate the Potential Opening Price based on the mid-point of lowest executable bid price and the highest executable offer price, rounded, if necessary, up to the closest minimum trading increment.

(A) Executable bids/offers include any interest which could be executed at the Potential Opening Price without trading through residual interest or the Boundary Price or without trading at the Boundary Price where there is Priority Customer interest at the best bid or offer for any leg, consistent with paragraph Options 3, Section 14(c)(2).

(B) Executable bids/offers will be bounded by the Boundary Price on the contra-side of the interest, for determination of the Potential Opening Price described above.

This proposed new Complex Opening Process seeks to maximize the interest which is traded during the Complex Opening Price Determination process and deliver a rational price for the available interest at the opening. The Complex Opening Price Determination process maximizes the number of contracts executed during the Complex Opening Process and ensures that residual contracts of partially executed orders or quotes are at a price equal to or inferior to the Opening Price. In other words, the logic ensures there is no remaining unexecuted interest available at a price which crosses the Opening Price. If multiple prices exist that ensure that there is no remaining unexecuted interest available through such price(s), the opening logic selects the mid-point of such price points. Below are some examples.

Example # 3 (More Than One Potential Opening Price—Mid-Point of Larger-Sized Interest)

''*if there is more than one price at which the interest may execute, the Potential Opening Price when the larger sized interest is offering (bidding) is the mid-point of the highest (lowest) executable offer (bid) price and the next available executable offer (bid) price rounded, if necessary, down (up) to the closest minimum trading increment*''

Assume

Complex Order Strategy: A+B strategy
Quote for Leg A @1.75 × 1.95
Quote for Leg B @1.75 × 1.95
Boundary Price = 3.50 (10) − 3.90 (10)
(Leg A Bid 1.75 + Leg B Bid 1.75 = 3.50)
(Leg A Offer 1.95 + Leg B Offer 1.95 = 3.90)
Complex Order #1: Buy 20 for $3.79
Complex Order #2: Buy 20 at $3.73
Complex Order #3: Sell 20 at $3.60

With the proposed amendment, Opening Price would be for 20 strategies at a price of $3.76. The execution price of $3.76 is derived from the mid-point of the lowest executable bid price of $3.73 and the next available executable bid price of $3.79. In this example, 20 strategies can be opened at multiple price points ranging from $3.73 up to $3.79. None of these Potential Opening Prices would cause the unexecuted $3.73 buy order to be available at a price which crosses the Opening Price, therefore, the System opens at the mid-point of such prices, $3.76.

Today, with this same example, the Opening Price would be 3.79, the highest executable bid price, which provides the offer side with all price improvement. With the proposed amendment, the Opening Price seeks to distribute to the extent possible price improvement to both the bid and offer side of the transaction.

Example # 4 (Mid-Point When Interest Is Equal in Size)

''*Provided such crossing interest is equal in size, the System will calculate the Potential Opening Price based on the mid-point of lowest executable bid*

[53] The Boundary Price is described in Supplementary Material .05(d)(1) of ISE Options 3, Section 14(a)(1).

[54] *See* Supplementary Material .05(d)(1) of ISE Options 3, Section 14.

[55] The Potential Opening Price is described in Supplementary Material .05(d)(2) of ISE Options 3, Section 14.

[56] The Exchange proposes to amend the citation within Supplementary Material .05(d)(2) to Options 3, Section 14 within this proposal. The citation to Supplementary Material .06(b), related to Uncrossing, should be to Supplementary Material .05(b), related to Complex Opening Price Determination. Specifically, the reference is to Eligible Interest during the Complex Opening Price Determination.

price and the highest executable offer price, rounded, if necessary, up to the closest minimum trading increment''

Complex Order Strategy: A+B strategy
Quote for Leg A @1.75 × 1.95 each
Quote for Leg B @1.75 × 1.95 each
Boundary Price= 3.50 (10) − 3.90 (10)
(Leg A Bid 1.75 + Leg B Bid 1.75 = 3.50)
(Leg A Offer 1.95 + Leg B Offer 1.95 = 3.90)
Complex Order #1: Buy 10 for $3.78
Complex Order #2: Buy 20 for $3.74
Complex Order #3: Buy 10 at $3.71
Complex Order #4: Sell 20 at $3.64
Complex Order #5: Sell 20 at $3.66

With the proposed amendment, the Opening Price will be for 40 strategies at a price of $3.69. The execution price of $3.69 is derived from the mid-point of the lowest executable bid price of $3.71 and the highest executable offer price of $3.66, rounded up to the closest minimum trading increment. Today, rounding would be down and with this proposal the rounding would be up.

If the example were changed slightly such that Complex Order #4 and Complex Order #5 were Market Complex Orders rather than Limit Orders, the Opening Price for the 40 strategies would be $3.61, which is derived from the mid-point of the lowest executable bid price of $3.71 and the highest executable offer of $3.50 (which is the Boundary Price of the sell Market Complex Orders), rounded up to the closest minimum trading increment.

The Exchange notes that executable bids/offers include any interest that could be executed at the net price without trading through residual interest or the Boundary Price, or without trading at the Boundary Price where there is Priority Customer interest at the best bid or offer for any leg, consistent with current ISE Options 3, Section 14(c)(2).[57] Further, executable bids/offers would be bounded to the Boundary Price on the contra-side of the interest, for determination of the Opening Price described above when crossing interest is different in size and when crossing interest is equal in size.

The amendment will benefit Members by smoothing the way for the complex strategy to open with Market Complex Orders. Today, Market Complex Orders participate in the Complex Opening Process in a limited capacity as explained above. By permitting Market Complex Orders to participate in the Complex Opening Price Determination process in more situations, the Exchange can provide more opportunity for Complex Orders to trade in the Opening Process without having to go to the Uncrossing process. Market conditions can change between the Complex Opening Price Determination process and the Uncrossing process, which can lead to missed opportunities for execution. The proposed rule would have the Boundary Price assign limits to the Opening Price and therefore permit Market Complex Orders to participate in the Complex Opening Process to the extent that they are within the Boundary Prices. With this change, ISE would permit a complex strategy to calculate an Opening Price utilizing a greater number of Market Complex Orders, which benefits the Opening Process by taking into account these more aggressively priced orders[58] while also bringing more liquidity into the Opening Price calculation.

Example # 5 (Market Complex Orders Trading in Opening Price Determination)

''*Provided interest crosses and does not match in size, the System will calculate the Potential Opening Price based on the highest (lowest) executable offer (bid) price when the larger sized interest is offering (bidding)*''

As referenced above,

Assume

Complex Order Strategy: A+B strategy
Quote for Leg A @1.75 × 2.00
Quote for Leg B @1.75 × 2.00
Boundary Price = 3.50 (10) − 4.00 (10)
(Leg A Bid 1.75 + Leg B Bid 1.75 = 3.50)
(Leg A Offer 2.00 + Leg B Offer 2.00 = 4.00)
Market Complex Order #1: Buy 30
Complex Order #2: Sell 20 at $3.95
After Complex Opening Price Determination process, but before Uncrossing
ABBO for Leg A updates: 1.85 × 1.90
ABBO for Leg B updates 1.85 × 1.90
cNBBO: 3.70 × 3.80
(ABBO Leg A Bid 1.85 + Leg B Bid 1.85 = 3.70)(ABBO Leg A Offer 1.90 + Leg B Offer 1.90 = 3.80)

With the proposed amendment the Market Complex Order can be considered in the Complex Opening Price Determination process and therefore is able to trade at the Opening Price of $4.00 for 20 strategies with Complex Order #2 and also able to trade 10 strategies at a net price $4.00 with the individual legs at the best bids and offers before the ABBO updates, leaving no place for this complex strategy to trade. The Opening Price in this example is determined as the lowest executable bid because the bid side is the larger sized interest, which is limited by the Boundary Price on the offer side at 4.00.

Today, Market Complex Orders with a larger quantity than the quantity of interest on the contra side of the market do not participate in the Complex Opening Price Determination and can only execute during the Uncrossing pursuant to Supplementary Material .05(d)(6) of ISE Options 3, Section 14. In the example above, the ABBO of each leg updates after the Complex Opening Price Determination process and restricts the Market Complex Order and Complex Limit Order from trading in the Uncrossing because they cannot match at a price that would be within the Price Limits for Complex Orders pursuant to ISE Options 3, Section 16(a).

Finally, with this proposal and as demonstrated in Example 5 above, a complex strategy would open pursuant to Supplementary Material .05(d)(5) of ISE Options 3, Section 14, with less contracts becoming subject to the Uncrossing pursuant to Supplementary Material .06(b) of ISE Options 3, Section 14. As a result of this change, more interest would be able to trade within the Opening Process, ensuring a greater number of contracts are executed on ISE at the Complex Opening and lessening the likelihood that contracts which remain unmatched during the Complex Opening Price Determination process receive no execution in the Uncrossing due to changing market conditions.[59]

As noted above, this amendment is identical to a change recently adopted

[57] ISE Options 3, Section 14(c)(2) provides, ''Complex strategies will not be executed at prices inferior to the best net price achievable from the best ISE bids and offers for the individual legs. Notwithstanding the provisions of Options 3, Section 10: (i) a Complex Options Strategies may be executed at a total credit or debit price with one other Member without giving priority to bids or offers established on the Exchange that are no better than the bids or offers in the individual options series comprising such total credit or debit; provided, however, that if any of the bids or offers established on the Exchange consist of a Priority Customer Order, the price of at least one leg of the complex strategy must trade at a price that is better than the corresponding bid or offer on the Exchange by at least one minimum trading increment for the series as defined in Options 3, Section 3; (ii) the option leg of a Stock-Option Strategy has priority over bids and offers for the individual options series established on the Exchange by Professional Orders and market maker quotes that are no better than the price of the options leg, but not over such bids and offers established by Priority Customer Orders; and (iii) the options legs of a Stock-Complex Strategy are executed in accordance with subparagraph (c)(2)(i).

[58] The allowance of a greater number of Market Complex Orders within the Opening Process provides a greater depth of price discovery for an options series. As noted above, the Boundary Price would assign limits to the Opening Price, therefore preventing Market Complex Orders which are aggressively priced from negatively impacting the Opening Price.

[59] Unmatched orders would rest on the Order Book with the potential to execute intra-day.

for MRX.[60] Additionally, Phlx has a similar methodology to arrive at a complex opening price at Phlx Options 3, Section 14(d)(ii)(C)(2)[61] as compared to proposed Supplementary Material .05(d)(3) of ISE Options 3, Section 14. Phlx's COOP Evaluation and ISE's proposed Opening Price Determination both seek the price at which the maximum number of contracts can trade. Phlx's COOP Evaluation is an auction with a timer, unlike ISE's Opening Price Determination.[62] Proposed Supplementary Material .05(d)(3)(A) and (B) of ISE Options 3, Section 14 differs from Phlx Options 3, Section 14(d)(ii)(C)(2). ISE will open a complex strategy with the Complex Order Book crossed if an Opening Price cannot be found within the Boundary Prices and remain crossed while attempting to uncross the Complex Order Book on a best effort basis, pursuant to Supplementary Material .06 of ISE Options 3, Section 14, until all interest can be executed. Today, Phlx will open a complex strategy crossed when a price cannot be found within Phlx's cPBBO during the COOP Evaluation period and there are more aggressive away market prices that are limiting the ability to leg into the single-leg book, but will not remain crossed as complex orders that are through Phlx's cPBBO would be cancelled pursuant to Phlx Options 3, Section 14(f)(i)(A).[63] The Exchange also proposes to amend the Opening Price in Supplementary Material .05(d)(4) of ISE Options 3, Section 14 that currently provides,

Opening Price. If the Potential Opening Price is at or within the Boundary Prices, the Potential Opening Price becomes the Opening Price. If the Potential Opening Price is not at or within the Boundary Prices, the Opening Price will be the price closest to the Potential Opening Price that satisfies the maximum quantity criteria without leaving unexecuted contracts on the bid or offer side of the market at that price and is at or within the Boundary Prices. If the bid Boundary Price is higher than the offer Boundary Price, or if no valid Opening Price can be found at or within the Boundary Prices, there will be no trade in the Complex Opening Price Determination and the complex strategy will open pursuant to the Complex Uncrossing Process described in Supplementary Material .06(b) to this Rule.

The Exchange proposes to amend this rule to instead provide,

If the Potential Opening Price is at or within the Boundary Prices, the Potential Opening Price becomes the Opening Price and the complex strategy will open pursuant to Supplementary Material .05(d)(5) to this Rule. If the bid Boundary Price is higher than the offer Boundary Price, or if no valid Potential Opening Price can be found at or within the Boundary Prices, there will be no trade in the Complex Opening Price Determination and the complex strategy will open pursuant to the Complex Uncrossing Process described in Supplementary Material .06(b) to this Rule.

With the proposed change, if the Potential Opening Price is at or within the Boundary Prices, the Potential Opening Price becomes the Opening Price and the complex strategy will open pursuant to the Uncrossing described in Supplementary Material .05(d)(5) of ISE Options 3, Section 14, as is the case today. However, as is the case today, if the bid Boundary Price is higher than the offer Boundary Price, or if no valid Potential Opening Price can be found at or within the Boundary Prices, there will be no trade in the Complex Opening Price Determination and the complex strategy will open pursuant to the Complex Uncrossing process described in Supplementary Material .06(b) of ISE Options 3, Section 14 pursuant to the proposed amendment to the Complex Opening Price Determination. As noted above, this amendment is identical to a change recently adopted for MRX.[64]

Complex Order Risk Protections

The Exchange proposes a non-substantive amendment to the title of a Complex Order Risk Protection in ISE Options 3, Section 16, Complex Order Risk Protections. Specifically, the Exchange proposes to amend ISE Options 3, Section 16(c)(1) to change the title from ''Limit Order Price Protection'' to ''Complex Order Price Protection.'' The Exchange believes the proposed title more accurately describes the risk protection.

[60] *See* note 3 above. MRX amended Supplementary Material .05(d)(3) of ISE Options 3, Section 14.

[61] COOP Evaluation. Upon expiration of the COOP Timer, the System will conduct a COOP Evaluation to determine, for a Complex Order Strategy, the price at which the maximum number of contracts can trade, taking into account Complex Orders marked All-or-None (which will be executed if possible) unless the maximum number of contracts can only trade without including All-or-None Orders. The Exchange will open the Complex Order Strategy at that price, executing marketable trading interest, in the following order: first, to Public Customers in time priority; next to Phlx electronic market makers on a pro rata basis; and then to all other participants on a pro rata basis. The imbalance of Complex Orders that are unexecutable at that price are placed on the CBOOK. (1) No trade possible. If at the end of the COOP Timer the System determines that no market or marketable limit Complex Orders or COOP Sweeps, Complex Orders or COOP Sweeps that are equal to or improve the cPBBO, and/or Complex Orders or COOP Sweeps that cross within the cPBBO exist in the System, all Complex Orders received during the COOP Timer will be placed on the CBOOK, as described in paragraph (f) below. (2) Trade is possible. If at the end of the COOP Timer the System determines that there are market or marketable limit Complex Orders or COOP Sweeps, Complex Orders or COOP Sweeps that are equal to or improve the cPBBO, and/or Complex Orders or COOP Sweeps that cross within the cPBBO in the System, the System will do the following: if such interest crosses and does not match in size, the execution price is based on the highest (lowest) executable offer (bid) price when the larger sized interest is offering (bidding), provided, however, that if there is more than one price at which the interest may execute, the execution price when the larger sized interest is offering (bidding) is the midpoint of the highest (lowest) executable offer (bid) price and the next available executable offer (bid) price rounded, if necessary, down (up) to the closest minimum trading increment. If the crossing interest is equal in size, the execution price is the midpoint of lowest executable bid price and the highest executable offer price, rounded, if necessary, up to the closest minimum trading increment. Executable bids/offers include any interest which could be executed at the net price without trading through residual interest or the cPBBO or without trading at the cPBBO where there is Public Customer interest at the best bid or offer for any leg, consistent with paragraph (c)(iii). If there is any remaining interest and there is no component that consists of the underlying security and provided that the order is not marked all-or-none, such interest may ''leg'' whereby each options component may trade at the PBBO with existing quotes and/or Limit Orders on the Limit Order book for the individual components of the Complex Order; provided that remaining interest may execute against any eligible Complex Orders received before legging occurs. If the remaining interest has a component that consists of the underlying security, such Complex Order will be placed on the CBOOK (as defined below). (3) The Complex Order Strategy will be open after the COOP even if no executions occur.

[62] Phlx's All-or-None order type differs from ISE's All-or-None order in that only Public Customers may utilize the Phlx All-or-None order type and Phlx's All-or-None order may rest on the order book. *See* Phlx Option 3, Section 7(b)(5). ISE's All-or-None order is a limit or market order that is to be executed in its entirety or not at all. *See* ISE Options 3, Section 7(c).

[63] By way of example, assume Phlx cPBBO is 1.00 × 2.00 and cNBBO is 1.45 × 1.50. Also, assume Phlx complex Day Order to buy the strategy @$0.50 which begins a COOP timer. Next, a complex day order to sell the strategy @$0.50 arrives during the COOP timer. These orders are crossed, but are not within Phlx's cPBBO, and, therefore, both orders cannot trade as part of the COOP Evaluation. Additionally, the sell order cannot leg into Phlx's simple order book because of the more aggressive cNBBO which would limit legging as part of the ACE price protection described within Phlx Options 3, Section 16(b)(i), and, therefore, the sell order that is crossed with Phlx's cPBBO cannot remain on the Complex Order Book and is ultimately cancelled. In contrast, on ISE, this sell order would remain crossed on the Complex Order Book while continuously looking for an opportunity to uncross and trade these Complex Orders as new orders arrive or the market moves. Options 3, Section 14(f)(i)(A) provides that Complex Orders must be entered onto the CBOOK in increments of $0.01. The individual components of a Complex Order may be executed in minimum increments of $0.01, regardless of the minimum increments applicable to such components. Such orders will be placed on the CBOOK by the System when the following conditions exist: (A) When the Complex Order does not price-improve upon the cPBBO upon receipt . . .''.

[64] *See* note 3 above. MRX amended Supplementary Material .05(d)(4) of ISE Options 3, Section 14.

Implementation

The Exchange intends to begin implementation of the proposed rule change prior to December 23, 2023. The implementation would commence with a limited symbol migration and continue to migrate symbols over several weeks. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates.

Technical Amendments

The Exchange proposes to amend an incorrect citation within Options 3, Section 6, Collection and Dissemination of Quotations. Specifically, the Exchange proposes to amend Options 3, Section 6(c)(2) to correct a citation to ''Options 5, Section 8''. The citation should be to ''Options 3, Section 8''.

The Exchange proposes to amend ''Option'' to ''Options'' within Options 3, Section 8(b)(2) related to the Opening Process and Options 3, Section 9(d)(2) related to Trading Halts.

The Exchange proposes to delete the words ''which is'' within Options 3, Section 8(j)(3)(B) because they are duplicative.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[65] in general, and furthers the objectives of Section 6(b)(5) of the Act,[66] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest for the reasons discussed below.

Legging Order

Amending ISE Options 3, Section 7(k)(1) to add a provision which states that a Legging Order will not be generated during a Posting Period in progress on the same side in the series pursuant to Options 3, Section 15 regarding Acceptable Trade Range, is consistent with the Act because from a System processing and user acceptance standpoint, the best practice is to wait for the ATR Posting Period to complete before attempting to generate a Legging Order on the same side in the series, as the time required to complete the ATR Posting Period is minimal. The proposed change is designed to protect investors and the public interest as automatically generated Legging Orders would be removed from the single-leg order book when they are no longer at the Exchange's displayed best bid or offer. Generating a Legging Order during a Posting Period in progress on the same side in the series would lead to the immediate removal of the Legging Order from the single-leg order book, making it superfluous to have been generated. This amendment is identical to a change recently adopted for MRX.[67] Additionally, Phlx's legging order rule in Options 3, Section 14(f)(iii)(C)(2)[68] has the same restriction on generating legging orders as proposed herein.

Re-Pricing

The Exchange believes that amending Options 3, Section 12(c) and (d) and Options 3, Section 14(b)(19) to account for re-pricing of quotes and orders that would otherwise lock or cross an away market, as provided in Options 3, Section 4(b)(6) and (7) and Options 3, Section 5(c) and (d) of SR–ISE–2022–25, is consistent with the Act.

As discussed above with the implementation of re-pricing as provided in Options 3, Section 4(b)(6) and (7) and Options 3, Section 5(c) and (d), interest could be available on the Exchange at a price that is better than the NBBO but is non-displayed (*i.e.,* the Exchange's non-displayed order book or internal BBO). The proposed addition of ''internal BBO'' to Options 3, Section 12(c) and (d) will ensure that Members continue to submit Qualified Contingent Cross Orders and Complex Qualified Contingent Cross Orders at prices equal to or better than the best prices available in the market and ensure that these orders are not executed ahead of better-priced interest. This amendment is identical to a change recently adopted for MRX.[69]

Further, with respect to the amendment to Options 3, Section 14(b)(19), regarding Complex Preferenced Orders, the addition of ''internal BBO'' is designed to ensure that Complex Preferenced Orders are not allocated unless the Preferred Market Maker is quoting at the better of the internal BBO (which could be better than the NBBO) or the NBBO for a component leg(s) of the Complex Preferenced Order at the time the Complex Preferenced Order is received. This amendment is identical to a change recently adopted for MRX.[70]

Changes to the Single-Leg Price Improvement Mechanism for Crossing Transactions

The Exchange's proposal to amend ISE Options 3, Section 13(d)(4), related to single-leg PIM, to not permit unrelated marketable interest, on the opposite side of the market from the Agency Order, which is received during a single-leg PIM to early terminate a single-leg PIM is consistent with the Act and promotes just and equitable principles because allowing the auction to run its full course would provide a full opportunity for price improvement to the Crossing Transaction. The unrelated interest would participate in the single-leg PIM allocation pursuant to ISE Options 3, Section 13(d), if residual contracts remain after executing with interest on the single-leg order book. This amendment is identical to a change recently adopted for MRX.[71] Additionally, Phlx[72] and BX[73] do not permit unrelated interest on the same or opposite side of an Agency Order to early terminate their simple price improvement auctions.

The proposed amendment in ISE Options 3, Section 13(c)(5)(ii), related to single-leg PIM, applies to the receipt of marketable orders both on the same side and opposite side of the Agency order. With respect to the same side of the Agency Order, today, an unrelated market or marketable limit order in the same series on the same side of the Agency Order would cause the single-leg PIM to early terminate as well. The proposal promotes just and equitable principles of trade because a market or marketable limit order in the same series on the same side of the Agency Order cannot interact with a single-leg PIM auction. The market or marketable limit order may interact with the order book, and if there are residual contracts that remain from the market or marketable order in the same series on the same side of the Agency Order, they will rest on the order book and improve the BBO beyond the price of the Crossing Transaction which will cause early termination of the single-leg PIM pursuant to proposed ISE Options 3, Section 13(c)(5)(ii). The Exchange believes that this outcome would allow for the single-leg PIM exposure period to continue for the full period despite the receipt of unrelated marketable interest on the same side of the market from the Agency Order, provided residual interest does not go on to rest on the order book improving the BBO beyond the price of the Crossing Transaction of the PIM. Allowing the single-leg PIM to run its full course protects investors and the general public because it would provide an

[65] 15 U.S.C. 78f(b).

[66] 15 U.S.C. 78f(b)(5).

[67] *See* note 3 above. MRX amended Options 3, Section 7(k)(1).

[68] *See* note 10 above.

[69] *See* note 3 above. MRX amended Options 3, Section 12(c) and (d).

[70] *See* note 3 above. MRX amended Options 3, Section 14(b)(19).

[71] *See* note 3 above. MRX amended Options 3, Section 13(d)(4).

[72] *See* note 17 above.

[73] *See* note 18 above.

opportunity for price improvement to the Agency Order. This amendment is identical to a change recently adopted for MRX.[74]

Amending current ISE Options 3, Section 13(c)(5)(iii) to align the rule text with MRX[75] and also more closely with BX Options 3, Section 13(ii)(B)(2)[76] is consistent with the Act because it removes any ambiguity that a market or marketable limit order priced more aggressively than the Agency Order on the same side could ultimately rest on the order book, improving the BBO beyond the price of the Crossing Transaction of the PIM and, therefore, cause the early termination of a single-leg PIM. Continuing to permit a single-leg PIM to early terminate any time the Exchange best bid or offer improves beyond the price of the Crossing Transaction on the same side of the market as the Agency Order protects investors and the general public because the Crossing Transaction Agency Order's price is inferior to the Exchange's best bid or offer on the same side of the market as the Agency Order. Upon early termination of the single-leg PIM, the Crossing Transaction would execute against responses that arrived prior to the time the Exchange's best bid or offer improved beyond the Crossing Transaction. The proposed amendment to the rule text is not intended to amend the current System functionality, rather it is intended to make clear that a market or marketable limit order could ultimately rest on the order book and improve the BBO beyond the price of the Crossing Transaction.

Adding proposed new ISE Options 3, Section 13(c)(5)(iii), which describes the automatic termination of the exposure period resulting from a trading halt on the Exchange in the affected series, is consistent with the Act because a trading halt would cause an option series to stop trading on ISE and thereby impact the PIM auction. Today, if a trading halt is initiated after an order is entered into the single-leg PIM, such auction will be automatically terminated without execution. Of note, the Exchange is separately proposing to amend ISE Options 3, Section 13(d)(5)[77] to change System behavior such that if a trading halt is initiated after an order is entered into the single-leg PIM, such auction will be automatically terminated with execution solely with the Counter-Side Order.[78] The proposed amendment to ISE Options 3, Section 13(c)(5)(iii) protects investors and the general public by making clear that a trading halt would lead to early termination of a single-leg PIM. This amendment is not intended to amend the current System functionality, rather it is intended to make clear that a trading halt will cause the single-leg PIM to early terminate. This amendment is identical to a change recently adopted for MRX.[79]

Changes to the Complex PIM

Deleting ISE Options 3, Section 13(e)(4)(vi) within Complex PIM, as well as a paragraph in Supplementary Material .01(b)(ii) of ISE Options 3, Section 14 discussing Complex Order Exposure, related to the early termination of single-leg PIM from the arrival of unrelated marketable interest on either the same or opposite side of the market from the Agency Order, is consistent with the Act because a single-leg PIM will no longer early terminate from the arrival of unrelated marketable interest on either the same or opposite side of the market from the Agency Order and because the flash functionality will no longer exist.[80] The removal of the aforementioned rule text will protect investors and the public by avoiding confusion as the scenarios contemplated by ISE Options 3, Section 13(e)(4)(vi) and Supplementary Material .01(b)(ii) of ISE Options 3, Section 14 will no longer be able to occur. This amendment is identical to a change recently adopted for MRX.[81]

Other Complex Order Amendments

Opening Only Complex Order

The Exchange's proposal to remove the word ''Limit'' within the description of the Opening Only Complex Order Type in ISE Options 3, Section 14(b)(10) is consistent with the Act because it allows Opening Only Complex Orders to be submitted as Market Orders or Limit Orders. The Exchange believes that allowing Market and Limit Orders to be submitted within the Complex Opening Process promotes just and equitable principles of trade. Market Orders are typically the most aggressively priced orders while Limit Orders have a limit price contingency that Market Orders do not have. Allowing both of these order types to participate in the Complex Opening Process protects investors and the general public because it allows greater liquidity to be present to determine the Opening Price. All Members may enter both Market Orders and Limit Orders in the Complex Opening Process as well as intra-day. This proposal is consistent with current System operations. This amendment is identical to a change recently adopted for MRX.[82]

Complex QCC With Stock Orders

The Exchange's proposal to amend an incorrect citation with ISE Options 3, Section 14(b)(15), related to Complex QCC with Stock Orders, is consistent with the Act because the current citation to ISE Options 3, Section 12(e) in the description of this order type should be to ISE Options 3, Section 12(f). This non-substantive amendment will make clear what was meant by the reference.

Complex Preferenced Orders

The Exchange's proposal to add ''Complex Preferenced Orders'' to the list of Complex Order Types in ISE Options 3, Section 14(b) is consistent with the Act because the Exchange believes that this order type will promote just and equitable principles of trade because the order type will continue to encourage Preferred Market Makers to quote aggressively in an effort to execute against the Complex Preferenced Order. Preferred Marker Makers are not able to ascertain if a particular order is a Complex Preferenced Order. The Exchange believes the proposal will protect investors and the general public by encouraging greater order flow to be sent to the Exchange through Complex Preferenced Orders and that this increased order flow will benefit all market participants on the Exchange because they may interact with that order flow.

The proposal promotes just and equitable principles of trade because it continues to prioritize Priority Customer[83] Orders on the single-leg order book. Priority Customers have priority over non-Priority Customer interest at the same price in the same options series on the single-leg order

[74] *See* note 3 above. MRX amended Options 3, Section 13(c)(5)(ii).

[75] *See* MRX Options 3, Section 13(c)(5)(iii).

[76] *See* note 22 above.

[77] *See* note 23 above.

[78] SR–ISE–2022–15P proposes to renumber ISE Options 3, Section 13(d)(5) as Options 3, Section 13(d)(6), and proposes to amend the rule text to state, ''If a trading halt is initiated after an order is entered into the Price Improvement Mechanism, such auction will be automatically terminated with execution solely with the Counter-Side Order.''

[79] *See* note 3 above. MRX amended Options 3, Section 13(c)(5)(iii).

[80] *See* note 28 above.

[81] *See* note 3 above. MRX deleted Options 3, Section 13(e)(4)(vi) within Complex PIM, as well as a paragraph in Supplementary Material .01(b)(ii) of Options 3, Section 14.

[82] *See* note 3 above. MRX amended Options 3, Section 14(b)(10).

[83] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Options 1, Section 1(a)(36).

book.[84] Complex Preferenced Orders are allocated based on the competitive bidding of market participants. The Exchange's proposal promotes just and equitable principles of trade as a Preferred Marker Maker must be at the NBBO for a component leg(s) of the Complex Preferenced Order at the time the Complex Preferenced Order is received. Moreover, participation entitlements for Preferred Market Makers are designed to balance the obligations[85] that the Preferred Market Maker has to the market with corresponding benefits. In its approval of other options exchange preferenced or directed order programs, the Commission has, like proposals to amend a specialist guarantee, focused on whether the percentage of the ''entitlement'' would rise to a level that could have a material adverse impact on quote competition within a particular exchange, and concluded that such programs do not jeopardize market integrity or the incentive for market participants to post competitive quotes.[86]

Further, adding this existing order type, which is described in ISE Options 2, Section 10, would complete the list of Complex Order types in ISE Options 3, Section 14(b). The addition of Complex Preferenced Orders to the list of order types in ISE Options 3, Section 14(b) will make clear to Members the availability of Complex Preferenced Orders. This amendment is identical to a change recently adopted for MRX.[87] Additionally, Phlx[88] and MIAX[89] have a similar order type.

Complex Opening Price Determination

The Exchange's proposal to amend the citation within Supplementary Material .05(d)(2) to Options 3, Section 14, related to the Potential Opening Price, is consistent with the Act because the current citation to Supplementary Material .06(b) should be to Supplementary Material .05(b). This non-substantive amendment will make clear what was meant by the reference.

The Exchange's proposal to amend Supplementary Material .05(d)(3) of ISE Options 3, Section 14, which describes the Complex Opening Price Determination, is consistent with the Act because the proposed new Complex Opening Process would allow for additional contracts to be included in the Potential Opening Price calculation. This proposed methodology would protect investors and the general public by leading to better price discovery and more contracts executing as part of the Complex Opening Price Determination. With this proposal, when the interest does not match in size and there is more than one Potential Opening Price at which the interest may execute, then the Exchange would calculate a Potential Opening Price using the mid-point of the highest (lowest) executable offer (bid) price and the next available executable offer (bid) price rounded, if necessary, down (up) to the closest minimum trading increment. As a result, the proposal promotes just and equitable principles of trade as more options contracts are likely to be executed at better prices than under current rule. This behavior differs from ISE's current opening rule in that, today, the Exchange would calculate the Potential Opening Price as the highest (lowest) executable bid (offer) when there would be contracts left unexecuted on the bid (offer) side of the complex market. This amendment is identical to a change recently adopted for MRX.[90] Also, the proposed methodology is similar to Phlx.[91]

Further, the proposed amendment promotes just and equitable principles of trade by allowing Market Complex Orders to participate in the Opening Price Determination process in a broader capacity than the ISE opening rule allows for today. Today, if there are only Market Complex Orders on both sides of the market, or if there are Market Complex Orders on the bid (offer) side of the market for greater than the total size of Complex Orders on the offer (bid) side of the market, then ISE will not open pursuant to the Complex Opening Price Determination process and would instead open pursuant to an Uncrossing pursuant to Supplementary Material .06(b) of ISE Options 3, Section 14. The proposed rule would have the Boundary Price assign limits to the Opening Price and, therefore, permit Market Complex Orders to participate in the Complex Opening Process, without limitation to the benefit of investors and the public interest. With this change, ISE would permit a complex strategy to calculate an Opening Price utilizing a greater number of Market Complex Orders, which benefits the Opening Process by taking into account these more aggressively priced orders[92] while also bringing more liquidity into the Opening Price calculation. The amendment is designed to promote just and equitable principles of trade as it will benefit Members by smoothing the way for the complex strategy to open with Market Complex Orders.

Finally, the proposed amendments to the Complex Opening Process should promote just and equitable principles by allowing a complex strategy to open pursuant to Supplementary Material .05(d)(4) of ISE Options 3, Section 14, with less contracts becoming subject to the Uncrossing pursuant to Supplementary Material .06(b) of ISE Options 3, Section 14. As a result of this change, more interest would be able to trade within the Opening Process, ensuring a greater number of contracts are executed on ISE at the opening and lessening the likelihood that contracts which remain unmatched during the Uncrossing receive no execution.[93]

Complex Order Risk Protections

The Exchange's proposal to amend the title of a Complex Order Risk Protection in Options 3, Section 16, Complex Order Risk Protections is a non-substantive amendment. The proposal to amend Options 3, Section 16 protects investors and the general public by making clear the contents of Options 3, Section 16.

Technical Amendments

The Exchange's amendment to Options 3, Section 6(c)(2) to correct a citation is non-substantive. The proposed amendments will protect investors and the general public by updating incorrect citations to make the rules clear.

The Exchange's amendments to Options 3, Section 8(b)(2) and Options 3, Section 9(d)(2) related to Trading Halts are non-substantive corrections. The proposed amendments will protect investors and the general public by

[84] *See* ISE Options 3, Section 10(c)(1)(A).

[85] Primary Market Makers are obligated to quote in the Opening Process pursuant to ISE Options 3, Section 8(c) as well as intra-day pursuant to Options 2, Section 5(e), in addition to other obligations noted within ISE Options 2, Sections 4–8.

[86] *See* Securities Exchange Act Release Nos. 74129 (January 23, 2015), 80 FR 4954 at 4955 (January 29, 2015) (SR–BX–2014–049) (Order Approving Proposed Rule Change Relating to Directed Market Makers); and 51759 (May 27, 2005), 70 FR 32860 at 32861(June 6, 2005) (SR–Phlx–2004–91) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto To Establish a Directed Order Process for Orders Delivered to the Phlx Via AUTOM).

[87] *See* note 3 above. MRX amended Options 3, Section 14(b).

[88] *See* note 50 above.

[89] *See* note 51 above.

[90] *See* note 3 above. MRX amended Supplementary Material .05(d)(3) of ISE Options 3, Section 14.

[91] *See* Phlx Options 3, Section 14(d)(ii)(C)(2).

[92] The allowance of a greater number of Market Complex Orders within the Opening Process provides a greater depth of price discovery for an options series. As noted above, the Boundary Price would assign limits to the Opening Price, therefore preventing Market Complex Orders which are aggressively priced from negatively impacting the Opening Price.

[93] Unmatched orders would rest on the order book with the potential to execute intra-day.

updating incorrect citations to make the rules clear.

Finally, the Exchange's amendment to Options 3, Section 8(j)(3)(B) to remove duplicative rule text is non-substantive. The proposed amendments will protect investors and the general public by updating incorrect citations to make the rules clear.

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.

Legging Orders

Amending ISE Options 3, Section 7(k)(1) to add a provision which states that a Legging Order will not be generated during a Posting Period in progress on the same side in the series pursuant to Options 3, Section 15 regarding Acceptable Trade Range does not impose an undue burden on intra-market competition because the amendment will apply equally to all Members as Legging Orders are generated by the System.

Additionally, this proposal does not impose an undue burden on inter-market competition as other options exchanges may adopt Legging Orders and similar rules for the generation of such orders. In addition to mirroring MRX Options 3, Section 7(k)(1), Phlx's legging order rule in Options 3, Section 14(f)(iii)(C)(2) has the same restriction as proposed to be added to ISE's Legging Order rule in ISE Options 3, Section 7(k)(1).[94]

Re-Pricing

Adding language consistent with re-pricing within Options 3, Section 12(c) and (d) and Options 3, Section 14(b)(19) does not impose an undue burden on competition on intra-market competition as all orders and quotes on ISE will be re-priced uniformly as provided for within Options 3, Section 4(b)(6) and (7) and Options 5(c) and (d), which recently became effective.[95] With this recent change, re-priced quotes and orders are accessible on the Exchange's order book at the non-displayed price. Amending Options 3, Section 12(c) and (d) to utilize the ''internal BBO'' language would continue to require Members to submit Qualified Contingent Cross Orders and Complex Qualified Contingent Cross Orders at the best price to receive an execution. Furthermore, amending Options 3, Section 14(b)(19) to utilize the ''internal BBO'' language does not impose an undue burden on competition on intra-market competition, rather it would specify clearly that Members must quote at the best price to receive allocation of a Complex Preferenced Order. The introduction of ''internal BBO'' will ensure that Qualified Contingent Cross Orders and Complex Qualified Contingent Cross Orders do not execute if better-priced interest is available and that a Complex Preferenced Order would not receive a Preferred Market Maker allocation if better-priced interest was available.

The re-pricing proposals within Options 3, Section 12(c) and (d) and Options 3, Section 14(b)(19) do not impose an undue burden on inter-market competition because these rules continue to support executions at the best price.

Changes to the Single-Leg Price Improvement Mechanism for Crossing Transactions

The Exchange's proposal to amend ISE Options 3, Section 13(d)(4), ISE Options 3, Section 13(c)(5)(ii) and (iii), and add a proposed new ISE Options 3, Section 13(c)(5)(iii), related to single-leg PIM, does not impose an undue burden on intra-market competition because the amendment will apply equally to all Members. All Members may utilize PIM.

The Exchange's proposal to amend ISE Options 3, Section 13(d)(4), ISE Options 3, Section 13(c)(5)(ii) and (iii), and add a proposed new ISE Options 3, Section 13(c)(5)(iii), related to single-leg PIM, does not impose an undue burden on inter-market competition because other options exchanges may adopt similar rules. In addition to mirroring to MRX Options 3, Section 13, Phlx[96] and BX[97] do not permit unrelated marketable interest on either the same or opposite side of the market from an Agency Order to early terminate their simple price improvement auctions.

Changes to the Complex PIM

Deleting ISE Options 3, Section 13(e)(4)(vi) within Complex PIM, as well as a related paragraph in Supplementary Material .01(b)(ii) of ISE Options 3, Section 14, which describes Complex Order Exposure, related to the early termination of single-leg PIM as a result of the arrival of unrelated marketable interest on either the same or the opposite side of the market from the Agency Order does not impose an undue burden on intra-market competition because the amendment will apply equally to all Members. All Members may utilize Complex PIM.

Deleting ISE Options 3, Section 13(e)(4)(vi) within Complex PIM, as well as a related paragraph in Supplementary Material .01(b)(ii) of ISE Options 3, Section 14, which describes Complex Order Exposure, related to the early termination of single-leg PIM from the arrival of unrelated marketable interest on either the same or opposite side of the market from the Agency Order does not impose an undue burden on inter-market competition as other options exchanges may adopt similar rules. In addition to mirroring to MRX Options 3, Section 13, Phlx[98] and BX[99] do not permit unrelated marketable interest on either the same or opposite side of the market from an Agency Order to early terminate their simple price improvement auctions.

Other Complex Order Amendments

The Exchange does not believe that the proposed amendments to the Complex Orders rule will impose any significant burden on inter-market competition. Other exchanges today offer complex order functionalities. These options markets may amend their rules to mirror those of ISE. Other options exchanges offer orders similar to Complex Preferenced Orders.[100] Additionally, the proposed Complex Opening Process is identical to MRX[101] and similar to Phlx.[102] Finally, the proposed Complex Opening Process methodology would allow ISE to compete with other options exchanges that offer Complex Order functionality.

Opening Only Complex Order

The Exchange's proposal to remove the word ''Limit'' within the description of the Opening Only Complex Order Type in ISE Options 3, Section 14(b)(10) does not impose an undue burden on intra-market competition because this proposed change will apply to all Members. Additionally, the Exchange's proposal to remove the word ''Limit'' within the description of the Opening Only Complex Order Type in ISE Options 3, Section 14(b)(10) does not impose an undue burden on inter-market competition because other options exchanges could adopt a similar order type.

[94] *See* note 10 above.

[95] *See* Securities Exchange Act Release No. 96362 (November 18, 2022), 87 FR 72539 (November 25, 2022) (SR–ISE–2022–25).

[96] *See* note 17 above.

[97] *See* note 18 above.

[98] *See* note 17 above.

[99] *See* note 18 above.

[100] *See e.g.* Phlx Options 2, Section 10 and MIAX Rule 100.

[101] *See* note 3 above. MRX amendment Supplementary Material .05 to Options 3, Section 14.

[102] *See* Phlx Options 3, Section 14(d)(ii)(C)(2).

Complex QCC With Stock Orders

The Exchange's proposal to amend an incorrect citation with ISE Options 3, Section 14(b)(15), related to Complex QCC with Stock Orders, does not impose an undue burden on intra-market or inter-market competition because the amendment is non-substantive.

Complex Preferenced Orders

The Exchange's proposal to add ''Complex Preferenced Orders'' to the list of Complex Order Types in ISE Options 3, Section 14(b) does not impose an undue burden on intra-market competition. Preferred Market Makers have obligations [103] unlike other market participants. The allocation entitlements for Preferred Market Makers are designed to balance the obligations that the Preferred Market Makers has to the market with corresponding benefits. In order to receive the participation entitlement for a Complex Preferenced Order, Preferred Market Makers are required to quote 90% of the trading day as compared to Market Makers who are required to quote 60% of the trading day.[104] Further, Priority Customers [105] have priority over non-Priority Customer interest at the same price in the same options series on the single-leg order book. [106]

At the time of receipt of the Complex Preferenced Order, a Preferred Market Maker would have to be quoting at the NBBO, which is intended to incentivize the Preferred Market Maker to quote aggressively in order to execute against the Complex Preferenced Order. Preferred Marker Makers are not able to ascertain if a particular order is a Complex Preferenced Order. The Exchange believes the proposal will encourage Market Makers to quote tighter and add a greater amount of liquidity on ISE in an attempt to interact with Complex Preferenced Orders that are sent to the Exchange. This order flow will benefit all market participants on the Exchange because any ISE Member may interact with that order flow. Finally, any ISE Member on the single-leg or Complex Order Book may trade with a Complex Preferenced Order. Also, any ISE Market Maker may elect to receive Preferenced Order.

The Exchange's proposal to add ''Complex Preferenced Orders'' to the list of Complex Order Types in ISE Options 3, Section 14(b) does not impose an undue burden on inter-market competition as other options exchanges could adopt a similar order type.

Complex Opening Price Determination

The Exchange's proposal to amend an incorrect citation within Supplementary Material .05(d)(2) to Options 3, Section 14, related to the Potential Opening Price, does not impose an undue burden on intra-market competition or inter-market burden on competition because the amendment makes clear the correct applicable text it was referring to within the Rulebook.

The Exchange's proposal to amend Supplementary Material .05(d)(3) to ISE Options 3, Section 14, which describes the Complex Opening Price Determination, does not impose an undue burden on intra-market competition because all Members may submit interest into the Complex Opening Process.

The Exchange's proposal to amend Supplementary Material .05(d)(3) to ISE Options 3, Section 14, which describes the Complex Opening Price Determination, does not impose an undue burden on inter-market competition because other options exchanges today offer complex order functionalities. These options markets may amend their rules to mirror those of ISE.

Complex Order Risk Protections

The Exchange's proposal to amend the title of a Complex Order Risk Protection in Options 3, Section 16, Complex Order Risk Protections from ''Limit'' to ''Complex'' Order Price Protection does not impose an undue burden on intra-market or inter-market competition because the change in the title makes clear the contents of that rule.

Technical Amendments

The Exchange's amendment to Options 3, Section 6(c)(2) to correct a citation does not impose an undue burden on intra-market or inter-market competition because it makes clear the proper ISE rule that was being referenced.

The Exchange's amendments to Options 3, Section 8(b)(2) and Options 3, Section 9(d)(2) related to Trading Halts does not impose an undue burden on intra-market or inter-market competition because the amendments make the rule clear.

Finally, the Exchange's amendment to Options 3, Section 8(j)(3)(B) to remove duplicative rule does not impose an undue burden on intra-market or inter-market competition because it removes confusion from the rule.

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 [107] and subparagraph (f)(6) of Rule 19b–4 thereunder.[108]

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–2022–28 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–2022–28. This file

[103] *See* ISE Options 2, Section 5.

[104] *See* ISE Options 2, Section 5.

[105] *See* note 83 above.

[106] *See* ISE Options 3, Section 10(c)(1)(A).

[107] 15 U.S.C. 78s(b)(3)(A)(iii).

[108] 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.

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–ISE–2022–28, and should be submitted on or before January 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[109]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27785 Filed 12–21–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96522; File No. SR–MIAX–2022–45]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Relating to FINRA Fees

December 16, 2022.

Pursuant to the provisions of 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 December 8, 2022, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to reflect adjustments to the Financial Industry Regulatory Authority, Inc. (''FINRA'') Registration Fees and Fingerprinting Fees.

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.[3] 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 *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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 Section 2)c) of the Fee Schedule, Web CRD Fees, to reflect adjustments to the FINRA Registration Fees and Fingerprinting Fees.[4] The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of MIAX Members[5] organizations that are not also FINRA members (''Non-FINRA members''). The Exchange merely lists these fees in its Fee Schedule. 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 Section 2)c) of the Fee Schedule, Web CRD Fees. 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

[109] 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. 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).

[4] 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 or registered associated persons of broker-dealers.

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] *See* note 3. 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 $30.00 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 $30.00 FINRA fee and a $11.25 FBI fee. *See https://www.finra.org/*

Continued

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 the proposal is consistent with Section 6(b) of the Act,[14] in general, and 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.

Those 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 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 MIAX Electronic Exchange Member and Market Maker 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 that is 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[22] and Rule 19b–4(f)(2) [23] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

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 3.

[13] *See* 2012 Rule Change at note 11. 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)(5).

[16] The $20 FINRA Fee is in addition to the $11.25 FBI Fee except for the second fingerprint transaction.

[17] *See* note 3.

[18] *See* 2012 Rule Change at note 11. 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 11. 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 240.19b–4(f)(2).

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–MIAX–2022–45 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–MIAX–2022–45. 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–MIAX–2022–45 and should be submitted on or before January 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27789 Filed 12–21–22; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11949]

U.S. Advisory Commission on Public Diplomacy: Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy will hold an in-person public meeting from 12 until 1:15 p.m., Wednesday, January 25, 2023, at the Dirksen Senate Office Building in Washington, DC. In addition to previewing the Commission's *2022 Comprehensive Annual Report on Public Diplomacy and International Broadcasting,* a panel of senior State Department public diplomacy officers will examine the challenges and opportunities facing U.S. government public diplomacy activities in 2023 and beyond.

This meeting is open to the public, including the media and members and staff of governmental and non-governmental organizations. The event will take place at the Dirksen Senate Office Building in Room SD–106, First Street and C Street NE, Washington, DC 20515, with an option for on-line participation. Attendees should plan to arrive for the meeting by 11:45 a.m. to allow for a prompt start. To register for the event, please email ACPD Program Assistant Kristy Zamary at *ZamaryKK@state.gov.*

To request reasonable accommodation, please email ACPD Program Assistant Kristy Zamary at *ZamaryKK@state.gov.* Please send any request for reasonable accommodation no later than January 4, 2023. Requests received after that date will be considered but might not be possible to fulfill.

Since 1948, the ACPD has been charged with appraising activities intended to understand, inform, and influence foreign publics and to increase the understanding of, and support for, these same activities. The ACPD conducts research that provides honest assessments of public diplomacy efforts, and disseminates findings through reports, white papers, and other publications. It also holds public symposiums that generate informed discussions on public diplomacy issues and events. The Commission reports to the President, Secretary of State, and Congress and is supported by the Office of the Under Secretary of State for Public Diplomacy and Public Affairs.

For more information on the U.S. Advisory Commission on Public Diplomacy, please visit *https://www.state.gov/bureaus-offices/under-secretary-for-public-diplomacy-and-public-affairs/united-states-advisory-commission-on-public-diplomacy/,* or contact Executive Director Vivian S. Walker at *WalkerVS@state.gov* or Senior Advisor Deneyse Kirkpatrick at *kirkpatrickda2@state.gov.*

Authority: 22 U.S.C. 2651a, 22 U.S.C. 1469, 5 U.S.C. Appendix, and 41 CFR 102–3.150.

Vivian S. Walker,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 2022–27771 Filed 12–21–22; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0010]

Final Re-Designation of the Primary Highway Freight System (PHFS)

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; response to comments.

SUMMARY: This notice announces the re-designated PHFS to meet the statutory requirements of the authorizing law. This notice presents a final, re-designated PHFS, provides summary analysis of input received for PHFS re-designation, FHWA responses to comments, the methodology applied, and changes made for the re-designation of the PHFS.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Birat Pandey, *birat.pandey@dot.gov*, 202–366–2842, Office of Freight Management and Operations (HOFM–1), Office of Operations, FHWA, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Congress established a new National Highway Freight Program (NHFP) in 23 United States Code (U.S.C.) 167 to improve the efficient movement of freight on the National Highway Freight Network (NHFN) and support several goals. The law required the FHWA Administrator to strategically direct Federal resources and policies toward improved performance of the network. The NHFP provides formula funding apportioned annually to States, for use on the NHFN. The definition of the NHFN is established under 23 U.S.C. 167(c) and consists of four separate highway network components: the

PHFS; Critical Rural Freight Corridors (CRFC); Critical Urban Freight Corridors (CUFC); and those portions of the Interstate System that are not part of the PHFS. The initial designation of the PHFS was identified during the designation process for the previously designated Primary Freight Network (PFN) under section 23 U.S.C. 167(d), as in effect on the day before the date of enactment of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94).

The FHWA Administrator is required to re-designate the PHFS every 5 years. Each re-designation is limited to a maximum 3 percent increase in total mileage of the system per 23 U.S.C. 167(d)(2)(B). In re-designating the PHFS, to the maximum extent practicable, the FHWA Administrator must use measurable data to assess the significance of goods movement, including consideration of points of origin, destinations, and linking components of the United States global and domestic supply chains. 23 U.S.C. 167(d)(2)(C). Per the statute, in re-designating the PHFS, the Administrator shall provide an opportunity for State Freight Advisory Committees (SFAC), as applicable, to submit additional miles for consideration. 23 U.S.C. 167(d)(2)(D). In re-designating the PHFS, the Administrator shall consider the factors outlined in 23 U.S.C. 167(d)(2)(E). Those factors include: changes in the origins and destinations of U.S. freight movement; changes in the percent of annual daily truck traffic on principal arterials; changes in the location of key facilities; land and water ports of entry; access to energy exploration, development, installation, or production areas; access to other freight intermodal facilities, including rail, air, water, and pipeline facilities; the total freight tonnage and value moved on highways; significant freight bottlenecks; the significance of goods movement on principal arterials, including consideration of global and domestic supply chains; critical emerging freight corridors and critical commerce corridors; and network connectivity.

PHFS and Use of NHFP Funds

Congress established NHFP in 23 U.S.C. 167 to improve the efficient movement of freight on the NHFN and support several goals. Additional details on the NHFP are available at: *https://www.fhwa.dot.gov/bipartisan-infrastructure-law/nhfp.cfm*. A State shall obligate funds apportioned to the State under 23 U.S.C. 104(b)(5) to improve the movement of freight on the NHFN pursuant to 23 U.S.C. 167. A State with PHFS mileage of less than 2 percent of the national total PHFS mileage (Low PHFS Mileage States) may obligate NHFP funds for projects on any component of the NHFN. A State with PHFS mileage greater than or equal to 2 percent of the national PHFS total (High PHFS Mileage State) may obligate its NHFP funds for projects on the PHFS, CRFCs, and CUFCs. States and in certain cases, Metropolitan Planning Organizations (MPO), are responsible for designating public roads for the CRFCs and CUFCs.

Final Re-Designation of the PHFS

With this Notice, FHWA officially re-designates the PHFS. The re-designated PHFS consists of 41,799 centerline miles, including 38,014 centerline miles of Interstates and 3,785 centerline miles of non-Interstate roads. Maps and tables exhibiting roads included in the PHFS re-designation will be available by State, here: *https://ops.fhwa.dot.gov/freight/infrastructure/ismt/nhfn_states_list.htm*.

Analysis of the Comments for Re-Designation of the PHFS

On August 26, 2021, at 86 FR 47705, FHWA published a Notice requesting information pertaining to re-designation of the PHFS and inviting comments for PHFS changes. This Notice explained statutorily required criteria for the PHFS re-designation, described available additional mileage for PHFS re-designation as required by the law, and presented results from FHWA preliminary analysis for the re-designation. The Notice also outlined data submission criteria for identifying PHFS changes for FHWA consideration, three options considered by FHWA for allocation of available additional PHFS mileage, and FHWA's recommendation to include the technical corrections to the PHFS for the re-designation. The FHWA did not recommend removing previously designated routes from the PHFS unless they are no longer eligible for use by trucks. The FHWA requested comments for the PHFS re-designation from SFACs, as required by the statute, and from other interested parties. The Notice requested that a State submitting routes or feedback for consideration in the PHFS re-designation provide a letter of support from or on behalf of their SFAC. In addition, FHWA performed stakeholder outreach activities to disseminate information about the Notice to solicit public comments pertaining to re-designation of the PHFS.

In response to stakeholder requests for additional time for submission of comments to the docket, FHWA extended the public comment period from October 25, 2021, to December 15, 2021 (86 FR 58998). The FHWA received 30 responses from 25 States and from the District of Columbia, which included 134 discrete comments. Fifty-six percent of discrete comments came from State departments of transportation (State DOT) on behalf of SFACs.

The FHWA received requests for a total of 1,767 miles of roadway changes for PHFS re-designation. Ninety three percent (1,641 miles) of the requested changes proposed additions to the PHFS and 7 percent of the mileage requests were for removal to the existing PHFS. About one third of the mileage changes for the re-designation were requested by High PHFS Mileage States and the remaining changes were requested from Low PHFS Mileage States.

The FHWA outlined several examples for allocating additional PHFS mileage and the challenges for optimal allocation of available limited PHFS mileage. Respondents commented on the options, and also presented other preferred options such as proportional allocation of additional PHFS mileage to each State based on the existing PHFS mileage total for that State. While some respondents preferred equal allocation of additional PHFS mileage among all States or equal distribution only among High PHFS Mileage States, many of them requested new PHFS mileage well above equal allocation thresholds, without prioritizing their list of changes. When combined, the majority of the respondents preferred either a technical correction to the current PHFS or did not have a clear preference.

Comments for PHFS Re-Designation and FHWA Response

The FHWA appreciates the comments relating to recommended statutory changes and request for additions, deletions, or modifications for PHFS re-designation. The majority of the comments included the specificity necessary to make modifications to the network and met the PHFS re-designation criteria. The FHWA attempted to accommodate all requests that met PHFS re-designation criteria to the maximum extent practicable. In re-designating the PHFS, FHWA provided an opportunity for SFACs, as applicable, to submit additional miles for consideration. The sections below summarize FHWA's responses to the comments received and the methodology applied for final PHFS re-designation.

Role of SFACs for Re-Designation of the PHFS

A number of respondents expressed that convening an SFAC and conducting coordination with committee members for the purpose of PHFS re-designation is burdensome and strains the limited capacity and resources available to States on this item of limited scope. Respondents requested changes to the current statutory requirement for SFACs input for re-designation of PHFS through future reauthorization or legislative changes for soliciting inputs for re-designation directly with State DOTs and MPOs. Respondents also noted that there is no statutory requirement for States to have a SFAC and Congress created them with an intent to advise States. Therefore, FHWA should not give greater weight to the input from SFACs than the views of the States itself for re-designation of the PHFS.

In response, FHWA recognizes that establishment of SFACs is not required by the statute and that States have significant flexibility in creating SFACs. However, FHWA notes that SFACs provide a platform for collaboration between public and private stakeholders to identify critical freight infrastructure and that this input is beneficial for freight planning. The FHWA encouraged States to coordinate with SFACs for re-designation of the PHFS but did not give priority consideration to SFACs views over the views of the States for PHFS re-designation. Pursuant to 23 U.S.C. 167(d)(2)(D), in redesignating the PHFS, the Administrator is obligated to provide an opportunity for SFACs, as applicable, to submit additional miles for consideration.

Coverage Gaps for PHFS Re-Designation

The FAST Act established 41,518 miles of PHFS and required re-designation of the PHFS every 5 years, with a provision for a maximum 3 percent mileage increase of the PHFS. Many comments expressed concern over the gaps in identification of critical freight network segments, due to limited mileage coverage of the PHFS and inadequate provision for PHFS mileage increase through re-designation. Respondents suggested several solutions for mitigating these mileage gaps, including changing the statutory provisions to allow for automatic designation of the entire Interstate System as PHFS, increasing the supplemental PHFS mileage that can be used during re-designation, or increasing the overall mileage of PHFS.

The FHWA recognizes that, in some cases, statutory limits on PHFS mileage could prevent identification as PHFS of all roadways critical for freight movement in States. This mileage limitation for PHFS designation could be mitigated by States designating other freight-critical routes as CRFCs and CUFCs. States, and in certain cases, MPOs, are responsible for designating public roads for the CRFCs and CUFCs; this designation authority can be expanded by removing prior designations after a project has been completed and reusing the mileage allowance on new segments, also known as designating on a rolling basis.

Furthermore, the Bipartisan Infrastructure Law (BIL) (enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58) (Nov. 15, 2021)) increased roadway mileage thresholds for the designation of CRFCs from 150 to 300 miles or 20 percent of the PHFS for that State, whichever is greater, and increased CUFCs mileage thresholds from 75 miles to 150 miles or 10 percent of the PHFS for that State, whichever is greater. The BIL also created an additional category, ''Rural States,'' that establishes an even higher CRFCs mileage threshold for States with a population per square mile density that is less than the national average. The Rural States threshold for CRFCs is 600 miles. While it is possible that some States may still encounter a mileage challenge in identifying all of the freight-critical roadways in the State as PHFS, FHWA believes States have needed flexibility to prioritize roadways for designation to allow the State to program NHFP funds where needed.

• *Include statutory provisions for automatic designation of the entire Interstate System as PHFS.*

The PHFS provides a system of roadways intended to reflect the most critical highway portions of the U.S. freight transportation system. Interstates that are not designated as PHFS are, by default, part of the NHFN and are called the Non-PHFS Interstate component of the NHFN. If a State's intent is to achieve eligibility to use NHFP funding, NHFN roadways are eligible for NHFP funds except for non-PHFS Interstate segments in High PHFS Mileage States. The FHWA notes that this is the structure that was created by Congress and FHWA does not have the authority for automatic designation of entire Interstate System as PHFS.

• *Change requirements for PHFS mileage increase for re-designation process.*

Statutory language at 23 U.S.C. 167(d)(2)(B) specifies that each re-designation is limited to a maximum 3 percent increase in the total mileage of the system. The FHWA notes that the mileage limitation for PHFS designation can be mitigated by designating other freight-critical segments of roadways for States as CRFCs and CUFCs, made possible with the expansion of CRFCs and CUFCs mileage allowances provided by the BIL.

• *Modify provisions to increase the overall mileage of PHFS.*

The PHFS provides a system of roadways intended to reflect the most critical highway portions of the U.S. freight transportation system. If a desired addition to the network is necessary to achieve eligibility to use NHFP funding or for other purposes specific to a State (for example, to gain eligibility to use discretionary grant funding that requires NHFN designation), States and MPOs may add roadway segments to the NHFN using the process to designate CRFCs and CUFCs. Increased roadway mileage thresholds for the designation of CRFCs and CUFCs from the BIL expand flexibility to identify critical freight infrastructure as a component of the NHFN. The initial designation of the PHFS was set by the FAST Act as the 41,518-mile network identified during the designation process for the Moving Ahead for Progress in the 21st Century Act highway-only PFN under 23 U.S.C. 167(d). The FHWA does not have the authority to increase the mileage.

Expanding NHFP Funds Eligibility for NHFN

Respondents recommended changing the statute to expand NHFP funds eligibility for all portions of the NHFN. High PHFS Mileage States would then be allowed to use their NHFP funds for projects on the PHFS, CRFCs, and CUFCs, as well as all Interstates. Currently, non-PHFS Interstates of the NHFN are eligible for NHFP funds only for Low PHFS Mileage States.

The FHWA recognizes that the statutory language limits High PHFS Mileage States ability to program NHFP funds on all portions of the NHFN. Currently, a State in which the percent of PHFS mileage is greater than or equal to 2 percent of the national total may only use its NHFP funds for projects on the PHFS, CUFCs, and CRFCs unless they add designation for non-PHFS Interstates through the use of CRFCs and CUFCs.

Roadway Specific Additions, Deletion and Adjustments for PHFS Re-Designation

About two-thirds of the discrete comments received requested addition of PHFS mileage totaling 1,641 miles. Of

those, 65 percent were for Interstate miles and 32 percent were principal arterials. The remaining 3 percent of proposed additions were for other roadways of lower functional classifications. Sixty-three percent of miles requested for addition were from Low PHFS Mileage States, which sought 608 miles of Interstates and 401 miles of principal arterials. These Interstates submitted for PHFS re-designation are by default a part of the NHFN and are automatically eligible for NHFP funding by Low PHFS Mileage States. More than one third of the PHFS mileage additions were requested by High PHFS Mileage States, which included requests for the addition of 457 Interstate miles and 131 miles of principal arterials. These requests for additional mileage range from less than one quarter mile to hundreds of miles of roadway segments, covering a large portion of a State.

About one quarter of comments received requested removal or other technical correction of the existing PHFS. More than half of these changes are for roadway segments that are less than one mile long. About 70 percent of the mileage (86 miles) submitted for removal from PHFS designation were for toll roads. Other changes related to adjustments to correctly identify intermodal connectors, fix mapping errors, and to update network connectivity.

A number of requested PHFS additions included fragmented roadway segments that did not provide continuity of the PHFS and did not meet PHFS re-designation criteria. These requests for PHFS additions would have required significant mileage to connect to the PHFS network. The PHFS provides a system of roadways that is most critical for freight movement. Network connectivity is a consideration for PHFS re-designation and is necessary to provide continuity of PHFS roadways. To provide system-level network connectivity, one end of a PHFS roadway should connect with existing PHFS roadways. In response, FHWA suggests that if a desired addition to the network is necessary to achieve eligibility to use NHFP funding, States and MPOs may add a stand-alone segment to the NHFN using the process to designate CRFCs and CUFCs. The CUFCs and CURCs do not need to connect to the PHFS and are designated separately from the PHFS re-designation, on a rolling basis, using the mileage allotted to a State.

A number of respondents from Low PHFS Mileage States identified Interstate mileage to be added as PHFS to expand roadways eligible for NHFP funding. Interstates that are not designated as PHFS are by default part of NHFN and are identified as Non-PHFS Interstates, a component of the NHFN. As such, the addition to the network is unnecessary for Low PHFS Mileages States to achieve eligibility to use NHFP funding as these Non-PHFS Interstates are automatically eligible for investment of NHFP by Low PHFS Mileage States. Designating all Interstates in those States as PHFS would not provide additional flexibility for States for programing NHFP funds.

Respondents identified needs to provide a greater emphasis on designating arterial highways, Interstates that cross rural States and other areas, to increase resiliency of PHFS by ensuring redundancy in the system. As a result, respondents identified many large corridors including roadway traversing an entire State for PHFS re-designation. In response, FHWA reiterates that PHFS highways are intended to reflect the most critical highway portions of the U.S. freight transportation system, determined by measurable and objective national data. If a desired addition to the network is necessary to achieve eligibility to use NHFP funding or for other purpose specific to a State, States and MPOs may add a stand-alone segment to the NHFN using the process to designate CRFCs and CUFCs. Increased roadway mileage thresholds for the designation of CRFCs and CUFCs, provided by the BIL, expand the flexibility for States to identify critical freight infrastructure as a component of the NHFN. The FHWA attempted to accommodate requested mileage for PHFS re-designation that met re-designation criteria to the maximum extent practicable.

Respondents also requested removal of self-financed toll facilities from PHFS by citing their interpretation of the statute that toll roads are an ineligible use for NHFP funds. The FHWA clarifies that toll facilities are eligible for NHFP funds and did not exclude toll facilities designated as PHFS for PHFS re-designation unless those facilities have been deemed by the States as no longer eligible for use by trucks. Toll roads using NHFP funding would necessarily become federalized, however, and need to adhere to all Title 23 requirements.

The FHWA also conducted a separate review of the network for technical corrections and to improve mapping accuracy of the PHFS using State DOTs' linear referenced roadway network data that are submitted as the spatial route information for all roads in the States. The FHWA did not remove previously designated routes from the PHFS unless they are no longer eligible for use by trucks. This ensures continued alignment with the State Freight Plans completed by all States and the District of Columbia pursuant to 49 U.S.C. 70202, which were based in part on the existing PHFS network and funding eligibilities of NHFN routes.

The FHWA made a number of corrections to PHFS, including correction of roadway mapping data, updates to roadway descriptions, corrections to represent new bypasses, adjustments to achieve network connectivity, and exclusion of roadways that are not open to public. Corrections were made to reflect change in access and network connectivity such as for facilities that are part of military base or where roadways have checkpoints to access ports.

Section 167(d)(2) of title 23, U.S.C. requires the FHWA Administrator to re-designate PHFS every 5 years and provides for a maximum 3 percent increase in the total milage of the system. Per this Notice, the newly re-designated PHFS will be available in map format on the following site: *https://ops.fhwa.dot.gov/freight/infrastructure/ismt/nhfn_states_list.htm.*

(Authority: 23 U.S.C. 167(d))

Stephanie Pollack,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2022–27875 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0082]

Entry-Level Driver Training: Western Area Career and Technology Center; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption application from Western Area Career and Technology Center (WACTC). WACTC requested an exemption from the theory and behind-the-wheel (BTW) instructor requirements contained in the entry-level driver training (ELDT) regulations for one prospective instructor. FMCSA analyzed the exemption application and public comments and determined that the application lacked evidence that would ensure a level of safety equivalent to or

greater than would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 366–2722; *richard.clemente@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number (''FMCSA–2022–0082'') in the ''Keyword'' box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''View Related Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number (''FMCSA–2022–0082'') in the ''Keyword'' box, click ''Search,'' and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The ELDT regulations, implemented on February 7, 2022, established minimum training standards for individuals applying for certain commercial driver's licenses (CDLs) and defined curriculum standards for theory and BTW training. It also established an online training provider registry (TPR), eligibility requirements for providers to be listed on the TPR, and qualification requirements for instructors. Under 49 CFR 380.713, a training provider must use instructors who meet the definitions of ''theory instructor'' and ''BTW instructor'' in 49 CFR 380.605. The definitions of ''theory instructor'' and ''BTW instructor'' in 49 CFR 380.605 require that instructors hold a CDL of the same (or higher) class, with all endorsements necessary to operate the commercial motor vehicle (CMV) for which training is to be provided, and have either: (1) a minimum of two years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement; or (2) at least two years of experience as a BTW CMV instructor.

Applicant's Request

WACTC requests an exemption from 49 CFR 380.713, which requires a training provider to use instructors who meet the definitions of ''theory instructor'' and ''BTW instructor'' in 49 CFR 380.605. WACTC specifies that it would like to use one driver training instructor, Drew Ley, who does not have two years of required driving experience with a Class A CDL. WACTC states that it has been difficult to find qualified instructors. WACTC stated that Mr. Ley would meet the ELDT regulation's requirement for two years of driving experience with a Class A CDL in August 2022.

WACTC states that it conducts monthly classes in which students achieve 160 hours of practical training, with four students per class. The ratio of instructor to students ''provides a more individualized training approach as well as the ability to address individual student needs and/or concerns as they may arise.'' According to WACTC, the impact of this exemption being denied would be devastating not only to its CDL program, but to the Adult Education Department as a whole. WACTC asserts that its CDL program is the most popular and successful program offered and helps stabilize other struggling programs through a steady stream of revenue.

IV. Method To Ensure an Equivalent or Greater Level of Safety

WACTC believes that Mr. Ley makes up for his failure to have two years of required driving experience through his experience with the FMCSA regulations and his other qualifications. According to WACTC, prior to FMCSA's implementation of the ELDT regulations, Mr. Ley successfully trained four of its classes and achieved a 100% student completion rate. When he was an employee of the Commonwealth of Pennsylvania DOT (PennDOT), Mr. Ley previously audited and verified third-party testing sites, routes, and CDL examiners to assure compliance with PennDOT regulations. He also assisted in the training and bi-annual reviews of experienced and new CDL examiners and has experience operating Class B vehicles with school bus and passenger endorsements. In addition, Mr. Ley has obtained a School Bus Instructor Certification, Certified Inspection Mechanic (class 7), certification as a licensed private Class C instructor, and has had a Class A CDL for a year and a half without restrictions. A copy of WACTC's application for exemption is available for review in the docket for this notice.

V. Public Comments

On June 15, 2022, FMCSA published notice of WACTC's application for exemption and requested public comment [87 FR 36202]. Six comments were filed in response to the exemption request, five from individual commenters and one from the Owner-Operator Independent Driver's Association (OOIDA). Four commenters, including OOIDA, opposed the exemption request, while two others offered no opinion either for or against the exemption request.

OOIDA cited its participation as a primary industry stakeholder on the Entry-Level Driver Training Negotiated Rulemaking Committee (ELDTAC) when the ''framework'' of the ELDT rule was agreed upon by the Committee. OOIDA supported the provision in the ELDT rule that required driving experience for training instructors because OOIDA believes that experience is essential to provide comprehensive training to entry-level drivers. OOIDA believes there is no substitute for an experienced BTW trainer. According to OOIDA,

exempting instructors without driving experience will not result in an equivalent or greater level of safety. OOIDA further added that the delayed implementation date of the ELDT regulations from 2020 to 2022 allowed even more time for training providers to obtain the requisite experience.

Other individual commenters who filed in opposition also cited Mr. Ley's lack of experience. A commenter stated that ''CDL drivers with less than two years of experience are a hazard to new drivers as they lack the experience to understand safe operation of a tractor trailer.'' Another commenter added that in their opinion, ''it takes much more than one year of 'real' driving experience, not just holding a CDL to gain any experience that is worthy of passing along.''

VI. FMCSA Safety Analysis and Decision

FMCSA has evaluated WACTC's application and the public comments. When the Agency established the ELDT regulations, it determined that two years of experience driving a CMV is the minimum qualification standard, reflecting the opinion of numerous commenters to the ELDT Notice of Proposed Rulemaking. Furthermore, WACTC indicated in its application that the exemption, if granted, would only be necessary until August 2022, when Mr. Ley will have had his Class A CDL for the required two years.

The Agency concurs with commenters that if it allows an individual instructor to provide ELDT without the required driving experience, it could open the door for similar exemption requests on a widespread basis. Such a result would be inconsistent with a primary goal of the ELDT regulations, which was to improve highway safety by establishing a uniform Federal minimum ELDT standard.

FMCSA concludes that WACTC has presented insufficient evidence to establish that not complying with the provisions of the ELDT regulations relating to driving experience requirements for CMV instructors would meet or exceed the level of safety provided by complying with the ELDT regulations. In addition, based on the information provided by WACTC that Mr. Ley would meet the requirement for two years of driving experience with a Class A CDL in August 2022, the request is now moot.

For the above reasons, WACTC's exemption application is denied.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–27848 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0169]

Entry-Level Driver Training: SBL Truck Driving Academy, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption application from SBL Truck Driving Academy, Inc. (SBL). SBL sought an exemption from the theory and behind-the-wheel (BTW) instructor requirements contained in the entry-level driver training (ELDT) regulations for two of its instructors. SBL specifically requested an exemption from the requirement that instructors have at least two years of experience driving a commercial motor vehicle (CMV) requiring a commercial driver's license (CDL) of the same or higher class and/or the same endorsement level for which training is to be provided. FMCSA analyzed the exemption application and public comments and determined that the application lacked evidence that would ensure an equivalent or greater level of safety than would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–2722. Email: *richard.clemente@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number ''FMCSA–2021–0169'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''View Related Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number ''FMCSA–2021–0169'' in the keyword box, click ''Search,'' and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The ELDT regulations, implemented on February 7, 2022, and set forth in 49 CFR 380, subparts F and G, established minimum training standards for individuals applying for certain CDLs and defined curriculum standards for theory and BTW training. The ELDT regulations also established an online training provider registry (TPR), eligibility requirements for providers to be listed on the TPR, and requirements for instructors. Under 49 CFR 380.713, a training provider must use instructors

who meet the definitions of ''Theory instructor'' and ''Behind-the-wheel (BTW) instructor,'' set forth in 49 CFR 380.605. The definitions of ''Theory instructor'' and ''BTW instructor'' in 49 CFR 380.605 require that instructors hold a CDL of the same (or higher) class, with all endorsements necessary to operate the CMV for which training is to be provided, and have either: (1) a minimum of 2 years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement; or (2) at least 2 years of experience as a BTW CMV instructor.

Applicant's Request

SBL seeks an exemption from the requirement in 49 CFR 380.713 that a training provider use instructors who meet the definitions of ''Theory instructor'' and ''BTW instructor'' in 49 CFR 380.605. SBL states that it has two employees who do not have two years of required driving experience. SBL states the employees were qualified to provide training prior to implementation of the ELDT regulations on February 7, 2022, have Class A CDLs with tanker endorsements, and are medically qualified.

SBL argues that the instructor qualifications required by the ELDT regulations will have a severe negative impact on its business and on the driver shortage. SBL requests an exemption that would allow the two instructors to provide instruction without having two years of driving experience while they accumulate the required level of experience. They assert that the exemption would allow for full instructor staffing, resulting in a ''50% increase of approximately 96 students annually.'' If the exemption is not granted, SBL states that it would be forced to terminate these employees and seek to replace them with other instructors with unproven track records.

SBL reasons that FMCSA has included ''grandfathering'' provisions in the implementation of other new rules and therefore should apply a ''grandfathering'' provision to the ELDT requirements relating to driving experience. SBL points to 49 CFR 380.603 which provides that individuals who obtained a Commercial Learner's Permit (CLP) before February 7, 2022, are not required to comply with the ELDT rule if they obtain a CDL before the CLP expires. SBL is requesting similar consideration for State-licensed instructors who met applicable Federal requirements prior to February 7, 2022.

IV. Method To Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, SBL offers a list of the qualifications for the two driver training instructors for whom the exemption is requested. According to SBL, both individuals meet the qualifications that were required prior to implementation of the ELDT rule; both have Class A CDLs with tanker endorsements; both are medically qualified; both graduated from a State-licensed truck driver training school; both have taught over the road driving; both have previously trained commercial drivers; one individual worked as a commercial driver; and both have the ability to instruct all topics required by the ELDT regulations.

SBL indicates that the request for the exemption ''places no known negative safety impact'' and avers that SBL will continue to adhere to all applicable State and Federal regulations that govern the safe operation of CMVs. SBL notes that the two instructors met the qualification requirements of the South Carolina Department of Motor Vehicles, in effect prior to implementation of the ELDT regulations, and their instruction has not negatively impacted safety. Those requirements allow instructors with fewer than two years of driving experience to deliver training.

SBL also cites to a 2013 Bureau of Transportation Statistics report stating that motor vehicle fatalities in 2010 were trending downward. SBL also cites to a 2008 American Transportation Research Institute (ATRI) report that found no relation between driver training duration and subsequent driver safety performance. A copy of SBL's application for exemption is available for review in the docket for this notice.

V. Public Comments

On May 25, 2022, FMCSA published notice of SBL's application and requested public comment [87 FR 31930]. The Agency received nine comments. The Owner-Operator Independent Driver's Association (OOIDA) strongly opposed the exemption request. OOIDA commented that they were one of the primary industry stakeholders on the ELDTAC when the ''framework'' of the ELDT rule was agreed upon during the negotiated rulemaking, including support of the provision that required CDL experience for training instructors, as CDL experience is essential to deliver comprehensive training to entry-level drivers. OOIDA believes there is no substitute for an experienced BTW trainer and employing these instructors will help achieve the objectives of the ELDT regulations. OOIDA states that exempting instructors without CDL experience will not result in an equivalent or greater level of safety than is now required by the ELDT regulations. OOIDA added that the delayed implementation of the ELDT final rule, from 2020 to 2022, allowed even more time for training providers to meet the requisite CMV driving experience, or the minimum experience required to serve as a BTW CMV instructor under the ELDT regulations.

Seven other individual commenters opposed the requested exemption, while only one commenter supported the request. Of those opposing the exemption, a number cited similar concerns raised by OOIDA, *i.e.,* that the ELDT rule was agreed upon through the negotiated rulemaking process and, therefore, the rule's ''key'' provisions should not be changed. Another commenter stated that if SBL's petition is approved, the Agency may as well remove the two-year requirement for instructors, and that other CDL driver training schools will request similar relief. The only commenter supporting the request noted that SBL stated that these individuals have trained before and should be allowed to be grandfathered in as qualified instructors.

VI. FMCSA Safety Analysis and Decision

FMCSA has evaluated SBL's application and the public comments. The Agency concludes that SBL presented insufficient evidence to establish that not complying with the provisions of the ELDT regulations relating to driving experience requirements for CMV instructors would meet or exceed the level of safety achieved by complying with the ELDT regulations. Although SBL provides the resumes of the two instructors for whom it seeks the exemption, SBL has not demonstrated that allowing the instructors to provide ELDT without the required experience would achieve an equivalent level of safety as would be achieved by complying with the ELDT instructor qualification requirements. SBL cites to 2010 data indicating a downward trend in motor vehicle fatalities, however, that data is not relevant to whether not complying with the ELDT regulations provides an equivalent level of safety (*https://www.bts.gov/content/motor-vehicle-safety-data*). As to the 2008 ATRI study SBL cites, FMCSA and the ELDTAC considered that study, along with other studies, during the rulemaking. FMCSA concluded that data quality and

methodological issues prevented the study from being used as definitive guidance and further noted that ATRI described the study's results as preliminary. Further, the ATRI study is not determinative of whether the ELDT provided by the individuals subject to this exemption request would achieve a level of safety equivalent to that achieved by complying with the current instructor qualifications.

The Agency concurs with commenters stating allowing some individuals to provide ELDT without the required driving experience could open the door for similar exemption requests. If exemptions are granted on a widespread basis, such a result would be inconsistent with a primary goal of the ELDT regulations, which was to establish a uniform Federal minimum ELDT standard.

For the above reasons, SBL's exemption application is denied.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–27775 Filed 12–21–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons whose property and interests in property have been unblocked and who have been removed from the list of Specially Designated Nationals and Blocked Persons.

DATES: See Supplementary Information section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (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 December 16, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and they have been removed from the SDN List.

Individuals

1. BALDENEGRO BASTIDAS, Manuel Dario, c/o AGRICOLA GAXIOLA S.A. DE C.V., Hermosillo, Sonora, Mexico; DOB 11 Jan 1963; POB Hermosillo, Sonora, Mexico; alt. POB Distrito Federal, Mexico, Mexico; nationality Mexico; citizen Mexico; Passport 260000406 (Mexico); C.U.R.P. BABM630111HSLLSN16 (Mexico); alt. C.U.R.P. BABM630111HSLLSN08 (Mexico) (individual) [SDNTK].

2. BEDOYA LOPEZ, Gildardo de Jesus; DOB 18 Dec 1963; POB Abejorral, Antioquia, Colombia; citizen Colombia; Cedula No. 70560012 (Colombia) (individual) [SDNTK] (Linked To: REPRESENTACIONES MIDAS; Linked To: GARCES Y BEDOYA CIA. LTDA).

3. HERNANDEZ DURANGO, Wilton Cesar, Medellin, Colombia; DOB 10 Dec 1974; POB Medellin, Antioquia, Colombia; citizen Colombia; Gender Male; Cedula No. 70326525 (Colombia) (individual) [SDNTK] (Linked To: EUROMECANICA).

4. HUERTA RAMOS, Manuel (a.k.a. HUERTA RAMOS, Jesus Manuel), c/o SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; Sabino #804, Chihuahua, Chihuahua 31160, Mexico; DOB 26 Jun 1960; POB Juarez, Chihuahua, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. HURJ600626HCHRMS03 (Mexico) (individual) [SDNTK].

5. MEJIA ALZATE, Victor Gabriel; DOB 05 Oct 1985; POB Medellin, Colombia; citizen Colombia; Cedula No. 98772126 (Colombia) (individual) [SDNTK] (Linked To: CANTERAS COPACABANA S.A.; Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: TRITCON S.A.S.).

6. MEJIA SALAZAR, Pedro Claver; DOB 19 May 1943; POB Granada, Antioquia, Colombia; citizen Colombia; Cedula No. 3606361 (Colombia) (individual) [SDNTK] (Linked To: ARENERA EL CERREJON; Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: INVERSIONES MEYBAR S.A.S.; Linked To: MEJIA ALZATE ASOCIADOS Y CIA. LTDA.).

Entities

1. ALMEQUIP S.A.S., Circular 73B No. 39B 115 Of. 9901, Medellin, Colombia; NIT # 900314383–9 (Colombia) [SDNTK].

2. ARENERA EL CERREJON, Km. 2 via Aguadas, Aguadas, Caldas, Colombia; Matricula Mercantil No 121398 (Manizales) [SDNTK].

3. CANTERAS COPACABANA S.A. (a.k.a. TRAMCO S.A.), Circular 73B No. 39B 15 Of. 9901, Medellin, Colombia; NIT # 811035366–3 (Colombia) [SDNTK].

4. EUROMECANICA, Calle 44 74 83, Medellin, Antioquia, Colombia; Matricula Mercantil No 21–573208–02 (Medellin) [SDNTK].

5. GARCES Y BEDOYA CIA. LTDA, Carrera 50 No. 37–35, Medellin, Colombia; NIT # 800119082–9 (Colombia) [SDNTK].

6. INVERSIONES MEYBAR S.A.S., Calle 48 No. 53–62 Int. 902, Medellin, Colombia; NIT # 811004754–5 (Colombia) [SDNTK].

7. MEJIA ALZATE ASOCIADOS Y CIA. LTDA., Circular 73B 39 115–106, Copacabana, Antioquia, Colombia; Medellin, Colombia; NIT # 800246606–1 (Colombia) [SDNTK].

8. PROMOTORA TURISTICA SOL PLAZA S.A. (a.k.a. HOTEL SOL PLAZA), Circular 73B No. 39B 115 Of. 9901, Medellin, Colombia; Carrera 32 No. 35B 44, La Pintada, Antioquia, Colombia; NIT # 811035697–6 (Colombia); Matricula Mercantil No 30401904 (Medellin); alt. Matricula Mercantil No 37062402 (Medellin) [SDNTK].

9. REPRESENTACIONES MIDAS, Plaza Envigado, Local 89, Envigado, Antioquia, Colombia; Calle 40 Sur No. 40 20, Envigado, Antioquia, Colombia; Matricula Mercantil No 54512 (Aburra Sur) [SDNTK].

10. TRITCON S.A.S., Circular 73B 39B 115 Of. 9901, Medellin, Colombia; NIT # 900315365–0 (Colombia) [SDNTK].

Dated: December 19, 2022.

Gregory T. Gatjanis,

Associate Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–27892 Filed 12–21–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; U.S. Tax-Exempt Income Tax Returns

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection request to the

Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on this request.

DATES: Comments should be received on or before January 23, 2023 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.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: U.S. Tax-Exempt Income Tax Returns.

OMB Control Number: 1545–0047.

Type of Review: Revision of a currently approved collection.

Description: These forms and schedules are used to determine that tax-exempt organizations fulfill the operating conditions within the limitations of their tax exemption. The data is also used for general statistical purposes.

Current Actions: There have been changes in IRS guidance documents related to various forms approved under this approval package during the past year. There have been additions of forms included in this approval package. Based on updated survey data and actual population counts, there is an overall estimated increase of 14,500,000 hours of burden and $22,600,000 in out-of-pocket costs on respondents. This adjustment in estimates is driven by both an increase in the number filers as well as expected and observed inflation.

Form: Forms 990, 990–BL, 990–EZ, 990–N, 990–PF, 990–T, 990–W, 1023, 1023–EZ, 1024, 1024–A, 1028, 1120–POL, 4720, 5578, 5884–C, 5884–D, 6069, 6497, 7203, 8038, 8038–B, 8038–CP, 8038–G, 8038–GC, 8038–R, 8038–T, 8038–TC, 8282, 8328, 8330, 8453–TE., 8453–X, 8718, 8868, 8870, 8871, 8872, 8879–TE, 8886–T, 8899 and all other related forms, schedules, and attachments.

Affected Public: Not-for-profit Organizations.

Estimated Number of Respondents: 1,684,700.

Frequency of Response: Varies by form: annually, once or on occasion.

Estimated Total Number of Annual Responses: 1,684,700.

Estimated Time per Response: 43 hours, 10 minutes.

Estimated Total Annual Burden Hours: 72,720,000.

TABLE 1—FISCAL YEAR 2023 FORM 990 SERIES TAXPAYER COMPLIANCE COST ESTIMATES

	Type of return				
	Form 990	Form 990–EZ	Form 990–PF	Form 990–T	Form 990–N
Projections of the Number of Returns to be Filed with IRS	333,400	245,200	122,700	239,600	743,800
Estimates Average Total Time (Hours)	107	64	53	46	5
Estimated Average Total Out-of-Pocket Costs	$2,600	$500	$1,900	$2,100	$20
Estimated Average Total Monetized Burden	$8,700	$1,400	$4,100	$5,600	$90
Estimates Total Time (Hours)	35,780,000	15,770,000	6,510,000	10,940,000	3,720,000
Estimated Total Out-of-Pocket Costs	$867,200,000	$118,600,000	$237,200,000	$512,700,000	$13,800,000
Estimated Total Monetized Burden	$2,916,100,000	$335,200,000	$501,300,000	$1,346,200,000	$64,800,000

Source: IRS:RAAS:KDA:TBL (Dec 2022).

FY2023 TAXPAYER BURDEN FORM 990/990EZ/990PF BY TOTAL POSITIVE INCOME

Total positive income	Average time (hrs)	Average out-of-pocket costs	Average monetized burden
1. <10k	42	$331	$744
2. 10k to 50k	70	578	1,418
3. 50k to 100l	81	721	1,922
4. 100k to 1mil	91	1,507	4,264
5. >1mil	109	3,886	13,308

Source: IRS:RAAS:KDA:TBL (Dec 2022).

Authority: 44 U.S.C. 3501 et seq.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2022–27886 Filed 12–21–22; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 200, 232, 240, et al.
Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 232, 240, 249, 270, and 274

[Release Nos. 33–11131; 34–96206; IC–34745; File No. S7–11–21]

RIN 3235–AK67

Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to Form N–PX under the Investment Company Act of 1940 (''Investment Company Act'') to enhance the information mutual funds, exchange-traded funds (''ETFs''), and certain other funds currently report about their proxy votes and to make that information easier to analyze. The Commission also is adopting rule and form amendments under the Securities Exchange Act of 1934 (''Exchange Act'') that would require an institutional investment manager subject to the Exchange Act to report on Form N–PX how it voted proxies relating to executive compensation matters, as required by the Exchange Act. The reporting requirements for institutional investment managers complete implementation of those requirements added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').

DATES: *Effective date:* This rule is effective July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Christian Corkery, David Driscoll, or Nathan R. Schuur, Senior Counsels; Bradley Gude and Angela Mokodean, Branch Chiefs; or Brian M. Johnson, Assistant Director at (202) 551–6792, Investment Company Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is adopting new 17 CFR 240.14Ad–1 (''rule 14Ad–1'') under the Exchange Act and amendments to 17 CFR 200.30–5 (''rule 30–5''); 17 CFR 240.24b–2 (''rule 24b–2'') under the Exchange Act; 17 CFR 270.30b1–4 (''rule 30b1–4'') under the Investment Company Act; Form N–1A [referenced in 17 CFR 239.15A and 17 CFR 274.11A], Form N–2 [referenced in 17 CFR 239.14 and 17 CFR 274.11a–1], and Form N–3 [referenced in 17 CFR 239.17a and 17 CFR 274.11b] under the Securities Act of 1933 (''Securities Act'') and Investment Company Act; Form N–PX [referenced in 17 CFR 249.326 and 17 CFR 274.129] under the Exchange Act and Investment Company Act; and 17 CFR 232.101 of Regulation S–T (''rule 101 of Regulation S–T'').

Table of Contents

I. Introduction and Background

Mutual funds, ETFs, and other registered management investment companies (collectively, ''funds'') in the aggregate hold substantial institutional voting power that they exercise on behalf of millions of fund investors.[1] Funds own around 32% of the market capitalization of all U.S.-issued equities outstanding and in some cases funds hold a larger percent of a single company's stock.[2] As a result, funds can influence the outcome of a wide variety of matters that companies submit to a shareholder vote, including matters related to governance, corporate actions, and shareholder proposals. Funds' proxy voting decisions also can play an important role in maximizing the value of their investments, affecting the more than 45% of U.S. households that own funds, as well as other investors in U.S. equity markets.[3] Due to funds' significant voting power and the effects of funds' proxy voting practices on the actions of corporate issuers and the value of these issuers' securities, investors have an interest in how funds vote.

In 2003, the Commission adopted Form N–PX, which requires funds to report publicly their proxy voting

[1] 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)]. The amendments also will apply to registered closed-end management investment companies (which register on Form N–2) and insurance company separate accounts organized as management investment companies that offer variable annuity contracts (which register on Form N–3). Small business investment companies (which register on Form N–5) are not required to file Form N–PX and are not subject to these amendments or included in the defined term ''fund'' used throughout this release.

[2] Investment Company Institute (''ICI''), 2022 Investment Company Fact Book (2022), at Figure 2.7, *available at https://icifactbook.org/pdf/2022_factbook.pdf* (''ICI 2022 Fact Book'') (stating that mutual funds and other registered investment companies held 32 percent of U.S. corporate equities as of year-end 2021).

[3] *See* ICI 2022 Fact Book, *supra* footnote 2, at Figure 7.1.

records on an annual basis.[4] To improve the utility of Form N–PX information for investors, in September 2021 the Commission proposed amendments to enhance the information funds currently report about their proxy votes on Form N–PX and to make that information easier to analyze (''proposed amendments'').[5] Specifically, the Commission proposed to require funds to tie the description of the voting matter on Form N–PX to the issuer's form of proxy and categorize voting matters by type. In addition, the proposed amendments would have required disclosure of the number of shares that were voted (or, if not known, the number of shares that were instructed to be cast) and the number of shares that were loaned and not recalled. To enhance investors' access to funds' proxy voting records, the proposed amendments would have required funds to report information on Form N–PX in a structured data language and to provide their voting record on (or through) their websites.[6]

Institutional investment managers [7] subject to the reporting requirements of section 13(f) of the Exchange Act (each a ''manager'' and collectively with funds, ''reporting persons'') also have substantial voting power.[8] In addition to proposing to amend Form N–PX to enhance disclosure of funds' proxy voting records, the Commission also proposed to require a manager to report annually on Form N–PX how it voted proxies relating to shareholder advisory votes on executive compensation (or ''say-on-pay'') matters.[9] Specifically, the proposed amendments would have required a manager to report say-on-pay votes when it exercised voting power over the securities—meaning the manager both has the ability to vote, or direct the voting of, a security and influences the voting decision. To reduce the potential for duplicative reporting when more than one manager exercises voting power or when a manager exercises voting power on behalf of a fund, the Commission proposed to allow managers to rely on joint reporting provisions. The proposed amendments also addressed confidential treatment requests and provided transition rules based upon when managers begin or cease to be obligated to file Form 13F reports.

The proposed amendments to require manager reporting of say-on-pay votes were aimed at completing implementation of section 951 of the Dodd-Frank Act.[10] The Commission first proposed rule and form changes in October 2010 to implement this provision of the Dodd-Frank Act and the proposed amendments in 2021 took into account the comments received in response to that earlier proposal.[11]

The Commission received a number of comment letters on the 2021 proposal.[12] Many commenters believed the proposed amendments would improve the proxy information available to investors, such as by making it easier and more efficient for investors to get this information or by addressing information asymmetries that exist between investors and fund managers.[13] Some of these commenters highlighted the difficulties in using current fund proxy information.[14] Many other commenters supported enhancing the proxy voting record disclosure on Form N–PX, but raised concerns about some of the specific elements of the proposal.[15] For example, some of these commenters suggested changes to the proposed requirements to categorize voting matters and use the language from the issuer's form of proxy due, in part, to concerns about the scope of the proposed requirements.[16] Some commenters also expressed concern about the operational costs and effects of the requirement to provide information about the number of securities a fund or manager did not vote because the securities were out on loan.[17] To reduce burdens of the manager reporting requirements, some commenters supported using a different standard to determine when a manager should report a say-on-pay vote on Form N–PX and suggested that managers have certain exceptions from Form N–PX reporting requirements, including exceptions for managers with a disclosed policy of not voting.[18] Some commenters suggested that funds and managers should be required to report their votes more frequently than annually to provide investors with more current information.[19] Some commenters generally were supportive of the other specific elements of the proposed amendments, such as the requirement to report in structured data

[4] *See* Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act Release No. 25922 (Jan. 31, 2003) [68 FR 6563 (Feb. 7, 2003)] (''2003 Adopting Release'').

[5] *See* Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Investment Managers; Investment Company Act Release No. 34389 (Sept. 29, 2021) [86 FR 57478 (Oct. 15, 2021)] (''Proposing Release''). For a discussion of difficulties investors may face using Form N–PX reports today, *see id.* at paragraphs accompanying nn.16 and 20.

[6] *Cf.* Recommendations of the Investor Advisory Committee Regarding the SEC and the Need for the Cost Effective Retrieval of Information by Investors (adopted July 25, 2013), at 5, *available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/data-tagging-resolution-72513.pdf* (recommending amendments to Form N–PX to provide for the tagging of data).

[7] The term ''institutional investment manager'' includes any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. *See* section 13(f)(6)(A) of the Exchange Act [15 U.S.C. 78m(f)(6)]. The term ''person'' includes any natural person, company, government, or political subdivision, agency, or instrumentality of a government. *See* section 3(a)(9) of the Exchange Act [15 U.S.C. 78c(a)(9)]. Entities serving as managers could include, for example: banks, insurance companies, and broker-dealers that invest in, or buy and sell, securities for their own accounts; corporations and pension funds that manage their own investment portfolios; or investment advisers that manage private accounts, mutual fund assets, or pension plan assets.

[8] *See* Proposing Release, *supra* footnote 5, at n.24 and accompanying text (stating that institutional investment managers subject to section 13(f) reporting requirements exercised investment discretion over approximately $39.79 trillion in section 13(f) securities as of March 31, 2021).

[9] In addition to amendments to Form N–PX, the Commission proposed new rule 14Ad–1 under the Exchange Act to require managers to annually report their say-on-pay votes on Form N–PX.

[10] *See* 15 U.S.C. 78n–1(d).

[11] *See* Exchange Act Release No. 63123 (Oct. 18, 2010) [75 FR 66622 (Oct. 28, 2010)] (''2010 Proposing Release'').

[12] The comment letters on the Proposing Release (File No. S7–11–21) are available at *https://www.sec.gov/comments/s7-11-21/s71121.htm.*

[13] *See, e.g.,* Comment Letter of the American Sustainable Business Council (Oct. 12, 2021) (''ASBC Comment Letter''); Comment Letter of the Long-Term Stock Exchange, Inc. (Dec. 13, 2021) (''LTSE Comment Letter''); Comment Letter of the Consumer Federation of America (Dec. 14 2021) (''CFA Comment Letter''); Comment Letter of Better Markets (Dec. 14, 2021) (''Better Markets Comment Letter''); and Comment Letter of the Vanguard Group, Inc. (Dec. 14, 2021) (''Vanguard Comment Letter'').

[14] *See* Comment Letter of As You Sow (Dec. 14, 2021) (''As You Sow Comment Letter''); and Comment Letter of Ceres Accelerator for Sustainable Capital Markets (Dec. 14, 2021) (''Ceres Comment Letter'').

[15] *See, e.g.,* Comment Letter of the Investment Company Institute (Dec. 14, 2021) (''ICI Comment Letter I''); Comment Letter of Federated Hermes, Inc. (Dec. 14, 2021) (''Federated Hermes Comment Letter''); Comment Letter of BlackRock, Inc. (Dec. 14, 2021) (''BlackRock Comment Letter''); Comment Letter of the Managed Funds Association (Dec. 14, 2021) (''MFA Comment Letter''); and Comment Letter of Glass Lewis (Dec. 14, 2021) (''Glass Lewis Comment Letter'').

[16] *See, e.g.,* ICI Comment Letter I; Comment Letter of the State of Utah (Dec. 14, 2021) (''Utah Comment Letter''); and Comment Letter of Institutional Shareholder Services, Inc. (Dec. 14, 2021) (''ISS Comment Letter'').

[17] *See, e.g.,* Comment Letter of Teachers Insurance and Annuities Association of America (Dec. 14, 2021) (''TIAA Comment Letter''); and Comment Letter of Pickard Djinis and Pisarri LLP (Nov. 23, 2021) (''Pickard Comment Letter'').

[18] *See, e.g.,* Comment Letter of the Alternative Investment Management Association (Dec. 14, 2021) (''AIMA Comment Letter''); and MFA Comment Letter.

[19] *See, e.g.,* Comment Letter of Betterment LLC (Dec. 14, 2021) (''Betterment Comment Letter''); Comment Letter of Morningstar, Inc. (Dec. 13, 2021) (''Morningstar Comment Letter'').

language.[20] Other commenters, however, had general concerns about the proposed amendments, questioning the Form N–PX approach to fund proxy vote reporting or suggesting that the costs of the proposed amendments would be high relative to the expected benefits.[21]

We are adopting the amendments largely as proposed, but with certain modifications in response to the comments we received. First, while we will require reporting persons to categorize the voting matters reported on Form N–PX as proposed, the categories we are adopting are consolidated from those in the proposal, and we are not adopting the proposed requirement for reporting persons to use subcategories. Second, Form N–PX as amended will require reporting persons to identify proxy voting matters using the same language as disclosed in the issuer's form of proxy, presented in the same order as the matters appear in the form of proxy, and identify directors separately for director election matters only if a form of proxy in connection with a matter is subject to 17 CFR 240.14a–4 (''rule 14a–4''). Third, Form N–PX as amended will allow managers that have a disclosed policy of not voting proxies and that did not vote during the reporting period to indicate this on the form without providing additional information about each voting matter individually. We discuss these changes, among others, in more detail below.

II. Discussion

A. Scope of Funds' Form N–PX Reporting Obligations

Every fund is required to file its proxy voting record annually on Form N–PX. We did not propose to modify the scope of investment companies subject to Form N–PX reporting requirements, but we did propose to amend the scope of voting decisions these funds must report. Currently, funds are required to report information for each matter relating to a portfolio security considered at any shareholder meeting held during the reporting period and with respect to which the fund was entitled to vote.[22] We are amending this standard, as proposed, to provide that, for purposes of Form N–PX, a fund would be entitled to vote on a matter if its portfolio securities are on loan as of the record date for the meeting. Because the reporting fund could recall and vote these loaned securities, this amendment is designed to ensure that a fund's filings on Form N–PX reflect the effect of its securities lending activities on its proxy voting, providing context to the information funds already provide about revenue from securities lending.[23]

A number of commenters offered their views on the effect of including lent share disclosure in the form, which is discussed in more detail below in section II.C.3. On the overall scope of the form as it relates to funds, one commenter recommended requiring equity unit investment trusts (''UITs'') to file reports on Form N–PX.[24] Due to the unmanaged nature of UITs and the fixed nature of their portfolios, we do not think it is appropriate to require periodic reporting from UITs regarding proxy voting at this time. We understand that UITs largely vote their securities in the same proportion as the vote of all other holders of those securities (''mirror vote''), which limits the ability of such funds to influence the outcome of shareholder votes and therefore reduces the benefit that is provided by periodic reporting on Form N–PX.[25]

B. Scope of Managers' Form N–PX Reporting Obligations

1. Managers Subject to Form N–PX and Categories of Votes They Must Report

We are adopting amendments, as proposed, that require each person that (1) is an ''institutional investment manager'' as defined in the Exchange Act; and (2) is required to file reports under section 13(f) of the Exchange Act, to report its say-on-pay votes on Form N–PX.[26] This reporting obligation is consistent with the reporting obligation in section 14A(d) of the Exchange Act and provides that a manager otherwise required to report on Form 13F is required to disclose its say-on-pay votes on Form N–PX.[27] The types of say-on-pay votes that managers must report are the same as the types of shareholder advisory votes section 14A of the Exchange Act requires. This includes votes on the approval of executive compensation and on the frequency of such executive compensation approval votes, as well as votes to approve ''golden parachute'' compensation in connection with a merger or acquisition.[28]

Commenters generally supported the requirement for managers to report say-on-pay votes.[29] Some commenters agreed that the reporting requirement was appropriately tailored to managers who file Form 13F.[30] Certain commenters also agreed that the proxy vote reporting requirements for managers should be focused only on say-on-pay votes, as proposed.[31] Other commenters, however, suggested that managers should be required to report other proxy votes in addition to say-on-pay votes.[32] We continue to believe that it is appropriate at this time to limit managers' reporting obligations to say-on-pay votes, consistent with the statutory mandate in section 14A.[33]

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[20] *See, e.g.,* Morningstar Comment Letter; Comment Letter of the CFA Institute and the Council of Institutional Investors (Dec. 14, 2021) (''CFA/CII Comment Letter'').

[21] *See* Comment Letter of Caleb N. Griffin, Brian R. Knight, and Andrew N. Vollmer (Nov. 11, 2021) (''Mercatus Center Comment Letter'') (suggesting an alternative proxy voting approach where funds seek investor input prior to voting proxies and vote in reasonable accord with such input); and Comment Letter of the Mutual Fund Directors Forum (Dec. 14, 2021) (''MFDF Comment Letter'').

[22] *See* Item 1 of current Form N–PX.

[23] *See* Proposing Release, *supra* footnote 5, at section II.A. *See also infra* section II.C.3.b.

[24] *See* Morningstar Comment Letter. This commenter also recommended that both the lender and borrower be required to report what was lent or borrowed, respectively, and voted. A fund or manager typically will not know how a borrower has voted borrowed shares. If a borrower is itself a reporting person, however, the borrower will report its own voting record on Form N–PX, including votes cast with respect to borrowed shares. *See infra* section II.C.3.

[25] *See* Fund of Funds Arrangements, Investment Company Act Release No. 33329 (Dec. 19, 2018) [84 FR 1286 (Feb. 1, 2019)] (suggesting that mirror voting ''effectively nullifies'' the voting power of a fund that utilizes it).

[26] *See* rule 14Ad–1(a); 15 U.S.C. 78m(f). *See also* Proposing Release, *supra* footnote 5, at section II.B.1.

[27] Rule 14Ad–1(a); Item 1 of amended Form N–PX.

[28] *See* section 14A(a) and (b) of the Exchange Act; 17 CFR 240.14a–21. Shareholder votes on executive compensation that are not required by sections 14A(a) and (b), such as in the case of foreign private issuers (as defined in 17 CFR 240.3b–4(c) (''rule 3b–4(c) under the Exchange Act'')) that are exempt from the proxy solicitation rules, will not be required to be reported on Form N–PX.

[29] *See e.g.,* AIMA Comment Letter; ASBC Comment Letter; Better Markets Comment Letter; Comment Letter of Kyle Ratcliff (Oct. 15, 2021) (''Ratcliff Comment Letter''); Pickard Comment Letter; Comment Letter of Seattle City Employees' Retirement System (Dec. 7, 2021) (''SCERS Comment Letter''); Comment Letter of Shareholder Commons and B Lab US/CAN (Dec. 13, 2021) (''Shareholder Commons Comment Letter I''); CFA/CII Comment Letter; ASBC Comment Letter; Comment Letter of Christopher Pearce (Oct. 8, 2021) (''Pearce Comment Letter''); Comment Letter of John C. Friess (Nov. 22, 2021) (''Friess Comment Letter''); ICI Comment Letter I.

[30] *See* AIMA Comment Letter; Better Markets Comment Letter; MFA Comment Letter.

[31] *See* Pickard Comment Letter; MFA Comment Letter; AIMA Comment Letter.

[32] *See* Comment Letter of Alan Reid (Oct. 18, 2021) (''Reid Comment Letter''); Comment Letter of Heather Rhee (Nov. 18, 2021) (''Rhee Comment Letter''); Shareholder Commons Comment Letter I; SCERS Comment Letter (recommending the reporting of votes related to climate change metrics and qualitative reporting, net zero commitments, and board member elections).

[33] *See* Proposing Release, *supra* footnote 5, at the paragraph containing nn.35–36; *see also* 2010 Proposing Release, *supra* footnote 11, at section II.B.1 (''The scope of votes that would be required to be reported under the proposal is the same as the scope provided by new Section 14A(d) of the Exchange Act.'').

One commenter suggested that managers and funds should have different reporting forms.[34] Another commenter suggested that the Commission permit managers to file their say-on-pay votes through a revised Form 13F to relieve the additional regulatory burden that would result from a new, separate filing requirement.[35] We believe that both managers and funds should report proxy voting matters on the same form to reduce the potential for investor confusion and to enhance investors' ability to compare voting records from various reporting persons both over a uniform reporting period and through the use of a single form. In addition, the use of a revised Form 13F for managers would necessitate the creation and use of an expanded custom XML schema for Form 13F that would mirror the new custom XML schema for Form N–PX, leading to technical redundancies and inefficiencies compared to using a single new custom XML schema for Form N–PX that covers both funds and managers. It also would be confusing for both reporting persons and investors if managers included say-on-pay votes on Form 13F because, as the final rule provides, reports on Form N–PX cover different periods and different securities than those covered by reports on Form 13F.

2. Managers' Exercise of Voting Power

We are adopting, as proposed, a two-part test for determining whether a manager ''exercised voting power'' over a security and must report a say-on-pay vote on Form N–PX.[36] As proposed, a manager is required to report a say-on-pay vote for a security only if the manager: (1) has the power to vote, or direct the voting of, a security; and (2) ''exercises'' this power to influence a voting decision for the security.[37] In the first part of the test, the ability to vote the security or direct the voting of the security includes the ability to determine whether to vote the security at all, or to recall a loaned security before a vote. Under the rule, voting power could exist or be exercised either directly or indirectly by way of a contract, arrangement, understanding, or relationship. Per this analysis, multiple parties could both have and exercise voting power over the same securities and, in the proposal, we provided the example of a party exercising voting power when it influences the way a third party votes the security, even where the manager is not the sole decision-maker.[38]

As proposed, we are defining the exercise of voting power to mean the actual use of voting power to influence a voting decision. The framework focuses on the exercise, rather than mere possession, of voting power. Thus, managers will exercise voting power when they vote or influence a vote using their own independent judgment. As an example, a manager exercises voting power when it votes (or directs another party to vote) in accordance with the manager's own guidelines or based on the manager's own judgment, including exercising independent judgment or expertise to determine how a client's voting policies should apply to a say-on-pay vote. A manager also exercises voting power when it influences the decision of whether to vote a security, such as by determining not to vote on a say-on-pay matter or whether to recall loaned securities in advance of a vote in order to vote the shares. Given this focus on a manager influencing the voting decision, a manager will have no reporting obligation with respect to a voting decision that is entirely determined by its client or another party.[39] We are adopting the amendments as proposed because we believe the two-part test balances investor informational needs, reporting burdens, and the statutory obligations.

Some commenters generally supported our proposed definition of the exercise of voting power.[40] Other commenters preferred what they viewed as a more objective approach, suggesting that the ''exercise of voting power'' standard could be subjective, burdensome, and cause confusion in situations in which multiple managers exercise voting power over the same security.[41] One commenter recommended either basing the reporting obligation on who actually marks the proxy card or, in the alternative, limiting the reporting obligation to the party who ''primarily'' influences a voting decision.[42] Another commenter suggested that only the managers who actually voted or instructed an intermediary to vote securities should be required to report.[43]

We recognize that the framework we are adopting could result in some subjectivity in some cases. Nonetheless, this approach addresses the section 14A requirement for managers to report how they voted. We believe the appropriate focus is on when a manager exercises discretion in determining how to vote on a say on pay matter, as implemented in the final rule's definition of the exercise of voting power. This provides more comprehensive information for investors by requiring each manager who uses its voting power to influence a say-on-pay vote to report how the manager voted (or determined not to vote), even though there may be some degree of subjectivity in particular cases in determining whether a given manager is required to report a vote.

Conversely, the tests suggested by commenters would limit the utility of Form N–PX for investors. For example, while it may lessen the reporting obligations for some managers, a test based on who physically marks the proxy card (or its electronic equivalent), who primarily influenced a voting decision, or who actually voted or instructed a vote would exclude managers' votes that would be covered under the final rules, depriving investors of useful information regarding say-on-pay voting decisions. For example, if both managers A and B influenced a voting decision and manager B marked the proxy card, a test that only requires the manager marking the proxy card to report the vote would not provide investors any information about manager A's participation in the voting decision. As another example, a test that focuses exclusively on situations in which a manager actually votes or instructs a vote would not capture instances in which a manager determines not to cast a vote. Determining when a manager ''primarily'' influences a voting decision would create its own subjective analysis and thus does not appear to address commenter concerns about subjectivity. As for situations in which multiple managers exercise voting power over the same security, those managers will be able to rely on the joint reporting provisions to reduce the associated reporting burdens.

One commenter questioned whether a manager would ''influence'' a voting

[34] *See* Rhee Comment Letter.

[35] *See* AIMA Commenter Letter.

[36] *See* Proposing Release, *supra* footnote 5, at section II.B.2.

[37] *See* rule 14Ad–1(d)(1) (defining voting power) and rule 14Ad–1(d)(2) (defining exercise of voting power). This approach is tailored to considerations associated with section 14A of the Exchange Act and the scope of say-on-pay reporting obligations. As a result, the definitions of ''voting power'' and the ''exercise'' of voting power do not affect the meaning of these or similar terms used in other Commission rules.

[38] Proposing Release, *supra* footnote 5, at section II.B.2.

[39] For a discussion of examples where a manager does or does not exercise voting power, *see* Proposing Release, *supra* footnote 5, at section II.B.2.

[40] *See* ICI Comment Letter I; Morningstar Comment Letter.

[41] *See* Pickard Comment Letter; MFA Comment Letter.

[42] *See* Pickard Comment Letter.

[43] *See* MFA Comment Letter.

decision if the advice given to a client or co-manager was not taken and the vote was cast differently than the manager suggested.[44] Under the approach we are adopting, and in keeping with exercise of voting power analysis, a manager would not be viewed as influencing a vote if the vote is cast differently than the manager's recommendation or suggestion.

3. Additional Scoping Matters for Manager Reporting of Say-on-Pay Votes

We are adopting, as proposed, amendments that require a manager to report say-on-pay votes under section 14A with respect to any security over which it exercised voting power. Like both the 2010 Proposing Release and the Proposing Release, we are not modifying the scope of securities to align with those reported on Form 13F or to provide an exception from reporting where the manager does not vote. We are, however, amending Form N–PX to limit the reporting obligation for managers who have a disclosed policy of not voting proxies and who, in line with those policies, have in fact not voted proxies during the reporting period.

Some commenters supported the Commission's proposal to require managers to report all say-on-pay votes, suggesting that such a requirement provides investors with a manager's full voting record.[45] Other commenters recommended that we align the scope of securities reported on Form N–PX with those reported on Form 13F and proposed various ways to do so.[46] Some commenters suggested that the Commission provide a *de minimis* exemption that would, consistent with Form 13F, exclude from the Form N–PX reporting obligation securities holdings of fewer than 10,000 shares and less than $200,000 aggregate fair market value.[47] Some commenters suggested that the Form N–PX reporting requirements should be limited to the kinds of securities managers are required to report on Form 13F (*i.e.,* section 13(f) securities) on the basis that such an approach would be clearer to investors and would limit regulatory costs.[48] One of these commenters suggested this would be consistent with the Exchange Act, which imposes the say-on-pay vote reporting requirement on managers subject to section 13(f) of that Act.[49] Another one of these commenters urged the Commission to exclude from the reporting obligation securities that are exempt from registration under section 12 of the Exchange Act.[50] This commenter asserted that managers would have difficulty obtaining the information needed to complete Form N–PX for these securities because of a lack of adequate and reliable data. Another commenter suggested that managers who do not report a security on Form 13F because they lack investment discretion over such security should not be required to disclose on Form N–PX votes related to that security.[51] Other commenters suggested that only securities held at the end of a calendar quarter be reported because these securities would also be reported on Form 13F.[52] Some commenters urged that, in the alternative, short-term positions, such as those held for fewer than 30 days, should be excluded from the reporting obligation.[53]

We are not limiting the scope of securities subject to the Form N–PX reporting requirement as these commenters suggested because doing so would exclude say-on-pay voting information that would be beneficial to investors. A more limited reporting obligation would reduce the utility of the say-on-pay reporting disclosure by depriving investors of a manager's full voting record.[54] We do not believe that section 14A suggests or requires that the Commission align the scope of securities required to be reported on Form N–PX with those required for Form 13F or apply Form 13F's *de minimis* exemption to Form N–PX. Section 14A requires *every* institutional investment manager subject to section 13(f) to report how it voted on *any* say-on-pay shareholder vote, which would include say-on-pay votes held by issuers of securities that are not reported on Form 13F. If Form N–PX reporting contained a *de minimis* exemption or were limited only to those securities reported on Form 13F or only those securities over which managers have investment discretion, then investors would not be able to identify on Form N–PX all say-on-pay votes required under the statute.

In addition, a commenter urged the Commission to limit the reporting requirement to section 13(f) securities because managers may not have sufficient information to report say-on-pay votes conducted by issuers whose securities are exempt from registration under section 12 of the Exchange Act. There are, however, securities other than section 13(f) securities that are subject to section 12 registration, including certain non-exchange-traded securities.[55] Moreover, issuers of securities that are exempt from section 12 are not required to conduct say-on-pay votes in the first instance, and if such an issuer were to conduct a say-on-pay vote voluntarily, managers would not be required to report that vote because section 14A(d) only requires managers to report votes pursuant to subsections 14A(a) and 14A(b).[56]

We also are not adopting commenters' suggestions to align Form N–PX reporting requirements with Form 13F such that a manager would only report votes for securities reported at quarter end on Form 13F. Doing so would potentially exclude a significant number of say-on-pay votes, thus limiting the usefulness of the information for investors as well as potentially omitting the reporting of how a manager voted on a say-on-pay vote as required pursuant to section 14A. For example, Form 13F reports are not required to include securities held during the quarter but subsequently disposed of prior to the end of the quarter.[57] We are also not

[44] *See* Pickard Comment Letter.

[45] *See, e.g.,* Better Markets Comment Letter; CFA/CII Comment Letter; Comment Letter of Principles for Responsible Investment (Dec. 14, 2021) (''PRI Comment Letter'').

[46] *See, e.g.,* AIMA Comment Letter; MFA Comment Letter; Pickard Comment letter.

[47] *See* Pickard Comment Letter; AIMA Comment Letter; MFA Comment Letter; *see also* Special Instruction 10 of Form 13F. *But see* Better Markets Comment Letter; Morningstar Comment Letter (suggesting that we not provide a *de minimis* exemption because it would reduce the value of votes by omitting a manager's full voting record and would create the wrong incentives by encouraging managers to leave shares out on loan to stay below the reporting threshold).

[48] *See* AIMA Comment Letter; MFA Comment Letter. Section 13(f) securities are equity securities of a class described in section 13(d)(1) of the Exchange Act that are admitted to trading on a national securities exchange or quoted on the automated quotation system of a registered securities association. The Commission publishes a list of these securities pursuant to section 13(f)(4) of the Exchange Act. *See* 17 CFR 240.13f–1(c).

[49] *See* MFA Comment Letter.

[50] *See* AIMA Comment Letter.

[51] *See* Pickard Comment Letter.

[52] *See* MFA Comment Letter; AIMA Comment Letter.

[53] *See* AIMA Comment Letter; MFA Comment Letter.

[54] Proposing Release, *supra* footnote 5, at section II.B.3; *see also* Better Markets Comment Letter (suggesting that a *de minimis* exception or otherwise limiting say-on-pay votes to securities that managers report on Form 13F would exclude votes that section 14A(d) is meant to capture).

[55] *See* section 12(g) of the Exchange Act [15 U.S.C. 78*l*(g)].

[56] *See* Shareholder Approval of Executive Compensation and Golden Parachute Compensation, Exchange Act Release No. 63768 (Jan. 25, 2011) [76 FR 6010 (Feb. 2, 2011)], at n.38 (''[The say-on-pay rules for issuers] as adopted apply to issuers who have a class of equity securities registered under section 12 [15 U.S.C. 78*l*] of the Exchange Act and are subject to our proxy rules.'')

[57] *See* Proposing Release, *supra* footnote 5, at section II.B.3. *See also* Better Markets Comment Letter (suggesting that say-on-pay vote reporting should not be limited to positions reported on Form

adopting a framework that would only require the reporting of securities held for at least a specified period of time for similar reasons.

Some commenters responded to our request for comment as to whether we should modify our proposed approach for managers who do not vote their shares. For example, the Commission requested comment on whether to exempt a manager who does not vote its shares from certain disclosure requirements and whether any modified approach should be subject to conditions, such as the manager having disclosed to its clients that it does not vote.[58] Commenters addressing these points suggested that the Commission limit the reporting obligation for managers who have a disclosed policy of not voting proxies.[59] These commenters stated that some registered investment advisers do not vote proxies and disclose their general policy of not voting proxies in other materials, including Part 2A of their Form ADV. One of these commenters suggested that, under the proposed rule, these advisers would only be disclosing their security holdings, not the quantitative voting data contemplated by the proposed amendments.[60] Other commenters articulated their view that disclosure of a no-vote policy sufficiently addresses any transparency concerns by providing investors with an understanding of a manager's votes.[61] Relatedly, one of these commenters suggested that imposing the full reporting obligation on managers who have a disclosed policy of not voting creates a burden on managers, is of limited value to investors, and thus these managers should be exempted.[62] Other commenters suggested a more streamlined reporting process for managers with no or limited say-on-pay votes, with one such commenter suggesting that Form N–PX include a checkbox for managers that have a general policy of not participating in one or more categories of say-on-pay votes to alleviate such managers of reporting non-votes in those categories.[63]

As a result, we are adopting a streamlined reporting option for managers who have a disclosed policy of not voting proxies and in fact have not voted proxies during the reporting period. After considering those comments, we believe there is limited value for investors in requiring the full scope of Form N–PX reporting by managers, such as information about individual voting matters, under these circumstances. Accordingly, we are adding a designation to Form N–PX that would permit managers who have a disclosed policy of not voting proxies, and who did not in fact vote during the reporting period, to indicate such in a notice report. The manager would not have to report any information on a security-by-security basis and instead would be required only to file N–PX's cover page and required signature. This approach balances appropriate transparency with the reporting burden. However, we do not believe it is appropriate to exempt these managers fully from reporting on Form N–PX as this may limit the ability of investors to understand fully how a manager exercises its voting power.[64] Further, these notice reports will aid in the effectiveness of the Commission's oversight of managers in complying with the requirements of section 14A. Information filed on Form N–PX in a structured data language is easier to analyze systematically than a narrative disclosure and has the benefit of differentiating cases where a manager has no votes to report from cases where a manager simply fails to report. For similar reasons, as proposed, we are requiring managers that do not have any proxy votes to report for the reporting period to file a notice report to this effect.[65]

C. Proxy Voting Information Reported on Form N–PX

We are adopting the proposed amendments to the proxy voting information reported on Form N–PX largely as proposed, but have made certain revisions as laid out below . We believe the amendments we are adopting will make the information more useful to investors as compared to both the current form and the proposal. For example, the amendments facilitate investors' ability to locate the same proxy voting matter on different reports on Form N–PX, aiding investor identification of proxy voting matters that are of interest to them. The amendments also provide additional quantitative information to help investors understand how reporting persons balance voting decisions against other priorities, and, in general, make the information reported more useful to investors.

1. Identification of Proxy Voting Matters

We proposed to require reporting persons to use the same language that is on the form of proxy to identify the matter on Form N–PX, and to report proxy voting matters in the same order in which they are presented on the issuer's form of proxy, including identifying each director separately in the same order as on the form of proxy, even if the election of directors is presented as a single matter on the form of proxy (''voting matter identification requirements''). We are adopting these amendments as proposed, but with two modifications.

First, under the amendments, these requirements will only apply to proxy votes if a form of proxy in connection with a matter is subject to rule 14a–4 under the Exchange Act. That rule requires the form of proxy, or ''proxy card,'' included in the proxy materials to clearly and impartially identify each voting matter (an ''SEC proxy card''). SEC proxy cards contain the information reporting persons need to comply with the new voting matter identification requirements. Second, in all other cases, reporting persons will be subject to the current requirement to provide a ''brief identification of the matter voted on,'' except that we are adopting one modification limiting abbreviations used in the descriptions of these voting matters as described in more detail below. The amendments, with these modifications to the proposal, are designed to address challenges identified by commenters with respect to certain voting matters, while making it easier for investors to locate identical voting matters on different Form N–PX reports by different reporting persons.

Commenters supporting the proposed voting matter identification requirements asserted that they would assist investors in understanding how reporting persons vote shares and make the form more useful.[66] For instance, one commenter stated that non-standard descriptions made it difficult to

13F because securities disposed of before quarter end would not be reported).

[58] *See* Proposing Release, *supra* footnote 5, at section II.B.3.

[59] *See* Pickard Comment Letter; AIMA Comment Letter; MFA Comment Letter.

[60] *See* AIMA Comment Letter.

[61] *See* Pickard Comment Letter; AIMA Comment Letter (suggesting that many registered investment advisers disclose in Form ADV that they do not vote proxies).

[62] *See* Pickard Comment Letter.

[63] *See* MFA Comment Letter.

[64] *See* Proposing Release, *supra* footnote 5, at n.63 and accompanying paragraph.

[65] As discussed in more detail below, we have moved this language from the form to the cover page.

[66] *See, e.g.,* CFA/CII Comment Letter; Morningstar Comment Letter; Comment Letter of James McRitchie (Dec. 13, 2021) (''McRitchie Comment Letter II''). James McRitchie also wrote a separate comment letter dated Dec. 13, 2021 (''McRitchie Comment Letter I'') and a comment letter dated Dec. 14, 2021 (''McRitchie Comment Letter III''). The letters are referred to collectively as if they were a single letter (''McRitchie Comment Letter'').

compare votes across different reports on Form N–PX.[67] A different commenter stated that the current lack of standardization imposes a cost on investors, who need to expend time and resources to compare different reporting persons.[68]

Conversely, many commenters suggested that the proposed voting matter identification requirements could raise challenges, especially in the case of foreign issuers. For example, one commenter stated that ''the descriptions of proxy voting matters by [companies not subject to the Commission's proxy rules] vary widely between markets and, at least in some cases, are neither concise nor particularly descriptive, and in many cases are not in English.'' [69] Several other commenters also noted that non-English filings could create special challenges.[70] Commenters also stated that, in certain cases, voting matters may not be clearly described, and that descriptions of proxy voting matters can be quite extensive and can surpass standard character count limits, either of which could result in N–PX filings being longer than they are currently.[71] With regard to the ordering requirement, two commenters stated that the items presented in proxy materials issuers provide are not in a standardized order, with one stating that issuers may present a particular matter in multiple orders in different parts of the filing.[72] Another commenter suggested that, while a consistent ordering of content would be helpful for reading the data without using a program to analyze it, ordering is not needed when data is reported in structured format.[73] However, several commenters that raised concerns with the proxy voting matter identification requirements suggested their concerns would not extend to issuers whose form of proxy meets the proxy requirements of the Exchange Act.[74]

After considering the comments, we are adopting the voting matter identification requirements as proposed, except that they will only apply if a form of proxy in connection with a matter is subject to the requirements of rule 14a–4 under the Exchange Act, *i.e.,* an SEC proxy card is available for the matter.[75] As noted in the Proposing Release and as required by rule 14a–4, ''the descriptions and ordering used on an issuer's form of proxy, which is publicly available and must identify clearly and impartially each separate matter intended to be acted upon, would address the previously identified practical issues associated with standardized descriptions.'' [76] Forms of proxy subject to rule 14a–4 therefore will identify the matter in a clear manner, listed in order where the form of proxy covers multiple matters, and be in the English language. Reporting persons would not need to review other documents or filings of the issuer, such as a proxy statement, beyond the form of proxy to determine the description or order of presentation. We recognize that the voting matter identification requirements will involve changes to reporting persons' processes, or those of their service providers,[77] in order to comply with the voting matter identification requirements. These costs are justified by the benefits of the disclosure and may be reduced by applying the voting matter identification requirements only where a form of proxy is available to supply the information.[78]

Reporting persons, however, may hold securities for which voting matters are not subject to our proxy rules and for which an SEC proxy card is not available. In this case the associated proxy materials may not clearly provide the information required to satisfy the voting matter identification requirements, or may not provide that information in English. We recognize the practical challenges raised by commenters in complying with the proposed proxy voting matter identification requirements in these circumstances. Requiring reporting persons to use the same language that is on the form of proxy to identify the matter will be less useful to investors if the language on the form of proxy is not in English, or is not clearly presented. Reporting persons also would face challenges in reporting proxy voting matters in the same order in which they are presented on the issuer's form of proxy if, as some commenters asserted, items presented in proxy materials provided by some issuers are not in a standardized order.

The modifications to the voting matter identification requirements are intended to address these concerns because, under the amendments, these requirements will only apply when the reporting person will have the information necessary to satisfy them from an SEC proxy card. Where an SEC proxy card is not available for a matter, reports regarding the matter will instead be required to provide ''a brief identification of the matter voted on,'' consistent with the current requirement.[79] In an effort to improve the usefulness of this information to investors, and in a change from the proposal, descriptions of these matters will be required to limit the use of abbreviations to commonly understood terms or terms that the issuer abbreviated in its description of the matter. As we discussed in the Proposing Release, abbreviations and other shorthand were one of the fund practices that can make it difficult for investors to identify and compare voting matters.[80] The requirement to limit abbreviations should help ensure that, to the extent that a reporting person is abbreviating terminology on the form, the reporting person is doing so consistently, either because the abbreviation is commonly understood or was part of the issuer's description of the matter.

2. Identification of Proxy Voting Categories

As proposed, we are adopting a requirement for reporting persons to select from specified, standardized categories to identify the subject matter of each reported proxy voting item. The

[67] *See* Ceres Comment Letter.

[68] *See* CFA/CII Comment Letter.

[69] Glass Lewis Comment Letter.

[70] *See* ISS Comment Letter; ICI Comment Letter (stating that it was not clear whether or not reporting persons would be permitted to file N–PX in a language other than English); Federated Hermes Comment Letter.

[71] *See* Bloomberg Comment Letter (not clearly described); ISS Comment Letter (descriptions can be extensive).

[72] Federated Hermes Comment Letter (with regards to foreign issuers); Bloomberg Comment Letter.

[73] XBRL Comment Letter.

[74] *See, e.g.,* Glass Lewis Comment Letter (stating that the justification for requiring standardization only applies to issuers subject to the Commission's proxy rules); Federated Hermes Comment Letter (''[W]e believe this aspect of the Proposal to be workable where it concerns domestic issuers''). The proxy requirements of the Exchange Act are largely limited to securities registered pursuant to section 12 of the Exchange Act. *See, e.g.,* 15 U.S.C. 78n(a)(1). Foreign private issuers are exempted from these requirements. *See* 17 CFR 240.3a12–3(b).

[75] Special Instruction D.3 of amended Form N–PX.

[76] *See* Proposing Release, *supra* footnote 5, at n.76 and accompanying text (citing rule 14a–4(a)(3), which requires that the form of proxy identify clearly and impartially each separate matter intended to be acted upon, and associated guidance on descriptions of matters in forms of proxy). *See also* 17 CFR 240.14a–4(a)(3); *see* 17 CFR 232.306 (requiring the use of the English language in all electronic filings); Division of Corporation Finance, Compliance and Disclosure Interpretations, Section 301 (Mar. 22, 2016), *available at https://www.sec.gov/divisions/corpfin/guidance/exchange-act-rule-14a-4a3-301.htm.*

[77] *See* ICI Comment Letter I; ISS Comment Letter.

[78] In addition, recognizing that the structured data requirements may reduce the need for a consistent ordering when the filings are analyzed with the assistance of a computer program, the consistent ordering requirement should nonetheless aid investors who choose to review the filings in plain text format.

[79] *See* Item 1(e) of current Form N–PX.

[80] *See* Proposing Release, *supra* footnote 5, at text accompanying n.222.

categories are designed to cover matters on which funds frequently vote. In a change from the proposal, we have streamlined and consolidated the proposed list of categories, based on suggestions from commenters, to reduce overlap and make the categories easier to use. We also have eliminated the proposed requirement to select from a list of subcategories and have included in Form N–PX examples of matters that would fall into each category that generally track subjects that were previously proposed as subcategories. Collectively, we believe these changes from the proposal will increase the usefulness of the categories while reducing potential difficulties identified by commenters.

In general, commenters who supported the proposed categorization requirement believed the requirement would provide benefits to users of the form. For example, commenters stated that categorizing proxy votes makes a fund's disclosed proxy voting record more useful because it is more searchable, which makes it easier for investors to focus on topics they find important.[81] As one commenter stated, this ''significantly lowers the costs of consumption'' of the data.[82] Another commenter stated that categorizing proxy votes provides a signal to investors of the fund's investment criteria and overarching goals.[83]

Most commenters who addressed the categorization requirement stated that the proposed version would be burdensome for reporting persons and would not provide useful information for investors. For example, many commenters asserted that the proposed 17 categories and approximately 90 subcategories would not be helpful to investors, with some suggesting that the granularity could complicate investors' ability to compare different filings to locate matters relating to particular categories.[84] Some stated the proposed approach would result in numerous judgments as to the category or subcategory in which a matter belonged.[85] Commenters also suggested that a categorization requirement with fewer, broader categories would accomplish what they viewed as the main policy objective of the proposal while also reducing the likelihood of potential differences among reporting persons.[86] A number of commenters suggested that we remove the proposed subcategories but retain them as examples of matters to be included in the categories.[87] Certain commenters objected to particular categories or subcategories, asserting that they might not be representative of voting matters in future years.[88] Others suggested the burden of categorization would be better assigned to issuers, to reduce burdens on funds and provide consistency in funds' categorizations, or that we exempt small funds because they do not typically have enough voting power to change the outcome of most proxy votes.[89]

After considering these comments, we are modifying the proposed categorization requirement to reduce the burden and the level of uncertainty among potentially overlapping categories for reporting persons while enhancing the usefulness of categorization to investors. Specifically, based in part on suggestions from commenters, we have streamlined the list of categories, including combining certain categories that were particularly likely to overlap and thus could cause confusion on how to categorize. For example, one commenter recommended that we change the board of directors category to only address director elections and add the remaining elements of the board of directors category to the corporate governance category, combine meeting governance with the corporate governance category, combine securities issuance with capital structure, and combine political activities with other social issues.[90] As detailed in the chart below, we have made changes to the categories that are generally consistent with these recommendations. These changes should reduce questions about how to categorize voting matters on these topics and reduce overlap between categories.

We are not, however, combining section 14A reporting with other compensation matters, as one commenter suggested, in order to aid managers in complying with this categorization requirement given that they are only reporting say-on-pay votes, and to aid investors in finding say-on-pay votes efficiently.[91] We are also not combining or otherwise changing the categories relating to environmental or climate, human rights or human capital/workforce, or diversity, equity, and inclusion as we believe that these are sufficiently distinct topics that they should be separately identified.[92]

We also are removing entirely the proposed requirement to assign matters to subcategories. Instead, the amendments include examples of matters that would be included within each category. The examples we are adopting are largely the same as the proposed subcategories, but, when combining categories, we added the subcategories from the eliminated category as examples in the combined category.[93] In addition because these examples are now illustrative rather than comprehensive, we eliminated proposed subcategories that simply clarified that any other matter within a category needed to be included (*e.g.,* ''other audit-related matters (along with a brief description)'').

Accordingly, relative to the proposal we are adopting a categorization requirement with fewer, but broader, categories. Adopting broader categories and eliminating subcategories seeks to reduce potential overlap among categories and also reduce the likelihood that the categories are not representative since they are broader and less likely to change.[94] As a result, the changes should reduce the need for subjective judgments on the part of reporting persons in determining the applicable categories. In particular, the differences between categories should be clearer and reporting persons need not determine which of several subcategories may apply to a matter. This, in turn, will increase comparability, and therefore the utility, of the information for investors.[95] We

[81] *See, e.g.,* Morningstar Comment Letter; CFA/CII Comment Letter.

[82] Bloomberg Comment Letter.

[83] LTSE Comment Letter.

[84] *See, e.g.,* ICI Comment Letter I.

[85] *See, e.g.,* Blackrock Comment Letter.

[86] *See, e.g.,* Federated Hermes Comment Letter.

[87] *See, e.g.,* ICI Comment Letter I; CFA/CII Comment Letter; Federated Hermes Comment Letter. Some commenters also suggested that we change one or more subcategories. *See, e.g.,* PRI Comment Letter; CFA/CII Comment Letter. However, we are not adopting the subcategorization requirement.

[88] *See* Comment Letter of the National Center for Public Policy Research (Dec. 9, 2021) (''NCPPR Comment Letter''); US Chamber of Commerce Comment Letter; Utah Comment Letter; McRitchie Comment Letter.

[89] *See, e.g.,* AIMA Comment Letter (issuers should categorize), *but see* Blackrock Comment Letter (funds, not issuers, should categorize); Ultimus Comment Letter (issuers should categorize and exempt small funds).

[90] *See, e.g.,* ICI Comment Letter I.

[91] *See id.*

[92] *See id.; see also* PRI Comment Letter.

[93] In addition, we added the example of ''proxy access'' in the corporate governance category to further clarify where those votes should be categorized.

[94] While any chosen list of categories may not perfectly capture unanticipated trends that arise in the future, the use of broader categories that are less likely to change helps to address concerns that the chosen categories are based on a proxy season that some commenters asserted was not representative. *See, e.g.,* NCPPR Comment Letter; US Chamber of Commerce Comment Letter.

[95] Although one commenter suggested that activists, rather than fund investors, would use this information to try to influence how funds vote, fund advisers are subject to fiduciary duties and

Continued

therefore believe the modifications to the proposal balance the concerns raised by commenters on the proposed categorization requirement with the benefits provided by voting matter classifications. We also believe that the reduced burden further reinforces our decision not to require issuers to categorize voting matters. In the context of this rulemaking, which is focused on the requirement for funds to report their proxy voting records and implementing section 14A for managers, we believe the categorization requirement should apply to those reporting persons. The reduced burden of the categorization requirement relative to the proposal also supports not exempting small funds, therefore allowing investors in those funds to benefit from the categorization requirement. The table below outlines the changes to the categories in the proposal.

TABLE 1—CHANGES TO CATEGORIES FROM THE PROPOSAL

Proposed category	Adopted category	Change from proposal
Board of directors	Director elections	Limited to elections; other board matters categorized as corporate governance.
Section 14A	Section 14A	None.
Audit-related	Audit-related	None.
Investment company matters	Investment company matters	None.
Shareholder rights and defenses	Shareholder rights and defenses	None.
Extraordinary transactions	Extraordinary transactions	None.
Security Issuance	n/a	Consolidated with capital structure.
Capital structure	Capital structure	Now includes security issuance.
Compensation	Compensation	None.
Corporate governance	Corporate governance	Includes board matters other than director elections and meeting governance.
Meeting governance	n/a	Consolidated with corporate governance.
Environment or climate	Environment or climate	None.
Human rights or human capital/workforce	Human rights or human capital/workforce	None.
Diversity, equity, and inclusion	Diversity, equity, and inclusion	None.
Political activities	n/a	Consolidated with other social issues.
Other social issues	Other social issues	Now includes political activities.
Other	Other	None.

As proposed, the list of categories will be non-exclusive and reporting persons are instructed to select all categories applicable to the matter.[96] This approach will further aid investors in locating useful information by allowing them to identify multiple topics that may be of interest. For example, a fund that casts a vote on a proxy proposal tying executive compensation to the completion of a merger (other than a section 14A proposal) would categorize the vote in both the compensation and extraordinary transactions categories, enabling investors who are interested in either the fund's votes on compensation issues or its votes on the merger to locate the vote.

3. Quantitative Disclosures

We are adopting as proposed changes to Form N–PX that will require reporting persons to disclose quantitative information about the shares that were voted or instructed to be voted, as well as shares the reporting person loaned and did not recall.

(a) Disclosure of Number of Shares Voted or Instructed To Be Voted

Consistent with the proposal, amended Form N–PX will require reporting persons to disclose the number of shares voted (or instructed to be voted) and how those shares were voted (*e.g.,* for or against proposal, or abstain), as reflected in their records at the time of filing a report on Form N–PX. If a reporting person has not received confirmation of the actual number of votes cast, the Form N–PX report instead may reflect the number of shares instructed to be cast on the date of the vote. If the votes were cast in multiple manners (*e.g.,* both for and against), reporting persons will be required to disclose the number of shares voted (or instructed to be voted) in each manner.[97]

We are requiring this disclosure because providing the number of votes cast improves the transparency of fund and manager voting records and more effectively enables investors to monitor their funds' and managers' involvement in the governance activities of their investments. It also provides information about the magnitude of a reporting person's voting power. This disclosure also provides important context for the disclosure of the number of shares the reporting person loaned and did not recall and disclosures where a manager votes in multiple ways on the same matter.[98]

Many commenters supported the proposed approach, although some of these commenters suggested that we require additional information.[99] Specifically, some of these commenters suggested that reporting persons should be required to identify the number of shares voted by subadvisers or other third parties such as an independent fiduciary retained to avoid conflicts of interest.[100] In initially adopting Form

thus must make voting determinations in the best interest of the fund and its shareholders. *See* Utah Comment Letter; *see also infra* footnotes 331–333 and accompanying text. In addition, the amendments to the format and content of Form N–PX may also help deter fund voting decisions motivated by conflicts of interest. *See infra* footnotes 281–284 and accompanying text.

[96] Special Instruction D.4 of amended Form N–PX.

[97] Item 1(k) of amended Form N–PX. As proposed, in the case of a shareholder vote on the frequency of executive compensation votes, a reporting person will be required to disclose the number of shares, if any, voted in favor of each of one-year frequency, two-year frequency, or three-year frequency, and the number of shares, if any, that abstained. The number zero (''0'') would be entered if no shares were voted, so that responses to this item would be uniformly numeric in nature. Item 1(i) of amended Form N–PX.

[98] *See* Proposing Release, *supra* footnote 5, at section II.C.3.a. While we understand that funds do not split votes regularly, investors should benefit from parity in disclosure between funds and managers in cases where funds do split votes.

[99] *See, e.g.,* Better Markets Comment Letter; Morningstar Comment Letter; *see also* ICI Comment Letter I (not objecting to providing quantitative data generally, but objecting to the lent share quantitative data requirement).

[100] *See* Morningstar Comment Letter; Bloomberg Comment Letter.

N–PX, the Commission stated that investors in mutual funds have a fundamental right to know how a fund casts proxy votes on its shareholders' behalf.[101] Consistent with this view, how a fund casts its proxy votes is the more salient information for investors than whether, for example, a particular subadviser cast the vote.

In addition, the form will provide investors with some indication of how subadvisers may have influenced the fund's votes. For example, a fund may have multiple subadvisers exercising the power to vote over a portion of securities held by the fund. To the extent one of these subadvisers voted a reporting fund's shares differently than the other subadvisers to the fund, the fund's quantitative disclosures will reflect this split vote by showing the fund had a number of shares voted both for and against. Further, investors will continue to have access to descriptions of funds' proxy voting policies and procedures through required disclosures, which would include applicable descriptions of the policies and procedures of investment advisers or other third parties that are used to determine how to vote fund proxies.[102] In addition, some subadvisers or third parties will likely be managers subject to say-on-pay reporting and so investors will also have access to how those parties voted on say on pay matters.[103]

One commenter also suggested that we require funds to indicate, per ballot, how many shares were voted, along with associated share class voted, noting that in some cases companies offer multiple share classes with different voting rights.[104] In this circumstance, reporting persons should report different share classes separately as different portfolio securities for purposes of Form N–PX because of this difference in relative voting power and rights.

Another commenter objected to disclosure of the number of shares voted, particularly its application to manager say-on-pay votes.[105] This commenter argued that quantitative information about the number of shares voted went beyond the statutory mandate regarding say-on-pay and did not provide any useful information that was not already available to investors under 17 CFR 275.206(4)–6 (''rule 206(4)–6''), the investment adviser proxy voting rule. This commenter suggested instead that we only require disclosure of the number of shares voted in split vote situations. We are not adopting this change because requiring quantitative disclosure only for split votes could result in potentially confusing inconsistencies within each report on Form N–PX. Moreover, this disclosure provides a number of benefits beyond illustrating how reporting persons split votes. It improves the transparency of fund and manager involvement in corporate governance, including providing relevant information about the magnitude of the reporting person's voting power.[106] To enable investors to understand how a fund or manager has exercised its voting power, investors need to have access to quantitative information about the number of shares voted, in addition to shares on loan and not recalled. For these reasons, requiring quantitative information about the number of shares voted is consistent with the statutory mandate for a manager to report ''how it voted'' pursuant to section 14A(d).

We also disagree that the Form N–PX disclosure does not provide useful information beyond that already required to be disclosed under rule 206(4)–6. That rule requires a registered investment adviser to disclose to clients how they may obtain information from the adviser about how it voted with respect to their securities. Thus, it does not apply to all managers because not all managers are registered investment advisers. Further, it does not provide the same level of transparency as the amendments we are adopting, because voting information under rule 206(4)–6 is only required to be made available to a single client, related solely to that client's securities, and only upon the client's request. Voting records on Form N–PX are available to the public. Even if a client were to request information from its adviser about how it voted with respect to the client's securities, that client could not use it to compare their manager's voting activities to other managers' voting activities unless that client had an existing advisory relationship with those other managers.[107]

The amendments permit a reporting person to report the number of shares voted as reflected in its records at the time of filing a report on Form N–PX.[108] If the reporting person has not received confirmation of the actual number of votes cast prior to filing a report on Form N–PX, the reporting person may report the number of shares instructed to be cast. If the reporting person learns prior to filing its Form N–PX that a different number of shares were voted than were instructed to be cast, the reporting person will be required to report the actual number of votes cast.[109] However, if confirmation of the actual number of votes cast occurs after the reporting person files the Form N–PX report, a reporting person will not be required to amend a previously filed Form N–PX report.[110] This approach will limit the compliance burden of providing information regarding the number of shares voted and, in situations where the actual number of votes cast may differ from the number of shares instructed to be cast, the information provided will reflect how a reporting person intended to vote such shares.

(b) Disclosure of Number of Shares the Reporting Person Loaned and Did Not Recall

As proposed, we are requiring disclosure of the number of shares the reporting person loaned and did not recall in addition to the number of shares a reporting person voted.[111] This requirement is designed to provide transparency into how a reporting person's securities lending activities affects its proxy voting, which had been raised by commenters in the context of the 2010 Proposing Release and Proxy Mechanics Concept Release.[112] It also would help address commenter concerns with a requirement in the 2010 proposal to disclose the total number of shares a fund was entitled to vote or over which a manager had or shared voting power.[113]

Commenters were mixed on this aspect of the proposal. A number of commenters supported this disclosure,

[101] *See* 2003 Adopting Release, *supra* footnote 4, at section I.

[102] *See, e.g.,* Item 17(f) of Form N–1A (''[D]escribe the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities . . . Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, to determine how to vote proxies relating to portfolio securities.''); Item 18.16 of Form N–2. A fund may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies by including a copy of the policies and procedures themselves.

[103] *See* Special Instruction D.6.b to amended Form N–PX.

[104] *See* Morningstar Comment Letter.

[105] *See* Pickard Comment Letter.

[106] *See, e.g.,* Proposing Release, *supra* footnote 5, at section I (discussing the substantial institutional voting power that funds exercise on behalf investors).

[107] *See* rule 206(4)–6(b).

[108] Item 1(i) of amended Form N–PX; Special Instruction D.5 to amended Form N–PX.

[109] Special Instruction D.5 to amended Form N–PX.

[110] *Id.*

[111] Item 1(i) of amended Form N–PX.

[112] *See* Proposing Release, *supra* footnote 5, at n.99 and accompanying text.

[113] *See* Proposing Release, *supra* footnote 5, at nn.100–103 and accompanying text.

suggesting it would provide helpful context to investors about how securities lending activities affect voting practices and help issuers better understand their shareholder base.[114] Commenters opposing this aspect of the proposal argued that the disclosures would not provide meaningful information to investors, particularly in light of expected costs.[115] Some were also concerned that these disclosures did not reflect the complete context of the analysis reporting persons perform when determining whether to engage in securities lending and did not show the benefits of keeping shares on loan during a vote.[116] Many of these commenters suggested that these disclosures, or fund securities lending practices in general, would provide an incomplete picture of the securities lending activities and could be viewed in a negative light, for example by market data firms that provide environmental, social, and governance (''ESG'') rankings, which may consider these disclosures in forming their ESG rankings.[117] Some commenters asserted that reporting persons may programmatically recall lent shares to avoid a negative implication, resulting in negative impacts both to the reporting person and the securities lending market in general.[118] A number of commenters recommended that, instead of the proposed quantitative disclosure, we require a narrative discussion to provide investors additional context, such as disclosure of the reporting person's policies and procedures for determining whether to recall lent shares ahead of a proxy vote.[119]

The disclosure of the number of shares the reporting person loaned and did not recall will provide transparency on a specific, security-by-security basis. Absent this disclosure, investors would not have quantified information showing how securities lending may have impacted the degree of proxy voting by the reporting person.[120] As a result, we believe that the quantitative disclosure in the final amendments will provide important information to investors and that it is consistent with other information provided on Form N–PX in enabling shareholders to monitor how the reporting person voted on a particular voting matter.[121] For these reasons, we believe that the costs to respondents in providing the quantitative disclosures are justified in light of the increased level of information and transparency provided to investors.

We appreciate that the quantitative disclosures, alone, will not provide the full context of a decision of whether to recall a security on loan. An adviser must make a determination regarding whether to retain a security and vote the accompanying proxy or lend out the security that is in the client's best interest.[122] The considerations underlying this analysis will not be reflected in the disclosed number of shares on loan and not recalled. Reporting persons will, however, have the option to provide this or other information on Form N–PX. The form as amended permits a reporting person to provide additional information on the cover page and/or on a vote-by-vote basis.[123] This flexibility will facilitate a reporting person's ability to provide additional information about a particular vote, such as with respect to portfolio securities on loan, or about the reporting person's voting practices in general, if the reporting person so chooses. For example, in a given case where a fund did not recall loaned securities, the fund could disclose that not recalling the shares provided the fund with additional revenue in order to show the benefits fund shareholders received by leaving the securities out on loan. Therefore, although some commenters were concerned that the quantitative disclosure alone would not provide full context, a reporting person with this concern will have the option to provide additional information about its process for determining whether to recall lent shares ahead of a proxy vote in order to provide investors with additional context in cases where the reporting person believes the information is helpful.

We do not believe that the narrative discussion or disclosure of the reporting person's policies and procedures for determining whether to recall lent shares ahead of a proxy vote that some commenters suggested would be an adequate substitute for the quantitative disclosure we are adopting.[124] The commenters' alternative would not provide investors with an understanding of the specific number of shares a reporting person has or has not recalled to vote a proxy, which is important to understand the relationship between securities lending and proxy voting. While a narrative discussion or disclosure of the reporting person's policies and procedures may provide some overall context, it may be difficult for investors to understand how the narrative disclosures suggested by commenters relate to the reporting person's voting record disclosed on the form, particularly if that disclosure applies to a number of funds covered in the report, or is otherwise not specific to any vote. Under the final amendments to Form N–PX, in contrast, reporting persons will be permitted to provide optional narrative disclosure in their reports alongside the required quantitative disclosure, which can be provided on a vote-by-vote basis or on their voting record as a whole.

Finally, we recognize that an adviser and its client may agree that the adviser would not vote due to the opportunity costs of recalling the loaned securities in order to vote and that it can be in the client's best interest not to recall the loaned securities.[125] There are legitimate reasons why an adviser or other reporting person may decide not to recall any loaned securities. The quantitative disclosure we are adopting is designed to provide investors with additional information about a reporting person's proxy voting activities. The

[114] *See, e.g.,* Better Markets Comment Letter (''Form N–PX does not currently account for loaned securities that are not recalled, a major loophole that the SEC should close as proposed. This will ensure that investors and the public have a more complete picture of how funds' and managers' securities lending activities, in search of revenue, impact their ability to vote shares in their investors' interests.''); Public Citizen Comment Letter; LTSE Comment Letter (''Having actual knowledge of the extent to which an investor retained its voting rights—or relinquished them by having loaned the shares—can help a company better understand its shareholder base.'') (footnote omitted); Morningstar Comment Letter; Bloomberg Comment Letter.

[115] *See, e.g.,* ISS Comment Letter; BlackRock Comment Letter; ICI Comment Letter I; MFDF Comment Letter; Utah Comment Letter.

[116] *See, e.g.,* TIAA Comment Letter; BlackRock Comment Letter; Comment Letter of the Securities Lending Council of the Risk Management Ascociation (Dec. 14, 2021) (''RMA Comment Letter''); Federated Hermes Comment Letter.

[117] *See, e.g.,* RMA Comment Letter; TIAA Comment Letter; Pickard Comment Letter; AIMA Comment Letter.

[118] *See, e.g.,* RMA Comment Letter; Federated Hermes Comment Letter; TIAA Comment Letter.

[119] *See, e.g.,* ISS Comment Letter; ICI Comment Letter I; IAA Comment Letter.

[120] *See* Proposing Release, *supra* footnote 5, at n.106 and accompanying text.

[121] *See* Proposing Release, *supra* footnote 5, at n.15 and accompanying text.

[122] *See* Proposing Release, *supra* footnote 5, at nn.104–105 and accompanying text; Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Investment Company Release No. 33605 (Aug. 21, 2019) [84 FR 47420 (Sept. 10, 2019)], at n.34 (''Proxy Voting Guidance''); *see also* BlackRock Comment Letter; TIAA Comment Letter.

[123] *See* Special Instruction B.4 to amended Form N–PX; Item 1(o) to amended Form N–PX. The disclosures permitted by these items are optional. A reporting person is not required to respond to Item 1(o) for any vote. If a reporting person does provide additional information for one or more votes, it is not required to provide this information for all votes.

[124] *See, e.g.,* RMA Comment Letter; Federated Hermes Comment Letter; TIAA Comment Letter.

[125] Proxy Voting Guidance, *supra* footnote 122, at n.34.

disclosure requirement is not intended to change the analysis reporting persons may undertake currently as to whether to recall a loaned security, such as by creating pressure for reporting persons to programmatically recall lent shares, or to create a negative implication when a reporting person does not recall a loaned security in any given case. Such determinations are subject to an adviser's fiduciary duties owed to its clients.[126] If a reporting person believes that leaving securities on loan is in the client's best interest, the reporting person should leave those securities on loan. Further, as discussed above, to the extent a reporting person believes additional narrative information may be helpful for investors to understand fully a determination whether to recall a loaned security and mitigate any perceived negative implications of this reporting, the reporting person will have the option of providing additional information on Form N–PX as amended.

Some commenters raised the concern that reporting persons are often not aware of the issues that will be voted on at a particular shareholder meeting at the record date because proxy materials often are not distributed until after that date, leaving reporting persons with limited information to make a determination as to whether to recall shares to vote proxies.[127] We understand that industry practices have developed that allow reporting persons to make informed decisions about voting matters and whether to recall loaned securities in these circumstances. For example, one commenter has previously told the Commission that, even though proxy statements often are sent after the record date, funds ''have long been in the business of loaning securities and have been able to develop methods to monitor corporate developments and make arrangements to recall shares in the event of a vote on a material matter'' and that it, at the time, did ''not believe it is essential for the Commission to adopt additional regulations to facilitate the recall of securities for voting purposes.'' [128] Reporting persons today already are analyzing whether to recall loaned securities, even though proxy materials may be distributed after the record date for a vote.[129] This disclosure is not intended to change that analysis.

Commenters also raised concerns that information about the number of shares on loan and not recalled may not be readily available in all cases. Specifically, some commenters stated that custodians do not always provide full information on the number of shares on loan with the proxy ballot, which reporting persons could use to provide the disclosure.[130] We recognize that practices may vary and that in some cases providing the disclosure may require coordination among reporting persons, custodians, proxy voting services providers, and others, as some commenters observed.[131] Disclosure requirements for reporting persons under the Federal securities laws often can require some degree of coordination amongst parties to produce required information, and we believe the costs associated with this quantitative disclosure are justified in light of the increased level of information and transparency provided to investors.

As proposed, the disclosure we are adopting will be required only where the reporting person has loaned the securities. The reporting person may have loaned such securities directly or indirectly through a lending agent.[132] However, the disclosures would not be required in scenarios where the manager is not involved in lending shares in a client's account, either directly or indirectly. For example, if a manager is not a party to the client's securities lending agreement and has not itself (rather than the client) loaned the securities, such as when a manager's prime broker has rehypothecated securities in a manager's margin account, then the manager would not be involved in decisions to lend securities or recall loaned securities for that account.[133]

Similarly, a manager will not exercise voting power over loaned securities when its client hires a securities lending agent to lend securities in the client's account and the manager has no involvement in the securities lending arrangement or in decisions to recall loaned securities.[134] In these cases, as when a client entirely directs a given vote, the manager would not report because the manager did not make a determination to lend a security in the first instance or to leave it on loan. Thus, the manager would not have any say-on-pay reporting obligations with respect to those loaned securities because it did not exercise voting power. Alternatively, if a reporting person has loaned securities and instructs its lending agent, custodian, or other service provider to recall lent shares but for various reasons those shares are not returned on time for a proxy vote, the reporting person would report these shares as being on loan but not recalled because they were not in fact recalled in time for the vote.[135] The reporting person may, however, choose to explain that it attempted to recall the securities in Item 1(o) of the amended form.

4. Additional Amendments to Form N–PX

We are adopting as proposed all but two of the proposed additional amendments designed to enhance the usability of Form N–PX reports and to modernize or clarify existing form requirements.

First, we are adopting as proposed the requirement for funds that have multiple series of shares to provide each series' Form N–PX disclosure separately by series.[136] We received no comments on this aspect of the proposal. This change will make Form N–PX disclosure easier to review and compare among reporting persons by allowing investors to focus on disclosure relevant to them, rather than to investors in other series.

We also are adopting as proposed the instruction requiring the information otherwise required or permitted to be reported on Form N–PX to be reported in the order presented on the form.[137] No commenters discussed this aspect of the proposal and we continue to believe it will make Form N–PX disclosure

[126] *See* Proxy Voting by Investment Advisers, Investment Advisers Act Release No. 2106 (Jan. 31, 2003), at 15 (stating that under the Advisers Act, ''an adviser is a fiduciary that owes each of its clients duties of care and loyalty with respect to all services undertaken on the client's behalf, including proxy voting,'' citing *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180 (1963)).

[127] *See, e.g.,* BlackRock Comment Letter; ICI Comment Letter I; AIMA Comment Letter.

[128] Comment Letter of the Investment Company Institute (Oct. 20, 2010) (regarding the concept release on the U.S. proxy system (File No. S7–14–10)).

[129] *See, e.g.,* AIMA Comment Letter; BlackRock Comment Letter (stating that in the United States, the record date of a shareholder meeting typically falls before the proxy mateirals are released).

[130] *See* BlackRock Comment Letter; ISS Comment Letter.

[131] *See* Glass Lewis Comment Letter; Broadridge Comment Letter.

[132] *See* Special Instruction D.7 to amended Form N–PX. To the extent a reporting person allocates a number of securities to the lending agent for lending purposes and treats that number of securities as being on loan when determining how many shares it can vote in a matter, the reporting person should report all of the allocated shares as being on loan and not recalled (excluding any shares the reporting person recalled for the vote).

[133] *Cf.* MFA Comment Letter (raising concerns about obtaining the required information in this scenario).

[134] *See supra* footnote 39 and accompanying text.

[135] *See* Item 1(j) of amended Form N–PX.

[136] Special Instruction D.9 to amended Form N–PX. For example, a fund that has multiple series of shares would provide Series A's full proxy voting record, followed by Series B's full proxy voting record.

[137] Special Instruction D.1 to amended Form N–PX.

easier to review and compare among reporting persons.[138]

We are not, however, adopting the proposed requirement to identify whether a voting matter is a proposal or a counterproposal. Some commenters who discussed this aspect of the proposal opposed it, stating that, in practice, the difference between a proposal or counterproposal would not always be clear.[139] After considering these comments, we agree that it may be challenging to distinguish between proposals and counterproposals, which could make this requirement challenging for reporting persons to implement and the information less useful for investors. In addition and discussed above, we are adopting requirements that will standardize the ways in which proxy voting matters are identified and require reporting persons to identify the category of each voting matter, both of which could assist investors in identifying the information they seek.

As proposed, the revised form will require that a reporting person disclose whether a vote was for or against management's recommendation.[140] Two commenters recommended that we remove this item, arguing that investors can determine this themselves if management's recommendation was disclosed as well.[141] It will be easier for investors to understand whether a reporting person voted for or against management's recommendation with this information, rather than trying to discern it from the other information reported on the form.

As proposed, we are amending Form N–PX to require a reporting person to report only one security identifier, the security's Committee on Uniform Securities Identification Procedures (''CUSIP'') number or International Securities Identification Number (''ISIN''), as opposed to the form's current requirement to report both a security's CUSIP and ticker symbol. Under the amendments, a reporting person will be required to report the security's CUSIP unless it is not available through reasonably practicable means. If the CUSIP number is not reported, then Form N–PX will require the security's ISIN, unless it also is not available through reasonably practicable means. We also are removing the current requirement to report the ticker symbol of a security, as proposed.[142]

In addition to proposing these changes related to security identifiers, the Commission also sought comment on whether to require an alternative identifier instead of, or in addition to, CUSIP, and we received several comments suggesting alternative identifiers.[143] In particular, some commenters requested that we use an open-source securities identifier, such as the security's Financial Instrument Global Identifier (''FIGI''), and one suggested concerns with CUSIP identifiers in particular due to concerns relating to CUSIP licensing fees.[144] Although we appreciate that CUSIPs have licensing fees, reporting persons are already subject to CUSIP reporting requirements, such as on Form 13F and Form N–PORT, and would therefore incur licensing costs associated with storing CUSIPs for their holdings even if CUSIPs were not required to be reported on Form N–PX. While the final rules will maintain the requirement to disclose CUSIP, we believe that providing the flexibility of reporting an additional security identifier, along with CUSIP, would be appropriate. CUSIP numbers and FIGIs are both able to provide the unique identification of a reported security in a manner that is standard across datasets.[145] Reporting persons choosing to report using FIGI would provide the share class level FIGI which, like CUSIP, is standard across exchanges.[146] Providing reporting persons with the option of reporting a FIGI, in addition to the mandatory CUSIP number, for some or all of the reporting person's securities will enhance the utility of holdings data reported on Form N–PX and the usefulness of such information to the Commission, other regulators, or members of the public and other market participants by allowing analysis based on FIGI where managers choose to report that identifier. For example, investors who analyze data reported on Form N–PX and that use FIGIs in their internal analyses could use the reported FIGIs without having to first convert a security's CUSIP number to a FIGI.

By contrast we are not amending the form to allow a reporting person to report the corresponding legal entity identifier (''LEI'') of the issuer of such security as one commenter suggested.[147] Because an LEI is an identifier of legal entities (such as issuers of securities reported on Form N–PX), rather than an identifier of securities, it would not provide comparable information to a CUSIP number or a FIGI.[148]

D. Joint Reporting Provisions

We are adopting, as proposed, amendments that permit reporting persons to report jointly their say-on-pay votes in three scenarios. Specifically, we will permit a single manager to report say-on-pay votes in cases where multiple managers exercise voting power. We are also permitting a fund to report a manager's say-on-pay votes on behalf of a manager exercising voting power over some or all of the fund's securities. Lastly, we are allowing two or more managers who are affiliated persons to file a single report on Form N–PX for all affiliated person managers within the group, notwithstanding that they do not exercise voting power over the same securities. In any of these instances, the non-reporting manager would be

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[138] One commenter did express that it generally supported the goal of formatting reports on Form N–PX consistently. *See* Vanguard Comment Letter. The requirement to report the required information in the order presented on Form N–PX is distinct from the requirement to report the votes themselves in the same order as they are displayed on the issuer's form of proxy, which we are also adopting. *Compare* Proposing Release, *supra* footnote 5, at n.112 and accompanying text and Special Instruction D.1 to amended Form N–PX *with* Proposing Release, *supra* footnote 5, at n.74 and accompanying text and Special Instruction D.3 to amended Form N–PX.

[139] *See* Blackrock Comment Letter; ISS Comment Letter. *But see* Bloomberg Comment Letter (suggesting that this is an important data point that should be given an XML or JSON tag as it may not be sufficiently clear to investors).

[140] This is conceptually similar to the current form's requirement, which requires that reporting persons identify whether the votes being disclosed represent votes for or against management. The changed wording is intended to more clearly describe what is being reported, that is, whether the reporting voted for or against management's recommendation.

[141] *See* Bloomberg Comment Letter; ISS Comment Letter.

[142] We proposed this change in response to a comment to the 2010 Proposing Release that recommended that a ticker symbol be required only if a CUSIP number was unavailable since certain securities listed on more than one exchange have multiple ticker symbols. *See* Proposing Release, *supra* footnote 5, at section II.C.4.

[143] *See, e.g.,* GLEIF Comment Letter (suggesting use of LEI).

[144] *See* XBRL Comment Letter (support for FIGI); Morningstar Comment Letter (same); Bloomberg Comment Letter (same); McRitchie Comment Letter (same); IAA Comment Letter (specific concerns with CUSIP).

[145] FIGI is an open-sourced, non-proprietary, data standard for the identification of financial instruments across asset classes. FIGI allows users to link various identifiers for the same security to each other, which includes mapping the CUSIP number of a security to its corresponding FIGIs. *See* Object Management Group Standards Development Organization, Financial Instrument Global Identifier, *available at https://www.omg.org/figi/*.

[146] *See* About OpenFigi, *available at https://www.openfigi.com/about* (stating that the Share Class level FIGI is assigned to equities and enables users to link multiple FIGIs for the same instrument in order to obtain an aggregated view for that instrument across all countries globally).

[147] *See* GLEIF Comment Letter.

[148] *See* Introducing the Legal Entity Identifier (LEI), *available at https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei* (stating that the LEI ''connects to key reference information that enables clear and unique identification of legal entities participating in financial transactions''). *Cf. supra* section II.E.

required to file a ''notice'' or ''combination'' Form N–PX report that identifies each manager or fund reporting on its behalf.[149] We also are making certain technical amendments to Form N–PX to specify on whose behalf reporting is being made and to permit the reporting of votes by parties other than the reporting person.

We are adopting, as proposed, a number of technical changes to facilitate joint reporting. Specifically, in all three cases, the non-reporting manager's notice or combination report on Form N–PX will have to identify the other managers or funds reporting on its behalf.[150] In addition, where another reporting person reports say-on-pay votes on a manager's behalf, the report on Form N–PX that includes the non-reporting manager's votes would be required to identify that manager (and any other managers) on whose behalf the filing is being made on the Summary Page. Further, we will require a manager to report the number of shares the manager is reporting on behalf of another manager pursuant to the joint reporting provisions separately from the number of shares the manager is reporting only on its own behalf. A manager will also be required to separately report shares when the groups of managers on whose behalf the shares are reported are different. For example, if the reporting manager is reporting on behalf of Manager A with respect to 10,000 shares and on behalf of Managers A and B with respect to 50,000 shares, then the groups of 10,000 and 50,000 shares must be separately reported. Similarly, a fund will be required to report separately shares that are reported on behalf of different managers or groups of managers.[151]

This approach is designed to allow managers' clients and investors to easily search for all votes where the manager exercised voting power, whether or not those votes are reported on the manager's own Form N–PX. Use of the joint reporting provisions is optional, however, and reporting persons can elect to report the relevant say-on-pay votes individually instead of relying on the joint reporting provisions. If a manager does not rely on the joint reporting provisions, it would not be subject to the disclosure requirements tied to joint reporting that facilitate identification of all of a manager's say-on-pay votes. In such case, the manager's report on Form N–PX would provide its complete proxy voting record for say-on-pay votes during the reporting period, without reference to any other reports on Form N–PX, and would not include any votes where the manager did not exercise voting power. This requirement is designed to further our goal of providing meaningful information to investors by allowing investors to clearly see how a particular manager exercised voting power.

As discussed in the Proposing Release, we believe that joint reporting will implement the statutory mandate to require say-on-pay vote reporting and mitigate potentially confusing duplicative reporting.[152] It should also reduce the reporting burden for reporting persons by permitting them to either divide reporting responsibility among themselves or to report individually, creating operational efficiencies for reporting persons without negatively impacting the quality or accessibility of the information they report on Form N–PX. The votes of each relevant manager will be identifiable under the joint reporting framework since the amendments require reporting persons that are reporting say-on-pay votes on behalf of other managers (including a fund on behalf of their sub-advisers) to separately report the number of shares being reported for those other managers.[153] The requirement to submit Form N–PX reports in a structured data format also will allow for the joint reporting data to be sorted and filtered in a manner that gives investors the ability to view votes by each relevant manager.

Commenters who addressed these amendments generally supported them.[154] One commenter, however, stated that each reporting person should be required to make its own report, though that commenter did not object to joint filing if voting information was transparent and provided for each voting entity.[155] As discussed, reporting persons that rely on the joint reporting provisions must identify all managers included in the report and separate reporting of the shares reported on behalf of the non-reporting managers. One commenter suggested that a manager completing Form N–PX should not be required to separately identify the relevant managers for each vote and, instead, should be allowed to jointly report say-on-pay votes without separate attribution to each specific manager.[156] This commenter suggested that allowing large groups of affiliated managers to aggregate votes would be less complex and burdensome and would avoid providing unnecessary detail regarding the underlying portfolio to persons who are neither clients nor investors associated with the managers. We are not making this change because we do not believe that aggregated data is consistent with section 14A, as investors would be unable to determine in such circumstances how each manager voted.

E. The Cover Page

We are adopting the amendments to the cover page of Form N–PX largely as proposed, but with some changes intended to increase the efficiency of filing for reporting persons. The amendments are designed to address the addition of managers as a class of reporting persons and to facilitate the joint reporting provisions we are adopting. As proposed, we are adopting amendments to require reporting persons to identify more clearly whether the reporting person is a fund or a manager and the type of report being filed. Also, as proposed, managers will be required to disclose on the cover page the name of the reporting person, the address of its principal executive offices, the name and address of the agent for service, the telephone number of the reporting person, identification of the reporting period, and the reporting person's file number. In addition, managers will be required to provide their Central Registration Depository (''CRD'') number and other SEC file number, if any. In a change from the proposal, and as detailed below, we have expanded the types of ''notice'' reports relative to those in the proposal.[157] Specifically, reporting

[149] If the manager is relying upon another manager or a fund to report all of its say-on-pay votes, it would file an ''Institutional Manager Notice Report,'' whereas if the manager is reporting some votes but is relying on another manager or a fund to report others, it would file an ''Institutional Manager Combination Report.'' *See* Special Instructions B.2.d and B.2.e to amended Form N–PX.

[150] General Instructions C.5 and C.6 to amended Form N–PX; Special Instructions C.2 and D.6 to amended Form N–PX.

[151] Special Instruction D.6 to amended Form N–PX. Reporting persons will not be required to report shares separately when they are not relying on the joint reporting provisions, even if another manager exercised voting power over some of the shares reported.

[152] *See* Proposing Release, *supra* footnote section 5, at section II.D.1 (noting that section 14A(d) generally requires managers to report say-on-pay votes and stating that ''we believe that allowing consolidated reporting in this manner would yield reported data that would be at least as useful as separately reported data while reducing burden for reporting persons who may prefer to report jointly.'').

[153] *See* Special Instruction D.6 to amended Form N–PX.

[154] *See, e.g.,* Pickard Comment Letter; ICI Comment Letter I; Bloomberg Comment Letter.

[155] *See* Morningstar Comment Letter.

[156] *See* MFA Comment Letter.

[157] The proposal provided check boxes for ''Registered Management Investment Company,''

Continued

persons will be required to check a box in order to identify the report as one of the following types:

- ''Fund Voting Report:'' to be used when the fund holds one or more securities it is entitled to vote. As proposed, this reporting type is for registered investment companies with votes to report. In a change from the proposal, we changed the title of the report type from ''Registered Management Investment Company Report'' to ''Fund Voting Report.'' We are adopting a clearer name that reflects that this fund report, in contrast to the newly added Fund Notice Report type, contains a report of the fund's votes;
- ''Fund Notice Report:'' to be used when the fund does not hold any securities it is entitled to vote. Under the proposal, if a reporting person did not have any proxy votes to report for the reporting period, the reporting person would have been required to file a report with the Commission stating that fact. In a change from the proposal, rather than requiring a fund to file with the Commission a report stating the fact that it had no proxy votes to report, under the amendments the fund would instead indicate: (i) that the fund has no votes to report by ticking this box on the cover page; and (ii) file only the cover page, required signature, and information about the series on the summary page. This change only relates to the manner in which the information is provided and does not change the scope of what is to be reported. Ticking a box on the cover page will be more efficient for funds than affirmatively stating they have no votes to report. This approach will be more efficient for investors because they can identify a fund that does not vote via a check box on the cover page, as opposed to having to review the report and find the manager's affirmative assertion that it has no votes to report;
- ''Institutional Manager Voting Report:'' to be used when a manager is reporting all of its proxy votes that are required to be reported in a single report. As proposed, this reporting type is for managers when the report contains all say-on-pay votes of the manager;
- ''Institutional Manager Notice Report:'' to be used when the report contains no say-on-pay votes of the manager. As proposed, a manager would use the notice report option when all of its say-on-pay votes are reported by other managers or funds under the joint reporting provisions. In a change from the proposal, a manager also will be permitted to file a notice report in two additional circumstances. First, consistent with the addition of a fund notice report, a manager that does not exercise voting power for any reportable voting matter during the reporting period and therefore does not have any proxy votes to report would file a notice report and indicate this fact on the cover page. This should be more efficient for managers and investors than requiring managers to affirmatively state they have no votes to report. Second, as discussed above, Form N–PX as amended will allow managers that have a disclosed policy of not voting proxies and that did not vote during the reporting period to indicate this on the form without providing additional information about each voting matter individually. We are making a conforming change, based in part on a suggestion from a commenter, on the cover page to allow a manager to indicate that it is filing a notice report, and therefore not providing additional information about each voting matter individually, because it is relying on this reporting option; [158]
- ''Institutional Manager Combination Report:'' to be used when the report contains some say-on-pay votes of the manager but additional votes are reported by other managers or funds under the joint reporting provisions. As proposed, this reporting type addresses situations in which the manager is reporting some say-on-pay votes and other votes are reported by other managers or by funds.

Any ''notice'' or ''combination'' report will include on the cover page a list of the file numbers and names, as well as CRD numbers (if any), of any other managers and funds whose Form N–PX reports include say-on-pay votes of the reporting manager.[159]

Commenters generally supported the proposed changes to the Form N–PX cover page.[160] However, in response to a request for comment regarding the inclusion of additional information on the cover page such as an LEI, some commenters suggested that we require certain reporting persons to list additional identifiers, including LEIs, on the Form N–PX cover page.[161] This additional information will be helpful in identifying the reporting person, whether a fund or a manager. Therefore, in a change from the proposal, we will require that all reporting persons that have an LEI report that information on the Cover Page.[162]

F. The Summary Page

We are adopting, largely as proposed, amendments to add a new summary page to Form N–PX to facilitate the joint reporting framework we are adopting and to enable investors to readily identify which fund series are intended to be covered by the report as well as any managers (besides the reporting person) (''included managers'') with say-on-pay votes included on the Form N–PX report. The summary page will be required on all Form N–PX reports by funds as well as manager ''voting'' and ''combination'' filings.[163]

Commenters who addressed this aspect of the proposal generally supported the new Form N–PX summary page as proposed.[164] In addition, one commenter responded to a request for comment in the proposing release asking if the Commission should require other information, such as a series' LEI, that would enable investors to identify which funds a report covers more easily. The commenter suggested that we require that funds disclose the LEI for each series of the fund on the basis that it would assist investors in identifying and analyzing parent-subsidiary relationships.[165] After considering this comment, we are amending the Form N–PX summary page to include a section that requires funds to identify the LEI for the fund series. The LEI would be in addition to the other information about the fund series in the proposal, including the series identification number and series name. We agree that the LEI would help investors identity the funds covered in the report, and funds already have LEIs because we currently require each series to report its LEI in other reports to the Commission.[166] In light of this change with respect to funds, we are also

''Institutional Manager Voting,'' ''Institutional Manager Notice,'' and ''Institutional Manager Combination'' reports.

[158] *See* MFA Comment Letter.

[159] Special Instruction B.2 to amended Form N–PX.

[160] *See* Morningstar Comment Letter; MFA Comment Letter.

[161] *See* Morningstar Comment Letter; Bloomberg Comment Letter.

[162] While the request for comment, and commenters, only identified managers for this item, we do not see a reason to distinguish between funds and managers on this point. *See infra* footnotes 165–166 and accompanying paragraph.

[163] *See* Special Instructions B.2.a–d to amended Form N–PX. The summary page would not be required in a ''notice'' report by managers because, since the notice report would not contain any say-on-pay votes at all, it would not report any say-on-pay votes of other managers.

[164] *See* Morningstar Comment Letter; MFA Comment Letter.

[165] *See* Morningstar Comment Letter (suggesting the inclusion of a fund series' LEI on the summary page). Although another commenter advocated against including LEIs for funds' series because series LEIs do not exist, funds currently report series LEI in other Commission reports, including Form N–PORT. *See* Bloomberg Comment Letter.

[166] *See* Item A.2 of Form N–PORT.

amending the Form N–PX summary page to require that included managers identify their LEI, if any. Although no commenter specifically suggested that LEIs of other managers whose information is included in the report under the joint reporting provisions be reported on the summary page, we solicited comment in the proposal as to whether there was any other information that additional managers should provide. In light of the comments related to the addition of LEI for fund series, we believe investors could similarly benefit if included managers provided their LEI, if any, as well.[167]

The required summary page information will assist investors in identifying on a Form N–PX report the relevant managers or series associated with the reported votes by providing a standardized approach to the reported data, making it easier to access and review, while at the same time permitting reporting persons to reduce their reporting burden and avail themselves of the joint-report framework. The summary page will require reporting persons to identify the names and total number of included managers with say-on-pay votes included in the report in list format. The instructions to Form N–PX specify the contents of this information, including the title, column headings, and format.

If a Form N–PX report includes the say-on-pay votes of included managers, the summary page list would be required to include all such managers together with their respective Form 13F file numbers and, if they exist, any CRD numbers, LEI, and other SEC file numbers.[168] In addition, and similar to Form 13F, reporting persons must assign a number (which need not be consecutive) for each such manager, and present the list in sequential order.[169] These numbers will help identify the particular managers who exercised the power to vote the securities. While we anticipate that the sequential numbering requirement will make the list easier to use, the amendments permit non-consecutive numbering to allow managers to retain the same number across filings of different reporting persons and different time periods. If a Form N–PX filing does not disclose the proxy votes of an included manager, the reporting person would enter the word ''NONE'' under the title and would not include the column headings and list entries. To the extent a fund's report on Form N–PX includes the votes of multiple series, the summary page would require the name, the series identifier, and LEI of each series.

G. Form N–PX Reporting Data Language

We are adopting, as proposed, amendments to require reporting persons to file reports on Form N–PX in a structured data language.[170] The amendments require that Form N–PX reports be filed in a custom eXtensible Markup Language (''XML'') -based structured data language created specifically for reports on Form N–PX (''custom XML'').[171] Reports on Form N–PX are currently required to be filed in HTML or ASCII.[172] As stated in the proposal, use of a custom XML language will make it easier for reporting persons to prepare and submit the information required by Form N–PX accurately and, additionally, increase the utility of the information submitted. To further increase the accessibility of Form N–PX data, we are developing electronic ''style sheets'' that, when applied to the reported XML data, will present Form N–PX data in human-readable form.

Many commenters supported the use of structured data for Form N–PX filings.[173] Many commenters suggested that the unstructured data format of current Form N–PX disclosure is difficult to interpret and analyze.[174] Some commenters suggested that structured data language would allow investors to search, aggregate, and analyze the reported data more easily.[175] One commenter, however, generally opposed the proposal on the basis that the existing disclosure regime and the current ability of data aggregators to assess proxy voting information were sufficient.[176]

As stated in the Proposing Release, the use of structured data on Form N–PX should make it easier for reporting persons to prepare and submit information on the form accurately and increase the utility of the information submitted.[177] Currently, reporting persons generally need to reformat required information prior to submission of Form N–PX, including stripping out incompatible metadata related to normal business uses. However, this process is not necessary when using an XML-based reporting data language. Further, using an XML-based reporting language permits the Commission to provide a web-based reporting application for Form N–PX, which would not be possible currently. The use of structured data should also result in reported data that is sufficiently standardized to make structured data useful for interested parties.[178]

In addition, the current requirement to file Form N–PX in HTML or ASCII is not suitable for automated validation or aggregation. In contrast, the custom XML data language will allow investors to aggregate and analyze reported data in a much less labor-intensive manner.[179] Also, while certain Form N–PX data may be available commercially by third-parties, users of third-party data may also benefit if the costs associated with third-party data analysis—and the costs to users to access that data—fall as a result of the structured data requirement, or if this

[167] *See* Proposing Release, *supra* footnote 5, at section II.D.3.

[168] The SEC file number would be any file number (*e.g.,* 801–, 8–, 866–, 802–) assigned by the Commission to the manager other than the manager's 13F file number. *See* Special Instruction B.3 to amended Form N–PX.

[169] *See* Special Instruction 8.b to Form 13F.

[170] *See* General Instruction D.2. to amended Form N–PX (specifying that reporting persons must file reports on Form N–PX electronically on the Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR''), except as provided by the form's confidential treatment instructions, and consult the EDGAR Filer Manual for EDGAR filing instructions). *See also* 17 CFR 232.301 (requiring filers to prepare electronic filings in the manner prescribed by the EDGAR Filer Manual). We are also amending rule 101(a)(1)(iii) of Regulation S–T to provide that reports filed pursuant to section 14A(d) of the Exchange Act must be submitted in electronic format. Reports filed pursuant to section 30 of the Investment Company Act are already subject to electronic filing. *See* rule 101(a)(1)(iv) of Regulation S–T.

[171] This would be consistent with the approach used for other XML-based structured data languages created by the Commission for certain EDGAR Forms, including the data languages used for reports on each of Form N–CEN, Form N–PORT, and Form 13F.

[172] *See* Regulation S–T, 17 CFR 232.101(a)(1)(iv); 17 CFR 232.301; EDGAR Filer Manual (Volume II) version 62 (June 2022), at 5–1 (requiring EDGAR filers generally to use ASCII or HTML for their document submissions, subject to certain exceptions).

[173] *See, e.g.,* Morningstar Comment Letter (''As demonstrated by other examples, such as Forms NFP, N–CEN, and N-Port, there is significant value in using a structured data language.''); ICI Comment Letter I; Blackrock Comment Letter; Bloomberg Comment Letter.

[174] *See, e.g.,* Ceres Comment Letter; SCERS Comment Letter; Blackrock Comment Letter; Bloomberg Comment Letter; LTSE Comment Letter; CFA/CII Comment Letter; McRitchie Comment Letter III.

[175] *See* Morningstar Comment Letter; XBRL Comment Letter; Blackrock Comment Letter (''[U]se of an XML-based format would make the N–PX data more consistent, usable, and accessible.''); Bloomberg Comment Letter; CFA/CII Comment Letter.

[176] *See* MFDF Comment Letter.

[177] *See* Proposing Release, *supra* footnote 5, at the text following n.169.

[178] *See* Proposing Release, *supra* footnote 5, at the text accompanying n.175.

[179] *See id.* at the text following n.177. Some investors review funds' voting practices by accessing Form N–PX reports directly on EDGAR, while others may obtain information about funds' voting practices through analysis or synthesis of Form N–PX reports by data aggregators or others. A variety of market participants and other stakeholders also use data reported on Form N–PX. *See id.* at n.10.

requirement facilitates additional third-party data analyses for the benefit of investors. The structured data requirement would likely improve any third-party analyses of voting information and, in doing so, potentially benefit investors through reduced costs for accessing those third-party analyses.

Several commenters specifically supported requiring the use of custom XML language to file Form N–PX reports.[180] These commenters generally agreed that use of an XML-based structured data language would make the Form N–PX information more accessible and useful to interested parties.[181] Some other commenters suggested the use of other structured data languages besides XML. Two of these commenters suggested the use of JavaScript Object Notation (''JSON'') as the structured data language on the basis that XML is not frequently used and that JSON involves smaller file sizes, does not require specialized tools, and is more user-friendly.[182] Other commenters suggested use of eXtensible Business Reporting Language (''XBRL'') language on the basis that XBRL could utilize various built-in taxonomies that include certain identifying information, would have smaller file sizes, and would be easier for other analytical applications and data collection systems to read.[183] One commenter suggested use of XBRL–CSV on the basis that issuers could use the same applications they use today to prepare their financials and that end users of the data could leverage the same tools they currently use to extract financial statement data from SEC reporting entities.[184] Some commenters also offered suggestions about ways to address the size of Form N–PX files, such as establishing a file size limit so that computer and software memory constraints do not impede data processing or accessibility, or that each series be required to file separately.[185]

The use of a custom XML language for Form N–PX will minimize reporting costs while yielding reported data that would be more useful to investors.[186] In our experience, we have found that XML-based structured data languages for EDGAR filings allow investors to aggregate and analyze reported data in a streamlined manner. Concerns related to file size issues and the related suggestion by some commenters to require each series to file separately will be addressed by our adoption of the custom XML language for Form N–PX because the XML-based structured data language substantially reduces the size of both the submitted forms and the human-readable information available to investors to review. In addition, the use of custom XML is consistent with other Commission forms, particularly Form 13F, Form N–CEN, and Form N–PORT, such that it should be familiar both to reporting persons and investors. The Commission has also developed web-based reporting applications that allow persons without structured data expertise to file custom XML documents on EDGAR, while still permitting reporting persons with structured data expertise to submit filings directly to EDGAR in the applicable custom XML data language. By contrast, no EDGAR filings are currently filed using JSON or comma-separated values format (''CSV''), and the EDGAR system currently does not accept these formats.[187] Furthermore, with respect to XBRL–CSV, the Commission believes using the XBRL data model to define the elements and relationships featured in Form N–PX would add unnecessary complexity because Form N–PX consists of a relatively simple two-dimensional set of rows and columns, and does not feature any complex interlinking relationship among different rows. In addition, XBRL–CSV is not likely to create significant efficiencies in preparing and using managers' Form N–PX data because only a small number of managers are subject to a reporting requirement to file XBRL disclosures with the Commission.[188]

Custom XML will not significantly impact either the filing process or the accessibility of the data. In addition to using structured data to allow investors to aggregate and analyze the reported data efficiently, the electronic ''style sheets'' we are developing will present Form N–PX data in a human-readable form for the benefit of investors who review Form N–PX reports on the Commission's EDGAR system. Commenters who discussed the proposed use of Commission-developed style sheets supported them on the basis that style sheets would reduce the costs of filing reports on Form N–PX and make them more accessible and user-friendly.[189]

Some commenters raised issues related to the timing for the implementation of the custom XML language. Some commenters suggested that the Commission provide the custom XML taxonomy in advance of the compliance date to provide reporting persons with time to implement the structured data language and that we offer a beta period so that reporting persons can test filings in advance of the compliance date.[190] We agree that reporting persons could benefit from a testing period that allows advance access to the various technical specifications for the custom XML reporting language and permits test filings using the EDGAR system. Therefore, there will be an EDGAR pilot that will provide reporting persons the opportunity to test the custom XML filing process in advance of the effective date of the amendments.[191]

H. Time of Reporting

As proposed, funds will continue to be required to report their proxy voting records, and managers will be required to report say-on-pay votes, annually on Form N–PX no later than August 31 of each year for the most recent 12-month period ended June 30. This reporting timeframe for managers—and retaining the current reporting timeframe for funds—seeks to appropriately balance the benefits of prompt reporting and the burdens associated with that reporting.[192]

Comments were mixed as to whether we should retain the current reporting frequency for funds and apply it to managers. A number of commenters supported these time frames and opposed more frequent reporting.[193] These commenters stated that more frequent reporting was unnecessary and would not provide meaningful information to investors because most

[180] *See, e.g.,* Morningstar Comment Letter; Federated Hermes Comment Letter; AIMA Comment Letter; Vanguard Comment Letter; Blackrock Comment Letter.

[181] *See id.*

[182] *See* Bloomberg Comment Letter; *see also* Morningstar Comment Letter.

[183] XBRL Comment Letter; GLEIF Comment Letter.

[184] *See* XBRL Comment Letter.

[185] *See* Morningstar Comment Letter; Bloomberg Comment Letter; Rhee Comment Letter.

[186] *See* Proposing Release, *supra* footnote 5, at section II.E.

[187] *See supra* footnote 172.

[188] *See* 17 CFR 232.405(b) (not applying the requirement to file an Interactive Data File consisting of financial statements to registered management investment companies). Based on structured data from EDGAR filings, less than 5% of Form 13F filers in the second quarter of 2022 also filed XBRL financial statements over the same period. *See* DERA Data Library, *available at https://www.sec.gov/dera/data.*

[189] *See* ICI Comment Letter I; Federated Hermes Comment Letter.

[190] *See* ICI Comment Letter I (stating that reporting persons need sufficient time to incorporate the custom XML taxonomy into their systems and perform test filings); XBRL Comment Letter.

[191] For additional information regarding the EDGAR filing process and the current technical specifications, *see https://www.sec.gov/edgar/filer-information.*

[192] *See also* Proposing Release, *supra* footnote 5, at section II.F.

[193] *See, e.g.,* ICI Comment Letter I, Federated Hermes Comment Letter, MFA Comment Letter.

proxy votes occur during the second quarter of the calendar year (''Proxy Season'').[194] One also stated that the information produced on Form N–PX can take a significant amount of time to process in highlighting the need for the 60-day period between the end of the reporting period and the deadline for filing the form.[195]

Other commenters, however, urged that we require prompt or real-time disclosure of votes.[196] One commenter stated that accountability requires full and timely transparency of votes.[197] Several suggested technological solutions that would automate the process of providing this information to avoid additional costs of this more frequent reporting.[198]

According to our analysis, over 60% of proxy votes conducted by Russell 3000 components in 2020 and 2021 happened during Proxy Season, whereas only 9% to 16% of votes occur in any other given calendar quarter.[199] Proxy Season ends on the same day as the end of the reporting period covered by the form, June 30, and reporting persons will continue to have 60 days to compile and file the form from that date. As a result, annual reporting will timely capture a significant percentage of the votes cast by reporting persons.[200] In addition, although not required, funds can choose to disclose their proxy votes more frequently than annually, for example on their websites, to provide enhanced transparency and facilitate greater insight into the fund's proxy voting activities. We also believe that the 60-day delay between the end of the reporting period and the deadline for filing the form continues to be appropriate and we are not adopting a shorter period to require more prompt reporting, particularly in light of the additional items that we are requiring on the amended form and for smaller funds or managers.

Some commenters suggested that funds or managers also should be required to provide some pre-vote transparency to investors, or that funds be required to seek the views of their investors before voting proxies.[201] These commenters suggested that this is necessary to provide accountability to these entities. We are not mandating that funds and managers disclose their intended votes on a prospective basis, nor are we requiring funds to seek the views of their investors before voting proxies, as both of these approaches raise questions that are distinct from those associated with reporting a fund or manager's voting record and that would benefit from further consideration. Moreover, reporting persons that are funds and registered investment advisers are currently required to describe their proxy voting policies and procedures.[202] Investors also can use the other reforms that we are adopting to help provide accountability, for example, by using the structured data in Form N–PX to monitor voting trends over time.[203] However, the adopted amendments will not restrict a manager's or fund's ability to voluntarily provide pre-vote transparency or survey investors.

I. Requests for Confidential Treatment

We are adopting, substantially as proposed,[204] instructions in Form N–PX that allow managers to request confidential treatment of proxy voting information consistent with rule 24b–2. The required content, procedures for filing both the request itself and information that is no longer entitled to confidential treatment, and the standard for approving such requests will be the same as for confidential treatment requests under section 13(f) of the Exchange Act.[205]

In addition, and consistent with recent amendments to Form 13F, confidential treatment requests regarding Form N–PX will be required to be filed electronically via EDGAR.[206] This is consistent with the Commission's statement in the proposing release that the instructions on Form N–PX provide that a reporting person requesting confidential treatment of information filed on Form N–PX should follow the same procedures set forth in Form 13F for filing confidential treatment requests.[207] Managers seeking

[194] *See* Federated Hermes Comment Letter (''[m]ore frequent submissions of vote reporting would result in periods of relatively fewer votes reported followed by a surge in vote data relating to the peak voting period which for most markets occurs during the spring''); ICI Comment Letter I.

[195] *See* ICI Comment Letter I.

[196] *See, e.g.,* Betterment Comment Letter; Comment Letter of the Board Director Training Institute of Japan (Dec. 14, 2021); Bloomberg Comment Letter; *see also* Morningstar Comment Letter (suggesting quarterly reporting).

[197] Shareholder Commons Letter; *see also* McRitchie Comment Letter (suggesting that current Form N–PX reporting frequency can produce data that is seen as out of date when filed).

[198] *See* Bloomberg Comment Letter; McRitchie Comment Letter.

[199] Our analysis is based on shareholder meeting dates in calendar year 2020 and 2021 for the Russell 3000 Index. This index measures the performance of the largest 3,000 U.S. companies representing approximately 96% of the investable U.S. equity market, as of the most recent reconstitution. *See* The Russell 3000 Index Fact Sheet, *available at https://www.ftserussell.com/products/indices/russell-us.* This information is provided to the Commission staff by a third party that provides proxy voting services.

[200] Alignment with Proxy Season is also why we decline, as suggested by one commenter, to align the annual deadline for managers reporting say-on-pay votes with that for Form 13F (December 31). *See* AIMA Comment Letter.

[201] *See, e.g.,* Reid Comment Letter; Mercatus Comment Letter; McRitchie Comment Letter.

[202] *See, e.g.,* rule 206(4)–6(c); Item 17(f) of Form N–1A; Item 18.16 of Form N–2.

[203] *See, e.g.,* rule 206(4)–6(c); Item 17(f) of Form N–1A; Item 18.16 of Form N–2.

[204] We are making corresponding changes to paragraphs (a)(1) and (d) of Rule 101 of Regulation S–T and rule 24b–2 to effectuate the electronic submission of these requests as discussed below. *See infra* footnote 206 and accompanying text. We have also revised the final Form N–PX confidential treatment instructions in order to make them consistent with amendments to Form 13F that we have adopted since the proposal. *See* Electronic Submission of Applications for Orders Under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV–NR; Amendments to Form 13F, Release No. 34–95148 (June 23, 2022) [87 FR 38943 (June 30, 2022)] (''E-Filings Release''). Also, consistent with Form 13F, we added a check-box to indicate when information has been omitted due to a request for confidential treatment. These changes are consistent with the Confidential Treatment Instructions to proposed Form N–PX that would have required a reporting person to file all requests for and information subject to the request in accordance with the instructions for information filed on Form 13F and are intended to provide an opportunity for managers to protect confidential information from being disclosed on Form N–PX in the same circumstances managers can make a confidential treatment request for information reported on Form 13F. *See* Confidential Treatment Instruction 3 of proposed Form N–PX; *see also* Proposing Release, *supra* footnote 5.

[205] Section 13(f)(4) of the Exchange Act provides that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of information filed on Form 13F in accordance with the Freedom of Information Act. Section 13(f)(4) also provides that any information filed on Form 13F that identifies the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) shall not be disclosed to the public. Section 13(f)(5) of the Exchange Act additionally provides that, in order to grant confidential treatment under section 13(f), the Commission must determine that such action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets.

[206] The Commission recently adopted amendments to require electronic filing of, among others, the confidential treatment requests made in conjunction with Form 13F. *See* E-Filings Release, *supra* footnote 204.

[207] The Commission stated in the Proposing Release that the Form N–PX confidential treatment instructions were ''designed to provide a similar opportunity to prevent confidential information that is protected from disclosure on Form 13F from being disclosed on Form N–PX'' and that [Form N–PX's] ''instructions provide that a person requesting confidential treatment of information filed on Form N–PX should follow the same procedures set forth in Form 13F for filing confidential treatment requests.'' *See* Proposing Release, *supra* footnote 5. The Commission also requested comment in the Proposing Release as to whether the Commission should ''require reporting persons to file confidential treatment requests for Form N–PX in the same manner as Form 13F requires.'' *Id.* While the Commission did not receive any comments relevant to this specific point, a commenter on the E-Filings Release urged ''the SEC to replace other outdated paper filing requirements with electronic

Continued

confidential treatment with respect to information on Form N–PX already will be required to file any confidential treatment requests related to Form 13F on EDGAR. Also, any confidential treatment requests a manager files with respect to Form N–PX will be subject to the same standards in determining whether to approve the request, as discussed below in this section of the release. Requiring managers to file Form N–PX confidential treatment requests on EDGAR therefore provides a consistent process for a manager seeking confidential treatment, whether the information is reported on either or both of Form 13F and Form N–PX. As adopted, the confidential treatment instructions to Form N–PX only refer to managers.[208] While the instructions in the Proposing Release referred to ''reporting persons,'' the Proposing Release also stated that the Commission was not aware of any situation in which confidential treatment would be justified under rule 24b–2 for information filed by funds on Form N–PX, as the form did not include any confidential treatment instructions prior to these amendments and, apart from Form N–PX, funds already disclose their portfolio holdings.[209] We requested comment in the Proposing Release on whether we should allow funds to request confidential treatment under some circumstances and we received no comments on this subject.

One commenter suggested we automatically extend confidential treatment for a vote on Form N–PX if we have granted it for a position on Form 13F or, alternatively, develop a streamlined process that would allow for a combined confidential treatment request for both Forms 13F and N–PX.[210] We do not believe this would be a practical approach because reports on Form 13F are filed quarterly while reports on Form N–PX are filed annually. For example, a manager may receive confidential treatment for a position in the first quarter of the year, but by the time filings are due for Form N–PX, the position may no longer meet the criteria for granting confidential treatment. In addition, the positions that managers are required to report on Form 13F may not always be the same as the positions for which the manager is reporting proxy votes on Form N–PX.

We will apply the same standards in determining whether to approve a confidential treatment request in relation to Form N–PX as we do for requests for confidential treatment regarding Form 13F.[211] For example, confidential treatment may be justified when a manager has filed a confidential treatment request for information reported on Form 13F that is pending or has been granted and where confidential treatment of information filed on Form N–PX would be necessary in order to protect information that is the subject of such Form 13F confidential treatment request.[212] As the Commission stated in the Proposing Release, confidential treatment would not be merited solely in order to prevent proxy voting information from being made public given the public disclosure intent of section 14A(d) and the confidential treatment requirements of rule 24b–2 under the Exchange Act.[213] As a result, we are not expanding the standards for requesting and obtaining confidential treatment to cover situations in which a manager has a confidentiality agreement with a client regarding disclosure of portfolio information because it would not meet the standards for confidential treatment in connection with Form 13F.

J. Website Availability of Fund Proxy Voting Records

The Commission is adopting amendments to Forms N–1A, N–2, and N–3 to require a fund to disclose that its proxy voting record is publicly available on (or through) its website and available upon request, free of charge in both cases. We are adopting these amendments as proposed, except that, in response to a comment, we are clarifying on the affected forms that a fund must make its proxy voting record available on its website only if it has a website.[214] Accordingly, under the amendments a fund must file Form N–PX reports in a custom XML language, post the fund's proxy voting record on the fund's website if it has one, and provide the voting record upon request. We also are amending Form N–1A and Form N–3 to require that a fund provide the email address, if any, that an investor may use to request the proxy voting record. These amendments will make a fund's proxy voting record more accessible to investors.[215]

Most commenters generally supported this aspect of the proposal.[216] One commenter suggested that we should clarify in the forms that funds are, consistent with statements made in the Proposing Release, able to comply with the website disclosure requirement by providing a direct link on their website to the HTML-rendered Form N–PX report on EDGAR.[217] We agree and we have amended Forms N–1A, N–2, and N–3 accordingly.[218] One commenter suggested that funds should not be required to mail proxy voting records upon request.[219] We understand, however, that most funds currently make their proxy voting records available to shareholders upon request and believe this practice should continue so that investors without website access are not disadvantaged.

K. Effective Date

As described above, funds will continue to be required to report their proxy votes, and managers will be required to report their say-on-pay votes, annually on Form N–PX not later than August 31 of each year, for the most recent twelve-month period ended June 30. In order to provide time for reporting persons to prepare to comply with the amendments, we are delaying the effectiveness of the amendments until July 1, 2024. Managers and funds will therefore be required to file their first reports on amended Form N–PX by August 31, 2024, with these reports covering the period of July 1, 2023, to June 30, 2024. The period provided by the extended effective date is generally consistent with the length of the compliance period described in the Proposing Release, under which reporting persons would have likely been required to file their first reports on amended Form N–PX by August 31,

filing,'' stating that doing so ''will reduce costs and burdens on filers and facilitate Commission staff review and processing.'' Comment Letter of the Investment Company Institute (Dec. 17, 2021) (regarding File Nos. S7–15–21 and S7–16–21).

[208] *See* Request for Confidential Treatment Instruction 1 to amended Form N–PX.

[209] *See* Proposing Release, *supra* footnote 5, at n.202 and accompanying text.

[210] *See* MFA Comment Letter.

[211] *See* 15 U.S.C. 78m(f)(4) and (5) and rule 24b–2; *see also* Request for Confidential Treatment Instruction 4 to amended Form N–PX.

[212] A manager also may seek confidential treatment for information that is not reported on Form 13F but would have been the subject of a Form 13F confidential treatment request if it were required to be reported (for example, a *de minimis* position that is not required to be reported on Form 13F but would have been eligible for confidential treatment if it were required to be reported on the form).

[213] *See* Proposing Release, *supra* footnote 5, at nn. 200–201 and accompanying text.

[214] *See* ICI Comment Letter I.

[215] *See* Proposing Release, *supra* footnote 5, at section II.H.

[216] *See, e.g.,* PRI Comment Letter; Public Citizen Comment Letter; McRitchie Comment Letter I; ICI Comment Letter I (noting their suggestions with respect to funds without websites and compliance with the amendments by linking to EDGAR); CFA/CII Comment Letter; Vanguard Comment Letter.

[217] *See* ICI Comment Letter I.

[218] *See also* Proposing Release, supra footnote 5, at section II.H (stating that a fund could comply with the requirement to disclose the proxy voting record in a human-readable format by, for example, ''providing a direct link on its website to the HTML-rendered Form N–PX report on EDGAR'').

[219] *See* McRitchie Comment Letter I.

2024, and with the views of commenters that addressed this issue, who urged that the Commission provide at least a year or one full reporting period to allow reporting persons time to implement necessary changes.[220] Thus, under the extended effective date, reporting persons and their third-party service providers will have at a minimum one full reporting period to prepare for the amended reporting requirements before any reporting person will file on amended Form N–PX. Further, setting an effective date on July 1, 2024, will provide a uniform transition to the amended form beginning with the reporting period ended June 30, 2024. In addition, although the compliance period in the proposal would have required reporting persons to report votes in conformity with amended Form N–PX for votes occurring six months after the effective date, this could have created additional operational complexity to have different Form N–PX requirements that apply in the same reporting period, and we believe that providing reporting persons until July 1, 2024 to begin reporting under the amendments provides sufficient time for reporting persons to prepare to include all applicable votes on amended Form N–PX at that time. We also will provide an EDGAR pilot program before July 1, 2024, to allow reporting persons to test file the amended form.[221]

L. Transition Rules for Managers

We are adopting as proposed transition rules that govern the timing of a manager's Form N–PX filing obligations for say-on-pay vote reporting whenever the manager enters and exits from the obligation to file Form 13F reports. We received no comments on this aspect of the proposal.

In particular, rule 14Ad–1 will not require managers to file a Form N–PX report for the 12-month period ending June 30 of the calendar year in which the manager's initial filing on Form 13F is due.[222] Instead, managers will be required to file a report on Form N–PX for the period ending June 30 for the calendar year following the manager's initial filing on Form 13F. For example, assume that a manager does not meet the $100 million threshold test on the last trading day of any month in 2023 but does meet the $100 million threshold test on the last trading day of at least one month in 2024. As a result, under the rules that currently apply to Form 13F, the manager would be required to file a Form 13F report no later than February 15, 2025, for the period ending December 31, 2024.[223] Additionally, under rule 14Ad–1(b) as adopted, the manager will be required to file a Form N–PX report no later than August 31, 2026, for the 12-month period from July 1, 2025, through June 30, 2026.[224] The following chart illustrates the timing of the entrance of a manager to its obligation under the rule to file reports on Form N–PX.

INITIAL FORM N-PX FILING

Date manager exceeds reporting threshold	First Form 13F filing due	First proxy reporting period	First Form N–PX due
Mar. 31, 2023	Feb. 15, 2024	July 1, 2024–June 30, 2025	Aug. 31, 2025
Dec. 31, 2023	Feb. 15, 2024	July 1, 2024–June 30, 2025	Aug. 31, 2025
Jan. 31, 2024	Feb. 15, 2025	July 1, 2025–June 30, 2026	Aug. 31, 2026

In addition, as proposed, we will not require a manager to file a report on Form N–PX with respect to any shareholder vote at a meeting that occurs after September 30 of the calendar year in which the manager's final filing on Form 13F is due.[225] Instead, the manager will be required to file a report on Form N–PX for the period July 1 through September 30 of the calendar year in which the manager's final filing on Form 13F is due. This short-period Form N–PX filing will be due no later than March 1 of the immediately following calendar year.[226] A manager's obligation to file Form 13F reports always terminates with the September 30 report, and the transition rule we are adopting conforms the ending date for reporting say-on-pay votes with the ending date for Form 13F reporting.[227] The March 1 due date would provide a two-month period for filing after December 31, when the manager's Form 13F filing status will be conclusively determined for the coming year.[228]

For example, assume that a manager ceases to meet the $100 million threshold in 2023. In other words, the manager meets the threshold on at least one of the last trading days of the months in 2022, but does not meet the threshold on any of the last trading days of the months in 2023. The manager's final report on Form 13F would be filed for the quarter ended September 30, 2023. The manager's final report on Form N–PX would include all say-on-pay votes cast during the period from July 1, 2023, through September 30, 2023, and will be required to be filed no later than March 1, 2024. The following chart illustrates the timing of the exit of a manager from its obligation to file Form N–PX.

[220] *See* ICI Comment Letter I (suggesting that the first reports on amended Form N–PX be filed by the August 31st that is a minimum of 14 months from the effective date); IAA Comment Letter (suggesting the Commission extend the compliance date to allow for at least one full reporting period for reporting persons to file).

[221] *See also supra* section II.E discussing timing of technical specification releases and beta testing of Form N–PX's structured data format.

[222] Rule 14Ad–1(b); General Instruction F to amended Form N–PX. For this purpose, an ''initial filing'' on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F was required for the immediately preceding calendar quarter. *Id.*

[223] Currently, under 17 CFR 240.13f–1 (''rule 13f–1''), the obligation to file Form 13F arises when a manager exercises investment discretion over accounts holding at least $100 million in section 13(f) securities as of the ''last trading day of any month of any calendar year.'' However, the manager's obligation to file Form 13F commences with the report for December 31 of that year, which is required to be filed within 45 days after December 31. Rule 13f–1(a)(1); General Instruction 1 to Form 13F. *See* 17 CFR 240.0–3.

[224] Rule 14Ad–1(b); General Instruction F to amended Form N–PX.

[225] Rule 14Ad–1(c); General Instruction F to amended Form N–PX. For this purpose, a ''final filing'' on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F is required for the immediately subsequent calendar quarter. *Id.*

[226] Rule 14Ad–1(c); General Instruction F to amended Form N–PX.

[227] *See* rule 13f–1(a) (manager that meets $100 million threshold on last trading day of any month of any calendar year is required to file Form 13F for December 31 of that year and the first three calendar quarters of the subsequent calendar year).

[228] A manager is required to file a report on Form 13F in the coming year if it meets the $100 million threshold on the last trading day of any month of the current calendar year. As a result, in cases where the manager does not meet the threshold in January through November, its status will not be determined until December 31.

FINAL FORM N–PX FILING

Date manager ceases to meet threshold	Final form 13f filing due	Final proxy reporting period	Final form N–PX due
Mar. 30, 2023	Nov. 14, 2024	July 1, 2024–Sept. 30, 2024	Mar. 1, 2025
Dec. 30, 2023	Nov. 14, 2024	July 1, 2024–Sept. 30, 2024	Mar. 1, 2025
Feb. 1, 2024	Nov. 14, 2025	July 1, 2025–Sept. 30, 2025	Mar. 1, 2026

M. Technical and Conforming Amendments

We are adopting as proposed two technical and conforming amendments. First, we are amending the heading of subpart D of part 249 of the Code of Federal Regulations to include new section 14A of the Exchange Act and to indicate that Exchange Act reports are filed by both issuers and other persons (*e.g.,* managers). We are also adopting amendments to reflect the fact that Form N–PX will be an Exchange Act form, as well as an Investment Company Act form.[229] We received no comments on this aspect of the proposal.

N. Delegation of Commission Authority

In order to facilitate the efficient consideration of requests for confidential treatment of information required pursuant to amended Form N–PX, the Commission is amending 17 CFR 200.30–5(c–1) to provide delegated authority to the Director of the Division of Investment Management (''Director'') to grant and deny these requests. Section 4A of the Exchange Act provides the Commission the authority to delegate, by published order or rule, any of its functions to a division of the Commission, subject to certain limitations.[230] The authority to grant and deny applications for confidential treatment and revoke a grant of confidential treatment is delegated to several members of our staff. We believe that it is appropriate for the Director to exercise such functions and that delegating this authority will conserve our resources and improve efficiency. Specifically, we are amending rule 30–5(c–1)(1) to authorize the Director to grant and deny applications filed pursuant to section 24(b) of the Exchange Act and rule 24b–2 thereunder for confidential treatment of information filed pursuant to section 14A(d) of the Exchange Act and rule 14Ad–1 thereunder. The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedure Act (''APA''), that the amendment to rule 30–5(c–1)(1) relates solely to agency organization, procedures, or practices.[231] Accordingly, the APA's provisions regarding notice of rulemaking and opportunity for public comment are not applicable.[232]

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

The Commission is adopting amendments to Form N–PX to enhance the information funds currently report annually about their proxy votes on both executive compensation and other matters to make these reports more informative and easier to analyze. The amendments to Form N–PX will require the categorization of votes, structuring and tagging the data reported, and, if the form of proxy in connection with a matter reported on the form is subject to rule 14a–4 of the Exchange Act, require that the reporting person use the same language used on the form of proxy to identify the matter, identify all matters in the same order as on the form of proxy, and, for election of directors, identify each director separately in the same order as on the form of proxy. The amendments will also provide investors with additional information about the extent to which a reporting person votes or loans its shares.

The Commission is also adopting rule and form amendments that will complete the implementation of section 951 of the Dodd-Frank Act by requiring a manager to report how it voted proxies relating to executive compensation matters. Specifically, the rule and form amendments will require managers to report their say-on-pay votes annually on Form N–PX. For managers that have a disclosed policy of not voting proxies and that did not vote during the reporting period, the rule and form amendments will allow them to indicate this on Form N–PX without providing additional information about each voting matter individually. Funds that did not hold any securities entitled to vote during the reporting period would also be permitted to make a similar short-form filing.

The Commission is sensitive to the economic effects, including the costs and benefits, imposed by the final rule and form amendments.[233] Where practicable, we have attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the final rule and form amendments. In some cases, however, data needed to quantify these economic effects are not currently available to the Commission or otherwise publicly available. For example, we are unable to quantify the degree to which funds and managers may choose to forego income from securities lending as a result of any

[229] Rule 30b1–4; 17 CFR 249.326 and 274.129.

[230] 15 U.S.C. 78d–1.

[231] 5 U.S.C. 553(b)(3)(A).

[232] For the same reason, and because the amendment to rule 30–5(c–1)(1) does not substantively affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable to this amendment. Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are not applicable to this amendment. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under that Act, to consider the anticompetitive effects of any rules it adopts. The Commission does not believe that this amendment will have any impact on competition. Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995. *See* 5 U.S.C. 804(3)(C); 5 U.S.C. 603; 15 U.S.C. 78w(a)(2).

[233] Section 3(f) of the Exchange Act, section 2(b) of the Securities Act, and section 2(c) of the Investment Company Act require the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with the public interest), to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. Additionally, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition. Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

incentive effects associated with the disclosure of the number of shares loaned but not recalled. While we provide a qualitative discussion of the potential effect, we are unable to estimate its magnitude because we do not have data to predict how funds and managers would trade off any perceived benefits from recalling shares on loan with the anticipated loss in securities lending income.[234]

B. Economic Baseline

The economic baseline against which we measure the economic effects of this final rule, including its potential effects on efficiency, competition, and capital formation, is the state of the world as it currently exists.

1. Funds' Reporting of Proxy Voting Records

Since 2003, funds have been required to file Form N–PX to report their proxy voting records annually for each matter relating to a portfolio security considered at any shareholder meeting held during the reporting period and with respect to which the fund was entitled to vote. In May 2022, we estimate that there were approximately 12,492 funds and series of management investment companies with average total net assets of $35.1 trillion that were required to file reports on Form N–PX.[235] As of year-end 2021, assets held in mutual funds and other registered investment companies account for approximately 32% of the market capitalization of all U.S.-issued equities outstanding.[236]

On the current Form N–PX, among other things, a fund discloses whether it cast its votes on each proposal, how it voted (*e.g.,* for or against the proposal, or abstained), and whether any votes cast were for or against management. Although the form specifies the information that each fund must provide, it does not specify the format of the disclosure or how funds present or organize the information. Reports on Form N–PX also are not currently filed in a machine-readable, or ''structured,'' data language. Investors can access a fund's Form N–PX filings online through the EDGAR website. Funds also must disclose that their proxy voting records are available to investors either upon request or on (or through) their websites, with most funds disclosing that this information is available upon request.

We understand that many funds currently use vendors to prepare their Form N–PX filings.[237] These vendors typically provide a summary of the ballot description and may also provide a link to the issuer's proxy statement. Vendors may also list ballot items in an order that deviates from that on the proxy statement. According to some commenters, larger funds are more likely to use a vendor to prepare their Form N–PX than smaller funds.[238]

Current Form N–PX reports have improved transparency into fund voting. However, these reports can be difficult for investors to read and analyze. For example, under the current rules, Form N–PX is routinely filed as a large HTML or plain-text (ASCII) file. Many funds use automated systems to produce their Form N–PX records, which is often a simple output from a database maintained by the reporting person that covers meetings, proposals, and votes over a given period.[239] A fund may own hundreds of different securities each of which may have ten or more proposals each year. As a result, Form N–PX reports disclosing proxy voting records for all securities and proposals can be overwhelmingly long.[240] Investors also may have difficulty finding a particular fund's voting history within a single Form N–PX filing because many fund complexes include information about several different funds in a single Form N–PX report, given the structure of many funds as series of a trust.

Funds also often use their own descriptions and abbreviations when describing a particular voting matter, which can differ from the descriptions on an issuer's form of proxy. This can make it difficult for investors to identify a particular voting matter or category of similar voting matters, and to compare funds' voting records.

In addition to difficulties collecting and analyzing data provided on current Form N–PX, certain gaps in the current required disclosures may provide an incomplete picture of a fund's proxy voting practices. For example, current Form N–PX does not require funds to provide information about the potential effects of a fund's securities lending activities on its proxy voting. A fund's securities lending activities can generate additional income for the fund and its shareholders. However, when a fund lends its portfolio securities, it transfers incidents of ownership, including proxy voting rights, for the duration of the loan. As a result, the fund loses its ability to vote the proxies of such securities, unless the securities are recalled, the loan is terminated, and the securities are returned to the fund before the record date for the vote.

2. Managers' Reporting of Say-on-Pay Votes

Section 951 of the Dodd-Frank Act added new section 14A to the Exchange Act requiring issuers to provide shareholders with a vote on say-on-pay matters, and requires managers to report how they voted on those matters. Section 14A generally requires public companies to hold non-binding say-on-pay shareholder advisory votes to: (1) approve the compensation of its named executive officers; (2) determine the frequency of such votes; and (3) approve ''golden parachute'' compensation in connection with a merger or acquisition. Section 14A(d) requires that every manager report at least annually how it voted on say-on-pay votes,[241] unless such vote is otherwise required to be reported publicly. However, until these amendments, there have been no rules or forms governing how managers comply with their reporting obligation under section 14A(d).[242] Some managers, such as public pension funds, disclose their proxy voting records on their websites, although we understand that their disclosures generally do not contain quantitative information and presentation practices of website

[234] We do not anticipate any significant economic effects associated with the technical and conforming amendments discussed in *supra* section II.M.

[235] These estimates are based on Form N–CEN filings of management investment companies registered with the Commission as of May 2022.

[236] This figure has ranged between 30 and 34 percent over the past four years. ICI 2022 Fact Book, *supra* footnote 2, at Figure 2.7. *See also supra* section I.

[237] *See, e.g.,* ICI Comment Letter I.

[238] *See* ICI Comment Letter I, Ultimus Comment Letter.

[239] *See* Chong Shu, *The Proxy Advisory Industry: Influencing and Being Influenced,* U.S.C. Marshall School of Business Research Paper (May 23, 2022), at 28), *available at* https://ssrn.com/abstract=3614314 (retrieved from SSRN Elsevier database) (observing widespread use of voting platforms to report votes on Form N–PX, including the use of three voting platforms by approximately 90% of mutual funds from 2007 to 2017).

[240] Based on reports on Form N–PX, larger funds can have filings in excess of 1,000 pages. *See also supra* footnote 14.

[241] Based on Form 13F filings covering the first quarter of 2022, as of March 31, 2022, there were 8,147 managers with investment discretion over approximately $44.4 trillion in section 13(f) securities.

[242] Although managers as a whole have not been required to file reports on Form N–PX, a subset of managers advise funds and each of these funds has been and is required to report its own proxy voting record, including say-on-pay votes, annually on Form N–PX.

reporting vary across managers.[243] Registered investment advisers also are required to disclose to clients, upon the client's request, how the adviser voted the client's securities.[244] Unlike publicly available reports on Form N–PX, however, this information is only required to be made available to a single client, related solely to that client's securities, and only upon the client's request. The adoption of say-on-pay vote reporting requirements for managers completes the implementation of section 951.

3. Other Affected Parties

(a) Users of Proxy Voting Data

Form N–PX information is used by fund investors, other market participants, corporate issuers, and regulators such as the Commission. In addition, there are service providers that help collect and analyze proxy voting information or that provide advice based on information contained in Form N–PX disclosures. Such service providers include proxy voting advisers, proxy data providers and analysts, and equity analysts.

According to an association representing regulated funds, as of December 2021, 62.2 million (47.9%) U.S. households and 108.1 million individuals owned U.S. registered investment companies.[245] Median mutual fund assets of mutual fund-owning households were $200,000 with the median number of mutual funds held being four.[246] Moreover, registered funds play an important role in individuals' retirement savings. 63% of households had tax-advantaged retirement savings with $12.6 trillion invested in mutual funds either through defined contribution plans or IRAs.[247]

(b) Custodians and Securities Lending Agents

Funds and managers typically hold client securities with a custodian, who safeguards these assets. The custody service industry has been characterized as dominated by a small number of large market share participants; as of 2018, ''[n]early half of the total assets [were] under the custody of the four largest [firms], which are all from the US.'' [248] The vast majority of custodians also provide a range of related services, which may include acting as a securities lending agent to administer a fund's or manager's securities lending program.[249] A commenter stated that custodians are a primary source of data on which fund shares are on loan over a record date and another commenter similarly stated that for funds and managers to collect information on shares on loan, custodians and securities lending agents would be expected to be involved in the process.[250]

C. Benefits and Costs

1. Amendments to Funds' Reporting of Proxy Votes

(a) Benefits

The fund-related amendments to Form N–PX will benefit fund investors, other market participants, and other proxy voting data users,[251] by enhancing the information funds currently report about their proxy votes and making that information easier to collect and analyze. The amendments include the following principal elements: (1) requiring the disclosure of information about the number of shares that were voted (or instructed to be voted) and the number of shares that a fund loaned and did not recall before the record date for the vote; [252] (2) if a form of proxy in connection with a voting matter is subject to rule 14a-4 under the Exchange Act, requiring that funds describe the matter using the same language, and in the same order, as found in the issuer's form of proxy; [253] (3) requiring funds to categorize voting matters by type; (4) requiring funds to provide disclosure separately by series of shares; (5) requiring the reporting of information on Form N–PX in a custom XML language; and (6) requiring funds to disclose that their proxy voting records are publicly available on (or through) their websites and available upon request, free of charge in both cases.

The amendments are designed to broaden the scope of the benefits that the Commission originally identified when adopting Form N–PX namely: (1) to provide better information to investors who wish to determine to which fund managers they should allocate their capital, and whether their existing fund managers are adequately maximizing the value of their shares; (2) to deter fund voting decisions that are motivated by considerations of the interests of a fund's adviser rather than the interests of the fund's investors; and (3) to provide stronger incentives for fund managers to vote their proxies carefully.[254]

We expect that the amendments to the Form N–PX format and content will help investors and other data users more easily collect and analyze proxy voting information, resulting in lower costs of gathering and understanding this information.[255] As a result, we expect these amendments will facilitate comparisons of voting patterns across a wide range of funds or within an individual fund over time. To the extent that investors choose among funds based on their proxy voting policies and records, in addition to other factors such as expenses, performance, and investment policies, we expect that investors will be able to select funds that suit their preferences more efficiently.[256]

Some commenters stated that the proposed amendments would facilitate investors' acquisition and use of information about proxy votes that funds disclose.[257] Specifically, a number of commenters supported the view that the structured data language requirement in the proposed

[243] Some pension funds publish some or all of their proxy votes. *See, e.g.,* Office of N.Y. State Comptroller, N.Y. State Common Retirement Fund Proxy Voting (2021), *available at https://www.osc.state.ny.us/files/common-retirement-fund/corporate-governance/pdf/proxy-voting-2021.pdf;* CalPERS Global Proxy Voting Decisions, *available at https://viewpoint.glasslewis.com/WD/?siteId=CalPERS;* CPP Investments, Proxy Voting, *available at https://www.cppinvestments.com/the-fund/sustainable-investing/proxy-voting.*

[244] Rule 206(4)–6(b).

[245] *See* ICI 2022 FactBook, *supra* footnote 2, at ''2021 Facts at a Glance'' Table.

[246] *Id.*

[247] *Id.*

[248] Deloitte [Luxembourg], *The evolution of core financial service. Custodian & Depository Banks,* (2019), at 10 (''Deloitte White Paper''), *available at* https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/financial-services/lu-the-evolution-of-a-core-financial-service.pdf.

[249] *See* Deloitte White Paper, *supra* footnote 249, at 13.

[250] *See* Blackrock Comment Letter; Glass Lewis Comment Letter.

[251] *See supra* section IV.B.3.a.

[252] Funds that did not hold any securities entitled to vote during the reporting period can indicate this on the form without providing additional information about each voting matter individually.

[253] In a change from the proposal, when reporting proxy votes in all other cases, reporting persons will remain subject to the current requirements regarding the language used for identifying proxy matters, with the modification that these reports will be required to limit the use of abbreviations.

[254] 2003 Adopting Release, *supra* footnote 4. The discussion of the interests of funds' investors is not intended to describe the interests of any particular investor or investors, but instead refers to the funds' investors, considered as a whole.

[255] Many commenters agreed that the proposed amendments will facilitate investors' acquisition and use of information about proxy votes that funds disclose. *See, e.g.,* CFA/CII Comment Letter; Morningstar Comment Letter; LTSE Comment Letter.

[256] For example many commenters agreed that the proposed amendments can help increase transparency regarding proxy voting on ESG matters. *See, e.g.,* The Shareholder Commons Comment Letter; LTSE Comment Letter; PRI Comment Letter.

[257] *See, e.g.,* CFA/CII Comment Letter; Morningstar Comment Letter; LTSE Comment Letter; ASBC Comment Letter; Ratcliff Comment Letter. *See also infra* footnote 258 and footnote 259.

amendments would make Form N–PX easier to use, would facilitate investors' comparison of funds' voting information, and would make Form N–PX more informative for investors and other users of proxy voting information.[258] Some commenters also stated that the website disclosure requirement would make proxy voting information more accessible, and the requirement would make it easier and less costly for investors to compile information on funds' voting history.[259]

While some commenters agreed that the requirement for funds to characterize voting matters by type would facilitate the comparison of voting patterns across funds,[260] other commenters stated that the proposed requirement would not provide useful information to investors, for example because of the potential for a lack of consistency of classifications by funds or in light of the information that is already disclosed on Form N–PX.[261] In a change from the proposal, under the amendments we are adopting reporting persons will select from a streamlined and consolidated list of categories and will not be required to select from a list of subcategories. As discussed above, and in light of the comments we received, these changes should increase the usefulness of the categories.[262] As a result, we anticipate that this change may enhance the benefits to investors and other data users compared to the proposal and ultimately enable investors to have more information about reporting persons' proxy voting records which may aid them in their investment decisions. In a change from the proposal, the amendments will permit reporting persons to include certain additional identifiers, such as LEIs and FIGIs, when identifying themselves, other reporting persons reporting on their behalf, which series are included in a fund's reporting, or which portfolio security the reporting person is reporting votes for.[263] The inclusion of these additional identifiers should benefit users of Form N–PX data by providing additional identifying information methods to supplement the existing identifying information provided on Form N–PX (for example, the CUSIP number). Form N–PX data users could benefit from certain features from this other identifying information, including the ability to use a security identifier without fees or charges.

Also, a commenter expressed the view that the proposed amendments are not likely to change retail investors' tendency to not use Form N–PX but instead rely on fund websites for information about proxy voting.[264] While many retail investors may not make direct use of Form N–PX as noted by other commenters, retail investors that rely on third parties such as research analysts to access and evaluate proxy voting information will benefit indirectly because those third parties will face lower costs in accessing information from Form N–PX as a result of the structured data language component of the amendments.[265] As a result of making funds' proxy voting information easier to collect and analyze, the amendments may lead some investors to change how they allocate capital across funds to better match their preferences. While some commenters questioned the importance of proxy voting information for investors' decisions,[266] we anticipate that some investors will find this information valuable in making their investment decisions.[267] Another commenter expressed the view that the ability to switch funds may be limited by potential taxes on gains associated with changing funds and, in the case of participants in employer-sponsored retirement plans, investors' inability to change asset managers without changing their employer, which may hamper the degree to which investors could realize this benefit.[268] This commenter also stated that the usefulness of past proxy voting information for investors in selecting funds is limited to the extent that funds deviate from their past voting behavior in the future.[269] While we agree that for some investors there may be meaningful impediments to switching funds, and that for certain participants in employer-sponsored retirement plans those impediments may be prohibitively large, for other investors it may still be worthwhile to change funds if information on funds' past proxy voting practices significantly conflicts with the preferences of these investors.

We expect additional benefits to investors and other proxy voting data users from the new quantitative disclosure on amended Form N–PX regarding the number of shares voted and the number of shares loaned but not recalled. This additional information will benefit investors and other data users by providing more information about the scope of a fund's participation in proxy voting activities, the fund's voting preferences, the magnitude of the reporting fund's voting power, and whether funds have recalled securities on loan to vote proxies.

A number of commenters agreed that the disclosure of the number of shares voted and the number of shares lent but not recalled would benefit investors and other proxy voting data users by providing useful information on the fund's proxy voting record, the fund's decision not to vote, and whether the fund has recalled shares lent to vote proxies.[270] For example, some commenters expressed the view that the disclosure of shares lent but not recalled would enable investors to better understand the scope of funds' proxy voting activities, including (1) funds' voting preferences; (2) the extent of funds' voting for or against a certain ballot measure; (3) the influence funds have on the outcome of shareholder votes and their influence on issuer firms' corporate governance; and (4) funds' decision not to vote their shares.[271] However, other commenters expressed the view that benefits from this disclosure may be limited to the extent that other quantitative or qualitative information such as financial benefits from share lending, operational constraints to recalling shares, the size of the fund's position, and the ability to influence voting outcome, would not be

[258] *See, e.g.,* Morningstar Comment Letter; ICI Comment Letter I; Vanguard Comment Letter; Blackrock Comment Letter; Bloomberg Comment Letter; PRI Comment Letter; US Chamber of Commerce Comment Letter.

[259] *See, e.g.,* Vanguard Comment Letter; CFA/CII Comment Letter.

[260] *See, e.g.,* Morningstar Comment Letter; CFA/CII Comment Letter.

[261] *See, e.g.,* ICI Comment Letter I.; Utah Comment Letter.

[262] *See supra* section II.C.1 for a discussion of the comments we received on this aspect of the proposal.

[263] As proposed, we are also including ISINs as an additional identifier for portfolio securities the reporting person is reporting votes for.

[264] *See* Blackrock Comment Letter.

[265] *See supra* footnote 258 and accompanying text.

[266] *See, e.g.,* Chamber of Commerce Comment Letter; MFDF Comment Letter.

[267] *See supra* footnote 257 and accompanying text.

[268] *See* Mercatus Center Comment Letter.

[269] To the extent that a fund follows its proxy voting policies and procedures, however, reported votes may be more likely to have predictive value. In addition, the amendments may lead funds to vote more consistently on similar issues over time, including at multiple portfolio companies, as a result of making funds' proxy voting information easier to collect and analyze. Specifically, if fund managers know that investors are able to track their voting behavior at low cost, then this may increase funds' incentives to vote consistently on similar issues in order to align with the preferences of their investors.

[270] *See, e.g.,* Bloomberg Comment Letter; LTSE Comment Letter; Alliance Bernstein Comment Letter.

[271] *See, e.g.,* Better Markets Comment Letter; PRI Comment Letter; LTSE Comment Letter. Also *see supra* footnotes 89–93 and accompanying text for a discussion of comments we received on the disclosure requirement of the number of shares voted.

disclosed and would be needed to contextualize the information to be disclosed.[272]

While we agree with commenters' view that disclosure of lent shares alone may not provide comprehensive information on the funds' decision to recall or not recall shares, we believe that disclosure of a fund's shares that were lent but not recalled will still facilitate investors' understanding on funds' securities lending activities, particularly as funds may provide additional voluntary disclosures on their securities lending activities if they believe such disclosures are helpful.

The amendments to Form N–1A, Form N–2, and Form N–3 may help some investors and other users of the form access the information on Form N–PX, which is also publicly available on EDGAR, more easily. Under the baseline, most funds make information regarding how the fund voted proxies relating to portfolio securities available upon request, while other funds provide this information on (or through) their websites. The amendments would allow investors to choose between accessing a fund's proxy voting information via the fund's website and requesting the information from the fund.[273] Thus, the amendments would benefit those investors that prefer a delivery method that their fund does not offer currently. For example, some investors in the majority of funds that currently make a fund's voting record available upon request only may prefer to access this information on the fund's website directly rather than place a request and wait for the fund to deliver the voting record.

In light of the increased transparency the amendments will provide on fund voting, the final rule may also provide an incentive for fund managers to devote additional time and resources to their participation in voting proxies, which can lead to an improvement in the performance of corporate issuers and enhance shareholder wealth.[274] Assets held in funds account for approximately 32% of the market capitalization of all publicly traded U.S. corporations as of year-end 2021,[275] and therefore funds have the ability to exercise a considerable amount of influence in proxy votes which can affect the value of these corporations.[276] Academic research provides some evidence that actively voting funds may help sway shareholder votes toward value-maximizing outcomes when voting on matters such as CEO turnover, executive compensation, anti-takeover provisions, and mergers.[277] These potential corporate governance improvements resulting from more active participation in proxy voting by funds can have a positive externality effect, as the benefits will be accessible to all holders of the fund's underlying equity securities, and not limited to fund investors. A commenter provided the view that the increase in transparency resulting from the proposed amendments will emphasize the effort made by institutional investors in the proxy voting process, which may incentivize reporting persons to put more effort into participating in proxy voting.[278] However, other commenters expressed the view that increases in disclosure from the proposed amendments is unlikely to change funds' proxy voting behavior.[279] While there is likely to be variability in how the amendments influence behavior at different funds, to the extent that the proposed amendments increase fund managers' efforts put into proxy voting, this will provide more information about proxy voting to fund investors and other owners of funds' underlying equity securities. These benefits may be reduced for smaller funds who are less able to devote additional time and resources to their participation in voting proxies, and may also be mitigated to the extent that additional time and resources devoted to fund participation in voting proxies raises costs to investors.[280]

In addition, the amendments to the format and content of Form N–PX may also help deter fund voting decisions motivated by conflicts of interest.[281] For example, some academic research observes that mutual funds' proxy voting may be affected by business ties such as those where a fund's adviser also manages the firm's pension plan, as well as through personal connections between fund managers and corporate executives.[282] More generally, although fund managers are fiduciaries that owe duties of care and loyalty to each client, their proxy voting decisions may be driven by their economic interest in attracting more investments into the fund or more investment opportunities.[283] A fund's proxy voting

[272] *See, e.g.,* Pickard Comment Letter; Federated Hermes Comment Letter; RMA Comment Letter; MFDF Comment Letter; MFA Comment Letter; Blackrock Comment Letter; Alliance Bernstein Comment Letter. *See also supra* section II.C.3.(b) for a discussion of comments received on this aspect of the proposal.

[273] *See supra* section II.J for a complete description of the requirements.

[274] *See* Peter Iliev & Michelle Lowry, *Are Mutual Funds Active Voters,* 28 Rev. Fin. Studies 446 (2015), *available at* https://academic.oup.com/rfs/article/28/2/446/1599644; Vincente Cunat, Mireia Gine, & Maria Guadalupe, *The Vote is Cast: The Effect of Corporate Governance On Shareholder Value,* 67 J. Fin. 1943 (2012), *available at* https://onlinelibrary.wiley.com/doi/full/10.1111/j.1540-6261.2012.01776.x (finding that passing a governance provision is associated with an increase in shareholder value, and more so when proposals are sponsored by institutional investors).

[275] *See supra* footnote 2.

[276] *See supra* section I.

[277] *See, e.g.,* Angela Morgan, Annette Poulsen, Jack Wolf, and Tina Yang, *Mutual Funds as Monitors: Evidence from Mutual Fund Voting,* 17 J. Corp. Fin. 914 (2011) (finding that, ''in general, mutual funds vote more affirmatively for potentially wealth-increasing proposals and funds' voting approval rates for these beneficial resolutions are significantly higher than those of other investors''). S*ee also* Jean Helwege, Vincent Intintoli, and Andrew Zhang, *Voting with Their Feet or Activism? Institutional Investors' Impact on CEO Turnover,* 18 J. Corp. Fin. 22 (2012), for a review of the literature. But, *see also infra* footnotes 282–284 and accompanying text. A number of commenters expressed the view that the proposed amendments' enhanced proxy voting disclosure requirement will be beneficial in light of funds' significant role in proxy voting on corporate governance at issuer firms. *See, e.g.,* The Shareholder Commons Comment Letter I; Ratcliff Comment Letter; Friess Comment Letter.

[278] *See* Glass Lewis Comment Letter.

[279] *See* MFDF Comment Letter; Mercatus Center Comment Letter

[280] *See infra* section IV.C.1.(b).

[281] *See, e.g.,* Gerald Davis & Han Kim, *Business Ties and Proxy Voting by Mutual Funds,* 85 J Fin. Econ. 552 (2007) (''To the extent that good corporate governance leads to higher valuations, fund managers have incentives to use their voting power to demand good corporate governance and accept (reject) proposals that may benefit (harm) investors. However, such fiduciary responsibilities may be compromised if mutual funds' corporate parents manage employee benefit plans (such as 401(k) plans) for their portfolio firms at the behest of management.''). According to the article, on average, earnings from 401(k)-related business equal 14% of the revenues that mutual fund families earn from their equity funds, and such income can represent as much as 25% of fund family revenues. A commenter agreed with our view that there may be conflicts of interests arising from proxy voting by funds and fund advisers. *See* Mercatus Center Comment Letter.

[282] *See, e.g.,* Rasha Ashraf, Narayanan Jayaraman, and Harley Ryan, *Do Pension-Related Business Ties Influence Mutual Fund Proxy Voting? Evidence from Shareholder Proposals on Executive Compensation,* 47 J. Fin. Quant. Anal. 567 (2012) (find that ''fund families support management when they have pension ties to the firm''); Dragana Cvijanovic, Amil Dasgupta, & Konstantinos Zachariadis, *Ties That Bind: How Business Connections Affect Mutual Fund Activism,* 71 J. Fin. 2933 (2016) (find that ''business ties significantly influence pro-management voting at the level of individual pairs of fund families and firms.''); Gerald Davis & Han Kim, *Business Ties and Proxy Voting by Mutual Funds,* 85 J. Fin. Econ. 552 (2007); and Alexander Butler & Umit Gurun, *Educational Networks, Mutual Fund Voting Patterns, and CEO Compensation,* 25 Rev. Fin. Studies 2533 (2012) (observe that ''mutual funds whose managers are in the same educational network as the firm's CEO are more likely to vote against shareholder-initiated proposals to limit executive compensation than out-of-network funds are.'').

[283] *See, e.g.,* Lucian Bebchuk, Alma Cohen, and Scott Hirst, *The Agency Problems of Institutional Investors,* 31 J. Econ. Perspectives 89 (2017) (discussing that fund managers' proxy voting decisions may be driven by their economic interest

also may be affected by the fund manager's personal preferences that may not align with the best interests of the fund's investors.[284]

While advisers have a fiduciary duty to make voting determinations in the best interests of their clients, and cannot place their own interests ahead of the interests of clients, commenters offered differing views as to the likely effectiveness of the proposed amendments at deterring votes from being driven by a conflict of interest. One commenter expressed the view that inconsistencies in proxy votes by different fund advisers for large index funds and socially responsible investing funds [285] suggest that the best interest of investors standard has not ensured that proxy voting decisions are not motived by conflicts of interest and that, as a result, a disclosure-based approach is not adequate to cause fund advisers to vote in the best interest of investors.[286] This commenter also stated that disclosure of proxy votes will not capture the influence of funds' engagement with corporate issuers outside of the proxy voting process. Conversely, statements from a number of commenters support the view that that the proposed amendments will help deter fund votes motivated by conflicts of interest. Specifically, these commenters expressed the view that the transparency provided by the proposed amendments will provide investors with information to help align funds' voting decisions with investors' expectations and improve investors' oversight over funds' proxy voting.[287] Aligning funds' voting decisions with investors' expectations and improving investors' oversight over voting by definition mitigates risks of conflicts of interest, in which investors (the principals) and fund managers (the agents) have different preferences and goals.

Finally, we considered whether the additional transparency the final amendments will provide regarding the number of shares on loan but not recalled may also help assess concerns regarding the extent to which borrowed shares could be used to affect a proxy vote towards an outcome that enhances a borrower's benefits instead of an outcome beneficial for a fund's shareholders.[288] We believe that the final amendments are unlikely to provide information that is meaningful in assessing these concerns as the information required to be disclosed would not allow an inference as to whether shares that were not recalled were used for such a purpose.

(b) Costs

The amendments to Form N–PX, Form N–1A, Form N–2, and Form N–3, will lead to some additional costs for funds. Any portion of these costs that is not borne by a fund's adviser or other sponsor will ultimately be borne by the fund's shareholders. Direct costs for funds will consist of both internal costs (for compliance attorneys and other, non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure and to update systems [289]) and external costs (such as any costs associated with third-party service providers to collect and report the information disclosed in Form N–PX).[290] The costs borne by funds will be borne equally by all of their investors. But to the extent that the required additional reporting is important to only certain fund investors or other interested parties, the proposed requirements subsidize some fund investors and other interested parties relative to other fund investors.

A commenter expressed the view that our analysis assumes the process of complying with the proposed amendments to Form N–PX will be automated but that automation may be logistically challenging given that the reporting process happens only annually.[291] Another commenter expressed the view that describing ballot items using the issuer's language and presenting them in the same order as in the issuer's form of proxy presents operational challenges and additional costs for funds and their shareholders.[292]

In a change from the proposal, however, the voting matter identification requirements will be limited to situations where a form of proxy in connection with a voting matter is subject to rule 14a–4 under the Exchange Act. Because this requirement would have extended to other situations under the proposal, this change will reduce the compliance costs associated with the requirement.[293] Similarly, the use of a streamlined and consolidated list of categories, and the omission of subcategories from which reporting persons would have been required to select, will reduce costs compared to the proposal.[294]

in attracting more business for the fund rather than engaging in generating governance gains at portfolio companies). The Commission has brought at least one enforcement action against a registered investment adviser for having proxy voting policies that did not address material potential conflicts when the adviser selected voting guidelines explicitly favored by certain clients to vote all its clients' securities, in order to improve the adviser's ranking in a third-party proxy voting survey. *See* In the Matter of INTECH Investment Management LLC, Investment Advisers Act Release No. 2872 (May 7, 2009) (settled order).

[284] *See, e.g.,* Paul Mahoney & Julia Mahoney, *The New Separation of Ownership and Control: Institutional Investors and ESG,* 2 Colum. Bus. L. Rev. 840 (2021). *See also infra* footnote 332 and accompanying text.

[285] *See* Caleb N. Griffin, *Environmental and Social Voting at Index Funds,* 44 Del. J. Corp. L. 167, 171 (2020) (comparing proxy voting decisions in 2018–2019 of the largest funds and designated socially responsible investing funds at the three largest fund complexes with competitor index funds and concluding that data from inconsistent voting decisions implies ''that index fund investors' interests likely do not determine voting decisions for the [largest index funds].'').

[286] *See, e.g.,* Mercatus Center Comment Letter (also stating that a disclosure rule puts the burden on fund investors to evaluate whether a fund and adviser vote proxies in the best interest of the investors.)

[287] *See, e.g.,* PRI Comment Letter; SCERS Comment Letter.

[288] *See also* Henry Hu & Bernard Black, *Equity and Debt Decoupling and Empty Voting: II Importance and Extensions,* 156 U. Penn. L. Rev. 625 (2008). The authors describe an empty voting strategy that involves borrowing shares in the stock loan market just before the record date and returning the shares immediately afterwards, which under standard borrowing agreements leaves the borrower holding votes without economic ownership. The authors provide examples of situations when such decoupling of voting rights from economic ownership can affect the control of corporations. However, to date, we are not aware of evidence on whether such voting with borrowed shares occurs on a regular basis or whether it has a significant effect on proxy voting outcomes. Commenters also did not provide such evidence.

[289] Several commenters pointed out that reporting persons may need to update existing systems. *See, e.g.,* ICI Comment Letter I, Ultimus Comment Letter.

[290] Based on the results of the Paperwork Reduction Act (''PRA'') analysis provided in Table 2, we estimate that the annual direct costs attributable to information collection requirements in the amendments for funds that hold equity securities will be approximately $10,012 per fund, which consists of $8,512 in internal costs and $1,500 in external costs. For funds not holding equity securities, the direct costs are not expected to change. For funds of funds, the annual direct costs attributable to information collection requirements in the amendments will comprise internal and external costs and are estimated at $436 per fund. Our annual direct cost estimates include both initial and ongoing costs with the former being amortized over three years.

[291] *See* Bloomberg Comment Letter.

[292] *See* ICI Comment Letter I.

[293] Commenters stated that the reporting of proxy votes by foreign issuers, which are not subject to rule 14a–4, would have involved more operational challenges and higher costs relative to the costs for proxy votes cast on domestic issuers. This is because, according to these commenters, a foreign issuer's form of proxy may not be in English and formatting of the issuer's proxy in foreign markets may have more variation across vendors. *See* ICI Comment Letter I; MFDF Comment Letter. Conversely, we anticipate that the costs for reporting persons to limit the use of abbreviations when reporting proxy votes in other circumstances will be minimal because we anticipate that reporting persons will choose not to use abbreviations (other than those used by the issuer on the card of proxy) unless an abbreviation is clearly a commonly understood term.

[294] *See supra* sections II.C.1 and 2 for or a discussion of the comments we received on this aspect of the proposal.

Several commenters discussed the direct cost of disclosing the number of shares the fund loaned and did not recall for voting and stated that obtaining this information may be costly for funds.[295] One commenter stated that it would be costly for funds to obtain information from shareholder meetings while a share is on loan (because in many cases the lending fund would not receive a ballot or meeting information for the position on loan) and to combine this data with securities lending information.[296] Another commenter stated that obtaining the required data would be costly for funds, particularly smaller firms, absent the data being provided by the fund's custodian, and stated that not all custodians currently provide this data.[297] We therefore anticipate that funds that currently do not have access to this data will engage their custodians or securities lending agents to obtain it. These service providers may then increase the fees they charge to funds to compensate for any costs of providing this information.

By contrast, we anticipate that any additional direct costs associated with certain other aspects of the amendments will be relatively low. Specifically, we believe that the costs of the amendments' requirements to use a custom XML language and to publish proxy voting records on the fund's website will be relatively low given that funds already accommodate similar requirements in their other reporting, and can utilize their existing capabilities for preparing and publishing an updated Form N–PX.[298] Similarly, a commenter expressed the view that the use of structured data language will facilitate reporting persons' preparation and submission of the information required by Form N–PX.[299]

We do not expect the LEI disclosure requirements for reporting persons and fund series under the amendments to result in significant compliance costs. Both the reporting person LEI disclosure requirement and the fund series LEI disclosure requirement will apply only to entities that already have an LEI, so the costs associated with obtaining and renewing an LEI will not be applicable. Furthermore, funds are already subject to fund series LEI disclosure obligations in Form N–PORT reports, so compliance costs associated with retrieving and retaining LEIs for each fund series are already reflected in the baseline.[300] We also do not expect the new FIGI disclosure on Form N–PX to result in additional compliance costs, because the disclosure of FIGIs is optional rather than mandatory, nor do we expect the new requirement to report ISINs rather than CUSIP numbers, where CUSIP numbers are not available through reasonably practicable means, to create significant compliance costs due to substantially similar existing disclosure requirements.[301]

We expect that the costs of complying with the amendments to Form N–1A, Form N–2, and N–3, will be small, as most funds already provide their proxy voting information upon request and the requirement to add this information to the fund's website that applies to funds with an existing website can be satisfied cost-effectively by including a link to the Form N–PX filing on EDGAR. In addition, funds that already provide their proxy voting information on their website are unlikely to incur significant cost as a result of also making this information available upon request, as we understand that funds who provide the option today rarely receive such requests from their investors.[302]

Some commenters expressed views about the costs borne by smaller funds. A commenter expressed a concern about relatively greater costs and burdens borne by smaller funds due to lack of economies of scale. For example, according to this commenter, many smaller funds do not currently use a vendor to prepare Form N–PX. To comply with the proposed amendments, these smaller funds may hire a vendor and incur the associated costs.[303] One commenter stated that the minimum charge for a proxy service provider is several thousand dollars, which would not be insubstantial for a smaller fund.[304] One commenters also suggested that the proposed amendments would result in an increase in their filling costs, and the cumulative regulatory burden on small funds as a result of the proposed amendments would be larger in relative terms because of the fixed nature of these costs and the funds' inability to achieve economies of scale that larger funds can realize.[305] However, another commenter expressed that while smaller funds may incur new costs, the fact that they are likely to already have information that they need to report will likely mitigate these costs. The commenter stated a view that, because the new costs are likely to be mitigated, the benefit of increased transparency outweighs any incremental cost incurred.[306] To account for these costs, we have increased our burden estimates to account for these costs.[307]

Indirect costs for funds will include the costs associated with additional actions that funds may decide to undertake in light of the increased transparency of their voting records and practices. To the extent that the amendments provide an incentive for fund managers to devote additional time and resources to voting proxies, this may result in additional expenses for funds, some of which may be passed on to funds' shareholders. Also, as a result of increased scrutiny by investors, a fund manager may be incentivized to vote against an issuer firm's management with whom the fund has business ties. This could jeopardize the fund manager's relationship with the client firm and result in lost revenue if, for example, a client firm were to decide to relocate its employee benefit accounts elsewhere.[308]

In addition, some fund advisers may decide to voluntarily incur the cost of providing additional information on Form N–PX to provide context for the disclosure of the number of shares the fund loaned and did not recall for voting, some of which may be passed on to funds' shareholders.[309]

[295] *See, e.g.,* BlackRock Comment Letter. Commenters did not provide estimates of the size of the associated costs.

[296] *See* ISS Comment Letter.

[297] *See* BlackRock Comment Letter.

[298] In addition, the custom XML requirement will allow reporting persons to forgo the step of stripping out incompatible HTML metadata from their Form N–PX before filing it on EDGAR, further mitigating compliance costs. *See infra* section II.G.

[299] *See* Morningstar Comment Letter.

[300] *See supra* footnote 166.

[301] Funds that hold securities for which CUSIP numbers are not available must report their ISINs on Form N–PORT. *See* Item C.1 of Form N–PORT.

[302] *See supra* section II.J for a discussion of comment letters received on this aspect of the proposal. Commenters did not provide estimates of costs for these requirements.

[303] *See* ICI Comment Letter I. *See generally* MFDF Comment Letter.

[304] *See* Ultimus Comment Letter.

[305] *See* ICI Comment Letter I.

[306] *See* CFA/CII Comment Letter (''We wish to address the concern that the proposed amendments to form N–PX will place a burden in costs and resources on investors in tracking, gathering and disclosing this information. We understand that this cost will be borne most by smaller funds and managers who must meet any N–PX related obligations. We sympathize with this view and acknowledge that there will be some incremental costs with the proposed changes to N–PX. However, many smaller funds and managers may already track or report this information. Thus, we are of the view that the benefit of increased transparency for investor clients outweighs any incremental costs incurred.'').

[307] *See infra* section V for the revised PRA analysis. *See also infra* section VI.B.2 for a detailed discussion of the comments received regarding the burden on small funds.

[308] A commenter agreed that disclosing proxy votes may result in conflict with clients if clients disagree with how the vote was cast by the manager. *See, e.g.,* SCERS Comment Letter.

[309] *See also supra* footnote 123. We anticipate that this cost is likely to be relatively small, as those funds would likely provide the same or similar disclosure on subsequent filings of Form N–PX. We

The requirement for funds to disclose the number of shares a fund voted and the number of shares the fund loaned and did not recall for voting may reduce funds' securities lending activity and the associated revenue for the fund and ultimately its shareholders.[310] Specifically, in light of the increased transparency the amendments will provide on funds' securities lending activities, some funds may decide to recall their loaned securities to be able to vote the proxies of these securities.[311] A commenter expressed the view that the proposed amendments' requirement to disclose loaned shares that are not recalled may have negative effects on funds' ESG rankings, since forgoing proxy voting may be perceived negatively by investors.[312] One commenter also stated that an additional reason for funds to recall loaned shares may be external pressures to support political or social causes.[313] Such incentive effects could be present for funds that currently do not have a disclosed policy of recalling all shares ahead of proxy voting.[314] Any change in the fund's lending activity can also affect the fund's adviser and its affiliates. For example, some funds use securities lending agents that are affiliated with the fund's adviser and that are compensated in their role as agent with a share of the proceeds generated by the lending program.

Funds that decide to recall loaned securities ahead of proxy voting would likely seek to lend their shares again immediately after the vote record date in order to minimize lost revenues from security lending. This is consistent with findings in academic research showing that the supply of shares available to lend starts to decrease about 20 days before the vote record date and reverts to its pre-event levels immediately after the vote record date.[315] However, as pointed out by some commenters, funds that decide to recall shares to vote proxies may not immediately be able to place the recalled shares back on loan after the vote and their opportunities for participating in the securities lending market may be diminished.[316]

We expect that funds will factor income from securities lending, among other considerations, into their lending decision and recall loaned securities when they expect the value of their voting rights will exceed lost income from securities lending. This is consistent with findings in academic research showing that the recall of shares ahead of the voting record date is sensitive to the borrowing fee and that recall is lower if the fee paid by borrowers is higher.[317] Many commenters agreed that the decision to recall loaned shares for proxy voting is based on informed decisions by funds after factoring into consideration costs and benefits of such decisions.[318] While we cannot predict the degree to which funds will recall loaned shares, and the new amendments represent new potential costs and benefits for funds to take into consideration (such as negative attention from activists), one commenter stated that the proposed amendments would not likely change funds' securities lending activities.[319]

Since stock loans can be used for many different purposes, including short selling, arbitrage, and hedge trading strategies, changes in funds' securities lending practices can have an impact on these activities, which may impose additional costs on market participants. A number of commenters expressed the opinion that for securities lending activity with high demand or low supply, recalls from funds to cast proxy votes may decrease market liquidity, which could increase trading costs in the given security, and may negatively impact fund investors.[320] For most securities, we expect that the market for securities lending has sufficient depth to withstand these short-term recalls by some funds ahead of the voting record date without experiencing significant changes. One academic study estimated that the equity lending market has a slack in supply with approximately a quarter of a corporate issuer's market capitalization typically available for lending and less than one-fifth of these shares being on loan.[321] Therefore, if some funds decided to recall their securities to participate in proxy voting, other lenders may step in to supply shares for loan on similar terms.[322] This is consistent with findings in some academic research noting that changes in borrowing fees during the recall period tend to be economically small or insignificant.[323] However, one commenter stated that funds will not be able to easily re-lend their shares after voting, or may not be able to easily re-lend them for the same rates as prior to voting, due to the readily available supply of certain securities where lending supply is significantly greater than borrower demand.[324] While this could lead to a loss of income for funds, because lending rates for readily available securities are low (because the supply of such securities is high, and the demand is low), this loss of income is likely to be small.

Conversely, the impact on borrowing fees can be more pronounced for hard-to-borrow stocks such as stocks with low lendable supply and/or high borrowing demand, also known as ''special.'' [325] If funds recalled a significant number of shares of such stocks ahead of the vote record date, this

estimate that a fund that chooses to provide this voluntary disclosure may incur a cost of between $250 to $750 for the initial disclosure but no material cost for each subsequent disclosure.

[310] Based on Form N–CEN filings received through May 2022, 63.9% of funds were authorized to engage and 38.8% participated in lending their securities. Funds that lent their securities reported aggregate net income from securities lending in the last year of $1.9 billion, representing an average of 0.021% of average total net assets in the last year. A number of commenters agreed that the proposed amendments requiring disclosure of loaned shares may incentivize funds to recall their loaned shares (or not to loan shares in the first place), which could result in decrease in revenues from securities lending for funds and their shareholders. *See, e.g.,* Pickard Comment Letter; Federated Hermes Comment Letter; RMA Comment Letter; MFDF Comment Letter. A commenter agreed that funds' changes in securities lending activity as a result of the proposed amendments could impose other costs on funds. *See* IAA Comment Letter.

[311] *See also* Federated Hermes Comment Letter; RMA Comment Letter; Utah Comment Letter.

[312] *See* RMA Comment Letter.

[313] *See* Utah Comment Letter.

[314] *See, e.g.,* Reena Aggarwal, Pedro A. C. Saffi, & Jason Sturgess., *The Role of Institutional Investors in Voting: Evidence from the Securities Lending Market,* 70 J. Fin. 2309, 2314 (2015) (''Aggarwal, Saffi, & Sturges''), *available at https://onlinelibrary.wiley.com/doi/10.1111/jofi.12284* (referencing a survey of institutional investors in which 37.9% of the respondents stated that a formal policy on securities lending is part of their proxy voting policy, with some institutional investors requiring a total recall of shares ahead of proxy voting, while others weigh the lost income from securities lending against the benefits of voting on a specific proposal).

[315] *See id.,* at 2316.

[316] *See, e.g.,* RMA Comment Letter; BlackRock Comment Letter.

[317] *See* Aggarwal, Saffi, & Sturges, *supra* footnote 314, at 2328.

[318] *See, e.g.,* RMA Comment Letter; Federated Hermes Comment Letter; Vanguard Comment Letter; Blackrock Comment Letter.

[319] *See* Blackrock Comment Letter.

[320] *See, e.g.,* RMA Comment Letter; Blackrock Comment Letter.

[321] *See* Aggarwal, Saffi, & Sturges, *supra* footnote 314, at 2315.

[322] A commenter agreed and stated that the vast majority of lending activity (approximately 90% of outstanding loan balances) will be a segment of the lending market with greater lending supply compared to borrower demand. *See* RMA Comment Letter.

[323] *See* Aggarwal, Saffi, & Sturges, *supra* footnote 314, at 2327. *See also* Susan Christoffersen, Christopher Geczy, David Musto, & Adam Reed, *Vote Trading and Information Aggregation,* 62 J. Fin. 2897, 2912 (2007), *available at* https://www.jstor.org/stable/4622357.

[324] *See* RMA Comment Letter.

[325] The Aggarwal, Saffi, & Sturges study, *supra* footnote 314, estimated that such special stocks represented about 9% of their considered equity lending sample, which covers more than 85% of the securities lending market. The study finds that ''special'' stocks have a higher average annualized borrowing fee of 429 basis points, compared with a fee of 9.3 basis points for the non-special stocks.

would have the potential to impact the price [326] or liquidity [327] of stocks. In addition, a reduction in the ability to short shares may negatively affect price discovery.[328] However, ''special'' stocks are typically associated with higher borrowing fees [329] and, therefore, as discussed above in this section, we would expect funds to be reluctant to recall these shares from loan if the income from lending them exceeds the benefits of participating in proxy voting. Consistent with this, one academic study shows that the lendable supply of ''special'' stocks changes by less than that of the non-special stocks prior to the vote record date.[330] As a result, we expect the amendments could have a more limited effect on securities lending activities for special stocks relative to non-special stocks, which may limit adverse effects on liquidity and price discovery.

One commenter stated that activists would seek to use the proposal's required categorization of voting matters to sway funds towards voting outcomes that are not for the benefit of fund shareholders.[331] To the extent that the concern is harm to fund shareholders from a vote, we believe this is less likely if a fund's adviser follows its fiduciary duty obligations. Specifically, investment advisers are fiduciaries that owe duties of care and loyalty to each client.[332] To satisfy its fiduciary duty in making any voting determination on behalf of a fund, an investment adviser must make determinations in the best interest of its client. Further, an investment adviser cannot place its own interests ahead of the interests of its client.[333]

Finally, the amendments could affect service providers used by funds to report information on Form N–PX. Some commenters stated that the proposed amendments could necessitate reconfiguration of their processes.[334] We agree that service providers that currently do not provide the information with the same degree of uniformity that will be required under the final rule will have to update their processes to help funds meet the new requirements. These service providers may pass on the costs of updating their processes to funds, and those costs may therefore be borne in part by investors. Larger service providers may be able to update or reform their operations with greater economies of scale than smaller service providers. To the extent that this results in consolidation of service providers, service provider prices may increase more broadly, representing an additional potential cost to funds and investors.

Conversely, because the amendments require that funds identify a voting matter using the exact same language and order found in a form of proxy subject to rule 14a–4 under the Exchange Act, service providers would save the cost currently associated with producing a summary of the voting matter in these circumstances. Service providers may pass some or all of the increased costs to fund advisers, who may ultimately pass these costs on to fund investors.

2. Amendments To Require Manager Reporting of Say-on-Pay Votes

(a) Benefits

Under the amendments, managers will publicly disclose annually on Form N–PX information about their proxy votes relating to say-on-pay matters. The information will include: (1) if the form of proxy in connection with a say-on-pay matter reported on the form is subject to rule 14a–4 of the Exchange Act, a description and ordering of say-on-pay matters using the same language that is on an issuer's form of proxy, (2) a standardized classification, (3) the number of shares voted and number of shares loaned and not recalled, and (4) how shares were voted by the manager. Managers will be required to provide this information in a custom XML language. However, managers are permitted to file a notice report that omits voting information where either (1) all proxy votes for which the manager exercised voting power are reported by other reporting persons; (2) the manager did not exercise voting power for any reportable voting matter and therefore does not have any proxy votes to report; or (3) the manager has a clearly disclosed policy of not voting, and did not vote, on any proxy voting matter. Managers will be allowed to request confidential treatment of proxy voting information electronically consistent with rule 24b–2.

The final rule may benefit the securities markets by providing investors with access to information about how managers vote on issuers' say-on-pay recommendations. As of March 31, 2022, managers that file reports on Form 13F exercised investment discretion over approximately $44.4 trillion in section 13(f) equity securities. In many cases, managers also exercise voting power for proxies relating to these equity securities. This voting power means that managers, although making decisions only for the securities they manage, have the ability to affect significantly the outcomes of shareholder votes and influence the governance of corporations.

Recent academic literature shows that the requirement of holding say-on-pay votes can have an impact on executive compensation and other corporate governance practices for corporate issuers.[335] The final rule will enable investors to observe how managers exercised their proxy votes regarding such matters.[336] To the extent the information contained in say-on-pay votes is understood and valued by investors,[337] investors can benefit from using this additional information in selecting managers that vote say-on-pay matters according to investor preferences.[338]

[326] *See, e.g.* Jesse Blocher, Adam Reed, & Edward Van Wesep, *Connecting Two Markets: An Equilibrium Framework for Shorts, Longs, and Stock Loans,* 108 J. Fin. Econ. 302 (2013), *available at* https://doi.org/10.1016/j.jfineco.2012.12.006 (finding that when share loan supply is ''reduced around dividend record dates, prices of hard-to-borrow stocks increase 1.1% while prices of easy-to-borrow stocks are unaffected''). While the study looked at the effect around the dividend record date, it is possible that similar results could hold around vote record dates.

[327] *See also supra* footnote 320.

[328] *See, e.g.,* Ekkehart Boehmer & Juan Wu, *Short Selling and the Price Discovery Process,* 26 Rev. Fin. Studies 2 (2013), *available at* https://www.jstor.org/stable/23356856 (finding that stock prices are more accurate when short sellers are more active).

[329] *See supra* footnote 325.

[330] *See* Aggarwal, Saffi, & Sturges, *supra* footnote 314, at 2323.

[331] *See* Utah Comment Letter.

[332] Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019) [84 FR 33669 (July 12, 2019)].

[333] Proxy Voting Guidance, *supra* footnote 122.

[334] *See* ICI Comment Letter I; ISS Comment Letter.

[335] *See* Peter Iliev & Svetla Vitanova, *The Effect of the Say-on-Pay Vote in the United States,* 65 Management Science 4451 (2019), *available at* https://doi.org/10.1287/mnsc.2018.3062; James Cotter, Alan Palmiter & Randall Thomas, *The First Year of Say-on-Pay under Dodd-Frank: An Empirical Analysis and Look Forward,* 81 Geo. Wash. L. Rev. 967 (2013), *available at* http://www.gwlr.org/wp-content/uploads/2013/04/Thomas.pdf.

[336] A number of commenters agreed that the proposed amendments will provide information about managers' proxy voting information in an accessible form to the beneficiaries of managers. *See, e.g.,* Morningstar Comment Letter. Some commenters also expressed the opinion that the proposed amendments will help ensure that managers follow stated policies on executive compensation. *See, e.g.,* SCERS Comment Letter.

[337] *See, e.g.,* David Larcker, Ronald Schneider, Brian Tayan, and Aaron Boyd, *2015 Investor Survey Deconstructing Proxy Statements—What Matters to Investors,* Stanford University, RR Donnelley, and Equilar Report (Feb. 2015), *available at* https://www.gsb.stanford.edu/faculty-research/publications/2015-investor-survey-deconstructing-proxy-statements-what-matters (finding that 58 percent of shareholders believe that say-on-pay is effective in influencing or modifying pay practices).

[338] Several commenters stated that the transparency provided by the proposed

This information may also help deter votes motivated by conflicts of interest and promote accountability of executives who often are in a position to shape their own pay arrangements. To the extent that executives are sensitive to approval from their institutional shareholder base, the adoption of the final rule should help align the incentives of executives and investors, which will result in better corporate governance practices at corporate issuers.[339]

Public companies currently subject to the Dodd-Frank Act's say-on-pay vote requirements may also benefit from the transparency provided by this rule. Knowing how managers have voted on executive compensation matters in the past, and knowing how they voted on say-on-pay matters at similar firms or other firms in the same industry, can be useful for the companies as they consider their own executive compensation practices and policies.

However, there may be cases where the information required to be reported on Form N–PX may not provide the entire context of a manager's proxy voting decision. For example, a commenter expressed the view that disclosure of proxy voting may be difficult to interpret when managers manage a range of different accounts with different policies and guidelines for proxy voting.[340] The commenter also stated that ambiguity in the definition of when a manager exercised voting power could lead to a situation where a manager may be required to report a vote they did not agree with in cases where multiple managers provide input on applying a client's voting policies but they ultimately disagree on a voting decision.[341]

Section IV.C.1.a discusses additional aspects of the proposal and the associated comments we received in the context of funds. Our analysis of the following aspects of the amendments in that context also applies to these requirements in the context of reporting by managers: i) the quantitative disclosures of the number of shares voted and the number of shares loaned but not recalled, ii) the structured disclosure requirement, and iii) the optional use of certain additional identifiers such as LEIs and FIGIs. Our analysis of both aspects of the amendments in the context of reporting by funds also applies to these requirements in the context of reporting by managers.

(b) Costs

The final rule will lead to some additional direct and indirect costs for managers associated with disclosing required information about their say-on-pay votes annually on Form N–PX. A manager may incur additional direct compliance costs associated with a filing if the manager seeks confidential treatment for the filing by making, via EDGAR, a confidential treatment request. Any portion of these costs that is not borne by the manager will ultimately be borne by the manager's clients. Some of these costs are a direct result of section 14A(d)'s statutory mandate for managers to report annually how they have voted.

Direct costs to each manager will include both internal costs (for compliance attorneys and other, non-legal staff, such as computer programmers, to prepare and review the required disclosure and to update systems) [342] and external costs (such as any costs associated with third-party service providers to collect and report the information disclosed in Form N–PX).[343] Direct costs also include the cost associated with determining whether a manager has exercised voting power and therefore must report a say-on-pay vote on Form N–PX. As discussed above, this determination may require subjective determinations by managers, and so there may be marginal cases where managers must undertake additional costly internal assessments to determine if they must report a say-on-pay vote.[344] Managers may also face additional costs to the extent they conservatively evaluate their voting power, and ultimately conduct the required reporting in cases where they may not have been required to report a say-on-pay voting of a security. For example, as observed above, one commenter stated that ambiguity in the definition of when a manager exercised voting power could lead to a situation where a manager may be required to report a vote in cases where multiple managers provide input on applying a client's voting policies, even if they ultimately disagree on the voting decision.[345]

We anticipate that costs for managers associated with obtaining the information required to be reported by the final rule will be limited to the extent that many managers may already track most of the necessary data.[346]

As discussed in section IV.C.1.b in the context of funds, commenters have observed that not all custodians currently provide their customers with the information that managers will need to report the number of shares the manager loaned but did not recall. We therefore anticipate that managers that currently do not have access to this data will engage their custodians or securities lending agents to obtain it. These service providers may then increase the fees they charge to compensate for any costs of providing this information, which may be passed down to investors.

In a departure from the proposal, managers that have a disclosed policy of not voting proxies and that did not vote during the reporting period, will be permitted to indicate as such, and will therefore incur lower costs compared to the proposal, which would have required them to report information on a security-by-security basis.

Some commenters expressed concerns about the costs and burdens borne by smaller managers. For example, according to these commenters, to comply with the proposed amendments, these smaller managers may hire a vendor which they currently do not use.[347] However, other commenters expressed a different view. According to these other commenters, while smaller managers may incur new costs, they are likely to have the information that they

amendments will help align managers' voting decisions with clients' expectations and improve clients' oversight over managers' proxy voting. *See infra* footnote 287. *See, e.g.,* SCERS Comment Letter; The Shareholder Commons Comment Letter; PRI Comment Letter.

[339] A number of commenters expressed the view that the proposed amendments will help investors and other users or proxy voting information to evaluate managers and their influence over corporate governance of issuer firms, *See, e.g.,* Corporate Governance Comment Letter; SCERS Comment Letter; Friess Comment Letter.

[340] *See* Pickard Comment Letter.

[341] *See, e.g.,* Pickard Comment Letter. *See also supra* section II.B.2 for a detailed discussion of comments we received on this aspect of the proposal.

[342] Several commenters pointed out that reporting persons may need to update existing systems. *See, e.g.,* ICI Comment Letter I, Ultimus Comment Letter.

[343] Based on the results of the PRA analysis provided in Table 2, the Commission estimates that the annual direct costs attributable to information collection requirements in the amendments for managers will be approximately $10,308 per manager, consisting of $7,808 in internal costs and $2,500 in external costs. These annual direct costs include initial as well as ongoing costs, with the former amortized over three years. For purposes of this estimate, we are assuming that every manager will file its full record of say-on-pay votes on ''voting'' report, and not file a ''notice'' report.

[344] *See also supra* footnote 41 and accompanying text, discussing that the framework for determining voting power could result in some subjectivity and the comments we received on this aspect of the proposal.

[345] *See, e.g.,* Pickard Comment Letter. *See also supra* section II.B.2 for a detailed discussion of comments we received on this aspect of the proposal.

[346] *See, e.g.,* CFA/CII Comment Letter (stating that the cost of complying with the proposed amendments ''will be borne most by smaller funds and managers'' but that ''many smaller funds and managers may already track or report this information.'').

[347] *See* ICI Comment Letter I; Ultimus Comment Letter.

need to report already. Therefore, these commenters anticipate that incremental costs may not be unduly burdensome for most of the smaller managers.[348] Nevertheless, we have increased our burden estimates to account for these costs.[349]

The costs arising from the final rule to use Form N–PX to implement section 14A's say-on-pay vote reporting requirements will be mitigated for managers that are advisers to funds and that therefore already have experience with filing Form N–PX reports on behalf of funds. In addition, the use of a custom XML data language for Form N–PX is not expected to impose significant costs on managers subject to say-on-pay voting requirements, as managers have experience filing other EDGAR forms that use similar custom XML data languages, such as Form 13F. The Commission believes that managers will incur an estimated cost of $540 per filing to file Form N–PX in a custom XML data language.[350]

With respect to the LEI reporting requirement on Form N–PX, some managers may be subject to LEI reporting requirements pursuant to Commission rules. For example, managers that are registered investment advisers provide their LEI on Form ADV if they have one.[351] For these managers, compliance costs associated with retrieving and retaining LEIs are similarly reflected in the baseline.

We also do not expect the FIGI disclosure on Form N–PX to result in significant additional compliance costs for managers, because the disclosure of FIGIs is optional rather than mandatory. We likewise do not expect the requirement to report ISINs rather than CUSIP numbers, where CUSIP numbers are not available through reasonably practicable means, to impose significant additional compliance costs on managers. Managers that report securities other than 13(f) securities and that do not already store ISINs for those securities would incur additional costs as a result of this requirement, because they would need to pay fees to license the storing of ISINs for those securities. By contrast, the requirement to report ISINs would not affect managers that report only 13(f) securities, because all 13(f) securities have CUSIP numbers and do not have ISINs. We do not have data on which to estimate the number of managers that could be affected or the extent to which such managers hold non-section 13(f) securities.

The electronic submission of confidential treatment requests via EDGAR obviates the need for filers to incur printing and mailing costs associated with paper submissions. In addition, managers are experienced in using the EDGAR system, which further mitigates the costs of filing these requests electronically. The Commission believes that managers will not incur an additional cost for submitting confidential treatment requests via EDGAR as compared to filing these requests in paper form.[352]

The costs associated with the final rule may vary depending on existing levels of voluntary disclosure, organizational structure, and investment objectives of each manager. For example, the cost of compliance with the final rule is likely to be lower for managers that exercise voting power on behalf of funds because such votes are already reported on Form N–PX, and the amendments will not require managers to separately report say-on-pay votes cast on behalf of funds in compliance with the joint reporting provisions. Also, the costs are likely to be lower for managers who already voluntarily track and disclose some of the data the final rule would require.

Some of the indirect costs to managers associated with the amendments will be the same as those discussed in the context of funds in section IV.C.1.b. Specifically, to the extent that the amendments may provide an incentive for managers to devote additional time and resources to proxy voting, this may result in additional expenses for managers, some of which may be passed on to their clients. Also, an increase in scrutiny by investors as a result of increased transparency under the amendments may incentivize managers to vote against the management of an issuer with which the manager may have a business relationship, which could weaken the manager's relationship with the issuer firm and result in lost revenue.

Similarly, the disclosure requirements for managers can create incentives for them to recall their loaned securities to cast proxy votes on say-on-pay matters for these securities. This can reduce these managers' and their clients' revenues and may have a short-term impact on the securities lending and underlying stock markets.[353] In addition, some managers may decide to voluntarily incur the cost for providing additional information on Form N–PX to provide context for the disclosure of the number of shares the manager loaned and did not recall for voting, some of which may be passed on to their clients.[354]

Finally, the amendments could affect service providers used by managers to report information on Form N–PX. Specifically, service providers that currently do not provide the information with the same degree of uniformity that will be required under the final rule will have to update their processes to help managers meet the new requirements. Service providers may pass some or all of the changes in costs they will incur to their manager customers, who may ultimately pass these costs on to their clients.[355]

D. Effects on Efficiency, Competition, and Capital Formation

In this section we consider whether the final rule and form amendments will promote efficiency, competition, and capital formation.

1. Amendments to Funds' Reporting of Proxy Votes

The amendments to Form N–PX will provide investors with greater access to information regarding the proxy voting decisions of the funds they invest in. This can help investors make better informed investment decisions if they want to take into account funds' voting records, and thus more efficiently express their voting preferences. To the degree that some investors face meaningful impediments to switching funds, for example as a result of possible tax implications or because of the selection of asset managers by their current employer, this may in those cases limit the improvement in allocative efficiency.[356] Conversely, to the extent that the additional information disclosed on Form N–PX leads some investors to accept lower returns (for a given level of risk) in exchange for investing in funds that

[348] *See, e.g.,* CFA Comment Letter.

[349] *See infra* section V for the revised PRA analysis.

[350] *See* Short Position and Short Activity Reporting by Institutional Investment Managers, Exchange Act Release No. 94313 (Feb. 25, 2022) [87 FR 14950, 14973 (Mar. 16, 2022)].

[351] *See* Item 1.P of Form ADV.

[352] *See* E-Filings Release, *supra* footnote 204, at section V.D.

[353] *See supra* footnotes 253—258 and accompanying text for the discussion related to the effect on securities lending for funds and the potential effects on underlying markets, which would also apply to changes in managers' securities lending activities.

[354] *See also supra* footnote 123. As discussed in the context of funds, we anticipate that this cost is likely to be relatively small, as those managers (like funds) would likely provide the same or similar disclosure on subsequent filings of Form N–PX. We estimate that a fund that chooses to provide this voluntary disclosure may incur a cost of between $250 to $750 for the initial disclosure but no material cost for each subsequent disclosure.

[355] *See supra* footnote 334 and accompanying text for a discussion of the comments received on this aspect of the proposal.

[356] *Cf. supra* footnote 268 and accompanying text.

better align with their political, social, or other preferences, this could reduce the overall allocative efficiency of capital in the economy.

The amendments will also make it easier for investors and other proxy voting data users to compare and evaluate proxy voting records across a wide variety of funds. This may improve competition among funds, to the extent that funds seek to differentiate themselves based on their voting records.[357] For example, a fund that follows a strategy designed to provide good governance to its portfolio companies may be able to show a track record of more effective proxy voting patterns relative to their peers that follow similar strategies but less effectively. This can further promote a more efficient allocation of capital by investors among competing funds. Further, as proxy voting information becomes easier to gather and analyze, data-collecting service providers can face an increased competitive pressure to improve and develop new tools and methodologies and/or reduce their service fees.

Finally, the increased transparency with regard to funds' proxy voting may encourage more investors to invest in funds, which may increase capital formation.[358] In addition, to the extent that the final rule leads funds to make voting decisions that positively affect corporate issuers' productive use of capital, this could also enhance capital formation.[359]

2. Amendments To Require Manager Reporting of Say-on-Pay Votes

The amendments to require manager reporting of say-on-pay votes can promote more efficient allocation of capital to managers. The amendments will enable investors, including investors who are not currently advisory clients of any given manager, to obtain managers' proxy voting information which, to the extent that investors review the disclosures, can help investors allocate assets to managers who cast proxy votes that are consistent with investors' preference for voting on executive compensation matters.[360]

Because the final rule applies equally to all managers that are required to file reports under section 13(f) of the Exchange Act, we do not anticipate that any competitive disadvantages will be created. To the contrary, we anticipate that the final rule may encourage competition by raising awareness about manager voting on say-on-pay matters and may facilitate differentiation among managers.

Finally, we do not anticipate any significant effects of the amendments on capital formation.

E. Reasonable Alternatives

1. Scope of Managers' Say-on-Pay Reporting Obligations

We considered several alternatives that would limit the scope of managers' say-on-pay reporting obligations by more closely aligning managers' reporting requirements on Form N–PX with their reporting requirements on Form 13F.[361]

One alternative we considered was to add a *de minimis* exception. Reporting persons on Form 13F are permitted to exclude positions when the positions have a dollar value of less than $200,000 and consist of fewer than 10,000 shares. Several commenters suggested that we include such a *de minimis* exception.[362] We also considered other alternatives suggested by commenters. Specifically, we considered limiting the reporting obligation to (i) votes on section 13(f) securities,[363] (ii) votes on securities held at the end of a calendar quarter,[364] and (iii) exclude short-term positions such as those held for fewer than 30 days.[365]

The benefits of say-on-pay vote reporting to managers' clients and to other investors, as discussed above, do not appear to be limited to votes of a certain size, to section 13(f) securities, or securities held at the end of a calendar quarter or those held for longer periods of time. Investors should benefit from a manager's full voting record, and a more limited reporting obligation would reduce the usefulness of the say-on-pay disclosure. We also believe that the cost savings of limiting the scope of the reporting requirement in any of these alternative ways would be minimal, because many reporting entities may already track or report this information.[366] To the extent that a filing could reveal information about a reporting person's trading strategy that would permit it to be front-run, we believe that the instructions for requesting confidential treatment will adequately address this concern.

We also considered as an alternative allowing managers to not file on Form N–PX when they did not exercise voting power over securities that held say-on-pay votes during the reporting period. We do not believe this alternative would substantially reduce costs for relevant managers relative to the final rule because the final rule only requires these managers to file a notice report indicating that they have no votes to report. Moreover, we believe that requiring all managers to make a filing will permit Commission staff to identify more easily managers who may have missed a filing obligation. Not requiring all managers to make a filing would reduce the usefulness of Form N–PX filings because investors will not necessarily understand whether a manager did not make a filing because it did not exercise voting power or because it simply neglected to file the form. In addition, we believe that other means for managers to disclose that they have no votes to report, such as by publishing that information on a website, would not be substantially less costly than filing a notice report as required by the final rule and would be less useful for Commission oversight.

2. Amendments to Proxy Voting Information Reported on Form N–PX

We are adopting changes to Form N–PX that will require disclosure of information about the number of shares that were voted (or, if not known, the number of shares that were instructed to be cast), as well as disclosure of the number of shares the reporting person loaned and did not recall.

We considered adopting a requirement to disclose the number of shares voted (or instructed to be cast) while not requiring disclosure of the number of shares the reporting person loaned but did not recall. This approach would have provided information to understand split votes, but would have limited utility otherwise. Specifically, this approach would not provide information to help investors understand the full extent to which a reporting person is voting shares. While the alternative approach would reduce reporting burdens for some funds and

[357] Some commenters expressed the view that enhanced proxy voting disclosure from the proposed amendments will help investors and regulators become more informed, which can promote competition among funds and protect investors and general public from the concentration of power in the asset management industry. *See, e.g.,* Friess Comment Letter; Corporate Governance Comment Letter.

[358] *See, e.g.,* Flores Comment Letter.

[359] *Cf. supra* footnote 274 and accompanying text.

[360] Many commenters agreed that enhanced proxy voting disclosure from the proposed amendments can help investors to align their interests on important topics (*e.g.,* ESG) with those of managers. *See, e.g.,* SCERS Comment Letter; LTSE Comment Letter; The Shareholder Commons Comment Letter; Corporate Governance Comment Letter.

[361] We also considered alternatives to the definition of the exercise of voting power. *See supra* section II.B.2 for a discussion of these alternatives and the comment letters we received on this aspect of the proposal.

[362] *See* Pickard Comment Letter; MFA Comment Letter; AIMA Comment Letter.

[363] *See supra* footnote 48 and accompanying text.

[364] *See supra* footnote 52 and accompanying text.

[365] *See supra* footnote 53 and accompanying text.

[366] *See supra* footnote 306.

managers, it would also have fewer benefits for investors such as transparency into how a reporting person's securities lending affects its proxy voting.[367]

3. Amendments to the Time of Reporting on Form N–PX or Placement of Funds' Voting Records

As an alternative to maintaining the current timeline for filing reports on Form N–PX, we considered requiring funds or managers to report relevant proxy votes more frequently, such as on a semiannual, quarterly, or monthly basis, or shortly after a given vote is held. We also considered maintaining the current annual reporting requirement but requiring reporting persons to file their reports more quickly (*e.g.,* by the end of July, rather than by the end of August). In general, these alternatives would provide investors and other data users with more timely information about how a fund or manager votes.

A semiannual reporting requirement could have been incorporated into funds' current reporting of annual and semiannual shareholder reports on Form N–CSR. The Commission proposed a similar approach to requiring disclosure of funds' proxy voting records in 2002.[368] At that time, some commenters raised concern about the burdens of such an approach for fund complexes with staggered fiscal year ends, as these fund complexes could be required to file reports on Form N–CSR with complete proxy voting records as many as twelve times per year.[369] An approach to requiring more frequent reporting of proxy voting records that is tied to funds' fiscal year ends would likely create administrative complexity for many fund complexes and increase costs associated with filing proxy voting information more frequently.

As for a semiannual or quarterly reporting requirement on Form N–PX that is based on the calendar year, either of these approaches may not significantly enhance the timeliness of voting information in many cases because most corporate issuers hold proxy votes within the few months leading up to June 30, which is the end of the current Form N–PX annual reporting period. As a result, if we required semiannual or quarterly reporting of Form N–PX, most votes would likely be in the reporting person's report for the first half of the year (for semiannual reports) or for the second calendar quarter (for quarterly reports). A semiannual or quarterly reporting requirement would also increase reporting costs, as reporting persons would be required to file either two or four Form N–PX reports per year rather than one report per year.

A requirement to report monthly or shortly after each proxy vote is held would have provided voting information much more quickly to investors and this could have provided certain benefits. For example, timelier public reporting of funds' proxy votes has the potential to facilitate fund shareholders' ability to monitor their funds' involvement in the governance activities of portfolio companies, including within a single proxy season. Annual reporting will timely capture a significant percentage of the votes cast by reporting persons because most votes occur during Proxy Season. As discussed above in section II.H, while some commenters supported more frequent reporting, for example suggesting that reporting persons be required to provide prompt or real-time disclosure of votes, this frequency of reporting may make it difficult for investors reading a reporting person's Form N–PX reports to evaluate overall patterns in the reporting person's voting behavior.

Also, these alternative approaches would require reporting persons to disclose a position in a security before disclosure of the position is required on Form 13F or Form N–PORT, increasing the potential for disclosure of sensitive information that competitors can use to front-run or reverse engineer investing strategies. In addition, we expect that both alternative approaches would increase costs associated with reporting proxy voting information because reporting would take place more frequently.

Shortening the timeline for filing annual Form N–PX reports, which is currently approximately two months after the end of the reporting period, would marginally improve the timeliness of the reported information. However, shortening the filing timeline by more than a few weeks would also increase the possibility of a reporting person being required to disclose a vote on a security before otherwise being required to disclose a position in that security on Form 13F or Form N–PORT. As a result, this approach could to some extent increase the potential for disclosure of sensitive information that competitors could potentially use to front-run or reverse engineer investing strategies.

V. Paperwork Reduction Act Analysis

Certain provisions of the final rules and form amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[370] The Commission published a notice requesting comment on changes to these collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[371] The title for the collection of information is: ''Form N–PX—Annual Report of Proxy Voting Record'' (OMB Control No. 3235–0582).[372] 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.

Section 14A(d) of the Exchange Act requires that every manager subject to section 13(f) of the Exchange Act report at least annually how it voted on say-on-pay votes, unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission. To implement section 14A(d), we are adopting new rule 14Ad–1 under the Exchange Act, which will require managers to file their record of say-on-pay votes with the Commission annually on Form N–PX.[373] We are also adopting amendments to Form N–PX, which was adopted pursuant to section 30 of the Investment Company Act and is currently used by funds to file their complete proxy voting records with the Commission, to accommodate the new filings by managers and to enhance the information funds provide on their proxy votes. In addition, we are adopting amendments Forms N–1A, N–2, and N–3 to require funds to disclose that their proxy voting records are available on (or through) their websites. Although the website availability requirement will be located in the relevant registration form, we are reflecting the burden for these requirements in the burden estimate for Form N–PX—Annual Report of Proxy

[367] *See supra* section II.C.3.b for detailed discussion.

[368] *See* Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act Release No. 25739 (Sept. 20, 2002) [67 FR 60828 (Sept. 26, 2002)].

[369] *See* 2003 Adopting Release, *supra* footnote 4. We did not receive comments on this alternative.

[370] 44 U.S.C. 3501 *et seq.*

[371] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[372] The title for the collection of information relating to Form N–PX will be renamed from ''Form N–PX—Annual Report of Proxy Voting Record of Registered Management Investment Companies.''

[373] For purposes of the PRA analysis, the burden associated with the requirements of rule 14Ad–1 is included in the collection of information requirements of Form N–PX.

Voting Record, and not in the burden for Forms N–1A, N–2, or N–3.

Form N–PX, including the amendments, contains collection of information requirements. Compliance with the disclosure requirements of the form is mandatory. Responses to the disclosure requirements will not be kept confidential unless granted confidential treatment as discussed above.

Approximately 12,492 funds and series (each a ''portfolio'') file on Form N–PX.[374] We estimate that the 12,492 portfolios are composed of approximately 5,496 portfolios that do or may hold equity securities, 2,339 portfolios holding no equity securities, and 1,619 portfolios holding fund securities (*i.e.,* funds of funds).[375] In addition, the Commission estimates that there are approximately 8,147 managers required to file Form 13F reports with the Commission, which will be required to file Form N–PX reports under the amendments.[376]

We also estimate that managers will file approximately 234 amendments to Form N–PX reports as a result of the final adverse disposition of a request for confidential treatment or upon expiration of confidential treatment.[377] For purposes of this estimate, we are assuming that every manager will file its full record of say-on-pay votes on ''voting'' report, and not file a ''notice'' report. In practice, because certain managers exercise voting power over the same securities as other managers, or exercise voting power over say-on-pay votes that funds already report, the number of parties who need to separately maintain records and prepare filings may be lower.

While several commenters provided comments on the potential costs of the proposed amendments, no commenters specifically addressed our PRA analysis.[378] Two commenters stated that some reporting persons use service providers in the reporting process and that the proposed amendments could necessitate reconfiguration of the processes those service providers use.[379] One commenter suggested that proxy voting advisory firms will undertake much of the work of vote categorization, which will result in costs for funds for their services.[380] The commenter also stated that smaller funds that do not currently use an outside vendor to file Form N–PX may engage one as a result of the rule. On the other hand, a commenter stated that, while certain funds may bear new costs, funds may already track much of the information they will be required to report; the increased costs would thus only be due to transferring existing data onto a new form, rather than designing a new process to track the information in the first place.[381] In addition, several commenters stated that lent share disclosure may be burdensome to implement.[382]

Conversely, as discussed above, the amendments as adopted have been modified in some respects from the proposal. While we recognize that some of these changes may increase the burdens on respondents from what was proposed, for example, by necessitating that reporting persons ensure that LEI information is included on Form N–PX where applicable, the balance of these changes should reduce burdens on respondents. For example, the change that consolidates the proposed categories and removes the proposed subcategories as part of the categorization requirement should lower burdens on respondents by simplifying the categorization process resulting in less time taken in completing the form as compared to the proposal. As a result, while the amendments as adopted address many of the cost concerns suggested by commenters we are nonetheless increasing our burden estimates to account for the costs of the amendments as suggested by commenters. Regarding service providers, because not all filers use service providers, for PRA purposes, we have assumed that all burdens associated with the modifications will be incurred by filers, even if in certain cases it would be incurred by the service provider and passed on to the filer in the form of added costs.

The tables below summarize the proposed and final Form N–PX estimates of the initial and ongoing annual burden associated with the amendments.

TABLE 2—FORM N–PX PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]		Wage rate [2]	Internal time costs	Annual external cost burden
Proposed Estimates						
Funds Holding Equity Securities						
Estimated annual burden of current Form N–PX per response	.....	7.2	×	[3] $373	$2,686	$1,000
Estimated initial burden to accommodate new reporting requirements	24	8	×	[4] 325	2,600	.....
Additional estimated annual burden associated with amendments to Form N–PX	.....	10	×	[5] 335	3,350	500
Proposed website availability requirement [6]	.....	0.5	×	[6] 254	127	.....

[374] *See supra* footnote 235 and accompanying text.

[375] Based on Commission data as of December 31, 2021, of these, approximately 1,619 are funds of funds. Of the remaining 10,873, we estimate that 49% (5,332) are funds or series that invest primarily in equity securities, 6% (614) are ''hybrid'' funds or series that may hold some equity securities (5,332 + 614 = 5,496), 22% (2,339) are bond funds or series that hold no equity securities and 2% (250) are money market fund portfolios that hold no equity securities (2,339 + 250 = 2,588). *See* ICI 2022 Fact Book, *supra* footnote 2, at 170–214.

[376] *See supra* footnote 241. We assume, for purposes of our PRA analysis, that all of these filers are filing a complete Form N–PX. Because some managers will not make a full report but instead will file notice reports, for example those that have a clearly disclosed policy of not voting, and did not vote, on any proxy matters during the reporting period, the burden estimates may be overstated. We lack the data, however, to estimate the number of managers who will file notice reports. Form 13F–NT filers report their holdings on the Form 13F–HR of a different filer; while certain of those filers may be eligible to use the joint reporting provisions of Form N–PX, we have assumed for the purpose of this analysis that they will file their own reports on Form N–PX.

[377] This is based on the number of Form 13F filers as of the first quarter of 2022. In addition to these 8,147 filers, we also received 936 amendments to filings covering one of the four quarters in 2021; consistent with the proposal, for purposes of this analysis, we have included these amendment filings in our analysis divided by four. Consistent with the proposal, for purposes of this estimate, we are conservatively assuming that all amendments filed are related to the adverse disposition of a request for confidential treatment or the expiration of confidential treatment, and that this results in the full burden of a new Form N–PX filing being borne by the manager. We do so even though we recognize that Form 13F amendments also are filed to correct errors or omissions in a filing that does not relate to a request for confidential treatment. Consistent with the proposal, our estimate does not allocate a separate burden to amendments that merely correct errors or omissions in a separate filing. For that reason, and because we assume funds will not file confidential treatment-related amendments, we are not including a burden estimate for amendments filed by funds. *See* Proposing Release, *supra* footnote 5, at n.270 and accompanying text.

[378] *See supra* section II.

[379] *See* ICI Comment Letter I; ISS Comment Letter.

[380] *See* ICI Comment Letter I.

[381] *See* CFA Institute/CII Comment Letter.

[382] *See, e.g.,* Blackrock Comment Letter.

TABLE 2—FORM N–PX PRA ESTIMATES—Continued

	Internal initial burden hours	Internal annual burden hours [1]		Wage rate [2]	Internal time costs	Annual external cost burden
Estimated number of annual responses [8]		× 7,064			× 7,064	× 7,064
Total annual burden		181,545			61,901,832	10,596,000
Funds Not Holding Equity Securities						
Estimated annual burden of current Form N–PX per response		0.17	×	[3] 373	63	
Additional estimated annual burden associated with amendments to Form N–PX						
Estimated number of annual responses [8]		× 3,188			× 3,188	
Total annual burden		542			200,844	
Funds of Funds						
Estimated annual burden of current Form N–PX per response		1	×	[3] 373	373	100
Additional estimated annual burden associated with amendments to Form N–PX		0.5	×	[3] 373	187	100
Proposed website availability requirement [6]		0.5	×	[6] 254	127	
Estimated number of annual responses [8]		× 1,367			× 1,367	× 1,367
Total annual burden		2,734			939,129	273,400
Institutional Investment Managers						
Changes to systems to accommodate new reporting requirements	30	10	×	[9] 325	3,250	
Estimated annual burden associated with Form N–PX filing requirement		5	×	[10] 335	1,675	1,000
Estimated number of annual responses [11]		× 7,744			× 7,744	× 7,744
Total annual burden		116,160			38,139,200	7,744,000
Final Estimates						
Funds Holding Equity Securities						
Estimated annual burden of current Form N–PX per response		7.2	×	[3] 400	2,880	1,000
Estimated initial burden to accommodate new reporting requirements [12]	36	12	×	[4] 349	4,188	[13] 500
Additional estimated annual burden associated with amendments to Form N–PX [12]		12	×	[5] 349	4,188	[13] 1,000
Website availability requirement [6]		0.5	×	[6] 272	136	
Estimated number of annual responses [8]		× 5,496			× 5,496	
Total annual burden		188,490			67,737,479	14,865,142
Funds Not Holding Equity Securities						
Estimated annual burden of current Form N–PX per response		0.17	×	[3] 400	68	
Additional estimated annual burden associated with amendments to Form N–PX						
Estimated number of annual responses [8]		× 2,588			× 2,588	
Total annual burden		440			176,005	
Funds of Funds						
Estimated annual burden of current Form N–PX per response		1	×	[3] 400	400	100
Additional estimated annual burden associated with amendments to Form N–PX		0.5	×	[3] 400	200	100
Website availability requirement [6]		0.5	×	[6] 272	$136	
Estimated number of annual responses [8]		× 1,619			× 1,619	× 1,619
Total annual burden		3,238			1,191,584	323,800
Institutional Investment Managers						
Changes to systems to accommodate new reporting requirements [12]	45	15	×	[9] 349	5,235	[13] 500
Estimated annual burden associated with Form N-PX filing requirement [12]		7.5	×	[10] 343	2,573	[13] 2,000
Estimated number of annual responses [11]		× 8,381			× 8,381	× 8,381
Total annual burden		188,572			65,438,848	20,952,500
Total Burden						
Currently Approved Burden		47,984				17,657,958
Additional Burden Associated with Amendments		332,757				18,483,484

TABLE 2—FORM N–PX PRA ESTIMATES—Continued

	Internal initial burden hours	Internal annual burden hours [1]		Wage rate [2]	Internal time costs	Annual external cost burden
Total Burden		380,741				36,141,445

Certain products and sums do not tie due to rounding.

[1] Includes initial burden estimates amortized over a three-year period.

[2] 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 annually to account for the effects of inflation, with the last adjustment occurring in early 2022 (or 2021 in the case of estimates from the proposal). See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

[3] Represents the estimated hourly wage rate of a compliance attorney.

[4] Represents the blended estimated hourly wage rates of a programmer and a compliance attorney and includes, *inter alia,* the costs of obtaining from service providers data on the number of shares on loan but not recalled. In the case of the final estimates, the blended hourly rate is based on 18 hours for a programmer at $297 per hour and 18 hours for a compliance attorney at $400 per hour.

[5] Represents the blended estimated hourly wage rates of a programmer and a compliance attorney. In the case of the final estimates, the blended hourly rate is based on 6 hours for a programmer at $297 per hour and 6 hours for a compliance attorney at $400 per hour.

[6] While the amendments will require funds to disclose that their proxy voting records both are available on fund websites and will be delivered to investors upon request, the Form N–PX PRA estimates includes only the burdens associated with website posting. Funds' registration forms currently require them to disclose that they either make their proxy voting records available on their websites or deliver them upon request. We understand most funds deliver proxy voting records upon request and, therefore, the burdens of delivery upon request are already included in the information collection burdens of each relevant registration form.

[7] Represents the estimated hourly wage rate of a webmaster.

[8] These estimates are conducted for each fund portfolio, not for each filing, and are an average estimate across all Form N–PX reporting persons. In certain cases, a single Form N–PX filing will report the proxy voting records of multiple fund portfolios. In those circumstances, the reporting person will bear the burden associated with each fund portfolio it reported. This average estimate takes into account higher costs for funds filing reports for multiple portfolios without assuming any economies of scale that multiple-portfolio fund complexes may be able to achieve.

[9] Represents the blended estimated hourly wage rates of a programmer and a compliance attorney. In the case of the final estimates, the blended hourly rate is based on 22.5 hours for a programmer at $297 per hour and 22.5 hours for a compliance attorney at $400 per hour.

[10] Represents the blended estimated hourly wage rates of a programmer and a compliance attorney. In the case of the final estimates, the blended hourly rate is based on 3 hours for a programmer at $297 per hour and 4.5 hours for a compliance attorney at $400 per hour.

[11] At proposal, included 7,550 initial filings and assumed an additional 194 filings as a result of the final adverse disposition of a request for confidential treatment or upon expiration of confidential treatment. Now includes 8,147 initial filings and estimates an additional 234 filings.

[12] The Commission's estimates of the internal initial and annual time burdens associated with the amendments have been increased by 50% compared to the proposal.

[13] In light of comments and modifications to the proposal, the Commission's estimates of the external ongoing costs associated with the amendments have been doubled compared to the proposal, and the Commission has additionally included estimated initial costs of compliance. While the specific external costs will vary depending on the reporting person, this could include the costs of external reporting vendors or external counsel or of reporting in a custom XML data language. *See* footnote 343. Costs are estimated on a per-portfolio (not per-fund complex) basis, and as noted by a commenter, larger fund complexes may be able to achieve greater economies of scale. The same may also be true of managers.

VI. Regulatory Flexibility Act Certification for Managers and Final Regulatory Flexibility Analysis for Funds

A. Regulatory Flexibility Act Certification for Managers

Pursuant to section 605(b) of the Regulatory Flexibility Act (''RFA''), the Commission certified that, if adopted, new rule 14Ad–1 and the amendments to Form N–PX relating to managers (''final manager rules'') would not have a significant economic impact on a substantial number of small entities.[383] As discussed in more detail in the Proposing Release, for purposes of this rulemaking and the RFA, a manager is a small entity if it: (i) has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year. The Commission therefore stated in the Proposing Release that no small entities for purposes of 17 CFR 240.0–10 (''rule 0–10 under the Exchange Act'') would be affected by proposed rule 14Ad–1 and the amendments to Form N–PX relating to managers. This is because a manager would only be required to comply with those requirements if the manager exercises investment discretion with respect to accounts holding section 13(f) securities having an aggregate fair market value on the last trading day of any month of any calendar year of at least $100 million. The Commission requested comment on both the use of this small entity definition and the Commission's certification in section VI of the Proposing Release. No commenters responded to these requests request. For the same reasons as stated in the proposing release, we again certify that the final manager rules will not have a significant economic impact on a substantial number of small entities.

B. Final Regulatory Flexibility Act Analysis for Funds

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') in accordance with section 604 of the RFA.[384] It relates to amendments to Form N–PX relating to funds, as well as amendments to Forms N–1A, N–2, and N–3 (''final fund rules''). The Proposing Release included an Initial Regulatory Flexibility Act Analysis (''IRFA'') with regard to funds that solicited comment and was prepared in accordance with the RFA.[385]

1. Need for and Objectives of the Final Fund Rules

The Commission is amending Form N–PX under Investment Company Act to enhance the information mutual funds, ETFs, and certain other funds currently report annually about their proxy votes and to make that information easier to analyze. The amendments to Form N–PX will standardize the order in which reporting persons disclose information, categorize votes, structure and tag the data reported, and, require reporting persons to identify proxy voting matters using the same language as disclosed in the issuer's form of proxy, presented in the same order as the matters appear in the form of proxy, and separate directors for director election matters only if a form of proxy in connection with a matter is subject to rule 14a-4 of the Exchange Act. In all other cases, reporting persons will instead remain subject to the current requirement to provide a brief identification of the matters voted on. In a change from current practice, however reporting persons will be required to limit use of abbreviations, which should not be used other than for commonly

[383] 5 U.S.C. 605(b).

[384] 5 U.S.C. 604.

[385] *See* Proposing Release, *supra* footnote 5, at section VI.

understood terms or for terms that the issuer abbreviated in its description of the matters regarding the language used for identifying proxy matters. The final fund rules will also provide additional information about the extent to which a fund votes or loans its shares. In addition, we are amending Forms N–1A, N–2, and N–3 to require these funds to disclose that their proxy voting records are publicly available on (or through) their websites and available upon request, free of charge in both cases to make this information easier for investors to access.

All of these requirements are discussed in detail in section II of this release. The costs and burdens of these requirements on small funds are discussed below as well as above in our Economic Analysis and Paperwork Reduction Act Analysis, which discuss the applicable costs and burdens on all funds.[386]

2. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on the IRFA, including a request for comment on the number of small entities that may be affected by our proposed rules and guidelines and whether the proposed rules and guidelines would have any effects not considered in our analysis. We also requested that commenters describe the nature of any effects on small entities subject to the rules and forms and provide empirical data to support the nature and extent of such effects. We also requested comment on the proposed compliance burdens and the effect those burdens would have on smaller entities.

Some commenters highlighted some of the concerns specific to small funds relative to the proposal, such as needing to hire a third party vendor to prepare Form N–PX as a result of the amendments, resulting in increased costs.[387] One of these commenters also suggested that the proposed amendments would result in an increase in their filing costs, and the cumulative regulatory burden on small funds as a result of the proposed amendments would be larger in relative terms because of the fixed nature of these costs and the funds' inability to achieve economies of scale that larger funds can realize.[388] One commenter stated that the proposed amendments may be less beneficial to investors because of the lessened impact of their holdings on voting outcomes and suggested that we exempt small funds from the categorization requirements in particular.[389] Another commenter made a similar suggestion about the quantitative data disclosures.[390] A different commenter, however, suggested that the additional costs and resources required for compliance with the Form N–PX amendments would impact smaller funds, but that many small funds may already have in place systems to track and report the information and that the benefits of the increased transparency stemming from the amendments outweigh the incremental costs that would be incurred.[391] One other commenter stated that, to ensure the availability of the full dataset, all reporting persons, irrespective of size, should be required to file Form N–PX reports in a structured data language.[392]

It is important to establish a consistent framework for proxy information provided by funds to enhance the consistency and availability of this information to investors, and investors in funds of all sizes will benefit from the enhancements to Form N–PX we are adopting in this release. Therefore, the final fund rules establish requirements for reporting proxy information that are broadly applicable to all funds, including small funds. We have, however, made certain modifications to the proposed requirement regarding categorization that may have the effect of easing unnecessary burdens for all funds, including smaller funds. In particular, we have streamlined the list of categories from which reporting persons will be required to choose in order to reduce overlap between the categories and eliminated the proposed requirement to select from a list of subcategories in addition to the categories. Thus, while we acknowledge that the final fund rules will impose costs on smaller funds, the final fund rules are tailored to accomplish our goals while minimizing those costs.

3. Small Entities Subject to the New Rule and Amendments

The amendments will affect funds that are small entities. For purposes of Commission rulemaking in connection with the RFA, 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.[393] Commission staff estimates that, as of June 2022, approximately 35 registered mutual funds, 11 registered open-end ETFs, and 31 registered closed-end funds (collectively, 77 funds) are small entities.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

We are amending Form N–PX, which funds currently use to file their complete proxy voting records with the Commission, to require reporting in a custom XML language, to require other formatting and presentation changes, and to add certain new or modified disclosure items.

The amendments to Form N–PX will affect funds that are currently required to report on the form, including those that are small entities. For instance, the amendments require funds to tie the description of the voting matter to the issuer's form of proxy under certain circumstances and to categorize voting matters by type. In addition, the amendments require information about the number of shares that were voted (or, if not known, the number of shares that were instructed to be cast), as well as the number of shares the fund loaned and did not recall. The amendments also require reporting of information on Form N–PX in a structured data language.

We are adding a new section on the cover page of Form N–PX where the reporting person would provide information in cases where the form is filed as an amendment to a previously filed Form N–PX report. We are also requiring that the cover page include information to help users identify whether the reporting person is a fund or a manager. We are also adding a new summary page to Form N–PX on which a fund is required to provide information about series or managers whose votes are included in the report, if applicable.

The amendments are discussed in detail in sections I and II above. We discuss the specifics of these burdens in the Economic Analysis and Paperwork Reduction Act sections above. For

[386] *See supra* sections IV and V. Section V also discusses the professional skills that we believe compliance with the rules will entail.

[387] ICI Comment Letter I; Ultimus Comment Letter.

[388] *See* ICI Comment Letter I.

[389] *See* Ultimus Comment Letter.

[390] *See* ICI Comment Letter I. This commenter also suggested that smaller funds in particular would benefit from being permitted to comply with the website disclosure requirement by providing a direct link on their website to the HTML-rendered Form N–PX report on EDGAR, but, as discussed above, all funds, including smaller funds, will be permitted to do this. *See supra* footnote 218 and accompanying text.

[391] *See* CFA/CII Comment Letter.

[392] *See* XBRL Comment Letter.

[393] *See* 17 CFR 270.0–10(a).

purposes of the PRA analysis, we have estimated that the aggregate annual reporting, administrative, and paperwork costs imposed by the form amendments on funds will be approximately $56 million.[394] We also estimate aggregate one-time reporting, administrative, and paperwork costs of approximately $26 million for funds that hold equity securities.[395]

5. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse effect on small entities. Accordingly, we considered the following alternatives: (i) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the amendments, or any part thereof, for small entities.

The Commission does not presently believe that the amendments would require the establishment of special compliance requirements, timetables, or exceptions for small entities. The amendments are designed to increase transparency about how funds vote. As discussed above in response to comments, different disclosure requirements for small entities, such as reducing the level of proxy voting disclosure for small entities, would prevent investors in small funds from benefitting from the information provided by the amendments. Small funds currently must follow the same proxy voting reporting requirements as large funds in light of these concerns.

We have endeavored through the proposed amendments to Form N–PX to minimize the regulatory burden, including on small entities, while meeting our regulatory objectives. To this end, we made adjustments to the proposed amendments in the final fund rules as discussed in more detail above. Further, the proposed amendments took into account comments on the 2010 proposal, which resulted in retention of key disclosures to help investors understand how a fund votes, while reducing the burdens on funds.

We have endeavored to clarify, consolidate, and simplify the requirements applicable to funds, including those that are small entities. Finally, we do not consider the use of performance rather than design standards to be consistent with our statutory mandate of investor protection with respect to reporting of proxy voting records.

Statutory Authority

The Commission is adopting new rule 14Ad–1 and amendments to the rules and forms discussed above pursuant to the authority set forth in sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3]; sections 4A, 4B, 10(b), 13, 14A, 15(d), 23, 24, 35A, and 36 of the Exchange Act [15 U.S.C. 78d–1, 78d–2, 78j(b), 78m, 78n–1, 78o(d), 78w, 78x, 78*ll,* and 78mm]; sections 6(c), 8, 24(a), 30, 31, 38, and 45 of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, 80a–30, 80a–37, and 80a–44]; and section 204 of the Investment Advisers Act [15 U.S.C. 80b–4].

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

17 CFR Part 232

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

For the reasons set out in the preamble, the Commission is amending title 17, chapter II, of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, and 557; 11 U.S.C. 901 and 1109(a); 15 U.S.C. 77c, 77e, 77f, 77g, 77h, 77j, 77o, 77q, 77s, 77u, 77z–3, 77ggg(a), 77hhh, 77sss, 77uuu, 78b, 78c(b), 78d, 78d–1, 78d–2, 78e, 78f, 78g, 78h, 78i, 78k, 78k–1, 78l, 78m, 78n, 78o, 78o–4, 78q, 78q–1, 78w, 78t–1, 78u, 78w, 78ll(d), 78mm, 78eee, 80a–8, 80a–20, 80a–24, 80a–29, 80a–37, 80a–41, 80a–44(a), 80a–44(b), 80b–3, 80b–4, 80b–5, 80b–9, 80b–10(a), 80b–11, 7202, and 7211 *et seq.;* 29 U.S.C. 794; 44 U.S.C. 3506 and 3507; Reorganization Plan No. 10 of 1950 (15 U.S.C. 78d nt); sec. 8G, Pub. L. 95–452, 92 Stat. 1101 (5 U.S.C. App.); sec. 913, Pub. L. 111–203, 124 Stat. 1376, 1827; sec. 3(a), Pub. L. 114–185, 130 Stat. 538; E.O. 11222, 30 FR 6469, 3 CFR, 1964–1965 Comp., p. 36; E.O. 12356, 47 FR 14874, 3 CFR, 1982 Comp., p. 166; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Information Security Oversight Office Directive No. 1, 47 FR 27836; and 5 CFR 735.104 and 5 CFR parts 2634 and 2635, unless otherwise noted.

Subpart A—Organization and Program Management

■ 2. Section 200.30–5 is amended by revising paragraphs (c–1) introductory text and (c–1)(1) to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(c-1) With respect to the Securities Exchange Act of 1934:

(1) To grant and deny applications filed pursuant to section 24(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78x(b)) and § 240.24b–2 of this chapter (Rule 24b–2) for confidential treatment of information filed pursuant to section 13(f) of that Act (15 U.S.C. 78m(f)) and § 240.13f–1 of this chapter (Rule 13f-1) and the instructions to Form N–PX (§§ 249.326 and 274.129 of this chapter).

* * * * *

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

■ 3. The general authority citation for part 232 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78n–1, 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.

* * * * *

■ 4. Section 232.101 is amended by revising paragraphs (a)(1)(iii) and (xxii) and (d) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(iii) Statements, reports, and schedules filed with the Commission pursuant to sections 13, 14, 14A(d), 15(d), or 16(a) of the Exchange Act (15 U.S.C. 78m, 78n, 78n–1(d), 78o(d), and 78p(a)), and proxy materials required to be furnished for the information of the Commission pursuant to §§ 240.14a–3 and 240.14c–3 of this chapter (Rules 14a–3 and 14c–3) or in connection with annual reports on Form 10–K (§ 249.310

[394] *See supra* section V, Table 2.

[395] *Id.*

of this chapter) filed pursuant to section 15(d) of the Exchange Act;

Note 1 to paragraph (a)(1)(iii). Electronic filers filing Schedules 13D and 13G with respect to foreign private issuers should include in the submission header all zeroes (*i.e.,* 00–0000000) for the Internal Revenue Service (IRS) tax identification number because the EDGAR system requires an IRS number tag to be inserted for the subject company as a prerequisite to acceptance of the filing.

Note 2 to paragraph (a)(1)(iii). Foreign private issuers must file or submit their Form 6–K reports (§ 249.306 of this chapter) in electronic format.

* * * * *

(xxii) Confidential treatment requests filed with the Commission pursuant to section 13(f) of the Exchange Act (15 U.S.C. 78m(f)) and the rules and regulations in this chapter, including Form 13F (§ 249.325 of this chapter), or pursuant to the instructions to Form N–PX (§§ 249.326 and 274.129 of this chapter). The filings must be made on EDGAR in the format required by the EDGAR Filer Manual, as defined in § 232.11 (Rule 11 of Regulation S–T). Notwithstanding § 232.104 (Rule 104 of Regulation S–T), the documents filed or furnished under this paragraph (a)(1)(xxii) will be considered as officially filed with or furnished to, as applicable, the Commission; and

* * * * *

(d) All documents, including any information with respect to which confidential treatment is requested, filed pursuant to section 13(n) (15 U.S.C. 78m(n)) and section 13(f) (15 U.S.C. 78m(f)) of the Exchange Act and the rules and regulations in this chapter and the instructions to Form N–PX (§§ 249.326 and 274.129 of this chapter) shall be filed in electronic format.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 6. Add § 240.14Ad–1 to read as follows:

§ 240.14Ad–1 Report of proxy voting record.

(a) Subject to paragraphs (b) and (c) of this section, every institutional investment manager (as that term is defined in section 13(f)(6)(A) of the Act (15 U.S.C. 78m(f)(6)(A))) that is required to file reports under section 13(f) of the Act (15 U.S.C. 78m(f)) must file an annual report on Form N–PX (§§ 249.326 and 274.129 of this chapter) not later than August 31 of each year, for the most recent 12-month period ended June 30, containing the institutional investment manager's proxy voting record for each shareholder vote pursuant to sections 14A(a) and (b) of the Act (15 U.S.C. 78n–1(a) and (b)) with respect to each security over which the manager exercised voting power (as defined in paragraph (d) of this section).

(b) An institutional investment manager is not required to file a report on Form N–PX (§§ 249.326 and 274.129 of this chapter) for the 12-month period ending June 30 of the calendar year in which the manager's initial filing on Form 13F (§ 249.325 of this chapter) is due pursuant to § 240.13f–1. For purposes of this paragraph (b), ''initial filing'' on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F was required for the immediately preceding calendar quarter.

(c) An institutional investment manager is not required to file a report on Form N–PX (§§ 249.326 and 274.129 of this chapter) with respect to any shareholder vote at a meeting that occurs after September 30 of the calendar year in which the manager's final filing on Form 13F (§ 249.325 of this chapter) is due pursuant to § 240.13f–1. An institutional investment manager is required to file a Form N–PX for the period July 1 through September 30 of the calendar year in which the manager's final filing on Form 13F is due pursuant to § 240.13f–1; this filing is required to be made not later than March 1 of the immediately following calendar year. For purposes of this paragraph (c), ''final filing'' on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F is required for the immediately subsequent calendar quarter.

(d) For purposes of this section:

(1) *Voting power* means the ability, through any contract, arrangement, understanding, or relationship, to vote a security or direct the voting of a security, including the ability to determine whether to vote a security or to recall a loaned security.

(2) *Exercise* of voting power means using voting power to influence a voting decision with respect to a security.

■ 7. Amend § 240.24b–2 by revising paragraph (i) to read as follows:

§ 240.24b–2 Nondisclosure of information filed with the Commission and with any exchange.

* * * * *

(i) An institutional investment manager shall omit the confidential portion from the material publicly filed in electronic format pursuant to section 13(f) of the Act (15 U.S.C. 78m(f)) and the rules and regulations in this part and the instructions to Form N–PX (§§ 249.326 and 274.129 of this chapter). The institutional investment manager shall indicate in the appropriate place in the material publicly filed that the confidential portion has been so omitted and filed separately with the Commission. In lieu of the procedures described in paragraph (b) of this section, an institutional investment manager shall request confidential treatment electronically pursuant to section 13(f) (15 U.S.C. 78m(f)), the rules and regulations in this part, and the instructions to Form N–PX (§§ 249.326 and 274.129 of this chapter).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 8. The general authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

* * * * *

■ 9. Revise the heading for subpart D to read as follows:

Subpart D—Forms for Annual and Other Reports of Issuers and Other Persons Required Under Sections 13, 14A, and 15(d) of the Securities Exchange Act of 1934

■ 10. Add § 249.326 to read as follows:

§ 249.326 Form N–PX, annual report of proxy voting record.

This form shall be used by institutional investment managers to file an annual report pursuant to § 240.14Ad–1 of this chapter containing the manager's proxy voting record.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 11. The general authority citation for part 270 continues to read 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.

* * * * *

§ 270.30b1–4 [Amended]

■ 12. Amend § 270.30b1–4 by removing the phrase ''Form N–PX (§ 274.129 of this chapter)'' and adding in its place ''Form N–PX (§§ 249.326 and 274.129 of this chapter)''.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 13. The authority citation for part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78n–1, 78*o*(d), 80a–8, 80a–24, 80a–26, 80a–29, and sec. 939A, Pub. L. 111–203, 124 Stat. 1376, unless otherwise noted.

■ 14. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by revising Item 17(f) and Item 27(d)(5) to read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Item 17. Management of the Fund

* * * * *

(f) *Proxy Voting Policies.* Unless the Fund invests exclusively in non-voting securities, describe the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Fund uses when a vote presents a conflict between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free telephone number and, if any, contacting a specified email address; (2) on or through the Fund's website, if it has one, at a specified internet address; and (3) on the Commission's website at *http://www.sec.gov.*

Instructions

1. A Fund may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's proxy voting record by phone or email, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N–PX in a human-readable format, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Fund has a website, it must make publicly available free of charge the information disclosed in the Fund's most recently filed report on Form N–PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N–PX must be in a human-readable format and remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of Rule 30b1–4 (17 CFR 270.30b1–4). A Fund may satisfy the requirement to provide this information in a human-readable format by providing a direct link to the relevant HTML-rendered Form N–PX report on EDGAR.

* * * * *

Item 27. Financial Statements

* * * * *

(d) *Annual and Semiannual Reports.* Every annual and semiannual report to shareholders required by rule 30e–1 must contain the following:

* * * * *

(5) *Statement Regarding Availability of Proxy Voting Record.* A statement that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free telephone number and, if any, contacting a specified email address; (ii) on or through the Fund's website, if it has one, at a specified internet address; and (iii) on the Commission's website at *http://www.sec.gov.*

Instructions

1. If a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's proxy voting record by phone or email, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N–PX in a human-readable format, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

2. If a Fund has a website, it must make publicly available free of charge the information disclosed in the Fund's most recently filed report on Form N–PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N–PX must be in a human-readable format and remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of rule 30b1–4 (17 CFR 270.30b1–4). A Fund may satisfy the requirement to provide this information in a human-readable format by providing a direct link to the relevant HTML-rendered Form N–PX report on EDGAR.

* * * * *

■ 15. Amend Form N–2 (referenced in §§ 239.14 and 274.11a–1) by revising Item 18.16, Item 24.6.d, and Item 24.8 to read as follows:

Note: The text of Form N–2 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–2

* * * * *

Item 18. Management

* * * * *

16. Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interests of the Registrant's shareholders, on the one hand, and those of the Registrant's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act and the rules thereunder) of the Registrant, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Registrant voted proxies relating to portfolio securities during the most

recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free telephone number and, if any, contacting a specified email address; (ii) on or through the Registrant's website, if it has one, at a specified internet address; and (iii) on the Commission's website at *http://www.sec.gov*.

Instructions

1. A Registrant may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's proxy voting record by phone or email, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX [17 CFR 274.129] in a human-readable format, within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Registrant has a website, it must make publicly available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must be in a human-readable format and remain available on or through the Registrant's website for as long as the Registrant remains subject to the requirements of Rule 30b1–4 under the Investment Company Act [17 CFR 270.30b1–4]. A Registrant may satisfy the requirement to provide this information in a human-readable format by providing a direct link to the relevant HTML-rendered Form N–PX report on EDGAR.

* * * * *

Item 24. Financial Statements

* * * * *

6. Every annual and semiannual report to shareholders required by Section 30(e) of the Investment Company Act and Rule 30e–1 thereunder shall contain the following information:

* * * * *

d. A statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free telephone number and, if any, contacting a specified email address; (2) on or through the Registrant's website, if it has one, at a specified internet address; and (3) on the Commission's website at *http://www.sec.gov.*

* * * * *

8. a. When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information most recently disclosed in response to Item 18.16 of this Form or Item 7 of Form N–CSR within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

b. If a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's proxy voting record by phone or email, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX in a human-readable format, within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

c. If a Registrant has a website, it must make publicly available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must be in a human-readable format and remain available on or through the Registrant's website for as long as the Registrant remains subject to the requirements of Rule 30b1–4 under the Investment Company Act. A Registrant may satisfy the requirement to provide this information in a human-readable format by providing a direct link to the relevant HTML-rendered Form N–PX report on EDGAR.

* * * * *

■ 16. Amend Form N–3 (referenced in §§ 239.17a and 274.11b) by revising Item 23(f), Item 31.4(d), and Item 31.6 to read as follows:

Note: The text of Form N–3 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–3

* * * * *

Item 23. Management of the Registrant

* * * * *

(f) *Proxy Voting Policies.* Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interests of investors, on the one hand, and those of the Registrant's investment adviser; principal underwriter; or any affiliated person of the Registrant, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free telephone number and, if any, contacting a specified email address; (2) on or through the Registrant's website, if it has one, at a specified internet address; and (3) on the Commission's website at *http://www.sec.gov*.

Instructions

1. A Registrant may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's proxy voting record by phone or email, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX [17 CFR 274.129] in a human-readable format, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Registrant has a website, it must make publicly available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the

Registrant's most recently filed report on Form N–PX must be in a human-readable format and remain available on or through the Registrant's website for as long as the Registrant remains subject to the requirements of rule 30b1–4 [17 CFR 270.30b1–4]. A Registrant may satisfy the requirement to provide this information in a human-readable format by providing a direct link to the relevant HTML-rendered Form N–PX report on EDGAR.

* * * * *

Item 31. Financial Statements

* * * * *

4. Every report required by section 30(e) of the 1940 Act and rule 30e–1 under it [17 CFR 270.30e–1] shall contain the following information:

* * * * *

(d) a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free telephone number and, if any, contacting a specified email address; (ii) on or through the Registrant's website at a specified internet address, if applicable; and (iii) on the Commission's website at *http://www.sec.gov;*

* * * * *

6. (a) When a Registrant (or financial intermediary through which units of the Registrant may be purchased or sold) receives a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information disclosed in response to Item 23(f) of this Form, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(b) If a Registrant (or financial intermediary through which units of the Registrant may be purchased or sold) receives a request for the Registrant's proxy voting record by phone or email, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX [17 CFR 274.129] in a human readable format, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(c) If a Registrant has a website, it must make publicly available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must be in a human-readable format and remain available on or through the Registrant's website for as long as the Registrant remains subject to the requirements of rule 30b1–4 under the Investment Company Act [17 CFR 270.30b1–4]. A Registrant may satisfy the requirement to provide this information in a human-readable format by providing a direct link to the relevant HTML-rendered Form N–PX report on EDGAR.

* * * * *

■ 17. Amend § 274.129 by revising the heading to read as follows:

§ 274.129 Form N–PX, annual report of proxy voting record.

* * * * *

■ 18. Form N–PX (referenced in §§ 249.326 and 274.129) is revised.

Note: Form N–PX is attached as appendix A to this document. Form N–PX will not appear in the Code of Federal Regulations.

By the Commission.

Dated: November 2, 2022.

Vanessa A. Countryman,

Secretary.

Appendix A—Form N–PX

United States

Securities and Exchange Commission

Washington, DC 20549

Form N–PX

Annual Report of Proxy Voting Record

General Instructions

A. Rule as to Use of Form N–PX

Form N–PX is to be used by a registered management investment company, other than a small business investment company registered on Form N–5 (17 CFR 239.24 and 274.5), to file the registered management investment company's complete proxy voting record pursuant to Section 30 of the Investment Company Act of 1940 (''Investment Company Act'') and Rule 30b1–4 thereunder (17 CFR 270.30b1–4). Form N–PX also is to be used by a person that is required to file reports under Rule 13f–1 (''Institutional Manager''), to file the Institutional Manager's proxy voting record regarding votes pursuant to Sections 14A(a) and (b) of the Securities Exchange Act of 1934 (''Exchange Act'') on certain executive compensation matters, pursuant to Section 14A(d) of the Exchange Act and Rule 14Ad–1 thereunder (17 CFR 240.14Ad–1). Form N–PX is to be filed not later than August 31 of each year for the most recent 12-month period ended June 30, except in the case of Institutional Managers that make initial or final filings on Form 13F during the relevant 12-month period as described in General Instruction F.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Investment Company Act and the Exchange Act contain certain general requirements that are applicable to reporting on any form under those Acts. These general requirements should be read and observed carefully in the preparation and filing of reports on this form, except that any provision in the form or in these instructions is controlling.

C. Joint Reporting Rules

1. If two or more Institutional Managers, each of which is required by Rule 14Ad–1 to file a report on Form N–PX for the reporting period, exercised voting power over the same securities on a vote pursuant to Section 14A(a) or (b) of the Exchange Act, only one such Institutional Manager must include the information regarding that vote in its report on Form N–PX.

2. Two or more Institutional Managers that are affiliated persons, as defined in Section 2(a)(3) of the Investment Company Act, may file a joint report on a single Form N–PX notwithstanding that such Institutional Managers do not exercise voting power over the same securities.

3. An Institutional Manager is not required to report proxy votes that are reported on a Form N–PX report that is filed by a Fund.

4. An Institutional Manager that exercised voting power over any security with respect to proxy votes that are reported by another Institutional Manager or Managers pursuant to General Instruction C.1 or C.2, or are reported on a Form N–PX report filed by a Fund, must identify each Institutional Manager and Fund reporting on its behalf in the manner described in Special Instruction B.2.d. and B.2.e.

5. An Institutional Manager reporting proxy votes on behalf of another Institutional Manager pursuant to General Instruction C.1 or C.2 must identify any other Institutional Managers on whose behalf the filing is made in the manner described in Special Instruction C.2.

6. A Fund reporting proxy votes that would otherwise be required to be reported by an Institutional Manager must identify any Institutional Managers on whose behalf the filing is made in the manner described in Special Instruction C.2.

D. Signature and Filing of Report.

1. a. For reports filed by a Fund, the report must be signed on behalf of the Fund by its principal executive officer or officers. For reports filed by Institutional Managers, the report must be signed on behalf of the Institutional Manager by an authorized person. Attention is directed to Rule 12b–11 under the Exchange Act and Rule 8b–11 under the Investment Company Act concerning signatures.

b. The name and title of each person who signs the report shall be typed or printed beneath his or her signature.

2. A reporting person must file reports on Form N–PX electronically using the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system in accordance with Regulation S–T. Consult the

EDGAR Filer Manual and Appendices for EDGAR filing instructions.

E. Definitions.

As used in this Form N–PX, the terms set out below have the following meanings:

''Fund'' means a registered management investment company (other than a small business investment company registered on Form N–5 (17 CFR 239.24 and 274.5)) or a separate Series of the registered management investment company.

''Institutional Manager'' means a person that is required to file reports under Rule 13f–1 under the Exchange Act.

''LEI'' means, with respect to any company, the ''legal entity identifier'' as assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation. ''Reporting Person'' means the Institutional Manager or Fund filing this report or on whose behalf the report is filed.

''Series'' means shares issued by a registered management investment company that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with Rule 18f–2(a) under the Investment Company Act [17 CFR 270.18f–2(a)].

F. Transition Rules for Institutional Managers

1. An Institutional Manager is not required to file a report on Form N–PX for the 12-month period ending June 30 of the calendar year in which the manager's initial filing on Form 13F is due pursuant to Rule 13f–1 under the Exchange Act. For purposes of this paragraph, an ''initial filing'' on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F was required for the immediately preceding calendar quarter.

2. An Institutional Manager is not required to file a report on Form N–PX with respect to any shareholder vote at a meeting that occurs after September 30 of the calendar year in which the manager's final filing on Form 13F is due pursuant to Rule 13f–1 under the Exchange Act. An Institutional Manager is required to file a Form N–PX for the period July 1 through September 30 of the calendar year in which the manager's final filing on Form 13F is due pursuant to Rule 13f–1 under the Exchange Act; this filing is required to be made not later than March 1 of the immediately following calendar year. For purposes of this paragraph, a ''final filing'' on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F is required for the immediately subsequent calendar quarter.

Special Instructions

A. Organization of Form N–PX

1. This form consists of three parts: the Form N–PX Cover Page (''Cover Page''), the Form N–PX Summary Page (''Summary Page''), and the proxy voting information required by the form (''Proxy Voting Information'').

2. Present the Cover Page and the Summary Page information in the format and order provided in the form. Do not include any additional information on the Summary Page.

B. Cover Page

1. Amendments to a Form N–PX report must either restate the Form N–PX report in its entirety or include only proxy voting information that is being reported in addition to the information already reported in a current public Form N–PX report for the same period. If the Form N–PX report is filed as an amendment, then the reporting person must check the amendment box on the Cover Page, enter the amendment number, and check the appropriate box to indicate whether the amendment (a) is a restatement or (b) adds new Proxy Voting Information. Each amendment must include a complete Cover Page and, if applicable, a Summary Page.

2. Designate the Report Type for the Form N–PX report by checking the appropriate box in the Report Type section of the Cover Page, and include, where applicable, the List of Other Persons Reporting for this Manager (on the Cover Page), the Summary Page, and the Proxy Voting Information, as follows:

a. For a report by a Fund, if the Fund held one or more securities it was entitled to vote, check the box for Report Type ''Fund Voting Report,'' omit from the Cover Page the List of Other Persons Reporting for this Manager, and include both the Summary Page and the Proxy Voting Information.

b. For a report by a Fund, if the Fund did not hold any securities it was entitled to vote and therefore does not have any proxy votes to report, check the box for Report Type ''Fund Notice Report'' and file the Cover Page, required signature, and, if applicable, the Summary Page information about the series.

c. For a report by an Institutional Manager that includes all proxy votes required to be reported by the Institutional Manager, check the box for Report Type ''Institutional Manager Voting Report,'' omit from the Cover Page the List of Other Persons Reporting for this Manager, and include both the Summary Page and the Proxy Voting Information.

d. For a report by an Institutional Manager, if no proxy votes are reported by the Institutional Manager in the filing, check the box for Report Type ''Institutional Manager Notice Report,'' on the Cover Page and complete the notice report filing explanation section. If all the votes required to be reported by the Institutional Manager are reported by another Institutional Manager or by one or more Funds, check the explanatory box indicating ''all proxy votes are reported by other reporting persons,'' include the List of Other Persons Reporting for this Manager, and file the Cover Page and required signature only. All other reporting persons may omit this section. If the reporting manager did not exercise voting power over securities involving any reportable voting matter, check the explanatory box indicating ''the reporting person did not exercise voting power for any reportable voting matter and therefore does not have any proxy votes to report for the reporting period'' and file the Cover Page and required signature only. If the reporting manager has a policy not to vote on any proxy matters, clearly disclosed the policy, and did not vote any proxy matters during the reporting period, check the explanatory box indicating ''the reporting person has a clearly disclosed policy of not voting, and did not vote, on any proxy voting matters'' and file the Cover Page and required signature only.

e. For a report by an Institutional Manager, if only part of the proxy votes required to be reported by the Institutional Manager are reported by another Institutional Manager or Managers or one or more Funds, check the box for Report Type ''Institutional Manager Combination Report,'' include on the Cover Page the List of Other Persons Reporting for this Manager, and include both the Summary Page and the Proxy Voting Information.

3. If the Institutional Manager has a number assigned by the Financial Industry Regulatory Authority's Central Registration Depository system or by the Investment Adviser Registration Depository system (''CRD number''), provide the Manager's CRD number. If the Institutional Manager has a file number (*e.g.,* 801–, 8–, 866–, 802–) assigned by the Commission (''SEC file number''), provide the Manager's SEC file number. If the Reporting Person has a Legal Entity Identifier (''LEI''), provide the Reporting Person's LEI.

4. The Cover Page may include information in addition to the required information, so long as the additional information does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. Place all additional information at the end of the Cover Page, except as permitted by paragraph (o) of Item 1.

C. Summary Page

1. Include on the Summary Page the total number of included Institutional Managers with votes reported in this Form N–PX report pursuant to General Instruction C, not counting the reporting person filing this report. *See* Special Instruction C.2. If none, enter the number zero (''0'').

2. Include on the Summary Page the list of included Institutional Managers with votes reported in this Form N–PX report pursuant to General Instruction C. Use the title, column headings, and format provided.

a. If this Form N–PX report does not report the proxy votes of any Institutional Manager other than the reporting person, enter the word ''NONE'' under the title and omit the column headings and list entries.

b. If this Form N–PX report reports the proxy votes of one or more Institutional Managers other than the reporting person, enter in the list of included Institutional Managers all such Institutional Managers together with their respective Form 13F file numbers, if known, and, if they exist, any of the respective CRD Numbers, LEIs, and SEC File Numbers assigned to each manager. (The Form 13F file numbers are assigned to Institutional Managers when they file their first Form 13F). Assign a number to each Institutional Manager in the list of included Institutional Managers, and present the list in sequential order. The numbers need not be consecutive. Do not include the reporting person filing this report.

3. For reports filed by a Fund, include on the Summary Page: the total number of Series of the Fund reported in this Form N–PX, if any; the name of each Series included; each

Series identification number; and the LEI for any Series of the Fund. If this Form N–PX report does not report the proxy votes of any Series, enter the word ''NONE'' under the title and omit the column headings and list entries.

D. Proxy Voting Information

1. Disclose the information required or permitted by Item 1 in the order presented in paragraphs (a) through (o) of Item 1.

2. A reporting person must provide the Council on Uniform Securities Identification Procedures (''CUSIP'') number for the security pursuant to Item 1(b), unless the CUSIP is not available through reasonably practicable means, *e.g.,* in the case of certain securities of foreign issuers. If the CUSIP is not available through reasonably practicable means, the reporting person must provide the International Securities Identification Number (''ISIN'') pursuant to Item 1(c), unless the ISIN is not available through reasonably practicable means. A reporting person may choose to report the global share class Financial Instrument Global Identifier (''FIGI'') for the security pursuant to Item 1(d).

3. Item 1(f) requires an identification of the matter voted on for all matters. If a form of proxy in connection with a matter is subject to rule 14a–4 under the Exchange Act [17 CFR 240.14a–4], the description in Item 1(f) must: (i) use the same language that is on the form of proxy to identify the matter; (ii) identify all matters in the same order as on the form of proxy; and (iii) for election of directors, identify each director separately in the same order as on the form of proxy, even if the election of directors is presented as a single matter on the form of proxy. In all other cases, provide a brief identification of the matters voted on and limit use of abbreviations, which should not be used other than for commonly understood terms or for terms that the issuer abbreviated in its description of the matter.

4. Item 1(g) requires the reporting person to categorize each matter from a list of categories that may apply to such matter. In responding to Item 1(g), a reporting person must choose all categories applicable to such matter.

5. In responding to paragraph (i) of Item 1, a reporting person may use the number of shares voted as reflected in its records at the time of filing a report on Form N–PX. If the reporting person has not received confirmation of the actual number of votes cast prior to filing a report on Form N–PX, the numbers reported may reflect the number of shares instructed to be cast. A reporting person is not required to amend a previously filed Form N–PX report if the reporting person subsequently receives confirmation of the actual number of votes cast.

6. In responding to paragraphs (i) and (j) of Item 1:

a. An Institutional Manager must report the number of shares that the Institutional Manager is reporting on behalf of another Institutional Manager pursuant to General Instruction C.1 or C.2 separately from the number of shares that the Institutional Manager is reporting only on its own behalf. An Institutional Manager also must separately report shares when the groups of Institutional Managers on whose behalf the shares are reported are different. For example, if the reporting Institutional Manager is reporting on behalf of Manager A with respect to 10,000 shares and on behalf of Managers A and B with respect to 50,000 shares, then the groups of 10,000 and 50,000 shares must be separately reported.

b. A Fund must separately report shares that are reported on behalf of different Institutional Managers or groups of Institutional Managers pursuant to General Instruction C.3.

7. For purposes of paragraph (j) of Item 1, a reporting person is considered to have loaned securities if it loaned the securities directly or loaned the securities indirectly through a lending agent.

8. If management did not make a recommendation on how to vote on a particular matter, a reporting person should respond ''none'' to paragraph (l) of Item 1 for that matter.

9. In the case of a reporting person that is a Fund that offers multiple Series, provide the information required by Item 1 separately by Series (for example, provide Series A's full proxy voting record, followed by Series B's full proxy voting record).

10. In response to paragraph (o), a reporting person may provide additional information about the matter or how it voted, provided the information does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. The disclosure permitted by paragraph (o) is optional. A reporting person is not required to respond to paragraph (o) for any vote, and if a reporting person does provide additional information for one or more votes, it is not required to provide this information for all votes.

Instructions for Confidential Treatment Requests

1. An Institutional Manager should make requests for confidential treatment of information reported on this form in accordance with rule 24b–2(i) under the Exchange Act [17 CFR 240.24b–2(i)].

2. Paragraph (i) of rule 24b–2 requires a person filing confidential information with the Commission to indicate at the appropriate place in the public filing that the confidential portion has been so omitted and filed separately with the Commission. An Institutional Manager must comply with this provision by including on the Cover Page a statement that confidential information has been omitted from the public Form N–PX report and filed separately with the Commission.

3. An Institutional Manager must file electronically, in accordance with rule 101(d) of Regulation S–T [17 CFR 232.101(d)], all requests for and information subject to the request for confidential treatment.

4. An Institutional Manager must file all requests for and information subject to the request for confidential treatment in accordance with the instructions for filing confidential treatment requests for information filed on Form 13F. In making a determination as to requests for confidential treatment of information filed on Form N–PX, the Commission will apply the same standards as set forth in Section 13(f)(4) and (5) of the Exchange Act [15 U.S.C. 78m(f)(4) and (5)] and rule 24b–2. If a request for confidential treatment of information filed on Form N–PX relates to a request for confidential treatment of information included in an Institutional Manager's filing on Form 13F, the Institutional Manager should so state and identify the related request. In such cases, the Institutional Manager need not repeat the analysis set forth in the request for confidential treatment in connection with the Form 13F filing. The Institutional Manager's request, however, must explain whether and, if so, how the Form N–PX and Form 13F confidential treatment requests are related and should identify if any of the analysis in its request for confidential treatment on Form 13F does not apply, or applies differently, to its report on Form N–PX.

5. An Institutional Manager requesting confidential treatment must provide enough factual support for its request to enable the Commission to make an informed judgment as to the merits of the request, including a demonstration that the information is customarily and actually kept private by the Institutional Manager and that failure to grant the request for confidential treatment would be likely to cause harm to the Institutional Manager.

6. State, and provide justification for, the period of time for which confidential treatment of the proxy voting information is requested. The time period specified may not exceed one (1) year from the date that the Form N–PX report is required to be filed with the Commission.

7. At the expiration of the period for which confidential treatment has been granted (the ''Expiration Date'') and unless a *de novo* request for confidential treatment of the information that meets the requirements of Rule 24b–2 and these Confidential Treatment Instructions is filed with the Commission at least fourteen (14) days in advance of the Expiration Date, the Institutional Manager will make such proxy voting information public as set forth in Confidential Treatment Instruction 8.

8. Unless a hardship exemption is available, the Institutional Manager must submit electronically within six (6) business days of the expiration of confidential treatment or notification of denial, as applicable, a Form N–PX amendment to its previously filed public Form N–PX report that includes the proxy voting information as to which the Commission denied confidential treatment or for which confidential treatment has expired. Such Form N–PX amendment must be timely filed: (i) upon the denial by the Commission of a request for confidential treatment; (ii) upon expiration of the time period for which an Institutional Manager has requested confidential treatment; or (iii) upon the expiration of the confidential treatment previously granted for a filing. If an Institutional Manager files an amendment, the amendment must not be a restatement; the Institutional Manager must designate it as an amendment that adds new proxy voting

information. The Institutional Manager must include at the top of the Form N–PX Cover Page the following legend to correctly designate the type of filing being made:

THIS FILING LISTS PROXY VOTE INFORMATION REPORTED ON THE FORM N–PX FILED ON (DATE) PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FOR WHICH (THAT REQUEST WAS DENIED/CONFIDENTIAL TREATMENT EXPIRED) ON (DATE).

Paperwork Reduction Act Information

Form N–PX is to be used by a Fund to file reports with the Commission pursuant to Section 30 of the Investment Company Act and Rule 30b1–4 thereunder. Form N–PX also is to be used by an Institutional Manager to file reports with the Commission as required by Section 14A(d) of the Exchange Act and Rule 14Ad–1 thereunder. Form N–PX is to be filed not later than August 31 of each year, containing the reporting person's proxy voting record for the most recent 12-month period ended June 30. The Commission may use the information provided on Form N–PX in its regulatory, disclosure review, inspection, and policymaking roles.

Funds and Institutional Managers are required to disclose the information specified by Form N–PX, and the Commission will make this information public. Funds and Institutional Managers are not required to respond to the collection of information contained in Form N–PX unless the Form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM N-PX

ANNUAL REPORT OF PROXY VOTING RECORD

FORM N-PX COVER PAGE

_____
(Name of reporting person) (For registered management investment companies, provide exact name of registrant as specified in charter)

_____
(Address of principal executive offices) (Zip code)

_____
(Name and address of agent for service)

Telephone number of reporting person, including area code: _____

Report for the [year ended June 30, _____] [period July 1, _____ to September 30, _____]

SEC Investment Company Act or Form 13F File Number: [811-] [028-]_____

CRD Number (if any): _____

Other SEC File Number (if any): _____

Legal Entity Identifier (if any): _____

Check here if amendment ☐; Amendment number: _____

This Amendment (check only one): ☐ is a restatement.

☐ adds new proxy voting entries.

Report Type (check only one): Registered Management Investment Company.

☐ Fund Voting Report (Check here if the registered management investment company held one or more securities it was entitled to vote.)

☐ Fund Notice Report (Check here if the registered management investment company did not hold any securities it was entitled to vote and therefore does not have any proxy votes to report.)

Institutional Manager.

☐ Institutional Manager Voting Report (Check here if all proxy votes of this reporting manager are reported in this report.)

☐ Institutional Manager Notice Report (Check here if no proxy votes are reported in this report and complete the notice report filing explanation section below)

Notice report filing explanation:

☐ all proxy votes for which the manager exercised voting power are reported by other reporting persons

☐ the manager did not exercise voting power for any reportable voting matter and therefore does not have any proxy votes to report

☐ the manager has a clearly disclosed policy of not voting, and did not vote, on any proxy voting matters

☐ Institutional Manager Combination Report (Check here if a portion of the proxy votes for this reporting manager are reported in this report and a portion are reported by other reporting person(s).)

[ ] Confidential Treatment Requested. (The Institutional Manager has omitted from this public Form N-PX one or more proxy vote(s) for which it is requesting confidential treatment from the U.S. Securities and Exchange Commission pursuant to the instructions of this form)

List of Other Persons Reporting for this Manager:
[If there are no entries in this list, omit this section.]

Investment Company Act or Form 13F File Number	CRD Number (if any)	Other SEC File Number (if any)	LEI (if any	Name
[811-] [028-]_____	_____	_____	_____	_____

[Repeat as necessary.]

FORM N-PX SUMMARY PAGE

Information about Institutional Managers.

Number of Included Institutional Managers: _____

List of Included Institutional Managers:

Provide a numbered list of the name(s), 13F file number(s), CRD Numbers (if any), SEC File Number(s) (if any), and LEI (if any) of all Institutional Managers with respect to which this report is filed, other than the reporting person filing this report.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

No.	Form 13F File Number 28-_____	CRD Number (if any)	SEC File Number (if any)	LEI (if any)	Name
_____		_____	_____	_____	_____

[Repeat as necessary.]

Information about the Series.

Number of Series: _____

Provide a list of the name(s) and identification number(s) of all Series with respect to which this report is filed.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

Series Identification Number	LEI	Series Name
_____	_____	_____

[Repeat as necessary.]

FORM N–PX

Item 1. Proxy Voting Record

If the reporting person is a Fund, disclose the following information for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the Fund was entitled to vote, including securities on loan for purposes of this form. If the reporting person is an Institutional Manager, disclose the following information for each shareholder vote pursuant to Sections 14A(a) and (b) of the Exchange Act over which the Institutional Manager exercised voting power, as defined in Rule 14Ad–1(d) under the Exchange Act [17 CFR 240.14Ad–1].

(a) The name of the issuer of the security;

(b) The Council on Uniform Securities Identification Procedures (''CUSIP'') number for the security;

(c) The International Securities Identification Number (''ISIN'') for the security;

(d) The global share class Financial Instrument Global Identifier (''FIGI'') for the security (optional);

(e) The shareholder meeting date;

(f) An identification of the matter voted on;

(g) All categories applicable to the matter voted on from the following list of categories:

(A) Director elections;

(B) Section 14A say-on-pay votes (examples: section 14A executive compensation, section 14A executive compensation vote frequency, section 14A extraordinary transaction executive compensation);

(C) Audit-related (examples: auditor ratification, auditor rotation);

(D) Investment company matters (examples: new or changed investment management agreement, assignment of investment management agreement, business development company approval of restricted securities or asset coverage ratio change, closed-end investment company issuance of shares below net asset value);

(E) Shareholder rights and defenses (examples: adoption or modification of a shareholder rights plan, control share acquisition provisions, fair price provisions, board classification, cumulative voting);

(F) Extraordinary transactions (examples: merger, asset sale, liquidation, buyout, joint venture, going private, spinoff, delisting);

(G) Capital structure (examples: security issuance, stock split, reverse stock split, dividend, buyback, tracking stock, adjustment to par value, authorization of additional stock);

(H) Compensation (examples: board compensation, executive compensation (other than Section 14A say-on-pay), board or executive anti-hedging, board or executive anti-pledging, compensation clawback, 10b5–1 plans);

(I) Corporate governance (examples: term limits, board committee issues, size of board, articles of incorporation or bylaws, codes of ethics, approval to adjourn, acceptance of minutes, proxy access);

(J) Environment or climate (examples: greenhouse gas (GHG) emissions, transition planning or reporting, biodiversity or ecosystem risk, chemical footprint, renewable energy or energy efficiency, water issues, waste or pollution, deforestation or land use, say-on-climate, environmental justice);

(K) Human rights or human capital/workforce (examples: workforce-related mandatory arbitration, supply chain exposure to human rights risks, outsourcing or offshoring, workplace sexual harassment);

(L) Diversity, equity, and inclusion (examples: board diversity, pay gap);

(M) Other social issues (examples: lobbying, political or charitable activities, data privacy, responsible tax policies, consumer protection); or

(N) Other (along with a brief description).

(h) For reports filed by Funds, disclose whether the matter was proposed by the issuer or by a security holder;

(i) The number of shares that were voted, with the number zero (''0'') entered if no shares were voted;

(j) The number of shares that the reporting person loaned and did not recall;

(k) How the shares in paragraph (i) were voted (*e.g.,* for or against proposal, or abstain; for or withhold regarding election of directors) and, if the votes were cast in multiple manners (*e.g.,* for and against), the number of shares voted in each manner;

(l) Whether the votes disclosed in paragraph (k) represented votes for or against management's recommendation;

(m) If applicable, identify each Institutional Manager on whose behalf this Form N–PX report is being filed (other than the reporting person filing the report) that exercised voting power over the security by entering the number assigned to the Institutional Manager on the Summary Page;

(n) If applicable, identify the Series that was eligible to vote the security by providing the Series identification number listed on the Summary Page; and

(o) Any other information the reporting person would like to provide about the matter or how it voted.

Signatures

[See General Instruction D]

Pursuant to the requirements of the [Securities Exchange Act of 1934 (for Institutional Managers)] [Investment Company Act of 1940 (for Funds)], the reporting person has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Reporting Person) _____

By (Signature and Title) _____

Date _____

Print the name and title of each signing officer under his or her signature.

[FR Doc. 2022–24292 Filed 12–21–22; 8:45 am]

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Federal Register

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

45 CFR

Proposed Rules:

153.....78206
155.....78206
156 .....74097, 76239, 78206
160.....78438
162.....78438
164.....74216

46 CFR

294.....74977

47 CFR

1 .....74987, 76949, 78573
2.....78573
8.....76959
47.....78573
64 .....75496, 75943, 76425
73.....76582, 77526

Proposed Rules:

4.....74102
8.....77048
64.....75199
73.....76434, 77782

48 CFR

Ch. 1.....73888, 73889
1.....73894, 73902
2.....73894
3.....73894
4.....73890, 73894
5.....73894
6.....73894
7.....73894
8.....73894
9.....73894
10.....73894
11.....73894
12.....73894
13.....73890, 73894
14.....73894
15.....73894
16.....73894
17.....73889, 73894
18.....73890, 73894
19.....73894
22.....73890
23.....73894
24.....73894
25 .....73890, 73894, 76427
26.....73894
27.....73890, 73894
28.....73894
29.....73894
30.....73894
31.....73894
32.....73894
33.....73894
34.....73894
35.....73894
36.....73894
37.....73894
38.....73894
39.....73894
41.....73894
42.....73894
43.....73894
44.....73894
45.....73894
46.....73894
47.....73894
48.....73894
49.....73894
50.....73894
51.....73894
52.....73894
53 .....73889, 73890, 73894
Ch. 2.....76988
212.....76980, 76984
225.....76980, 76984
252.....76980, 76984
512.....76111
515.....76583
516.....76583
552.....76111, 76583

Proposed Rules:

19.....76598
204.....77053
212.....77680
227.....77680
232.....77053
252 .....77053, 77055, 77680
515.....77783
538.....77783
552.....77783

49 CFR

107.....77995
171.....77995
173.....77995
385.....78579

Proposed Rules:

390.....75206

50 CFR

17 .....73655, 73971, 73994, 76112, 76882, 77368, 78582
216.....76998
300.....74322
622 .....74013, 74014, 74989, 76125, 77526, 77742
635.....76427
648 .....74021, 74991, 75852, 78011
660 .....74328, 77000, 77007
665.....74991
679 .....74022, 75516, 74992
697.....75516

Proposed Rules:

10.....75977
17.....73722, 75977
21.....75977
622.....74588, 78625
648.....74591, 76600
665.....74387
679 .....74102, 75569, 75570, 76435

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws/current.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text is available at *https://www.govinfo.gov/app/collection/plaw*. Some laws may not yet be available.

H.R. 6722/P.L. 117–235
To designate the Department of Veterans Affairs community-based outpatient clinic in French Camp, California, as the ''Richard A. Pittman VA Clinic''. (Dec. 20, 2022; 136 Stat. 2322)

H.R. 6863/P.L. 117–236
To designate the medical center of the Department of Veterans Affairs in Memphis, Tennessee, as the ''Lt. Col. Luke Weathers, Jr. VA Medical Center''. (Dec. 20, 2022; 136 Stat. 2324)

H.R. 7903/P.L. 117–237
To designate the Department of Veterans Affairs community-based outpatient clinic located in Canton, Michigan, as the ''Major General Oliver W. Dillard VA Clinic''. (Dec. 20, 2022; 136 Stat. 2326)

H.R. 7925/P.L. 117–238
To designate the Department of Veterans Affairs community-based outpatient clinic located in Palm Desert, California, as the ''Sy Kaplan VA Clinic''. (Dec. 20, 2022; 136 Stat. 2328)

S. 3825/P.L. 117–239
To designate the facility of the United States Postal Service located at 3903 Melear Drive in Arlington, Texas, as the ''Ron Wright Post Office Building''. (Dec. 20, 2022; 136 Stat. 2330)

S. 4017/P.L. 117–240
To designate the United States courthouse located at 111 South Highland Avenue in Jackson, Tennessee, as the ''James D. Todd United States Courthouse'', and for other purposes. (Dec. 20, 2022; 136 Stat. 2331)

S. 4052/P.L. 117–241
Early Hearing Detection and Intervention Act of 2022 (Dec. 20, 2022; 136 Stat. 2332)

S. 5060/P.L. 117–242
Paul D. Wellstone Building Act of 2022 (Dec. 20, 2022; 136 Stat. 2334)

Last List December 20, 2022

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